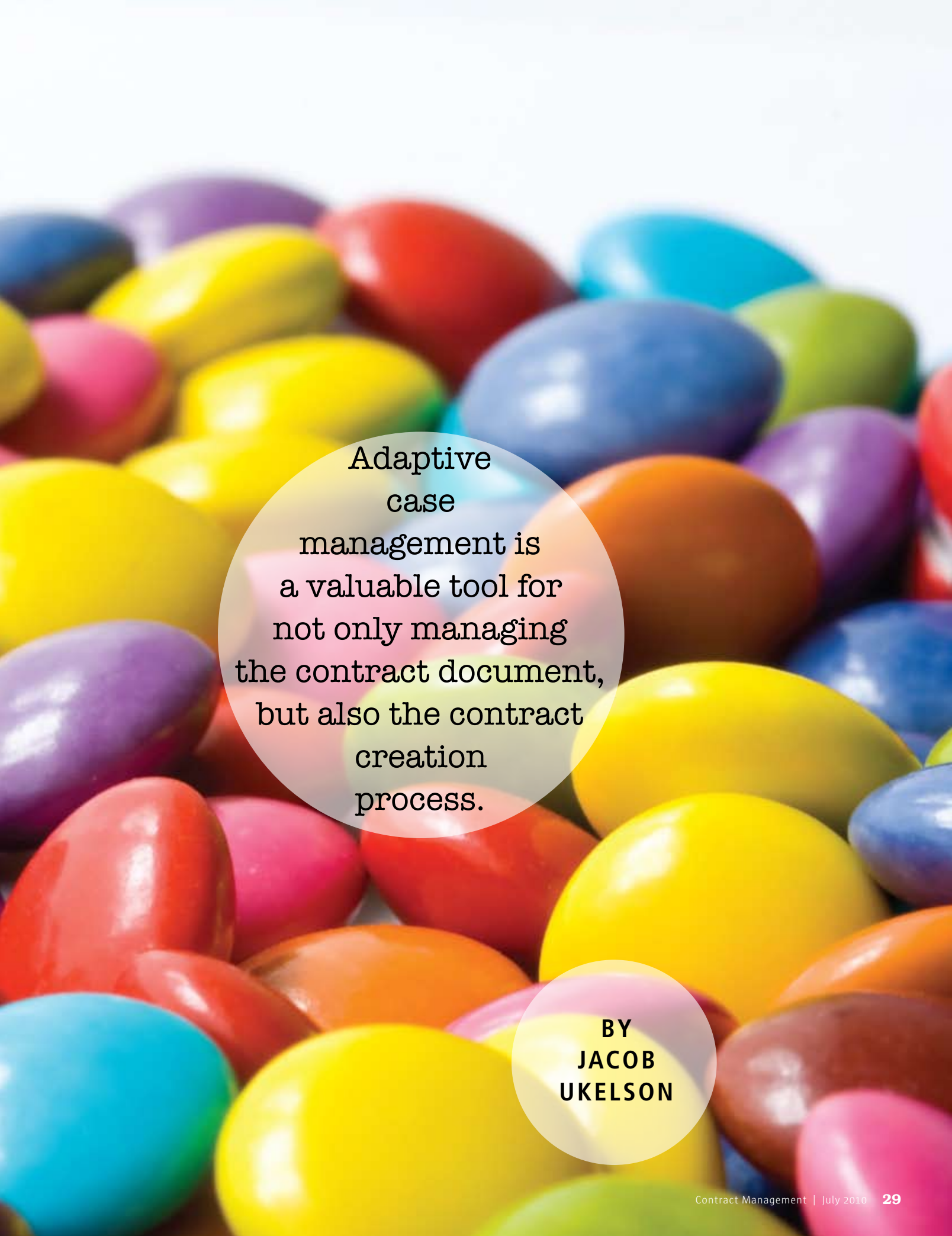


The
Value of
Adaptive Case
Management

for
Contract
Management



Adaptive
case
management is
a valuable tool for
not only managing
the contract document,
but also the contract
creation
process.

