

# David K. Isom



**David K. Isom**  
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David K. Isom is lead trial counsel and an electronic discovery consultant in complex commercial litigation throughout the United States and abroad. Isom Law Firm is headquartered in Salt Lake City, Utah.

Previously, David was a litigation shareholder and the founder and chair of Greenberg Traurig's 70-member international Electronic Discovery Practice Group.

## **Corporate Litigation**

David has been lead trial counsel in major commercial litigation, arbitrations and mediations throughout the Western United States, including Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Texas, Utah, Washington and Wyoming. His focus is to resolve disputes aggressively after evaluating the risks and values of the case, by settlement if indicated, or by motion or trial.

## **Electronic Discovery**

David focuses on the potency, risks and challenges of electronic discovery in complex commercial litigation, including discovery of location based information related to social networks, smartphone and tablet apps, and location based marketing. David has served as electronic discovery counsel in major civil and criminal litigation throughout the United States.

David has published two articles in the Federal Courts Law Review, "The Burden of Discovering Inaccessible Electronically Stored Information" and "Electronic Discovery Primer for Judges." [Federal Courts Law Review](#).

David was an invited participant in the Federal Judicial Conference's pivotal Fordham hearing on the proposed new federal rules of civil on electronic discovery, and by request submitted to the conference an analysis of the proposed rules.

From 2004 to 2007, David was a member of the Sedona Conference Working Group on Protective Orders and Public Access. He has published numerous white papers, blogs and alerts on electronic discovery. David has presented numerous seminars and webinars on electronic discovery, including information preservation and retention, search protocols and technology, inaccessibility, privacy, information security, protecting and waiving privilege, preparing case management orders, litigation hold protocols, inspection of computers, cost-shifting, and the discovery of deleted data and metadata.

David is the co-author of Chapter 3, "Key Considerations in Choosing Outside Electronic Discovery Counsel and Consultants" in the 2008 Thompson West book *eDiscovery for Corporate Counsel*.

David is the co-editor of the ABA's book *Information Security for Lawyers and Law Firms*.

David counsels corporate clients on how to manage information systems to reduce litigation risk and cost and to retain and destroy electronically stored information in compliance with law and corporate best practices. He has drafted numerous document retention policies and retention schedules, litigation hold protocols, acceptable IT use policies, and proactive strategic discovery plans. .

### **Significant Litigation and Arbitration Representations**

- Represented the plaintiff in major qui tam action asserting false claims under Medicare.
- Defended a billion dollar claim against a major coal producer for alleged overpricing under long-term coal supply agreements.
- Defended several major corporations as electronic discovery counsel in numerous actions around the country, including significant multidistrict litigation panel, antitrust, product liability and employment actions.
- Consulted with numerous major companies on aspects of the law of information management, including document retention, records management, acceptable use of information systems, information security, privacy and data export requirements.
- Provided expert advice to trial counsel regarding authenticity of Internet evidence in defending a major criminal prosecution under the USA Patriot Act.
- Consulted with a major litigation support services company about implementation and legality of concept search technology for privilege review in litigation.
- Obtained a \$20 million jury verdict for breach of a coal supply agreement and interference with contract.

- Represented a major coal company and a consortium of coal buyers in arbitrating coal royalty rates with American Indian nations.
- Prosecuted and defended several actions to adjudicate issues relating to price, force majeure, quality and royalties under various long-term coal supply agreements.

### Reported Cases

- *Vulcan Power Company v. Davenport Power, LLC*, 2007 U.S. Dist. LEXIS 781102 (D. Or. October 18, 2007)
- *Boca Raton Community Hospital v. Tenet Healthcare Corporation*, 502 F. Supp. 2d 1237 (S.D. Fla. 2007)
- *iMergent v. Giani*, 2007 U.S. Dist. LEXIS 20596 (D. Utah 2007)
- *United States ex rel. Sikkenga v. Regence Bluecross Blueshield*, 472 F. 3d 702 (19<sup>th</sup> Cir. 2006)
- *Whetman v. IKON*, 209 F.R.D. 94 (E.D. Pa. 2002)
- *Ruff v. Ensign-Bickford Industries*, 168 F. Supp. 2d 1271, 171 F. Supp. 2d 1226 (D. Utah 2001).
- *Thunder Basin Coal Company v. Southwestern Public Serv. Co.*, 104 F.3d 1205 (10th Cir. 1997).
- *Desktop Direct v. Digital Equipment Corporation*, 993 F. 2d 755 (10th Cir. 1993).
- *Decker v. IHC Hospitals, Inc.*, 982 F. 2d 433 (10th Cir. 1992)
- *In re Commercial Explosives Litigation*, 1996 U.S. Dist. LEXIS 21829 (D. Utah December 20, 1996)
- *Gohler v. Wood*, 162 F.R.D. 691 (D. Utah 1995)
- *Thunder Basin Coal Company v. Tuco, Inc.*, 156 F.R.D. 665 (D. Wyo. 1994)
- *C.C. v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913 (D. Utah 1993)
- *Anaconda Minerals Company v. Stoller Chemical Company*, 773 F. Supp. 1498 (D. Utah 1991)
- *Utah Power & Light Company v. Federal Insurance Company*, 724 F. Supp. 846 (D. Utah 1989)
- *Beaver Creek Coal Company v. Nevada Power Company*, 1998 U.S. Dist. LEXIS 16116 (D. Utah 1988)
- *Amoco Production Company v. United States*, 663 F. Supp. 998 (D. Utah 1987)
- *Eisenman Chemical Company v. NL Industries, Inc.*, 595 F. Supp. 141 (D. Nev. 1984)
- *Stegall v. Stegall*, 756 P. 2d 384 (D. Colo. 1987)
- *Widdifield v. Robertshaw Controls Company*, 671 P. 2d 989 (Colo. App. 1983)
- *Franklin v. Stevenson*, 987 P. 2d 22 (Utah 1999)
- *Utah Medical Products v. Searcy*, 958 P. 2d 228 (Utah 1998)
- *Roark v. Crabtree*, 893 P. 2d 1958 (Utah 1995)
- *Heiner v. S.J. Groves & Sons Company*, 790 P. 2d 107 (Utah App. 1990)
- *Southwestern Public Service Company v. Thunder Basin Coal Company*, 978 P. 2d 1138 (Wyo. 1999)

### Professional & Community Involvement

- Member, American Bar Association, 1977-present
- Member, Colorado Bar Association, 1977-present
- Member, Utah Bar Association, 1985-present
- Member, Utah Supreme Court Advisory Committee on Rules of Civil Procedure, 1987-1998
- Co-Chair, Technology Subcommittee, Sedona Conference Working Group on Protective Orders, Confidentiality and Public Access, 2004-06
- Listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers, AV-Rating
- Colorado Super Lawyer, 5280 Magazine.

### **Education**

- J.D., Duke University School of Law, 1977
- B.A., Philosophy, Brigham Young University, 1974