

# Legal Hold Notification: Demystifying The Market

An eDJ Group, Inc. Report

September 18, 2013

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## Introduction

Next month will mark the 10th anniversary of the *Zubulake IV* opinion. In this landmark case, US District Judge Shira A. Scheindlin clearly defined a party's duty to preserve ESI by stating that organizations, when there is reasonable anticipation of litigation, must "put in place a 'litigation hold' to ensure the preservation of relevant documents" (*Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003)). Since that time, there have been numerous published opinions sanctioning parties for inadequate or failed legal hold, and there have even been changes to both the FRCP and State Court rules that emphasize preservation requirements. The most basic preservation task, issuing legal hold notifications, remains a mystery to a surprising portion of corporate defendants.

For some organizations, management of the legal hold notification (LHN) process is not viewed as something that should or could be handled as a business process. Others simply don't know where to turn to understand the requirements of a solid LHN program and the options for managing it. At risk organizations are those that are less likely to have been serial litigants, which means that they often haven't felt compelled to implement legal hold programs.

We have seen the ramifications of poor Legal Hold practices with alarming frequency of late in multiple "bench slaps" delivered to Defendants and Plaintiffs, alike, because of immature or non-existent preservation methods. For some examples of such actions, see eDJ Group's first report in this series, *Bring Legal Holds to Life*. That report also lays out the framework for developing effective legal hold processes and procedures.

The immaturity surrounding LHN management is based on several pervasive myths or misconceptions about the process. One of the most prevalent is that LHN software is very expensive and requires a significant investment in time and internal resources to deploy. As a result, many businesses assume that LHN-specific applications are not for them and they are hampered in their ability to design and implement LHN processes by selecting appropriate Legal Hold tools.

This report will address how the most powerful myths around LHN stand up to examination and provides a corresponding analysis of current LHN technology offerings. The information and analysis in this report is based on eDJ Group's industry research which included (1) eDJ Group Legal Hold Notification 2013 survey of corporate and law firm professionals; (2) a focus survey of corporate and law firm consumers; (3) analyst briefings with providers; (4) independent product research; and (5) insights from The eDJ Group's strategic consulting engagements.

As laid out in the *Bring Legal Holds to Life* report, there are three core functions in a legal hold program: (1) legal hold notification, (2) in-place preservation of documents and data, and (3) preservation by collection. This report focuses specifically on legal hold notification. Where products featured in this report also support physical preservation of data, whether in-place or by collection, it is so noted but is not covered in depth. Further, some products featured herein support other areas of the eDiscovery and/or information management lifecycle, such as information governance, archiving, and legal matter management. Those functionalities are noted but are not covered in depth.

This report addresses the mechanics and management of the LHN function and does not include any legal advice, nor does it include analysis related to legal scoping or strategy of an organization's legal hold practices.

## What Myths Hinder LHN Tool Selection?

### Myth or Fact?

#### LHN software is designed for large enterprises with a lot of high stakes litigation.

**Myth.** In reviewing the evolution of LHN products, it is easy to understand how this myth came about. The early-to-market providers (2006-2007 era) *are* best suited for organizations with a steady stream of bet-the-company litigation and/or operate in highly regulated industries. These products also offer functionality both beyond and connected to the LHN function. However, there are a number of point solution products on the market today that do not require heavy human or financial resources. Some of these point solution products can meet the demands of both large and small enterprises with both large and small litigation profiles. There are also broader information governance products, as well as products/services that address other parts of the eDiscovery lifecycle that now include LHN modules and features.

#### LHN software is not affordable.

**Myth.** Whether an organization is an active, full-time litigant, a company with a low stakes litigation profile, or a law firm seeking to provide LHN management on behalf of clients, there are solutions available of the appropriate scale that will assist in creating defensible, repeatable processes and deliver a return on investment.

#### Managing LHN with spreadsheets and email works great.

**Myth and Fact.** LHN *can* be managed with spreadsheets and email or other manual solutions. However, in order to be successful, manually managed LHN programs must be highly structured and organized, and require a considerable commitment of human resources. Solutions designed for automated LHN workflow are superior to manual programs by reducing risk of human error or human resource turnover, increasing efficiency, and improving automation, reporting, and auditing capabilities. Our experiences in auditing manual LHN programs have consistently found human errors and discrepancies.

#### The mechanics of managing LHN are owned by corporations, not law firms.

**Myth and Fact.** Many organizations actively involved in litigation on a day-to-day basis manage their own LHN processes. However, these organizations represent only a portion of litigants and often represent the serial-litigation population. Organizations with less litigation management maturity can benefit by a partnership with their law firms as legal hold managers. Law firms that manage LHN for clients that do not fit the “manage in-house” model provide a significant value-add in legal services.

#### The software market is confusing – it is difficult to figure out the best solution.

**Fact.** eDJ Group has identified 19 LHN solutions on the market to date. These solutions range from stand-alone point products to tools built into broader product portfolios (information governance, enterprise archive, matter management, ECA and review applications) and are sourced in a variety of ways (hosted, on-premise, cloud, or hybrid). It is no wonder consumers are confused.

