

**MULTI-PARTY LITIGATION AND  
TECHNOLOGY:  
TIPS AND TRAPS  
(October 26, 2004)**

**Lisa C. Munro**

**LERNERS**

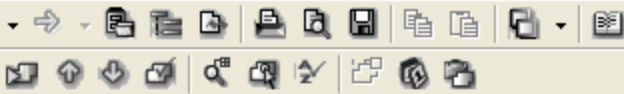


## A. “Test” case

- 13 parties
- 9 sets of counsel
- tens of thousands of documents
- all parties except one used Summation Blaze LG
- common goal = electronic document discovery
  - no exchange of paper documents
  - database containing all parties’ productions
  - electronic affidavit of documents
  - no paper at discoveries

## B. Types of information contained in database

- image
  - scanned electronic image of each document
  - each page of each document marked with a unique six-digit identifier (“Bates” number)
- coding
  - manual entry of objective information about a document such as sender, recipient, date, etc. into a chart or table
- Optical Character Recognition (OCR)
  - allows computer searches to be done of words contained in scanned documents
- transcripts
  - can be “hyperlinked” to documents



Column E-table Display: Summary 18 of 143

Seq#	Begdoc#	Date	Document	Issues	St
16	BK000009	Jan-08-1999	Facsimile Transmittal	Stigma Damages	Fax cover sent to Hinman f attachments.
17	BK000012	Feb-28-1998	Letter	Contractor's Negligence Homeowner's Negligence Wilful Creation of Nuisance Alter Natural Terrain FLat Space Plan Non-compliance	Letter from Thomas to Morr payment of amounts due ar of arroyo.
18	BK000013	May-23-1996	Letter	Negligent Construction Contractor's Negligence Foreseeability Building Code Violation Plan Non-compliance	Letter from Town planner to
19	BK000014	Mar-18-1996	Letter	Negligent Design Engineer's Negligence Foreseeability	Letter to town planner from
20	BK000015	Mar-08-1996	Memorandum	Architect's Negligence Engineer's Negligence Warning	Internal memo from planner
	BK000017	May-23-1996	Letter	Negligence Nuisance Wilful Creation of	Letter from town planner to

Image - BK000013 Page: 1 of 1

May 23, 1996

Mr. & Mrs. Morris  
9729 Barrister Lane  
Las Mesas, CA 55555

RE: Morris Residence  
9729 Barrister Lane  
File # 214-95-SD-ZP-GD  
New Residence and Pool

Dear Mr. & Mrs. Morris:

In reviewing the revised site plan and arborist's report received March 1, 1996, for the proposed new residence and pool, staff has noted the following items which need to be addressed:

1. A portion of the eastern walkway does not have the material specified. Of the area is proposed to be concrete, it would be required to be included in Worksheet #2.
2. The proposed energy dissipater may not be located closer than 10 feet from the property line.
3. The height should be called out on each elevation drawing. Please show the height from the pad to the roofline (i.e. 25.5 feet).
4. Investigate the possibilities of reducing the number of windows or utilizing windows that would reduce emitted light.

I have also enclosed the commented the Planning Staff has received from the Engineering Department and the Fire Department. No comments have been received from the geotechnical consultant to date. The application will remain incomplete for review until all of the necessary items are provided.

Please do not hesitate to call me at 999-7777 if you have any questions regarding the requested revisions to the project.

Sincerely,

Sara Moss  
Las Mesas Town Planner

CC: Roger Eljer, 389 Texas Street, Suite 102, Palo Alto, CA 99999

## C. Steps involved in electronic production

- (1) Select a single litigation support document management services company to be used by all parties
  - to provide scanning, coding, OCR services
  - to facilitate conversion to and from Summation and other software
  - to provide training and ongoing support throughout project
  - not a substitute for in-house expertise

## (2) Choose information to be stored electronically

- information to be shared, not shared
- merged database (all parties)
  - images of Schedule A productions
  - coding of information in affidavit of documents
- separate database (each party)
  - images of Schedule B productions
  - images of irrelevant documents?
  - source of documents (box no., box label, file)

- scanning decisions by all parties
  - compound documents
  - tabs
  - sticky notes
  - binders/staples
- coding decisions by all parties
  - how to identify each party's documents (e.g., ABC000123)
  - attachments
  - document type
  - document title
  - how to identify senders, recipients
  - copyee/bcc
  - names mentioned
  - marginalia

### (3) Cost allocation

- for services
- for software licences
- obtain budget, which is dependant upon:
  - number of codes to be entered
  - number of documents (paper and electronic)
  - number of pages per document (single or double-sided)
  - condition of documents (fragile, coloured)
  - sticky notes
  - bound documents

- dividing the costs among the parties
  - all parties share all costs equally
  - each party bears its own costs
  - one or more parties opt out
  - other arrangements
    - separate arrangements for images, coding
    - shared v. unshared information

## (4) Sending out documents for scanning and coding

- send all potentially relevant documents?
- send all privileged documents
- send originals

## (5) Review electronic information scanned and coded

- receive back
  - originals
  - CD ROM with images, coding, OCR
- check for errors, inconsistencies in coding
- add dates where not clear on document
- review images to identify Schedule A documents
- review images to identify Schedule B documents
- enter additional codes = lawyers' work product
  - issues
  - lawyer's notes
  - exhibit number

## (6) Production

- all Schedule A documents, coding, OCR for each party merged into one disk by Commonwealth Legal
- each party keeps a separate database for Schedule B and irrelevant documents
- affidavits of documents easily generated
- production of documents exchanged on disk
- production number = Bates number

## D. What if parties cannot agree?

- jurisdiction of the court
  - Rule 1.04(1) and (2), rules are to be liberally construed for most just, expeditious, and least expensive determination of proceeding
  - Rules 77.02 and 77.11(1) case management judge or case management master may make orders and give directions necessary to carry out purposes of the case management rule, which is to reduce unnecessary cost and delay in civil litigation and bring proceedings expeditiously to a just determination

- Section 12 of *Class Proceedings Act*, court may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination
- paras. 35 to 39 of Commercial List Practice Direction regarding case management

## E. Benefits of electronic production

- portable, convenient
- search capacity
- documents can be organized in innumerable ways, (for example, by date, author, recipient, issue, document type)
  - for key document or witness briefs
  - “parents” and “children” can be separate or together
- each document and page has a unique identifier

- split screen = image + coding / full screen
- images are at least as clear as photocopies and can be printed
- images can be magnified, reduced, orientation changed
- images can be highlighted on database
  - different coloured highlights possible
  - all members of team can view highlights
  - document can be printed with or without highlights

- notes can be added to database at any time
- duplicates easily discerned
- integrity of original file is maintained
- easily tied to originals
- cost - in dollars and time
- multiple technologies compatible
- use at discovery/trial
  - productions “hyperlinked” to discovery or trial transcripts
  - hard copies of documents not marked as exhibits at discoveries
- access to database via wireless internet
- use of mobile version of database

## F. Tips in multi-party litigation

- start planning early
  - before document production
  - leave sufficient lead time
- speak to someone who has done it before
- do a cost/benefit analysis
- have one “point person”
  - conduit of information
  - keeps process moving
  - builds consensus

- make use of case management
  - Judge/master to resolve small issues
  - deadlines imposed
- spend the time to become educated about the technology

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