

Best Practice
Asbestos Litigation
Cass County, ND

Asbestos is one of the more complex and expensive types of civil litigation cases brought to court.

Business Challenge

Organize asbestos filings so that motions, parties, and responses all relate, making the data usable by the judge prior to hearings

Before Odyssey

Before North Dakota took its asbestos case files electronic, the discovery process alone could take years, and the cases were nearly impossible to keep organized.

Clerks and court staff spent weeks sorting through one case that typically contained:

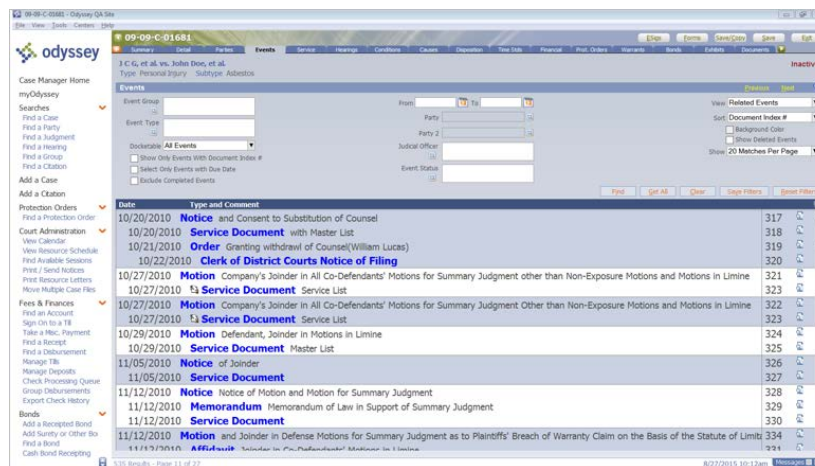
- 165 plus defendants
- 8 issues to litigate
- 175 plus dispositive motions
- 20 plus motions in limine
- 1700 plus documents

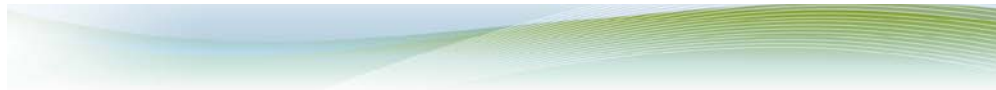
The Odyssey Electronic Organization Mission

The North Dakota Court System selected Odyssey to electronically manage their case files. The asbestos files already in disarray prior to their scan into Odyssey just meant that the files were still incomplete with incorrect references to documents. Cass County court staff quickly began working to identify the root issues of this disorganization.

The issues determined were:

- Documents were filed in chronological order as received, so dispositive documents were intermingled with thousands of documents
- Motions did not include the name of the defendant
- Defendants did not provide a description of the issue, or it was too vague, such as summary judgment or memorandum
- Plaintiff responses did not reference the motion to which the plaintiff was responding





Mission to Address the Organization Issues

Addressing the organization issues required innovation. Law clerks devised methods for applying Odyssey features as they developed methods for relating motions and responses.

Odyssey feature

The Add Related Event feature sped up the process of locating the motions within a case file.

Locate motions

Sorted files by related events instead of chronological order

Law clerks sorted files on the Events tab by choosing Add Related Event rather than sorting by chronological order.



By relating events, the associated documents became related. This sorting took Odyssey several minutes to pull up the next page of documents. A document with no defendant name or description took too long to open and sort during a hearing.

Issues remaining:

- Defendant name was missing
- Defendant omitted the issue description, only stating motion for summary judgment
- Motion in limine related to the notice for summary judgment
- Motion title was memorandum and listed many defendants without the issue or name of the motion
- Plaintiff response did not relate to the motion

Excel spreadsheet compiled to relate event code to motion
This very complex task was too time-consuming.

Use event codes to relate response to its motion

Excel spreadsheet compiled in an attempt to organize events and documents

Clerk staff reviewed all motion documents and created an Excel spreadsheet to assist parties with finding the event codes to relate the response to the motion. Data was organized by motion type, where each dispositive motion listed by docket number, defendant name, event number, and date filed. Plaintiff responses were added later.

The spreadsheet was useful, but cases were still grouped with as many as 13 plaintiffs. Plaintiffs' counsel using the spreadsheet still needed months to prepare responses to dispositive motions.