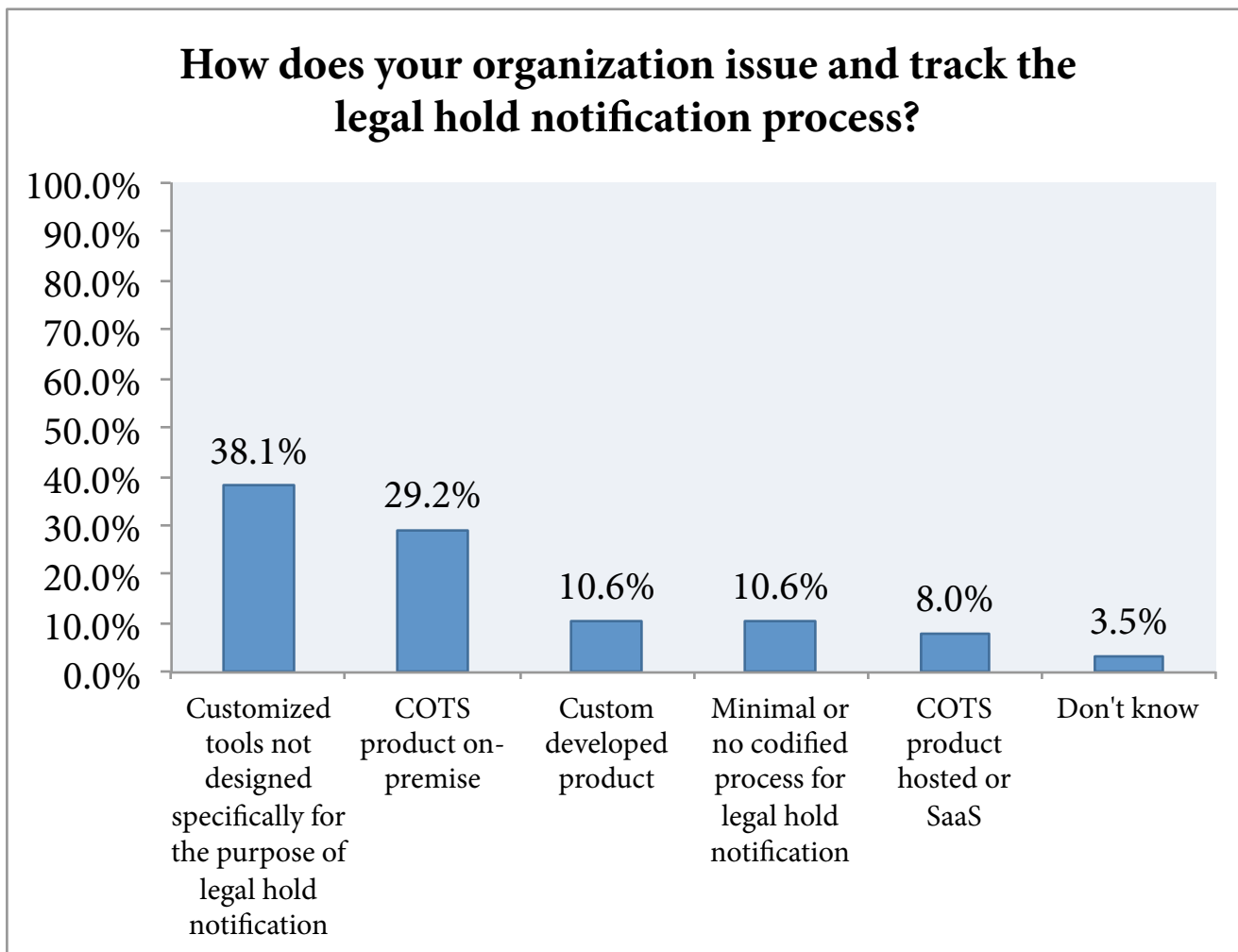
## Market Landscape

Understanding the market – both consumers and solutions – is integral to product selection. When it comes to the LHN, a review of the evolution of products sheds light on the evolution of the myths that hold buyers at bay.

### The Consumer Market

Corporations and law firms alike are consumers of LHN products. Corporations dominate the consumer market by far, though the number of law firms handling LHN management on behalf of clients is increasing – albeit slowly.

According to the eDJ Legal Hold Notification Summer 2013 survey, 37.2% of respondents use commercially available tools designed for legal hold notification, while 38.1% use commercially available tools not designed for legal hold notification (e.g., spreadsheets and email). Of those not using LHN tools, 17.7% plan to purchase a tool within the next 12 months. Only 10.6% indicated they have little to no codified legal hold notification process.



Source: eDJ Group Legal Hold Notification Survey, September 2013 , N = 113

## Corporations

Corporate entities have a plethora of buying options for LHN solutions. There are hosted and on-premise solutions; there are LHN tools embedded or added on to other products, including enterprise archive, enterprise data map, legal matter management, collection, processing, ECA and review tools. In determining which is best, an organization must take into consideration its litigation profile, corporate culture and infrastructure, and align with long-term business goals.

There is not a one-size-fits-all (or even most) LHN model. “Best practices” when it comes to corporate legal hold and discovery response procedures are personal to each organization and largely determined by cultural nuances.

## Law Firms

Law firms have largely been lost in the LHN market. As previously mentioned, law firms are target customers for LHN solutions to address litigation aimed both directly at the firm and at firms’ clients. However, more and more firms are coming to understand the value-add in assisting clients with the mechanics of managing LHN. They also recognize the risks posed by clients with immature or non-existent preservation processes. Additionally, a handful of service providers have recognized that the law firm consumer should not be forgotten. The eDJ Group believes that law firms are an emerging and important customer base for LHN solutions.

It is appropriate for full-time litigants to manage the LHN process internally. In-house legal departments are more familiar with their corporate environment and culture. In-house LHN systems can be more economical than having retained counsel manage the mechanics. It is a different story for the rest of the litigants out there. Law firms are in a prime position to assist clients that have only a handful of cases in any given year or those opting for the outsourced general counsel model.

Retained counsel understand the risks and requirements around legal hold and advise their clients accordingly. But law firms have traditionally relied on clients to administer the process around the advice given *or* are handling it the same way corporations that don’t have LHN software are: spreadsheets and email. Spreadsheets and email have proven to be complex and clunky solutions for LHN, especially considering the availability of purpose-built LHN tools. Further, while law firms understand the risk and requirements, they oftentimes do not have a good grasp on client data and systems. Managing client LHN closes that gap for law firms.

Not all solutions are suited for the law firm environment (e.g., security not designed for use on a client-by-client basis; embedded in products intended for up-stream functions such as information governance). However, there are appropriate options for law firms, including both on-premise and hosted solutions.

