Litigation Terminology

C.S.S
CUZDEY, STINE & SANSALONE, LLC
ATTORNEYS AT LAW

General:

Breach of Contract: A breach of contract occurs whenever a party who entered a contract fails to perform their promised obligations.

Cause in fact: Also referred to as factual causation or actual cause - A cause that produces a result in a natural and probable sequence and without which the result would not have occurred.

Special damages: Also called consequential damages; they refer to irregular damages such as physical injuries during a breach of contract, but general damages would refer to the damages expected from the contract being breached

Consideration: Consideration is a promise, performance, or forbearance bargained by a promisor in exchange for their promise. Consideration is the main element of a contract.

Damages: In civil cases, damages are the remedy that a party requests the court award in order to try to make the injured party whole. Typically damage awards are in the form of monetary compensation to the harmed party.

Defendant: a person or group against whom a criminal or civil action is brought : someone who is being sued or accused of committing a crime

General Damages: General damages refers to harm which arises directly and inevitably from a breach of contract or tort. In other words, those damages that would be theoretically suffered by every injured party under these circumstances.

Indemnification: To indemnify, also known as indemnity or indemnification, means compensating a person for damages or losses they have incurred or will incur related to a specified accident, incident, or event.

Liability: A party is liable when they are held legally responsible for something. Unlike in criminal cases, where a defendant could be found guilty, a defendant in a civil case risks only liability.

Mediation: Mediation is an alternative dispute resolution method with a neutral person helping the parties find a solution to their dispute.

Negligence: Negligence is the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. Either a person's actions or omissions of actions can be found negligent.

Plaintiff: A plaintiff is the party who initiates a lawsuit in a civil matter. The plaintiff may be an individual or an entity. A plaintiff files a complaint with a court against the defendant, initiating the action.

Punitive Damages: Also known as exemplary damages, are the damages awarded separately from the actual damages from an event. Courts generally award punitive damages only when it is determined that the defendant has acted in a particularly harmful way.

Proximate Cause: A proximate cause is an actual cause that is also legally sufficient to support liability.

Release: Release means to cease to be bound by an obligation or to concede a right.

Settlement: A settlement is an agreement that ends a dispute and results in the voluntary dismissal of any related litigation.

Statute of limitations: A statute of limitations is any law that bars claims after a certain period of time passes after an injury. The period of time varies depending on the jurisdiction and the type of claim.

Tort: A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment that an individual suffers.

Venue: In general, a place or location in which something takes place. The proper place to hold a civil or criminal trial, usually because important related events have taken place there.

Pleadings:

Answer: Refers to a defendant’s first formal written statement to a plaintiff’s initial petition or complaint.

Complaint: The pleading that starts a case

Counterclaim: A claim for relief filed against an opposing party after the original claim is filed.

Cross claim: A claim brought by a plaintiff against a co-plaintiff, or by a defendant against a co-defendant

Default: A failure to fulfill an obligation.

Default judgment: Ruling granted by a judge or court in favor of a plaintiff in the event that the defendant in a legal case fails to respond to a court summons or does not appear in court.

Motion: A formal request made by any party for a desired ruling, order, or judgment. The party that makes the motion is known as the movant.

Service of process: Service of process is the procedure by one party in a lawsuit or legal proceeding to give another party an appropriate notice of the initiation of legal action.

Summary judgment motion: A motion for summary judgment is a motion asking the court to issue summary judgment on at least one claim. If the motion is granted, a decision is made on the claims involved without holding a trial.

Third party complaint: A complaint filed against a third party by a defendant or plaintiff alleging that the third party is liable for all or part of a claim or counterclaim in dispute between the original parties

Discovery:

Depositions: Witness's sworn out-of-court testimony. It is used to gather information as part of the discovery process and, in limited circumstances, may be used at trial.

Discovery: In civil actions, the discovery process refers to what parties use during pre-trial to gather information in preparation for trial.

Dismissal with prejudice: The plaintiff cannot refile the same claim again in that court.

Dismissal without prejudice: When a court dismisses a claim but leaves the plaintiff free to bring a subsequent suit based on the same grounds as the dismissed claim.

Interrogatories: Written questions sent by one party to another as part of discovery–i.e. the gathering of information in preparation for trial.

Motion to compel: Asks the court to order either the opposing party or a third party to take some action. This sort of motion most commonly deals with discovery disputes, when a party who has propounded discovery to either the opposing party or a third party believes that the discovery responses are insufficient.

Requests to admit: These requests aim to simplify and narrow the issues in dispute by establishing certain facts as true, thereby reducing the amount of evidence needed during trial. If admitted, the statement is considered to be true for all purposes of the current trial.

Requests to produce: A discovery request served by one party to an action on another for the presentation for inspection of specified documents or tangible things or for permission to enter upon and inspect land or property in the other party's possession

Trial:

Appeal: A challenge to a previous legal determination

Daubert motion: The “Daubert Standard” provides a systematic framework for a trial court judge to assess the reliability and relevance of expert witness testimony before it is presented to a jury. Established in the 1993 U.S. Supreme Court case Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579 (1993), this standard transformed the landscape of expert testimony by placing the responsibility on trial judges to act as "gatekeepers" of scientific evidence.

Directed verdict: A ruling entered by a trial judge after determining that there is no legally sufficient evidentiary basis for a reasonable jury to reach a different conclusion.

Evidence: An item or information proffered to make the existence of a fact more or less probable. Evidence can take the form of testimony, documents, photographs, videos, voice recordings, DNA testing, or other tangible objects.

Expert witness: A person with specialized knowledge, skills, education, or experience in a particular field who is called upon to provide their expertise in legal proceedings to assist the court with understanding complex technical or scientific issues.

Fact witness: Source of evidence, offering firsthand accounts that can corroborate or refute claims made by parties involved.

Hearsay: An out-of-court statement offered to prove the truth of whatever it asserts, which is then offered in evidence to prove the truth of the matter

Judgment: Means the final decision made by a court or tribunal. After the judges consider all the relevant evidence of the legal trial and consider all rights and obligations, the plaintiff and defendant will receive the final ruling.

Verdict: The formal decision or judgment rendered by a court at the conclusion of a trial or legal proceeding.