Odyssey feature

Under designated Odyssey event codes, clerk staff set up categories for the purpose of

Link the motion and response

Clerk staff set up categories—case issues—in Odyssey under a designated event code and organized dispositive motions by

organizing dispositive motions by category.

Using the Add Related Event feature, each document was filed under the appropriate event code category.

Mission outcome

As the law clerks and attorneys worked through the organization issues, they framed rules for how to enter correct and complete data.

County judge determined County judge realized that with the help of the clerk's office, asbestos cases and other complex litigation cases could be uniformly organized electronically through Odyssey.

category. An *event* is the code (docket number) that an electronic filer or a clerk selects to enter a document into Odyssey.

Clerk staff manually assigned each event code a specific docket number. Next they filed each document under the appropriate event code category by using the Add Related Event feature. Each document is filed as its own event and related (attached) to the parent category—the main event.

As law clerks and attorneys linked together a motion and response, they determined that issues remained.

Issues remaining:

- Defendants cannot combine issues into one motion/brief, and must file a notice, motion, and brief as separate documents
- Defendants must provide a description for the motion being filed, including the name of the defendant
- Plaintiffs had to sift through thousands of documents to find the defendant's motion and event code
- Plaintiffs were unable to respond to the defendant's motions within a reasonable time causing numerous delays in the litigation process

Odyssey Electronic File Organization Rules

To have a file organized so that Odyssey can provide meaningful information, specific rules must be practiced at the onset of a case.

Rule 1: One event per filing

Reason: Odyssey sorting feature looks for events.

Rule 2: One issue per filing

Reason: The Odyssey-related case feature does not sort by issues, only motions. In multiple party litigation, for the proper sorting of documents there can only be one issue per filing.

Odyssey works on a parent/child listing of related events. Clerks must be able to readily identify the group category to which a document is to be associated. This requires filing a document with a description so specific that a clerk clearly knows which documents to relate.

Rule 3: Reply documents indicate the event code to which they apply

Reason: Clerks can relate the appropriate replies to the appropriate motions without making assumptions. Clerks must ensure that the motion and all related document list under the proper category.

Plaintiff counsel can respond in a timely manner because they related the response to the category number instead of the individual docket number.

Law clerk prints the docket screen before the hearing

The screen printed is also referred to as the summary screen or Register of Actions (ROA).

Business Solution

Events correctly entered at the onset of a case, as set forth in an agreed upon Scheduling Order, can be organized, and therefore consumed by Odyssey to provide meaningful information.

Today with Odyssey

- Asbestos cases are no longer grouped together.
- Dispositive motions have an event code assigned, by category (case issue), when the case is opened.
- Motions are filed under the parent code.
- Plaintiffs file a response to the motion and relate the response to the parent code.
- Law clerk prints summary screen before the hearing.

About a Schedule Order

Submitter

An attorney submits a proposed Scheduling Order based on the discussions held during the Scheduling Conference. Topics discussed include, timeframes and deadlines for the various events, and asbestos-specific language with regard to filing and service requirements.

Signer

The assigned judge is the signer.

Scheduling Order sets filing and service requirements

A Scheduling Order was constructed to set the agreed upon guidelines for the filing and serving of documents specific to the court of The Honorable Frank L. Racek, Judge of the District Court

Sections 1 through 10, and 12 through 21

Sections 1 through 10 outline the parameters for providing facts specific to a disposition of a named case in a named court, namely: 1) Submission of applicable files (medical, tax, workman's compensation); 2) Defendant interrogatories; 3) Witness names, and 4) Exhibit lists.

Sections 12 through 21 define how dispositive motions must be served.

Section 11 filing and service requirements summarized

All parties are bound to follow the defined filing and service requirements detailed in this section. The following is a short sample of the requirements defined in this section:

- Clerk staff manually assigns each event code a specific docket number. Clerks assign each dispositive motion a docket number, called an event code, when the case is filed.
- Dispositive motions are organized by category and filed under the main (parent) code.
- Parties cannot combine event codes. Notice of motion, motion, and brief in support must be filed as separate documents.
- Dispositive motions can contain only one issue.
- Parties must describe the document they are filing.
- Parties must relate their responding document to the parent code and provide a proper description in the title of the document.

Court-initiated Scheduling Orders for asbestos cases can translate for use in other complex civil litigation cases.