## LHN Products

### Evolution of LHN Products

**2006-2007** IBM (then PSS Atlas) and Exterro were the first to the LHN market. These products included tools to enable enterprises to not only manage the LHN function, but to also manage workflow, collection, chain of custody, and map the data environment. These products required significant commitments both in terms of budget and human resources. At the time, there was a fleeting perception that LHN tools would only be required for large serial litigants, but it quickly became clear that organizations of all sizes and litigation profiles require LHN solutions. Although both IBM and Exterro now offer LHN as a hosted solution, allowing them to serve the small/medium size businesses, they are designed to sit behind the firewall and/or be deployed as hosted and behind the firewall hybrids in order to take advantage of the full suite of tools. The primary target market for these products is the Global 1,000 organizations that have large litigation and regulatory profiles.

**2009** Recognizing that the early-to-market products were serving a specific type of master (e.g. large, serial litigations), the first product to challenge the early model was Zapproved's point solution, Legal Hold Pro. Legal Hold Pro is a hosted solution that services both the law firm and corporate the markets. The software-as-a-service solution can scale for large organizations with significant litigation profiles, with a pricing model appropriate for organizations with smaller litigation profiles and law firms managing LHN for clients. Zapproved began the trend of bringing LHN to the masses and others have followed.

**2010** kCura released Method, a LHN product built on its Relativity database. kCura was the first company to add LHN to a full featured review and production platform with significant market share. Also in early 2010, AccessData added LHN functionality to its AD eDiscovery product.

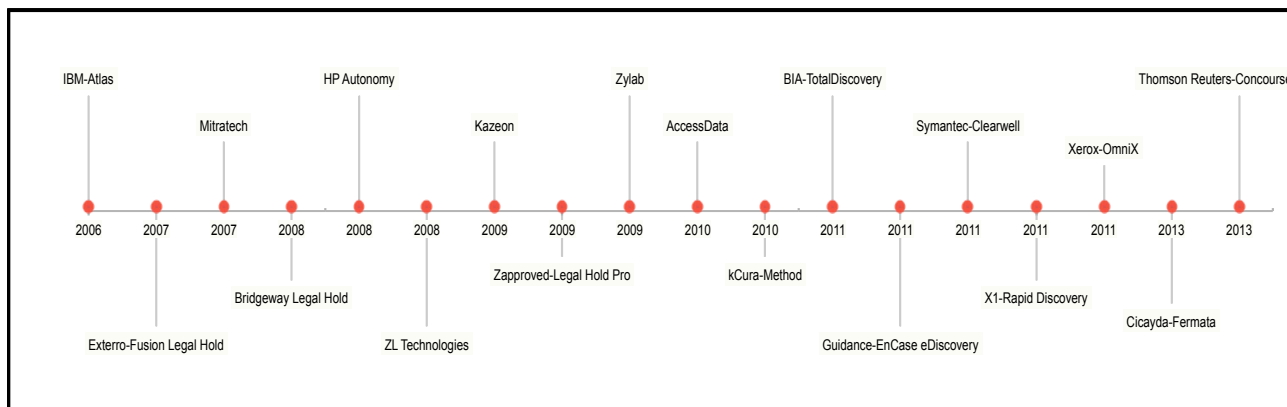
**2011** A flood of LHN-enabled products enter the market as add-ons to collection and processing, as well as ECA and review. These products include BIA Protect's TotalDiscovery, X-1 Rapid Discovery, Xerox Legal Services OmniX, and Guidance's EnCase eDiscovery.

**2013** Fermata, Cicayda's first product release, enters the market hosted in a private cloud environment. Cicayda, though, takes the the opposite approach from kCura (Relativity/Method) and releases its LHN product first, with plans to connect it to later released hosted ECA and review tools. Also this year, Thomson Reuters has added legal hold to its Concourse hosted suite of applications for corporate legal departments.

Several enterprise information management and archive tools now embed LHN functionality. ZL Technologies and HP Autonomy were the first to market in 2007 and 2008, respectively. These were followed by ZyLAB, Kazeon (now part of EMC), and Symantec Clearwell.

A handful of the matter management software designed for corporate legal departments also incorporate LHN functionality, including Case Track, Mitrtech and Bridgeway. Most recently, Thomson Reuters introduced LHN functionality to itsConcourse suite of tools.

### LHN Market Entry Timeline



## Features of LHN Tools

The products included in this market analysis all meet the minimum LHN functionality requirements defined as follows:

- ❖ Issue legal hold notice with customized language via email
- ❖ Custodian acknowledgement
- ❖ Customizable questionnaire/virtual interview
- ❖ Track custodian acknowledgement and response activity

Additional functionalities that bring a higher value of return to clients and demonstrate product maturity include:

- ❖ Flexible reminder and escalation features, including aggregate reminders\*, controlled by legal hold administrators
- ❖ Custodian dashboard/portal
- ❖ Integration with enterprise systems for custodian contact information

\**Aggregate reminders* refers to periodic reminder/reissue notices at intervals set by a legal hold issuer or administrator. This functionality means that if a custodian is subject to 15 active and acknowledged legal holds, they receive one periodic reminder for all 15 holds. Lack of aggregate reminder functionality means that the custodian would receive 15 separate emails – 1 for each hold.

## Solution Matrix

The solution matrix below charts the LHN providers in the market by consumer and buying categories. Note that market presence of LHN tools is not a measurable attribute at this time for the following reasons:

- ❖ Data Not Available: The lion's share of vendors refuse to provide market share data.
- ❖ Target Market Variance: The variance in solution providers' target markets (e.g., large enterprises only, both corporations and law firms) thwarts an apples-to-apples comparison of market share.
- ❖ Numerous Sourcing Options: While the variety of sourcing options (e.g., behind the firewall versus on-premise; point solution versus suite of tools) meet the needs of the multiple buyer requirements, it muddies the waters for measuring the overall market share of LHN solutions.

