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Anatomy of a Lawsuit

by Monte Vines

This article is geared to the layman–to provide a basic overview of the primary aspects of a lawsuit.

Pleadings

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 21 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 asserts any other defenses the defendant has to

the claim. The Answer then 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 the parties disagree about. The pleadings determine the claim asserted by the plaintiff and the defenses raised by a defendant, as well as the relief being requested from the court.

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.

Discovery

The three main stages of a lawsuit are the pleadings, discovery and trial. The discovery stage is to allow the parties to obtain the information and evidence they need to effectively pursue or defend or settle the case.

Legal claims depend on how the law applies to a particular set of circumstances. There are a number of tools and strategies for obtaining the facts and evidence needed to understand that set of circumstances and resolve the case well.

Sources of Information

There are usually three general sources for the facts and evidence needed. The first is yourself and those within your control, like your employees. The second source is the adverse party and those within his control. The third source is other parties not involved in the dispute.

Much of the information and documents you need can often be obtained informally. Pulling together the facts you already know, searching your records, and interviewing your employees and searching their records can yield a wealth of good information.

Sometimes the adverse party and third parties are cooperative and willing to informally provide their information as well. When you cannot get their information that way, or prefer to use more formal means, then the law

provides several formal procedures for obtaining that information and evidence.

Discovery Tools

One of the main principles of the rules governing lawsuits is that disputes are best resolved when all parties have the opportunity to be fully informed about the facts and have all the relevant evidence to present or defend or settle the case. So the rules provide several tools for obtaining the facts and evidence. The main tools are:

- **Requests for Production of Documents**–formal requests for another party in the case to produce the documents or other things in their possession or control that you describe, for your inspection and copying.

- **Interrogatories**–written questions for another party in the case to answer in writing under oath.

- **Depositions**–opportunities for the lawyers to question the parties or witnesses orally, under oath. A verbatim transcript is created of the questions and answers by a court reporter.

- **Requests for Admissions**–written requests for another party to admit specific facts.

In most cases, these tools operate well and any problems are worked out between the attorneys. When disputes arise over the use of these tools, or when parties or witnesses fail to respond as court rules require, the court can intervene and order that responses be made or control the discovery process so there is no abuse and it does not unfairly burden or damage a party or a witness. If a party or witness refuses to obey a court order regarding discovery, the court can impose sanctions to enforce the discovery process. These sanctions include monetary payments, summary determination of part or all of the claims in the case, and in unusual situations even jail time for a witness until he complies (such as a journalist who refuses to disclose a source when the law requires it).

The Key to the Case

These tools, and some less common ones, typically provide an opportunity to obtain all the information and evidence you need to fully understand the dispute and prepare for a court hearing to resolve it, or to settle it wisely. There are costs involved in conducting discovery, so it is a judgment call as to what tools to use and how much to use them. It depends on the size of the dispute and how important any particular witness or party's information or testimony is to the case.

Many depositions last just a few hours, but some take much longer. I once took a deposition that lasted several days. It was the deposition of the plaintiff in a large case. He was claiming that his large farming operation failed because some expensive farm equipment did not perform as advertised. Modern farms are sophisticated operations, and his deposition was our main way of investigating the many other possible causes of the failure of his operation.

With so much information now in digital form, such as emails and computer files and text messages, possibly located on many different devices, gathering all the information needed for a case can be a challenge. But without good information and evidence, it is very difficult to prepare a case for a successful trial or a good settlement.

The facts are what primarily determine how a legal dispute should be resolved. So the discovery process can be the most important part of a case.

Trial

The three main stages of a lawsuit are the pleadings, discovery and trial. The trial stage is the most well-known—when the evidence is presented, the case is argued, and a judgment is entered. Trials to a judge and jury are known as jury trials, while trials just to a judge are called bench trials. In most civil cases the parties have a constitutional right to a jury trial, but some cases must be tried only to a judge. Parties may waive their rights to have a jury decide the case and choose to try their case just to a judge.

In civil cases the plaintiff has the burden of proof and must convince the judge or jury of their case, usually to the standard of proof known as the preponderance of the evidence. That standard is met if the judge or jury decides that the facts establishing the claim are more probably true than not true, even if they are only 51% convinced.

The trial will proceed according to a court order worked out between the judge and the lawyers in advance, known as the pretrial order. It identifies the claims and defenses of the parties, establishes the issues to be determined at the trial, the witnesses and exhibits to be presented, and other aspects of the trial. While a trial is a very important and visible part of a lawsuit, it is the end product of much work behind the scenes.

Opening Aspects of Trials

In a jury trial, the first step is to select the jury from the potential jurors called for service. That process is called *voir dire.* The potential jurors are questioned to determine any biases or prejudices and to give the parties information on which to exercise challenges. Any potential juror can be challenged for cause if a reason to question their fitness to serve is established. Then each side will usually excuse three potential jurors with peremptory challenges, for which no reason needs to be given. Those remaining will be the jury.

The parties will then make opening statements to the judge or jury, outlining their case and what they intend to prove. Because first impressions can make a big impact, opening statements are seen as very important in a trial.

The plaintiff presents its evidence first, what is known as plaintiff's case-in-chief, and must establish a *prima facia* case, meaning that evidence has been presented of each necessary element of the claim. If plaintiff fails to present evidence of some element of the claim, the judge can end the trial by entering judgment as a matter of law in favor of the defendant.

