



Anatomy of a Lawsuit—Part 1—The Pleadings

by Monte Vines

There are three primary stages to a lawsuit—pleading, discovery and trial.

The pleading stage is to get all relevant parties into court and for them to formally assert their claims and defenses against each other and determine the scope of the dispute. The discovery stage is to allow the parties to obtain the information and evidence they need to effectively pursue or defend against or settle the case. The trial stage is when the parties formally present their evidence to a judge or jury to determine disputed facts and decide the outcome of the case. This article explains the pleading stage of a lawsuit.

The Petition or Complaint

A lawsuit begins when a plaintiff files a Petition with the court. (In federal court it is called a Complaint.) It is the first of the “pleadings.” The Petition identifies the parties and should provide a short and plain statement of the basic facts that the plaintiff asserts constitute his claim. It ends with a request for the remedy sought.

The plaintiff can assert multiple claims against the same defendant in one lawsuit. There can be more than one plaintiff and more than one defendant if each claim arises out of the same situation and has some issue in common with the other claims.

When a Petition is filed, the court issues an order that the defendant must respond to the Petition, usually within 20 days, if he plans to defend against

the claim. This order is called the Summons, as it summons the defendant to appear in court. The Summons and Petition must be “served” on a defendant in order to effectively start the lawsuit. Service is often accomplished by delivering a copy of these documents to the defendant by the Sheriff or by someone appointed by the court as a special process server, or by sending them by certified mail. Service notifies a defendant he has been sued, and it gives the court the power, or jurisdiction, to enter orders that will be legally binding on the defendant.

The Answer

If a defendant wants to defend against the claim, he can file an Answer with the court. The Answer must respond to the facts alleged in the Petition and as to each fact must either admit it, deny it, or explain that the defendant does not have enough information to admit or deny it, which is treated as a denial. The Answer also states how the defendant wants the court to handle the claim, for example, by entering judgment against the plaintiff on the claim.

If a defendant has his own claim against the plaintiff, he can assert it in the same lawsuit by stating a “counterclaim” in his Answer. If there are multiple defendants, and one has a claim against another arising from the same situation, he can assert a “cross-claim” in his Answer. If a defendant asserts that a third party is liable to him for his liability to the plaintiff, he can file a “Third-Party Petition” in the same lawsuit, and that would need to be served on the new party to bring him into the lawsuit. The party against

whom a counterclaim, cross-claim or third-party claim is asserted would need to file an Answer responding to the claim in order to defend against it.

While people usually try to avoid being involved in lawsuits, the rules provide that a person may be allowed to voluntarily intervene in a lawsuit between other parties under certain circumstances. One example is a person who has an interest in property others are claiming in their lawsuit. The person could protect his interest by intervening in the lawsuit and asserting his interest.

The Scope of the Lawsuit

The pleadings determine the scope of the dispute the court will need to resolve. If the defendant’s Answer admits some of the facts alleged by the plaintiff, the court will not need to resolve any dispute over those facts and the lawsuit will then proceed with a focus on the facts and issues the parties disagree about.

So it is through the process of pleading that the parties to the lawsuit and the scope of the lawsuit are determined. It is a crucial stage of the proceedings, as the way the plaintiff presents his claim, and the defenses a defendant asserts, will have a profound impact on what is actually determined in the lawsuit and on the eventual outcome of the case.

Future articles will cover the discovery and trial stages of a lawsuit. Submit your comments and questions on this article to Monte Vines at mvines@adamsjones.com.