## Solution Analysis

eDJ Group's analysis provides a snapshot of our Analysts' perspective of 17 LHN solutions and providers. eDJ reached out to the solution provider community for briefings on LHN products. Two vendors did not respond or could not respond: EMC and CaseTrack. EMC declined to participate in this research despite multiple attempts from eDJ to get a briefing on Kazeon's LHN capabilities. eDJ Group's last briefings with EMC in 2012 indicated some Legal Hold notification functionality, but did not go into the depth needed for this report. As to CaseTrack by EAG, there was not enough public information and we had not conducted previous briefings and have been unable to gather customer feedback. The vendor did not respond to multiple briefing requests.

Directly following is a chart that describes the product landscape by consumer and deployment categories. The data presented in this chart is not representative of all information governance or eDiscovery functionality offered by each solution provider. Rather, it is specific to LHN functionality.



		Product	Software as a Service (SaaS)	Offered by Channel Partners (Saas)	Cloud	On-Premise		
Well Matched to Both Corporate and Law Firm Requirements	Available as Stand-Alone Point Solution	Cicayda-Fermata			X			
		Zapproved-Legal Hold Pro	X	X				
	Provides Additional Downstream Offerings	BIA-TotalDiscovery	X	X	X			
		kCura-Method		X		X		
Well Matched to Corporate Requirements	LLHN Available as Stand-Alone Point Solution	Provides Additional Upstream and Downstream Capabilities/Add-On Offerings	Exterro-Fusion Legal Hold	X	X	X	X	
			IBM			X	X	
			ZyLAB	X		X	X	
			Guidance-EnCase eDiscovery				X	
			HP Autonomy - HP Legal Hold	X		X	X	
			Symantec-Clearwell		X		X	
			X1-Rapid Discovery			X	X	
			ZL Technologies			X	X	
	LLHN Available as Stand-Alone Point Solution	Provides Downstream Offerings	AccessData eDiscovery				X	
			Xerox-OmniX	X				
			Provides Matter/Practice Management and eBilling Offerings	Bridgeway Legal Hold			X	X
				Thomson Reuters-Concourse Legal Hold			X	
	Mitrtech				X	X		

eDJ Group's analysis of the products included in this research appears below in alphabetical order (by company name):

**AccessData - eDiscovery.** AD eDiscovery is a platform that offers LHN and downstream eDiscovery functionality including collection, processing, ECA, review, and production. AD rebuilt the Summation platform from the ground up and added Summation into the AD eDiscovery platform. AD eDiscovery is offered as an on-premise product.

#### Strengths

- LHN is not an add-on and is offered as an all-in-one solution within the platform
- LHN activity is connected to collection activity

#### Challenges

- Creating awareness of LHN capabilities within the company's larger branding messages
- Buyers focused on LHN products may not have AccessData on early short-lists

#### *eDJ Perspective*

AD eDiscovery's LHN functionality is robust, with its ability to connect to collection activity a very strong point. However, the product does not routinely come up in conversations with corporations about LHN. The LHN features introduced in AD eDiscovery seem to have gotten lost in the larger Summation shuffle. Much like close competitor Guidance Software, the company should carve out stories about LHN functionality to combat the reputation as either a forensic collection company (FTK) or just a linear review tool (Summation).

**BIA – TotalDiscovery.** TotalDiscovery is hosted by BIA Protect, in the cloud and through channel partners. Consumers can use TotalDiscovery as a stand-alone LHN product or in combination with the product's collection, processing and export tools.

#### Strengths

- Open API allows for custom development
- Integration with enterprise systems for custodian identity data
- Early web based remote custodian designation/collection functionality

#### Challenges

- No out-of-the-box aggregate reminder/reissue functionality (BIA claims functionality will be available in 2013 release)
- Does not contain a custodian dashboard/portal out-of-the-box

#### *eDJ Perspective*

TotalDiscovery LHN is well suited for both corporate and law firm markets, yet the client base is predominantly corporate. A custodian dashboard/portal is key – and typically ties to aggregate reminder functionality. This function is not built into the product. There is an open API that allows clients to configure the feature on their own or engage BIA's professional services for the same. If BIA is able to build this functionality into the product quickly, the overall TotalDiscovery offering will be much more compelling.

**Bridgeway Legal Hold.** Bridgeway provides matter management, e-billing, legal hold and corporate governance software for corporate legal departments. Bridgeway Legal Hold can be purchased as a stand-alone point solution or integrated with Bridgeway's suite of products. Bridgeway's products are offered in the cloud or as on premise deployments.

#### Strengths

- Integrates with multiple enterprise systems for custodian information
- Includes aggregate reminder/reissue functionality
- Custodian dashboard/portal

#### Challenges

- Anecdotal evidence that Bridgeway is slow to respond to customer requests and inquiries
- Lack of flexible escalation functionality

#### *eDJ Perspective*

Bridgeway failed to respond to eDJ's requests for a briefing on its LHN tool. Coupled with anecdotal evidence that Bridgeway is slow to respond to customer requests and inquiries suggests there is a lot of room for improvement in the customer and analyst relations departments. Our analysis is based on prior analyst briefings, feedback from multiple customers, as well as publicly available information.

**Cicayda – Fermata.** Fermata is hosted in a private cloud by Cicayda and, today, is offered as a stand-alone product. Moving forward, Cicayda will provide consumers the option to use Fermata in conjunction with its ECA and review tools.

#### Strengths

- Low, fixed price point and ease of use
- Well matched for both corporate and law firm requirements
- Quick start-up period

#### Challenges

- New to market – no brand recognition or customer reference base
- Custodian upload is a manual process (e.g., hand keyed or CSV upload)
- No aggregate reminder/reissue functionality
- Does not contain a custodian dashboard/portal

#### *eDJ Perspective*

Although new to the market, the Fermata product is frequently updated based on customer demand. It will be interesting to see the market reaction as Cicayda works toward tying Fermata to its other products. Watch for Cicayda as a compelling private cloud-based eDiscovery platform within the next 18-24 months.

