

## ESI | Insufficient Production of Documents

The following descriptions highlight a variety of matters for which Vestige has been retained that involve alleged insufficient production of documents. Each of these cases are real matters that we have worked, but for privacy and confidentiality purposes the relevant information has been sanitized. These cases are not the entire population of cases matching such criteria, but instead represent a wide sample of the cases we have worked in this specific area. Should you need additional information, please contact us.

### Individual v Mid-size Company | Wrongful Termination

Vestige represented an individual (Plaintiff) against a mid-size company (Defendant) involving a wrongful employment termination matter. Vestige was hired to prove or disprove that the Defendant was thorough in its response to discovery requests from the Plaintiff. Vestige found that the Defendant was not thorough enough in its discovery as information was deleted, new computers were purchased, data was disguised and other storage devices were withheld. Vestige successfully defended its process in multiple hearings and won its client a \$250,000 sanction and the Defendant's pleadings were stricken as punishment. After a long, drawn-out appeals process, Vestige's client was provided an extremely favorable outcome resulting in an award of over \$11 million dollars in damages and sanctions.



### Client v Accounting Firm | An Inside Fraud

The client (Plaintiff) of an accounting firm filed suit for professional negligence against the accounting firm (Defendant) it was currently using. The ownership of the client discovered fraud within its organization and placed fault on the accounting firm for failing to identify the fraud during their routine annual audit. The lawsuit turned into a nasty battle between the two parties. The accounting firm alleged that the Plaintiff who brought the suit was the one promulgating the fraud. Thus, the reason no red flags appeared during the audit was due to the data turned over by the Plaintiff. Vestige was hired by the accounting firm (Defendant) to investigate financial records on the Plaintiff's computers (one dozen computers and an antiquated mini frame), reverse engineer two applications that were in use by the Plaintiff and assist the forensic accountant in his investigation of fraud. Vestige testified via videotaped deposition of its findings. The opposing side made a motion for Vestige's testifying expert to compel production of work files. The court did an in-camera inspection and denied the Plaintiff's motion, claiming it was attorney-work product. Vestige's work in the matter allowed the accounting firm to mount a successful defense and win the matter.



### Mid-size Company v Mid-size Company | Software Theft

Two mid-size companies were involved in a bitter dispute over alleged theft of software. Vestige represented the Defendant in this matter. Vestige consulted the Defendant on the discovery process and advised them on a cost effective approach to producing documents by reducing the amount of documents that needed to be reviewed by attorneys for production. Furthermore, Vestige went above and beyond by convincing a federal judge to allow experts from both sides to come to an agreement on a more efficient route to take for e-discovery. Ultimately, Vestige helped both companies avoid a long, drawn out litigation proceeding.

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## Large Organization v Large Organization | Recovering Data from Sold Systems

Vestige was involved in a contract dispute matter between two large organizations. The original Defendant was purchased by another un-named company. During the pendency of the lawsuit, the IT Servers were also sold and integrated into the new company's infrastructure. Vestige was hired by the Plaintiff's counsel to assist with getting a court order to turn over the integrated servers. The Defendant claimed that it was unnecessary for the Plaintiff to examine the servers since data wiping methods were used prior to the servers being redeployed and integrated. Vestige convinced the Judge otherwise, and the order was granted. Vestige was able to successfully recover, search and produce relevant data for the applicable timeframe, notwithstanding the fact that the Defendant had reformatted and redeployed those systems. The Defendant suffered further damage when its counsel failed to adequately handle the ESI produced by Vestige. The Defendant's counsel inadvertently produced all the data, including privileged information to the Plaintiff. The Defendant's counsel copied all the data Vestige provided to them and simply deleted selected items. Upon review of the data in image form, these deleted items appeared to the Plaintiff. The Defendant pleaded to have the privileged information "clawed back" based on the egregious failure by the Defendant's counsel. However, black letter law held true, and the recovered, deleted data was considered a waiver of privilege.



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