

Redgrave Restructuring Discovery: How Does It Work?

A publicly traded company is having trouble servicing its debt and is considering a restructuring. It hired both a reputable financial advisor and a large law firm to help in the effort. Everyone involved believes that negotiations with key stakeholders will be successful and that a final deal will be reached, allowing the company to avoid any real threat of bankruptcy. The restructuring attorneys brief the litigators, but there is not much work for the latter to do. After several months, however, the market shifts and the company misses a major financial milestone. What looked like a negotiated resolution suddenly looks like a hotly contested dispute. The law firm begins preparing a bankruptcy filing. In-house counsel asks whether discovery is going to be an issue. The room goes silent.

Should we really start thinking about discovery at this point? It seems far off.

Yes, this is the moment to be proactive so you can keep whatever good momentum you've got going. For companies close to or in bankruptcy, there are critical sets of documents that are frequently requested, which can take a long time to collect and produce because of their nature (for example, think about board materials that need to be redacted). Even if it's unclear whether a petition will be filed, an ounce of prevention is worth a pound of cure. Getting ahead of the document requests now means that negotiations won't be stalled later because of production delays.

Law firms aren't known for sharing. Why add discovery counsel like Redgrave to the mix?

In restructuring matters, document collection and production are things that need to happen fast and, if done incorrectly, pose significant risk. Restructuring litigators are properly focused on preparation for hearings, depositions, and dealing with substantive investigations. If they also try to handle the discovery work, it can become a drag on their ability to focus on the merits or to take on more matters. Redgrave's approach is to handle the headache of discovery and make merits counsel look like rock stars. In addition, if the law firm was itself involved as counsel in disputed transactions, then having discovery counsel to act as a buffer in document collection and review can prove particularly helpful. Clients are pleased because our services are targeted, efficient, and often at rates lower than big firms.

"Redgrave comes in and saves the day. In restructuring—whether in or out of court—speed is often the name of the game. As you're racing to deal with multilateral negotiations, things like document production and privilege disputes can really trip you up. That's where Redgrave shines—they have the expertise and strategic know-how, including in the restructuring space specifically, to handle all of that, in line with our overall strategy for the case."

- ANDREW R. MCGAAN, P.C.
SENIOR PARTNER & RESTRUCTURING LITIGATOR, KIRKLAND & ELLIS LLP

There are lots of vendors out there that sell eDiscovery services. Sometimes restructuring advisors also have eDiscovery services. Is Redgrave a vendor?

No. Redgrave is a law firm and we provide legal advice, which vendors cannot do. In a restructuring matter, as discovery counsel we sit in between the client, merits counsel, and the eDiscovery vendor to develop an overall discovery strategy and provide legal advice during the process. Redgrave does not compete with vendors, and indeed we often hear from vendors that they wish we were involved in every case because we really “get it” and make the process go faster and smoother. If discovery counsel like Redgrave is not engaged in a matter, then merits counsel must provide the strategic discovery advice and manage the discovery process on top of everything else they are doing.

Is restructuring discovery something that requires distinct experience?

Yes. Anyone who has ever been involved in bankruptcy litigation can tell you it’s a very different beast than typical civil litigation. Most restructurings—whether in or out of court—are typically multilateral in nature, requiring production to many different parties, and the productions move in increments of hours and days, rather than weeks and months. Retaining discovery counsel that has specific experience in restructuring is critical.

Can’t most law firms simply have their ordinary eDiscovery team or person handle this?

Internal eDiscovery teams are typically quick to recommend that we get involved. Discovery in restructuring is very different than discovery in typical civil litigation. Most firms’ eDiscovery groups are not large enough or sufficiently experienced in restructuring discovery to tackle the unique challenges and exigencies that these matters present. Discovery becomes a logjam when not handled properly, frustrating ongoing financial negotiations. Firms that want to move quickly and get deals done, therefore, need experienced specialists at the helm for discovery. If a firm is taking on lots of restructuring work, there will likely be a need to amplify its internal capabilities; that’s where Redgrave steps in to help.

Beyond collection and production, what does Redgrave do?

Redgrave can handle all of discovery strategy. Collection, review, and production are important, but there are also tricky preservation issues, complex privilege analyses, data-privacy questions, and information governance needs. Additionally, Redgrave can help leverage sophisticated analytics systems to cut through vast sets of data and documents to find what matters, which is particularly helpful for investigations and large-scale document productions.

I’d like to know more. Who should I call?

Call **Jonathan Redgrave**. In addition to leading Redgrave’s team of skilled professionals who handle restructuring discovery matters, he is a world leader in eDiscovery and Information Law with extensive experience in all areas of complex litigation in both state and federal courts. You can reach Jonathan at jredgrave@redgravellp.com or 703-592-1155.