**Exterro – Fusion Legal Hold.** Exterro offers software for legal hold, enterprise data mapping, eDiscovery workflow, processing, collection and review. LHN is an option within Exterro’s suite of products that may be used as a point solution or integrated with other applications in the suite. Fusion Legal Hold is offered as a hosted solution or may be installed behind the firewall.

#### Strengths

- Early product with many years of development
- Multiple deployment options
- Custodian dashboard/portal
- Aggregate reminder/reissue functionality
- Offers two-way feeds with client systems for custodian identity data

#### Challenges

- Typically a high human resources investment for enterprise deployment
- Platform approach implies a higher entry price as cloud competitors bring pricing down; Exterro’s lower cost hosted deployments are not as well known and changing its reputation as a more expensive option will be difficult

#### *eDJ Perspective*

Exterro Fusion is best suited for enterprises with a steady stream of high-stakes litigation. Fusion Legal Hold is often the client entry point into Exterro’s suite of products, and Exterro continues to be committed to product enhancement. Clients must be willing to invest the human resources required to deploy and manage the product because it addresses very complex processes and requirements. As a stand-alone LHN solution, the human and financial resource investment decreases, and the hosted offering can accelerate deployment time. However, the typical consumer of this solution seeks to grow into the up-stream and downstream benefits that reach beyond LHN, and as such would tend to have complex requirements and goals requiring complex solutions.

**Guidance – EnCase eDiscovery.** EnCase eDiscovery is enterprise identification, collection, processing and review software. LHN functionality is built into the product suite.

#### Strengths

- LHN is not an add-on and is offered as an all-in-one solution within the EnCase eDiscovery product
- Custodian dashboard/portal
- Aggregate reminder/reissue functionality
- Integration with AD for custodian identity data
- LHN activity is connected to collection

#### Challenges

- Lacks custodian identity data integration with ERP systems like SAP
- Overcome brand reputation for purely forensic products that require specialized skills

#### *eDJ Perspective*

Guidance, in its first LHN release, succeeded in developing a tool that addresses enterprise client requirements in a way that similar competitors were unable to do in early releases. In order to better serve its enterprise customers, Guidance will need to improve integration capabilities with a wider range of enterprise systems, such as SAP and People Soft, for custodian identity data. Guidance will benefit by expanding market coverage on LHN capabilities and making sure that prospects know its LHN capabilities are competitive with other market offerings. The company would do well to carve out point solutions like LHN in its messaging to offset its reputation as mostly a forensic imaging company.

**HP Autonomy – HP Legal Hold.** HP Autonomy offers software for information management, preservation, processing, analysis, review, and production. The company also offers hosted eDiscovery services, hosting its own software for EDD processing, ECA, Review, and Production. The LHN tool is part of the HP Legal Hold product, which is offered as an on-premise or cloud solution. HP Legal Hold can be purchased as a stand-alone product or as part of the larger eDiscovery platform.

### Strengths

- LHN activities connected to other eDiscovery activities, such as collection and processing, etc.
- Ability to set custodian escalation behavior at the global level
- Connects to enterprise systems for custodian identity data

### Challenges

- Legal hold notice and questionnaire are separate, resulting in the custodians receiving 2 separate emails
- No aggregate reminder functionality
- Overcoming the distraction of HP's legal action against Autonomy's Founder for alleged misrepresentations of Autonomy's business

### *eDJ Perspective*

The HP Legal Hold product never seemed to be a market priority for the company compared to the large enterprise IDOL index implementation sales. Since the HP acquisition, eDJ has seen some discovery product/appliance consolidation, but nothing specific on LHN functionality. Prospective customers should be aware that as a pure stand-alone point solution for LHN, the IDOL server is not required. However, the IDOL server, which is part of the company's larger eDiscovery platform, is required for in-place preservation and collection activities.

**IBM.** IBM offers software for information management, identification, collection, preservation, analysis, and review. The LHN functionality is included in IBM's LHN product, which can be deployed on premise or in an IBM partner cloud.

### Strengths

- Early product with many years of development
- Suitable for very complex, large-enterprise requirements
- Very full set of features and mature offering
- Custodian dashboard/portal
- Aggregate reminder/reissue functionality
- Connects to enterprise systems for custodian identity data

### Challenges

- Typically a high human resources investment for enterprise deployment
- Anecdotal evidence of customers actively migrating to less complex and less expensive products
- Perceived lack of response to competition from point solutions with lower price points and simpler requirements.

### *eDJ Perspective*

IBM has a full-featured, mature offering and the product fits nicely into IBM's other enterprise content management (ECM) and business process management (BPM) product suites. As a stand-alone LHN solution,

the human and financial resource investment decreases. However, the typical consumer of this solution seeks to grow into the up-stream and downstream benefits that reach beyond LHN, and as such would tend to have complex requirements and goals requiring complex solutions. Anecdotal evidence of migration to less expensive and complex products, however, may be an indication that IBM is not committed to customers other than the large, serial litigant. Such organizations would be well served to consider IBM as long as the human and financial resources necessary to manage the product are available. Smaller organizations, those with lower litigation profiles, and law firms will want to look elsewhere for LHN.

**kCura – Method**. Method is a web-based LHN point solution that is built on kCura's Relativity platform. Method can be sourced as an on-premise installation or hosted through a kCura channel partner.

#### **Strengths**

- Multiple deployment options for a point solution LHN product
- Contains custodian portal/dashboard
- Relativity API allows for custom development
- Well matched for both corporate and law firm requirements
- Ability to pull custodian identity data from enterprise systems

#### **Challenges**

- No integration between LHN and Relativity document databases
- No aggregate reminder/reissue functionality
- Customization or development requires Relativity development skills

#### *eDJ Perspective*

There has been little in the way of feature/function development of the current version of Method since its introduction to the market in 2010. However, kCura is promising substantial updates in the next release of Method. At first glance, it is appealing that the LHN functionality is built on the Relativity database familiar to many. However, the fact that the LHN and document databases are completely separate means that the LHN data remains another silo of information in the eDiscovery lifecycle. kCura has not pressed the market hard to date and will be well served to emphasize Method's functionality to meet both law firm and corporate LHN needs moving forward.

