



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

LITIGATE LIKE AN EGYPTIAN

By Katherine Gallo

You are now sitting down to organize your Discovery Plan and determining what discovery you need to evaluate your case, prepare for mediation, file a motion for motion for summary judgment/summary adjudication and/or get it ready for trial. But where do you start? My suggestion is to litigate like an Egyptian and build a pyramid.

Using the below scenario I will demonstrate the discovery plan that I would use and the pyramid I would build in defending this matter.

Plaintiffs own a 3,500 square foot home in Danville, CA. Plaintiffs went to a Home Improvement Store one afternoon where they saw a “sales pitch” regarding new roofs. After listening to the “sales pitch,” the plaintiffs signed a contract for a new roof. After the first winter, the plaintiffs discovered many leaks in the roof. The plaintiffs tarped the roof, closed the windows and moved out. Two years later, plaintiffs are claiming that the house is uninhabitable and want the house torn down and rebuilt. They are seeking damages in the amount of \$2 Million.

INITIAL DISCOVERY

My first step is to spot all the issues. In the above scenario plaintiffs obviously have causes of action for breach of contract and property damage. Plaintiffs may also have a claim for personal injury and wage loss due to exposure of mold (“uninhabitable” part of the scenario). With this in mind I would serve the following initial discovery:

A. Judicial Council Form Interrogatories with the following boxes checked:

- Identity of Persons Answering These Interrogatories
- General Background Information–Individual
- Insurance
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages

969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 klgallo@discoveryreferee.com



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation–General
- 14.0 Statutory or Regulatory Violations
- 50.0 Contract

B. I would also serve Requests for Production of Documents that coincide with the checked boxes of the Form Interrogatories regarding:

- Insurance
- Physical, mental or emotional injuries
- Property Damage
- Loss of Income or Earning Capacity
- Other Damages
- Medical History
- Other Claims and Previous Claims
- Investigation
- Statutory or Regulatory Violations
- Contract

SECOND TIER DISCOVERY

A. Once I have received the verified responses to the form interrogatories and requests for production of documents, I should know:

1. Who are plaintiffs' treating physicians for the alleged medical injuries;
2. Who are plaintiffs' past treating physicians;
3. Who are plaintiffs' current employers where they incurred the alleged wage loss;
4. Who are plaintiffs' past employers;
5. Who has provided a written estimate for the alleged property damage; and
6. Who has repaired the property damage.

So my next step would be to subpoena the records from each and every one of them.

969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 klgallo@discoveryreferee.com



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

B. I would also decide whether or not I would want my investigator interview the witnesses named in plaintiffs' response to Form Interrogatory 12.1 or have them deposed. Most likely I would have my investigator talk to the witnesses and decide later if I needed them deposed. However, if I chose to depose them, then I would schedule the depositions.

C. At this point I would also start contacting and retaining experts—such as a roofing expert and possibly a mold expert.

D. Lastly, I would schedule a site inspection. However, before I serve my notice for the site inspection, I would make sure that my experts will have all the information he needs by the time of the site inspection and will be available on the date I selected.

THIRD TIER DISCOVERY

A. After I have received and reviewed the subpoenaed medical and employment records, I may determine that I need an independent medical examination for conditions that are “in controversy” See C.C.P. §2032.220. **Remember:** In scheduling the independent medical examinations, you only get one per plaintiff unless you file a motion. C.C.P. § 2032.220(a).

B. If plaintiffs are claiming emotional injuries if any of the plaintiffs are claiming “great mental pain and suffering” resulting from physical injury, then I would seek a psychiatric examination either by stipulation or motion. See Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶ 8:1554 et seq.

C. I would also schedule the deposition of the plaintiffs to take place after you receive the independent medical examination report of the plaintiff, but before I do my Target Discovery. When to take the deposition of the plaintiffs is based primarily on preference, but this is when I like to take it as I will have plaintiffs' response to form interrogatories, all plaintiffs' documents, documents from third parties and the report from the independent medical examiner.