**BY
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Managing complex contracts through their entire life cycles is a difficult task. Contracts aren't usually written with ease of execution in mind. They are a set of tradeoffs and compromises that allow two parties to reach agreement. In many cases, the needs of getting the contract signed are actually at odds with the needs of executing the contract. These issues are exacerbated by the fact that the team involved in negotiating the contract is probably not the team involved in executing it.

In many ways, the discipline of contract management is similar to the discipline of case management. In case management, each case is assigned a manager—someone in charge of making sure all the guidelines associated with handling the case are followed. Just as every contract is unique, each case can have external similarities, but in the end each case needs to be handled in its own way. Various people (or teams) from various disciplines are called in to collaborate on the case, but this isn't their only task, just one of many jobs on their roster. For each case, the flow and handling morphs to meet the unique characteristics of that case. The case manager is in charge of making sure that the case is brought to an appropriate conclusion and owns the case handling process from its inception to its completion.

Now, change the word “case” to the word “contract” in the paragraph above, and you have a pretty good description of the term “contract management.” The contract manager makes sure that a contract is executed correctly and efficiently and leverages many people in the organization. Each contract can generate tens, if not hundreds

of subprocesses, each of which needs to be handled correctly in order for the contract to be successful. These processes are mostly unstructured, ad-hoc human processes that may have guidelines associated with them, but need to be flexible enough to handle changing conditions. The contract manager needs an overall view of the current state of contract execution and visibility into the execution of each component of the case.

In today's environment, contracts are handled through e-mail, documents, and meetings. This provides the flexibility needed to handle a changing environment, but really provides no management tools. The contract manager using e-mail has no visibility into the state of execution, and there is no direct linkage between the processes used to execute an action and the terms and clauses of the contract itself. Using e-mail and documents also means that there is no tracking or audit trail of the processes used in the execution of the document and the decisions related to the execution of the contract.

Adaptive (or dynamic) case management (ACM) is an emerging set of technologies that can be used to manage these types of ad-hoc, unstructured, human processes that include negotiation and discussion and have documents at their core (or what might be called the “characteristics” of a case). An ACM system can either be a standalone solution or can be embedded as part of your e-mail and document environment (for the ones embedded in e-mail and documents, the term “human process management” is also used). Because of the similarities between case management and contract management, ACM systems have been used for contract management with great success.

Managing for the “Brown M&M Clause”

Let’s take an example from contract folklore: the rock band Van Halen’s “brown M&M clause.” At one point, Van Halen’s standard contract specified that a bowl of M&Ms should be provided backstage by the venue at which they performed, with all the brown ones removed. On the surface, this seems like a crazy request from vain rockers, and the team negotiating the contract probably thought that if breached no real problem would arise. (What could be the harm from a few brown M&Ms?) So, even though it was a nonstandard request and needed unique handling, a negotiation team would probably not see any issues in agreeing to the “brown M&M” clause. In reality, the reason for the clause was to test whether the contract had been read and executed with sufficient attention (easy for one to check, much harder to execute), since the band also had several important safety and equipment clauses in their contract that they felt strongly about. So breaching this “unimportant” clause could cause the whole agreement to blow up.

This type of clause isn’t an everyday occurrence in most contracts, but it shows how important managing the life cycle of a contract actually is. It is all about managing the details and follow-up, with the contract as the central document. That includes many other related documents, numerous people, and hundreds of decisions—all orchestrated through the ad-hoc, unstructured, human processes that make up contract management.

So how would this be handled today? In most cases, the contract negotiation team would use a document management system to store the contract and all its versions. The actual conversations and decisions related to the contract wouldn’t be as carefully managed, and would become buried somewhere in the e-mail system and in scattered documents.

Once the contract was signed, the owner of the contract would break it up into executable pieces and assign them to the appropriate teams. From that point on, there

would be no actual connection between the contract (the central document of the whole process) and the processes involved in implementing it. The “M&M clause” would probably be assigned to the catering team, along with the numerous other tasks involved in such an event. There would be a kick-off meeting, and then the rest of the discussions, conversations, and negotiations would be handled through e-mail. Throughout these processes, the connection to the actual contract document would become even looser. Also, the contract manager’s visibility into the processes and decisions that go into executing the contract would be minimal, with no way for him or her to know the actual state of the processes involved in meeting those contractual obligations.

