

## UNDERSTANDING CLAIM AND LAWSUIT TERMINOLOGY

Being familiar with the basic vocabulary relating to claims and lawsuits is essential for basically all company employees, but especially for those employees involved in customer contract negotiations, risk management best practices, and insurance buying. At the same time it is important to be aware of the key players, their roles and the entire claims and lawsuit processes in the event that you are involved in either a claim or lawsuit.

Used usually in reference to insurance, a **claim** is (1) a demand (2) to recover under a policy of insurance (3) for a loss which may come within that policy. The key player in a claim is the **claimant**, or person or company making the claim. The loss would either be injuries or property damage sustained by the claimant as a result of actions of the insured. While this is not always the case, use of the word claimant generally is an indication that the person or company has not yet filed a lawsuit.

A claimant may have a claim against its own insurance policy as in the case of a fire loss or a vehicle loss due to an accident. A claimant may also have a claim against another person's or company's insurance policy as in the case of claim of negligence asserted against such other person or company which resulted in either an injury or property loss to the claimant. The parties involved in an insurance claim are the **insured** and the **insurer**. The insured is the first party—the insurance buyer. The second party is the insurer or the insurance company. The claimant is usually a third party and is neither the insured nor the insurer.

Once a lawsuit is filed, the claimant becomes a **plaintiff**. Although plaintiff is the correct term, an insurer if involved may continue to technically refer to the plaintiff as a claimant. A **lawsuit**, at times referred to as a **complaint** or a **petition**, is a formal claim filed by the plaintiff with a municipal, county, state or federal court. A lawsuit will most likely be prepared by an attorney hired by the plaintiff.

Not all lawsuits assert claims that are covered by insurance. For instance, a claim of a failure to comply with an agreement will most likely not be covered by insurance. A warranty claim to replace a mis-manufactured or mis-designed product is not covered by insurance. Therefore at times, a person or company asserting claims against a company may be referred to as a claimant even if insurance will not cover such claim.

A lawsuit will usually identify the following four pieces of information:

- the parties to the case which will include the plaintiff
- the background facts that give rise to the case
- what are referred to as **causes of action**
- a description of **damages** that the plaintiff is requesting be awarded

The legal assertions within a lawsuit are referred to as **causes of action**. Examples of causes of action are breach of contract, breach of warranty, negligence, strict liability and fraud. The **damages** sought will depend on whether injuries or property damage occurred.

**Parties** are the persons or companies that are involved in the lawsuit. We have already talked about the plaintiff who initiates the lawsuit. The **defendant** is the person or company against whom the lawsuit is filed. On occasion the defendant will join additional persons or companies to the case claiming they have some responsibility for the claims that are asserted by the plaintiff. These persons and companies are referred to as **third party defendants**. The defendant will have the right to bring in third party defendants even though the plaintiff has not named or sued such persons or companies in the lawsuit.

**Pleadings** are the formal allegations asserted by the parties to the case and are prepared by the attorneys for the parties. Pleadings are filed with the court and are usually of public record. The pleading initially filed with the court is commonly referred to as the **complaint** although in some states it is referred to as a **petition**. The complaint is what initiates the lawsuit.

An **answer**, which is also a pleading, is what is filed by the defendant to the complaint filed by the plaintiff. The answer will

most likely respond to each of the allegations contained in the complaint and will assert any defenses that may be available to the defendant. Here is an example of what an answer to a particular complaint may include.

## CASE BREAK

A passenger vehicle driver is injured in an accident with a truck driver employed by Perfecto Company. Since the truck driver was in the course and scope of his employment at the time of the accident Perfecto Company is responsible through what is referred to as vicarious liability.

The injured driver hires an attorney who files a lawsuit. The basis of the complaint is the truck driver failed to maintain a look-out for the driver of the vehicle and as a result the collision occurred and the driver sustained personal injuries. The complaint lays out the facts regarding the accident, names the truck driver and Perfecto Company as defendants, alleges negligence on the part of the trucker driver and Perfecto Company, and describes the damages the plaintiff allegedly sustained or will in the future sustain.

An answer is filed for both defendants by Perfecto Company's automobile insurance company. The answer admits to some of the allegations asserted by the plaintiff, such as the time and place of the accident and the weather conditions, but denies a majority of the allegations, such as who was at fault and the degree and severity of the injuries sustained by the plaintiff.

The answer further asserts various defenses. Among the defenses asserted, the defendants assert that the truck driver was making a perfectly legal left hand turn when the plaintiff from behind jumped the curb to make a left hand turn as well. The driver asserts the plaintiff failed to wait on the truck to turn as the plaintiff was apparently in a hurry to turn into the unemployment office. As a result, the truck driver asserts the plaintiff's car suddenly appeared in front of the truck as the plaintiff was turning left and the truck driver struck the plaintiff's car in the side. The answer further asserts as a defense that the plaintiff sustained no injuries. Instead she was coached by her attorney to go to the chiropractor to run up some medical bills in an effort to substantiate some real loss to cause Perfecto Company's insurance company to settle the lawsuit.

As you can see from our example, Perfecto Company has asserted a great number of defenses to the complaint that was filed.

**Discovery** is the process within a lawsuit that permits all parties to obtain certain information and admissions from the other party. There are several forms of discovery that are permitted from either the plaintiff, defendant or third party defendants including: **interrogatories**, **requests for production**, and **depositions**.

Many people incorrectly refer to taking a witness' statement as a deposition. A deposition is the asking of questions to a witness under oath before a court reporter where questions are asked by the attorneys for all the parties to the case. In our CASE BREAK example, depositions that are likely to be taken include the plaintiff, the defendant truck driver, any witnesses to the accident, and the chiropractor who treated the plaintiff. During all depositions, the lawyers for each party involved in the case will be able to ask questions and require that they be answered.

A **motion** is what is filed with the court by either the plaintiff or defendant on some issue involved in the case. A motion asserts some kind of action on the part of the judge in the case. Motions are filed after the complaint is filed and may also be filed up until the time of trial. In some instances, a motion may even be filed after the trial.

One common motion that is filed is referred to as a **summary judgment motion**. The summary judgment motion is most often filed by the defendant's attorney and is a request for a resolution of the case without the need for the case to be decided by a trial. If a summary judgment is filed by the defendant and granted by the judge, the case will be immediately dismissed.

In the event that a summary judgment motion is not granted by the court, and the case is not otherwise settled, the case will proceed to **trial**. A trial is the contested proceeding where evidence is presented in the form of testimony and documentation and a decision is rendered by either a jury or judge.

When rendered by a jury, the decision is referred to as a **verdict**. The verdict, or in the case of a trial heard by a judge and not a jury, the judge's **findings of fact and conclusions of law**, are reduced to a **judgment**. If the judge rules in favor of the defendant, the judgment essentially serves as an order that the case is decided in the defendant's favor. In the case of a plaintiff winning, the judgment establishes the relief awarded against the defendant and the damages assessed.

Judgments can be **appealed** by either party. Appeals are asserted by the losing party and are formal requests made of a court of appeals, which reviews the actions of the jury and the judge that conducted the trial of the case. If some kind of error is found by the court of appeals, the case can either be sent back to the same court where the trial took place or in a rarer instance, can be summarily decided in favor of the party that asserts the appeal.