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**FOLES & HILL**  
MID-SIZE CONSTRUCTION  
LAW FIRM

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## Modern Data Collection Strategy & ESI Protocol



WRITTEN BY NEXTPOINT  
CLIENT SUCCESS TEAM

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# Modern Data Collection Strategy & ESI Protocol

*Bringing Order to the Complexity  
of Construction Litigation*

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## QUICK SUMMARY

Mid-size firm Foles & Hill PLC\* took on a multi-million dollar construction case that presented data challenges often found in large construction matters. The firm had to manage an enormous volume of documents collected from multiple sources in varying formats, including hard-copy files stored in bankers boxes.

Working under tight deadlines with a non-uniform set of documents, the Foles team produced the data as best they could to the other parties involved in the case. Unfortunately, this production was inconsistent with opposing counsel's wishes, so the Foles team sprang into action to reproduce the documents in a more usable format.

Foles partnered with Nextpoint to quickly address their data challenges and leverage Nextpoint's cloud-based platform to reorganize their review and deposition process going forward.

In parallel, the Foles team collaborated with Nextpoint's Data Strategy team to develop a firm-wide ESI protocol and enhance their review procedures. By investing time upfront in a comprehensive ESI protocol, Foles developed the knowledge and skills necessary to be a far more formidable adversary and defender of its clients' interests.

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*When opposing counsel on a large, multi-million dollar construction case filed a Motion to Compel in the state court against Foles & Hill PLC (“Foles”)\*, a 35+ attorney law firm with five offices in the Midwest, Paul Reinhardt\* recognized the predicament his team now faced. Paul had joined Foles as an Associate the previous year, eager to contribute to the firm’s strong construction litigation practice and to build out the firm’s nascent eDiscovery capabilities. Working closely with Nextpoint, Paul and his team not only addressed opposing counsel’s immediate concerns; they also seized the moment to dramatically advance their litigation technology and operational capabilities.*

**THE CHALLENGE:**

The characteristics of Foles’ construction case were **consistent with the traits of most large construction matters**. Paul and his team were managing an enormous volume of documents collected from multiple sources (i.e., the client, sub-contractors, expert witnesses, various consultants, etc.). A significant percentage of the documents were in hard-copy form, predominantly stored in bankers boxes. Complicating matters, the electronic data they had collected arrived in varying formats from a number of different sources. Working under tight deadlines with a non-uniform set of documents, the Foles team produced the documents as best they could to the other parties involved in the case.

Lacking a comprehensive ESI protocol, Foles had unfortunately produced the documents to the other side in a manner inconsistent with opposing counsel’s wishes. Although the state courts did not

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\* The names of the law firm and associated professionals in this case study have been changed to preserve their anonymity.

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require ESI protocols at the time, to avoid costly and unproductive discovery-related motion practice, the Foles team sprang into action and decided they would reproduce the documents in a more usable format alongside the desired metadata.

Having already invested significant time and effort in their original review, reproducing the documents all but guaranteed incurring significantly more costs – costs that could not easily be passed through to the client.

### THE SOLUTION:

Foles partnered with Nextpoint to quickly address their data challenges and leverage Nextpoint's cloud-based platform to manage the review going forward. In parallel, Paul and his team collaborated with Nextpoint's Data Strategy team to develop a firm-wide ESI protocol and enhance their review procedures.

With limited in-house eDiscovery resources and a tight time-frame in which to operate, Foles engaged Nextpoint's Data Strategy team to develop and execute a game plan to address the data inconsistencies and improve their review processes. Nextpoint helped Foles craft a comprehensive ESI protocol and established new operating guidelines for collecting, scanning, and reviewing documents.



*The problem in this case was not having the foresight or know-how to get ahead of the issues... What Nextpoint showed us is that the work you put in on the front end makes the work much easier on the back end."*

**"Unlike other forms of litigation, construction litigation often involves collecting large amounts of documents from multiple third parties,"** says Sonali Ray, Nextpoint's Legal Strategy Director. The sheer volume of documents and diversity of sources, therefore, "requires firms to have clearly **defined, strategic protocols and procedures in place** to standardize the collection and document review process."

Paul agrees: "The problem in this case was not having the foresight or know-how to get ahead of the issues.... What Nextpoint showed us is that the work you put in on the front end makes the work much easier on the back end."

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As the data strategy came together, Nextpoint helped execute an Early Data Assessment (EDA) to cull down the amount of data necessary for review. Nextpoint also assisted with a preemptive privilege screen to ensure there were no inadvertent disclosures. Once the targeted data was imported into Nextpoint's software, Paul and his team conducted a comprehensive and efficient review. Upon completion, Foles was able to comply with the production format and metadata requests from opposing counsel.

During this exchange, Foles continued to receive data from numerous third parties, in varying, inconsistent formats – with no option to re-request. Nextpoint normalized said data received to ensure uniformity across all sets. This ultimately increased the efficiency and accuracy with which Paul's team was able to identify documents during their preparation of witness binders for upcoming depositions.

### THE OUTCOME:

According to Paul, Foles' engagement with Nextpoint helped the firm in two important ways. First, Foles was able to re-produce documents along with the corresponding metadata requested quickly, while reorganizing the firm's review and deposition processes in the platform going forward. Second, by investing time up front in a comprehensive ESI protocol, Foles developed the knowledge and skills necessary to be a far more formidable adversary and defender of its clients' interests.



*At the end of the day, we were assigned a near impossible task which most likely wasn't going to happen without [nextpoint's] additional support and technology."*

According to Paul, "We would have been lost at sea [on this construction case] if it wasn't for the stuff we accomplished with Nextpoint." Given the resource and time constraints his team was under, Nextpoint provided Paul and his team much needed leverage at a critical time. "At the end of the day, we were assigned a near impossible task which most likely wasn't going to happen without the additional support and technology."

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To illustrate his point further, Paul shared that on this particular construction case, Foles had to prepare for and lead six unique corporate depositions, each of which lasted five days. “We had over 170 exhibits – do you know how many hot documents we had to review and select to get through 30 days of depositions? If we didn’t have Nextpoint’s Trial Prep software, and instead were working in banker’s boxes, it would have been extremely difficult.”

More importantly, Paul believes that Foles’ partnership with Nextpoint has dramatically improved the firm’s ability to serve their clients’ interests. “Because of our elevated engagement with Nextpoint,” says Paul, “we have become more formidable” earlier in the case lifecycle. In fact, “it’s totally changed the dynamic when opposing counsel comes at us with demands,” and Foles is able to better negotiate favorable terms for its clients.

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