“The brown M&M clause” and other such anomalies in contracts would be more easily and efficiently handled with the support of ACM solutions. The following characteristics indicate a need for ACM:

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- If the process consists mainly of interactions between human participants.
 - Collaboration
 - Negotiation
- If the content is an integral part of the work—it is both consumed and produced as part of the process.
- If the participants control the process and change it on a case-by-case basis, though there may be a guideline or best practice framework.
 - Flow changes
 - Participant changes
 - Activity changes
- If every process instance has an owner.
- If every process instance has a goal, deadline, and a defined work product.

ACM, Contract Creation, and Modification

The creation of a contract is a detail-oriented collaborative task that involves many people. Many companies use document management and collaboration tools to assist in the creation of contracts. These tools all provide valuable support for managing the contract document, but ignore the contract creation process.

Contract creation is an ad-hoc, unstructured, unpredictable human process that changes for each contract, but is a process nonetheless. Using ACM for contract creation provides the contract owner with the ability to track and monitor the state of the case (or contract). It keeps track and manages who has been assigned what, and what needs to be done when. It links all of the different ad-hoc, unstructured processes involved in creating the contract terms into a coherent whole.

An ACM system ensures that the contract owner has visibility into the state of the contract at all times and keeps track of all the necessary follow-up. ACM works in unison with a document management system (which keeps track of the versions of the contract document) by tracking and storing

the processes involved in creating those versions, including documenting the decisions and linking the supporting documents. Together with the document management system, it provides a system of record documenting the contract creation process. ACM not only helps the contract owner ensure that the process is complete and nothing has been missed; it also creates a strong foundation for the next step of contract execution by linking the contract document to decisions and processes that were used to create it.

ACM and Contract Execution

An ACM system can provide even more value in the contract execution phase of contract management. First, by having documented the contract creation process, the contract execution owner has deeper insights into why things were agreed upon in a specific way—which is much more than just a copy of the final contract.

Here too, considering a contract as a case to be managed gives the contract owner the ability to track and monitor the state of the contract at all times. It links all of the different ad-hoc, unstructured processes

involved in meeting the contract terms into a coherent whole. An ACM system enables the contract owner to decide on the tasks to be executed for each part of the contract, assign an owner, and link those tasks back to the contract itself. Those links provide visibility into both the current state of contract execution and an audit trail of everything that has been done. The conversations, decisions, and documents (e.g., checklists) associated with these clauses are tracked, monitored, and documented by the ACM systems. Then, as the tasks are executed, the contract case is updated with the current status, and linked to the related trail of decisions, conversations, and documents. The ACM system provides visibility to the contract owner and each process owner as to the status of the contract and all of the processes related to the contract.

ACM and Contract Termination

By using ACM for managing contract creation and execution, a system of record is created for the whole life cycle of the contract. The contract is linked to all the decisions that were taken during its creation and during execution. This historical view can be invaluable during contract termination, especially if any issues arise.

Even if no issues arise during termination, this documentation can provide an invaluable tool for learning from both successful and failed contracts. The operational benefits that can be found from analyzing all the processes related to the complete life cycle of the contract are immense.

Summary

ACM is an emerging area, but there are a number of vendors already providing ACM solutions. They all enable the basic capabilities outlined above, but do it through different mechanisms and support different platforms, each with strengths and weaknesses. The main thing to keep in mind is to make sure you find a system that is easy enough that everyone will use it and that requires minimal (or no) IT involvement for initiating a new contract.


ACM isn't a panacea for all of the problems that arise as a result of managing a complex contract; you still need skilled managers and good teams. It does, however, lower the chances of a failed contract because of lack of process visibility or botched communications. It makes the contract an "active case" of up-to-date information that keeps track of its status, instead of a passive container of old information. The historical process trail also enables organizational learning—both from success and failure. **CM**

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