**Mitratech - TeamConnect.** TeamConnect is modular legal management platform used for matter management, spend management, entity management, GRC, legal hold and automated court deadline calculation. LHN is an optional add-on to the TeamConnect platform.

#### Strengths

- Contains custodian dashboard/portal
- Flexible escalation configuration capabilities
- Ability to track some collection activity

#### Challenges

- No aggregate reminder/reissue functionality

#### *eDJ Perspective*

Mitratech first introduced LHN functionality into its matter management product in 2007, and later replaced it with the full LHN module in 2009. The early and continued development of the LHN product, along with the robust workflow functionality, indicates maturity. However, eDJ sees the lack of aggregate reminder capability as a strong need currently missing from the product. eDJ has recently experienced an uptick in corporate client inquiries related to matter management integration with LHN as in-house eDiscovery practices mature. Mitratech will be wise to take notice and shine its marketing light on its LHN capabilities and integration with its suite of products.

**Symantec - Clearwell.** eDiscovery platform for legal hold, identification, collection, analysis, processing, review and production of ESI. Legal hold notification is an available option with appliance and enterprise software licensing, as well as through channel partners.

#### Strengths

- Contains custodian dashboard/portal
- Ability to set custodian escalation behavior at the global level

#### Challenges

- LHN and collection databases are not connected
- No aggregate reminder/reissue functionality
- Channel partner customers less likely to utilize Clearwell LHN functionality

#### *eDJ Perspective*

Clearwell's LHN functionality is best matched for enterprise requirements. eDJ sees the lack of integration between the LHN and collection databases as a weak point that needs to be addressed for corporate clients if they are to attain the theoretical advantage of an "integrated" platform. Symantec's market leadership position with its Enterprise Vault archiving product presents a huge opportunity to upsell with LHN functionality. However, Enterprise Vault and Clearwell have struggled within the Symantec universe to keep up growth. Symantec will need to prove its commitment to this market amid fairly large layoffs within its information management group.

**Thomson Reuters – Concourse Legal Hold.** Concourse Legal Hold is comprised of a suite of products for the corporate legal department market. Modules included in the Concourse suite include WestLaw Next (legal research), Serengeti Tracker (e-billing and matter management), Matter Room (document collaboration and light project management), and Legal Hold. Matter Room and Legal Hold are the most recent products to be introduced. Each module is an optional purchase and modules are cross-integrated. Concourse is offered as a private cloud solution.

#### Strengths

- Thomson Reuters has a long-standing history in the industry
- LHN integration with other Concourse modules

#### Challenges

- New to market
- No aggregate reminder/reissue functionality
- Does not contain a custodian dashboard/portal
- No integration with AD or enterprise HR systems for custodian information (Thomson Reuters claims this functionality is coming soon, but is not date specific)

#### *eDJ Perspective*

Thomson Reuter's large presence in corporate legal departments will help in gaining traction with its Legal Hold product and Concourse suite. The company claims to place a significant importance on listening to and understanding its customer base for product development and enhancement. The Legal Hold product is new to market and must continue to build on and enhance features in order to catch up to its competition in terms of LHN functionality. If Thomson Reuters is successful at listening to its customer base, the company may be able to build a feature-rich LHN product, but at present is still playing catch-up to the competition.

**X1 – Rapid Discovery.** Rapid Discovery is enterprise search, collection and ECA software designed for rapid cloud, virtual or traditional server deployment. Legal Hold Notification function is built into the Rapid Discovery product.

#### Strengths

- LHN is not an add-on and is offered as an all-in-one solution within the Rapid Discovery product
- LHN activity is connected to collection activity
- Amazon Cloud deployment option

#### Challenges

- Does not contain a custodian dashboard/portal
- No aggregate reminder/reissue functionality
- No integration with enterprise custodian identity data systems

#### *eDJ Perspective*

X1 has steadily gained momentum in the enterprise market. Addition of LHN shows that X1 is listening to client needs. However, eDJ sees the current functionality as lacking for some basic enterprise needs, such as custodian upload and dashboard/portal capabilities.



[Xerox - OmniX](#). OmniX is a web-based analytics and review platform. LHN functionality is built into the OmniX platform *only*.

#### Strengths

- LHN is connected to discovery document database
- LHN is not an add-on and is offered as an all-in-one solution within the OmniX platform
- Workflow capabilities to track activity between LHN and review

#### Challenges

- No aggregate reminder/reissue functionality
- Custodian upload is a manual process (e.g., hand keyed or CSV upload)
- Does not contain a custodian dashboard/portal

#### *eDJ Perspective*

Xerox Litigation Services has several eDiscovery offerings in addition to the OmniX platform. Currently, LHN is limited to the OmniX offering. If this vendor wants to demonstrate flexibility and commitment to providing additional value and understanding of enterprise client needs, it should add LHN functionality to its Viewpoint product, which can be installed behind the firewall. This is currently under consideration at Xerox, but there is no timetable.

[Zapproved – Legal Hold Pro](#). Legal Hold Pro is designed only for LHN and is offered as a software-as-a-service solution hosted by Zapproved. Legal Hold Pro is also available through technology partners that service other areas of the eDiscovery lifecycle, as well as through channel partners.

#### Strengths

- LHN point product, development staff dedicated to one product
- Custodian dashboard/portal
- Aggregate reminder/reissue functionality
- Offers two-way feeds with client systems for custodian identity data
- Ability to track some collection activity
- Low, fixed price point and ease of use
- Quick start-up period
- Well matched for both corporate and law firm requirements

#### Challenges

- Limited support for downstream eDiscovery lifecycle activities
- Limited marketing resources to compete with larger vendors
- No ability to grow LHN into larger discovery platform like other providers

#### *eDJ Perspective*

Zapproved has proven to be strong in listening to customer feedback and updating its product accordingly. Zapproved continues to grow through its channel network. Beware of 'press release' partnerships with larger software vendors as there may not be a pre-packaged integration. When in doubt, ask to see demos of how the products work together and press hard for reference customers using both products.