TARGET DISCOVERY

At this point I am refining my case for either a motion for summary judgment/summary adjudication or trial. My goal is to nail down the plaintiffs as to their claims and damages as well as what they think my client did wrong. This is when I use specific discovery requests and would serve:



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

A. Special Interrogatories as to specific areas. However, I will not use contention interrogatories as requests for admissions are more effective;

B. Requests for Admissions;

C. Form Interrogatory 17.1 titled "Responses to Request for Admissions"; and

D. Requests for Production of Documents requesting "all documents identified in your response to Form Interrogatory 17.1 (d)."

I try and stay under 35 requests for admissions and 35 special interrogatories. I could provide a Declaration of Necessity, but I want to limit plaintiffs' ability to object on the grounds of burdensome.

Hint: *In a complex case, target discovery may take many months or years, however, doing the first three levels is the necessary foundation for your target discovery.*

EXPERT WITNESSES

A. Unless stipulated or court ordered otherwise, expert disclosure is 50 days before trial. See C.C.P. §2034.260 and Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:166 - 1685.6. At that time I must exchange:

1. Expert List setting forth the name and address of each person whose expert opinion I expect to offer at trial.

2. Expert Witness Declaration describing the

- Qualifications of the expert
- General substance of expected testimony
- That the expert has agreed to testify and is sufficiently familiar with the pending action to provide a meaningful oral deposition concerning the specific testimony the expert is expected to give at trial
- The expert's hourly and daily fees for providing deposition testimony and for consulting with the attorney.

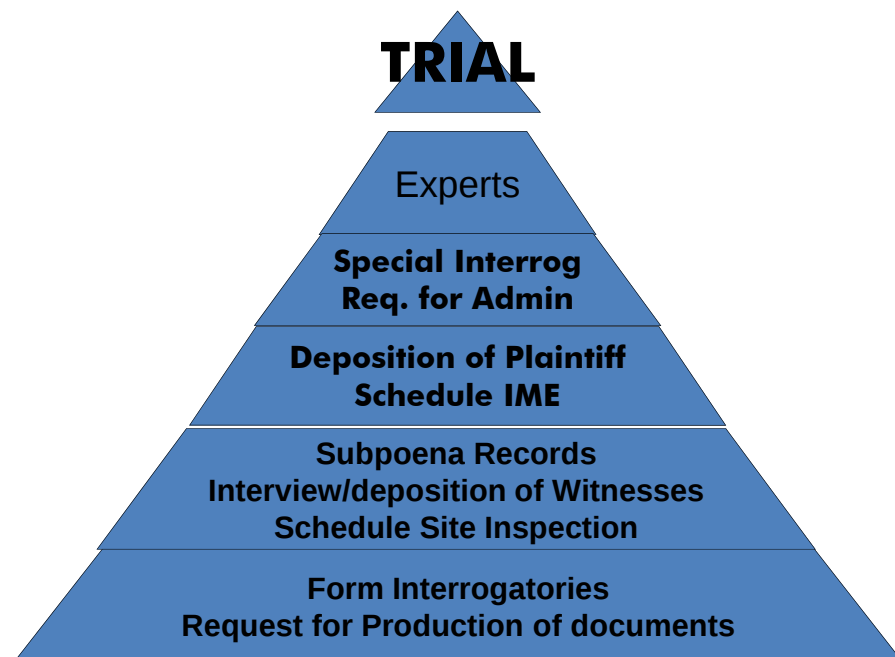


Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

B. After receiving plaintiffs' expert disclosure I would immediately contact opposing counsel and ask him for his experts' availability, advise him/her of my experts' availability and begin the scheduling of the experts' depositions. The scheduling of experts depositions is not a time to play games. Pursuant to C.C.P. §2034.230 (expert disclosure 50 days before trial), C.C.P. §2034.230 (expert discovery closes 15 days before trial) and C.C.P. §2034.230 (10 day deposition notice), I only have a 25-day window period in which to take all expert depositions and that includes Saturdays and Sundays. If I exclude the weekends, I have less than 15 days.

TRIAL

After doing the above, I have built my pyramid and I am ready for trial.



969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 klgallo@discoveryreferee.com