

## LITIGATION TERMINOLOGY

### GENERAL

#### **BREACH OF CONTRACT**

A contract is an agreement between two or more people to do something. If one party fails to perform on the agreement, the contract is “breached,” and the other party may sue for damages caused by the failure to perform.

#### **CAUSE IN FACT**

A cause in fact is an event in a chain of causation which results in an incident or outcome.

#### **SPECIAL DAMAGES**

Damages incurred for expenses or loss of value. Typical special damages are the cost of medical treatment, wages lost, or the repair of damaged property.

#### **CONSIDERATION**

A payment or promise given by each party to a contract is the consideration for the agreement.

#### **DAMAGES**

The amount of money to be paid in compensation or for punishment as a result of injuries done to another person or that person’s property.

#### **DEFENDANT**

The person or entity which must answer the lawsuit and defend itself.

#### **GENERAL DAMAGES**

Damages to compensate for non-economic losses, such as “pain and suffering.”

#### **INDEMNIFICATION**

A duty, typically undertaken in a contract, to repay another if it is found liable to a third party. An insurance policy is a form of indemnification contract.

#### **LIABILITY**

The legal term of art meaning that one party is responsible to another party and therefore must pay for his or her “damages.”

#### **MEDIATION**

Tries to help the parties evaluate and negotiate their claim to reach an agreement.

#### **NEGLIGENCE**

Negligence is the breach of a duty owed to another which causes the other to suffer damages. Usually, the standard of care one owes to another is that of a reasonable person. In special circumstances (for example a doctor providing medical care), the standard of care is that specific to a particular profession.

#### **PLAINTIFF**

The person or entity which brings a civil lawsuit for damages.

#### **PUNITIVE DAMAGES**

These damages are assessed by the jury to punish a wrongdoer and prevent future occurrences of the conduct which led to the injury or harm.

#### **PROXIMATE CAUSE**

The legal reason an event happened. For example, a car accident could never occur if the car had not been constructed in the first place but the proximate cause of the accident was the driver’s failure to stop for the red light. There can be more than one proximate cause, where separate acts combine to cause harm.

#### **RELEASE**

A contractual agreement whereby one party explicitly states that it will drop all claims against another, typically in exchange for payment.

#### **SETTLEMENT**

A contractual agreement to resolve the claims made without a trial.

#### **STATUTE OF LIMITATIONS**

The period of time in which a lawsuit must be filed or the right to sue expires.

#### **TORT**

A “tort” is the civil law equivalent of a crime. Where in criminal law, if one person steals from another, the thief might go to jail, in civil law, if one person steals from another, he will be “liable” for the loss and must compensate the person he stole from.

#### **VENUE**

The physical location where a case is to be heard and/or tried.

### PLEADINGS

#### **ANSWER**

The legal document which must be filed by a defendant in response to the complaint.

#### **COMPLAINT**

The legal filing which initiates a lawsuit.

#### **COUNTER CLAIM**

A claim by a defendant against the plaintiff.

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## **CROSS CLAIM**

A claim against another on the same side (plaintiff or defendant) of the case.

## **DEFAULT**

When a defendant fails to file an answer or to arrange for an extension of time to respond to the complaint.

## **DEFAULT JUDGMENT**

A worst case scenario: where the defendant has failed to file an answer, and the court has entered judgment in favor of the plaintiff.

## **MOTION**

A legal filing which requests the court take some action.

## **SERVICE OF PROCESS**

The delivery of initial legal pleadings to an opposing party.

## **SUMMARY JUDGMENT MOTION**

Juries are responsible for deciding facts, while judges are responsible for applying the law to those facts. When there are no facts in dispute, the judge is permitted to issue a "summary judgment," based on the undisputed facts of the case.

## **THIRD PARTY COMPLAINT**

Liability claim against another based on the claim made by the plaintiff.

## **DISCOVERY**

### **DEPOSITIONS**

A deposition is a discovery proceeding in which an individual, whether a party (plaintiff or defendant), or merely a witness (either a fact witness or an expert witness) sits down before a court reporter and answers questions under oath.

### **DISCOVERY**

The process of exchanging documents and answering questions in order for each party to gather the facts, evaluate the settlement case, and prepare for trial.

### **DISMISSAL WITH PREJUDICE**

A dismissal is the pleading which is filed by the party who brought the case, dismissing and ending the lawsuit. A dismissal with prejudice actually ends a case for all time. This is the final filing which most settlements require as "consideration" for the money paid to the plaintiff.

### **DISMISSAL WITHOUT PREJUDICE**

A dismissal which merely ends the case until it is re-filed, although it may never be re-filed.

### **INTERROGATORIES**

Written questions posed to another which require written responses.

## **MOTION TO COMPEL**

A legal filing requesting the court to order one side to take action, such as by producing documents in response to a request to produce which has drawn an objection.

## **REQUESTS TO ADMIT**

Similar to interrogatories, these are written statements which require a response in the form of "admit" or "deny" rather than a narrative. Used to narrow the issues in dispute.

## **REQUESTS TO PRODUCE**

Written requests for documents or things which are in the possession or control of another.

## **TRIAL**

### **APPEAL**

The process of bringing the case before a different court for the review of potential errors by the lower court.

### **DAUBERT MOTION**

*Daubert* was a United States Supreme Court case dealing with the question of whether or not an expert witness is testifying based on real, accepted principles of science. The motion seeks to exclude or limit an expert witness testimony and asks the judge to act as a "gatekeeper" who decides whether proposed testimony may be presented to the jury.

### **DIRECTED VERDICT**

Similar to a summary judgment, a directed verdict is granted by the judge at trial if a party has failed to carry its burden of proof to establish its case.

### **EVIDENCE**

Proof in the form of documents or testimony.

### **EXPERT WITNESS**

A person who is specially knowledgeable or skilled in a field and therefore is allowed to testify as to opinions and conclusions based on the facts.

### **FACT WITNESS**

A witness who is not necessarily an expert, but has personal knowledge of facts relevant to the case.

### **HEARSAY**

An out of court statement, offered in court, to prove the truth of the matter asserted in the statement.

### **JUDGMENT**

An order entered by the judge or judges, concluding an issue or the case.

### **VERDICT**

The decision of the judge or jury as to the outcome of a case.