**ZL Technologies – ZL Unified Archive.** ZL Unified Archive is an enterprise software solution for e-mail and files archiving for regulatory compliance, litigation support, corporate governance, and storage management. LHN functionality is included in the optional Discovery Manager component of the platform.

### Strengths

- Connects to enterprise systems for custodian identity data
- LHN functionality connected to other eDiscovery capabilities, such as collection and review within the Discovery Manager component

### Challenges

- Typically a high human resources and infrastructure investment
- No aggregate reminder/reissue functionality
- Does not contain custodian dashboard/portal

### *eDJ Perspective*

Enterprise archiving remains an important activity for many large corporations, thus ZL Technologies has the opportunity to enhance a strong archiving product with more robust LHN features. The company will have to prove that its product team can grasp the granular requirements that many Legal departments will have. While the product can be implemented as a stand-alone point solution for LHN, which would decrease the human and financial resource impact, that is not typically the core motivation for selection. Consumers looking at ZL Unified Archive may source the Discovery Manager as the first stepping-stone, but are looking at the larger information governance path.

**ZyLAB.** ZyLAB offers information management and eDiscovery software that can be deployed in a public or private cloud, or on premise. The products are sourced in modules, with the LHN capability in the eDiscovery & Production module.

### Strengths

- LHN connected to collection activities
- Integration with AD for custodian identity data
- Contains custodian dashboard/portal

### Challenges

- Lacks custodian identity data integration with ERP systems like SAP
- No aggregate reminder/reissue functionality
- Gaining traction in US market

### *eDJ Perspective*

ZyLAB has a global presence, yet the US market constitutes a small share of the client base (and happens to be a market where much LHN opportunity currently exists). Its LHN capabilities put it on par with some of the larger ECM and archiving vendors, but do lag behind some of the LHN specialists. ZyLAB will have to add features such as aggregate reminder functionality quickly in order to stay competitive. As the company continues to focus on gaining presence in the US, an emphasis on flexibility in its LHN product and its integration into both downstream and upstream activities is essential.

## Challenges

Our discussion with focus survey participants revealed reminder and escalation notices as challenge areas, which is in line with our strategic consulting experiences with corporate clients. Consumers are looking for more flexibility in these areas of LHN.

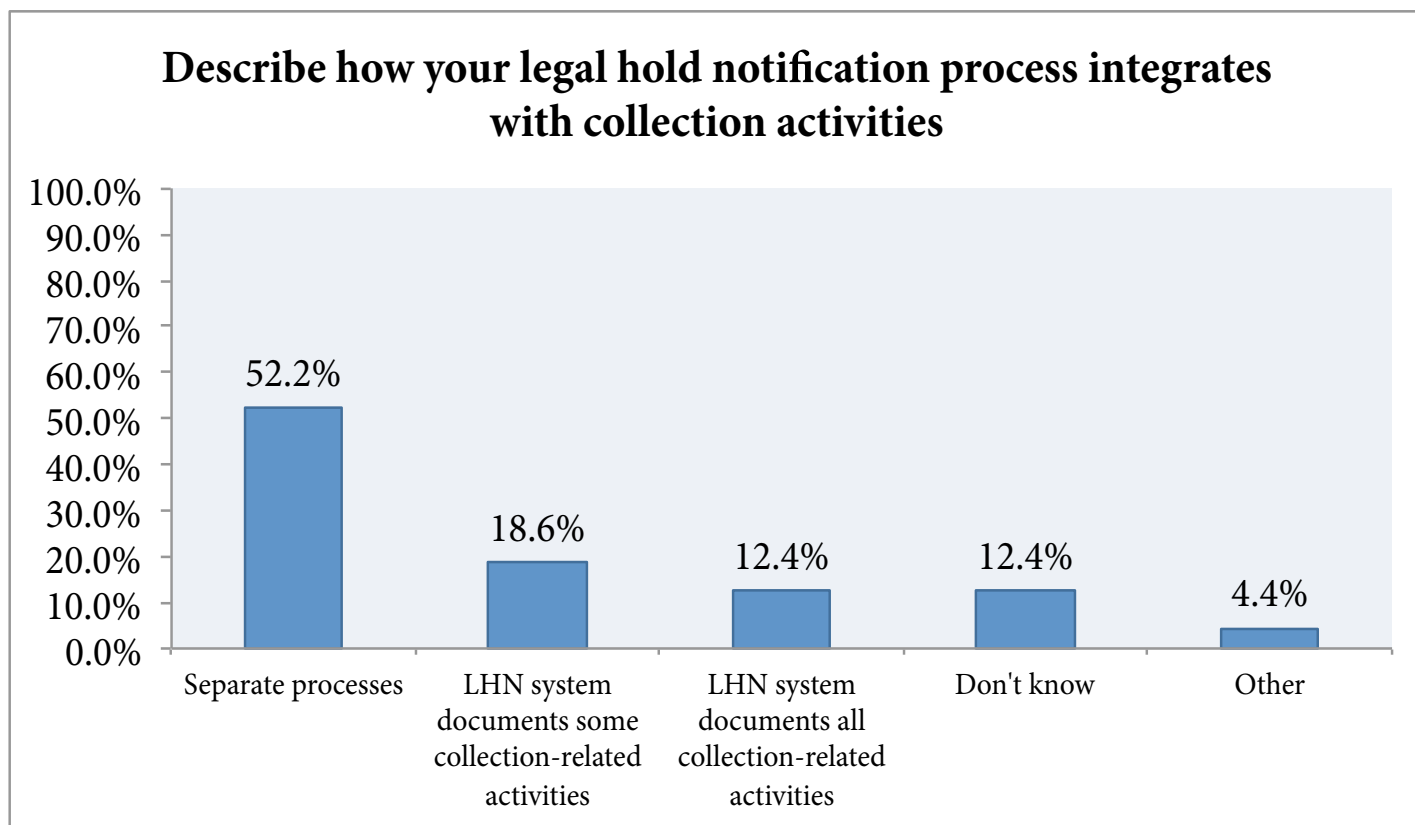
Many corporations utilizing LHN tools that do not allow aggregate reminders are either not using the automated reminder features provided in their current tools or are managing reminder activity on a hold-by-hold basis rather than as an overall business process. Without aggregate reminders, custodians tend to become fatigued by LHN communications that can result in, among other things, degradation of the legal hold message.