The Evidence

The evidence at the trial consists of the testimony of witnesses under penalty of perjury, exhibits, and other facts that the judge may recognize by judicial notice–matters of common knowledge or that are readily verifiable. The parties also may stipulate to some facts, so that those facts would not need to be proven at trial.

Witness testimony is given as answers to questions posed by the lawyers. Their initial testimony is given during direct examination by the lawyer who called that witness. The opposing party's lawyer then can cross-examine the witness regarding the matters testified to on direct. There may also be redirect and recross examinations.

Most witnesses are fact witnesses, because they are there to testify about the facts of the case that they know directly from their own involvement. Some cases also have expert witnesses–people whose special knowledge or experience enables them to testify about a

subject that would help the judge or jury understand a complex matter, such as the standard of care in a field of medical practice and whether it has been met in a particular situation. There may be expert witnesses on opposite sides of the case, and the judge or jury would need to decide which is more convincing.

There are many rules of evidence governing what evidence may be presented in a trial and how to present it. The purpose for some of these rules is to avoid evidence that is less likely to be trustworthy. So, for example, hearsay testimony is generally excluded, subject to many exceptions. And there must be an adequate foundation laid for certain testimony to be allowed into evidence, such as that a witness was in a position to adequately observe and recall the subject of their testimony. On the other hand, some rules restrict evidence that can be offered, even though it is likely to be trustworthy and relevant, such as the privileges against testimony about confidential communications between attorney and client, spouses, etc., in order to protect the willingness to communicate needed for those relationships.

In order to facilitate testimony being the actual recollections of the witnesses and to minimize the influence of the lawyer offering the witness on the testimony given, direct examination is to be conducted without leading questions, which are questions that suggest the answer desired. But leading questions are allowed and are common in cross examination, to foster vigorous challenges to the testimony of adverse witnesses.

Lawyers may object to questions or answers that would violate a rule of evidence, and the judge then rules on the objection, either sustaining or overruling the objection. Objections must be timely made, or they are considered waived and testimony that would have been inadmissible is allowed to stand. If inadmissible testimony was given before a lawyer could make the objection, the judge may instruct the jury to disregard that testimony– typically a challenge for a jury to do.

Exhibits are documents or other tangible things that relate to the case. Exhibits are admitted into evidence when a witness establishes the authenticity of the document or photograph or other item and its relevance to the issues in the case. Exhibits can be very valuable evidence, as they often are not as susceptible to bias or prejudice or faulty memory as the testimony of witnesses can be.

When the plaintiff has finished presenting its case-in-chief, the plaintiff rests its case. If the evidence has established a *prima facia* case of the claim the defendant then presents its case. This is done in the same way, through witnesses, exhibits and judicially-noticed facts. The defendant then rests its case.

The plaintiff then has the opportunity to present rebuttal evidence, in order to controvert evidence presented by the defendant. Then the defendant may present surrebuttal evidence, controverting the rebuttal evidence presented by the plaintiff.

End-of-Trial Matters

After the parties have presented their evidence, the lawyers make closing arguments to the judge or jury. They review the evidence that was presented, argue how it tends to prove or disprove the elements of the plaintiff's claim, and ask for a verdict in favor of their clients.

In a jury trial, the judge will then instruct the jury on what it needs to do to decide the case. The jury instructions will cover both the procedure involved as well as the substantive law that the jury is to apply in its deliberations. The jury instructions will have been the result of a conference between the judge and the lawyers to determine the specific instructions that should be given. Judges rely heavily on pattern instructions developed over the years

for many procedural and substantive points. But in many cases, contentious arguments are involved in determining some of the jury instructions, and incorrect instructions can be the basis for an appeal.

In jury trials, the jury will then deliberate behind closed doors until they reach a verdict. They may submit questions to the judge if they need guidance on the law, or they may ask to have some testimony read to them again. In Kansas, a civil jury has twelve jurors and will need the agreement of at least ten jurors to reach a verdict, although the parties can agree to empanel a smaller jury or can agree that a verdict can be reached with less than ten of twelve in agreement. When the jury reaches its verdict, it returns to the courtroom and the bailiff announces the verdict–a high point of the trial. If the jury cannot agree on a verdict, the judge will eventually declare a mistrial and the parties will need to try the case again to a different jury. In bench trials, the judge may "take the case under advisement" to review the evidence and the law involved in the case before reaching a verdict.

In jury trials, the judge will typically enter judgment in accordance with the verdict reached by the jury. Some cases involve post-trial motions, where some aspect of the trial or the verdict is challenged. In appropriate circumstances, the judge may enter a judgment as a matter of law that is different from or even contrary to the verdict reached by the jury, or may order a new trial.

Trials are Important, but Unusual

These are the basic aspects of a typical civil trial. Of course there are many other possible aspects of trials, and many details not covered here. But this overview may give you a better understanding of this most well-recognized part of a lawsuit. And while a trial is what most people think of in regard to a lawsuit, a trial is actually an uncommon aspect of civil lawsuits–because most cases by far are settled or otherwise resolved before they get to trial.

While civil trials rarely provide the riveting drama portrayed in the movies or on television, some trials do involve deep emotions, dramatic moments, and very difficult decisions for the judge or jury. A trial will usually determine matters that are very important to the parties involved, and may have long-lasting or even lifetime consequences.

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