

EDD SHOWCASE

iPads in Deepwater

Trial team turns to iPads and apps to process a tsunami of documents.

BY ROBYN WEISMAN / ILLUSTRATION BY JAKOB HINRICHS

When the Deepwater Horizon oil rig exploded on April 20, 2010, few people could conceive of the magnitude of personal injury and economic and property damage in the states bordering the Gulf of Mexico that would result from the three-month spill of 4.9 million barrels of oil. Under the Oil Pollution Act of 1990 (101 P.L. 380), a party responsible for the discharge of oil from a vessel or facility “into or upon the navigable waters adjoining shorelines” is liable for the removal costs and damages resulting from the discharge. A number of BP entities, along with Transocean, which operated the rig, and Halliburton, which was tasked with stopping the oil spill, were sued for Deepwater’s damages under OPA. *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, April 20, 2010 (MDL NO. 2179), Case No. 10-me-2179, E.D. La.*)

On Aug. 10, 2010, to eliminate duplicative discovery and prevent inconsistent pretrial rulings, the U.S. Judicial Panel on Multidistrict Litigation consolidated 77 actions pending in Alabama, Florida, Louisiana, Mississippi and Texas before Judge Carl Barbier in the U.S. District Court for the Eastern District of Louisiana. Barbier chose 15 attorneys to form the

Plaintiffs’ Steering Committee. Kirkland and Ellis partners Richard Godfrey and J. Andrew Langan, and Robert Brock, a partner at Covington & Burling, lead the defense team, which offered “no comment” for this report.



Both sides cooperated to produce documents and write the majority of the Pretrial Order about document production and e-data, said Magistrate Judge Sally Shushan. After 18 months of discussions, days before the first phase of the trial was scheduled to begin, the committee negotiated an agreement with BP that, among other things, included an estimated \$7.8 billion settlement fund for economic loss and medical claims and a waiver of OPA requirements. With the waiver, individuals and non-

municipal or governmental entities go directly to a website supervised by U.S. District Court, Eastern District of Louisiana to file claims against BP. “There’s a strong presumption of entitlement written into the settlement terms,” said Jeffrey Breit, a partner at Norfolk, Va.-based personal injury firm Breit Drescher Imprevento & Walker and a member of the PSC.

“The one thing we didn’t want to happen was to have this turn into another Exxon Valdez,” said Shushan. “We want to get this case resolved, get people who settled their cases paid, and keep it organized and ongoing.” With fast-tracking, the PSC needed to review 83 million pages of reports, pleadings, depositions, etc. Days after the PSC’s first strategy meeting in Oct. 2010, documents began pouring in. “Government agencies were generating reports of 400 to 500 pages, and pleadings were arriving by the bucketful,” Breit recalled.

John Roy, an associate at Domengeaux, Wright, Roy & Edwards, managed the PSC’s review team, with “roughly 300 attorneys from 91 different firms from around the country,” said Breit, and 40 to 50 contract attorneys assisting with document review, deposition, trial preparation, and other tasks.

The plaintiffs used Redondo Beach, Calif.-based iConect Development's nXT software to cull multiple terabytes of data. BP provided plaintiffs with all files from employees who dealt with cement, each given a Bates number and stored on an external hard drive. The iConect team then catalogued the electronically stored information and filtered out documents that didn't match basic criteria, such as date ranges.

After the initial cull, attorneys were given batches of 500 to 1,000 pages of files to determine relevant keywords to further cull the ESI. Reviewers tagged files either as irrelevant or hot, Roy said; a second team reviewed the first team's work. While this significantly thinned out files, the team still faced thousands of documents to manually review. So the PSC turned to Apple iPad tablets. It was a "game-changer," Breit said.

The first-generation iPad had been released a few weeks before the Deepwater explosion and several members of the PSC were using the tablet to check email, access the web and take notes. Breit did not initially view the iPad as a litigation tool. Although he observed that the tablet was effective for reading PDF files, the iPad was only as useful as its apps.

Breit tested GoodReader, a PDF reader and organizing tool, but it did not easily mesh with the team's needs. Then Miami-based Lit Software launched TrialPad. Breit saw he could use the \$89 app to organize the BP litigation. He developed a tab system where a complaint would be filed in the tab "Pleadings," which would also store the answer, interrogatories, requests for production and witness information, "all broken down into a tree," Breit explained. But he didn't know how to set up TrialPad in a way that would enable everyone on the litigation team to access his file system until he talked to Ian O'Flaherty,

Lit Software's chief software architect. O'Flaherty explained that Breit could pair TrialPad with Dropbox, a low-cost online web-based service, to allow his team access to files stored on Dropbox directly from an app like TrialPad.

Breit was impressed with how easily TrialPad and Dropbox digested large volumes of data, such as a 500-page PDF report that included slides, photos, and other ancillary materials. TrialPad also included tools that helped Breit zoom, highlight, and handwrite notes on PDF files. He could email a paragraph, a page, or a document to others on the trial team.

Breit quickly convinced the PSC participants to buy iPads to implement his system. They all bought iPads with 3G and Wi-Fi support, but soon found that the TrialPad-Dropbox combination was not an airtight method for organizing the MDL. The PSC couldn't risk storing trial strategy, such as to-do lists, on Dropbox because of potential security breaches. Instead, the team sent sensitive work product via secure email that could be opened and reviewed in the TrialPad app.

In February 2011 the PSC began to review more than 300 depositions of defense witnesses that ran approximately 800 pages per transcript. The plaintiffs needed to glean from the transcripts information pertinent to trial issues to build their case. But TrialPad was not designed to edit documents. The task of dissecting relevant information from each deposition PDF and then cutting and pasting these pieces together into another PDF was laborious. The team's paralegals tried using Phoenix-based inData Corp.'s TrialDirector, but quickly met the software's capacity limit.

Then in January 2012, Lit Software released TranscriptPad, an app designed to edit .TXT and ASCII files of depositions. It helps the PSC cut, paste, highlight, and tag deposition

content, and then consolidate that information into a PDF that could be imported into TrialPad. This allowed the plaintiffs to, e.g., "search TranscriptPad for instances where the blowout preventer is talked about among ... witnesses," said Breit. "We were able to put it all in a great organizational way."

Apps took the iPad through Deepwater. As of September 11, 2012, \$31 million of settlement monies had been distributed, reported Shushan. The status of the cleanup effort is hard to gauge because "we're not getting to the natural resources damages part of the case until Phase 3," she said, which is expected to be tried in May or June, 2013.

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Since 2010, Lit Software has been changing law practices for the better with solid, efficient apps that harness the best in emerging mobile technology. With a belief that every lawyer should have the best organization and presentation tools at their fingertips, and that it should be as powerful as it is easy, Lit Software introduced TrialPad and TranscriptPad, and continues to lead the field of legal app innovation.

Both apps are available by searching for TrialPad or TranscriptPad in the App Store app on your iPad.



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