By way of example, consider this scenario: A particular custodian receives 3 legal hold notices per month (a “serial custodian”) and reminders are scheduled to issue every 90 days from the date of issue. The end result is 36 notices, including acknowledgements – and possibly virtual questionnaires – and 108 reminders – and possibly re-acknowledgements – each year attributed to the notification process alone. This does not include follow-up interview fact or document/data-based interview questions and other custodian related activities.

Similarly, tools that are not flexible in escalation capabilities (e.g., alerting the issuer or supervisor of non-response) leave legal hold administrators in a position of managing the escalation function on a hold-by-hold basis, manually, or not managing it at all.

The key is finding the balance between the appropriate levels of legal hold communication with custodians with the least amount of disruption to the business as possible. Continued advancement in the areas of reminder and escalation functionalities in LHN tools is crucial to consumers.

eDJ Legal Hold Notification 2013 Survey respondents indicated the largest gap in maturity to be LHN integration with collection activity, with 40.7% ranking themselves as immature and only 15% as mature in this area. Additionally, when asked to describe how LHN activities integrate with collection activities, more than half stated that they are completely separate processes.



Source: eDJ Group Legal Hold Notification Survey, September 2013 , N = 113

This begs the question: if there are tools available that connect LHN and collection – or at least offer the option to document collection activities – why aren't more organizations implementing those tools? For the indoctrinated few that understand the importance of LHN and the risks of poor LHN management, using LHN tools is a no-brainer. However, there are many reasons why organizations resist purchasing available LHN solutions with collection offerings, including:

- ❖ The perception of large budgetary and human resource investment requirements for behind the firewall deployments
- ❖ Lack of product capability knowledge (e.g., hosted options)
- ❖ Lack of visibility of the problem to IT (who are often the main technology buyers)
- ❖ “Guardians of the spreadsheet” may be afraid of being displaced by technology

## Conclusion

LHN tools mitigate risk and deliver significantly greater efficiency over managing LHN with spreadsheets and email. Whether you are an organization or a law firm, large or small, there is a product on the market that will meet your needs.

Based on the multitude of corporate sourcing choices for LHN software, it is clear that the vendors in the market understand that corporations need options. It is also clear that there is no “best in market” model for corporate LHN.

Vendors should take notice that there is a market for law firms managing the mechanics of LHN for clients. This market will be best served by education around the tools and options available for the law firm business model.

## eDJ Findings and Recommendations for Consumers

- ❖ **Recognize that LHN tools greatly increase efficiency and mitigate risk.** Companies strive for process automation and efficiency in virtually every part of the business and LHN should be no different. Using tools designed to specifically manage LHN can protect against the risk of sanctions and make Legal Hold a more repeatable (and improvable) process. eDJ recommends designating a single source responsible for the management of LHN as a best practice.
- ❖ **Develop business requirements and goals around the LHN function prior to tool selection.** Because there are so many buying options and categories of LHN products, selection quickly becomes confusing. Knowing your business requirements and goals in advance allows you to narrow the toolsets that will be most appropriate for your organization.
- ❖ **Know that LHN tools don't have to break the bank!** There are several point solutions available that are very reasonably priced (e.g., one charges \$5 per legal hold per month). Additionally, many service providers and enterprise applications that go beyond LHN functionality include LHN tools as part of the package and at no additional cost.
- ❖ **Law firms need to recognize that managing LHN for clients is a value-add.** Clients with out-sourced GC models, or are low-volume or one-off litigants are prime candidates for the value-add service of efficiently and thoroughly managing the LHN process.

## eDJ Findings and Recommendations for Vendors

- ❖ **LHN tools must be flexible to meet the large variance in enterprise requirements.** Enterprise requirements vary and hinge on a number of factors, including business vertical, corporate culture, and regulatory and litigation profile. Thus, there is not a long list of “best practices” when it comes to the best way to source the LHN function.
- ❖ **Recognize and understand law firms as a market.** The law firm market should no longer be ignored or viewed as a secondary market. A handful of savvy law firms are already managing LHN for clients, and others are beginning to follow suit.
- ❖ **Manage the dual need to build out specific LHN functionality while also addressing other needs in the eDiscovery lifecycle.** This means that LHN specialists will need to partner with larger platform vendors and position for acquisition quickly, while larger vendors will need to make build-or-buy decisions and test integrations with potential specialist partners.

## About The eDJ Group

eDJ Group is a new kind of research firm – our analysts are “working analysts” that cycle between consulting engagements and research projects in order to keep a real-world perspective. eDJ’s analysts all have 10-25 years of experience in detailed eDiscovery and information governance projects. Our analysts research, analyze, and write based on a combined one hundred (100) years in the legal technology community.

We operate with the utmost integrity and commitment to our clients on these guiding principles:

- Independence – All research, reports, advice and services are agnostic and conducted independently without influence by solution providers.
- Highest Ethical standards – All content is honest perspective based on real experience and interactions with thousands of practitioners; detailing both successes and failures without favoritism.
- Pragmatic, Experienced Expertise – All services are conducted by industry experts with decades of experience and strictly vetted by the eDJ Group founders.

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