

## **COMMON LEGAL TERMS IN A PERSONAL INJURY CLAIM**

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** Refers to the broad array of alternatives to trial for resolution of legal disputes. Includes mediation, arbitration, and settlement conferences.

**AFFIDAVIT:** A written statement made under oath.

**ANSWER:** A formal pleading which states the defendant's response to plaintiff's complaint.

**APPEAL:** A request by a party for a higher court to review a lower court's decisions regarding questions of law.

**ARBITRATION:** Alternative to trial where parties agree to appoint an individual or panel to make a binding award or decision based on the evidence and testimony presented.

**BAD FAITH:** Actions by an insurer designed to mislead an insured; refusal or negligence of insurer in fulfilling some duty or contractual obligation.

**BENCH TRIAL:** A case heard and decided by a judge without a jury.

**BRIEF:** A written document prepared by an attorney to serve as the basis for a legal argument. It includes a summary of legal points and precedent, together with arguments to be presented to the court deciding the case or a particular issue of the case.

**BUSINESS RECORDS:** Common type of documentary evidence. Business includes any association, profession, occupation, and calling of any kind, whether or not conducted for profit. Records include memoranda, reports, chart notes, billing ledgers, etc., created and kept in the ordinary course of doing business, that document acts, events, and conditions. The information contained in the record must be supplied by a person with first-hand knowledge of the underlying events, conditions, etc.

**CIVIL LAW:** Law developed by governmental groups including statutes, regulations and ordinances enacted by legislative bodies such as Congress, state legislatures, county and city officials. This is different than laws based on custom.

**CLAIM:** A demand for compensation.

**CLAIMANT:** A person who makes a claim or asserts a right. The plaintiff in a personal injury case may also be known as the claimant.

**CLOSING ARGUMENT:** The chronological and psychological conclusion of a trial. The last opportunity for the attorneys representing each party to communicate directly with the jury and/or judge about their theory of the case, explain contested facts, and argue why their side should prevail.

**COMPARATIVE FAULT:** An affirmative defense available to the defendant. Reduction of the plaintiffs' recovery in proportion to the percentage of negligence or fault attributed to the plaintiff.

**COMPLAINT:** A formal statement filed by the plaintiff with the court that sets forth his/her injuries and damages and why he/she believes the defendant is liable.

**COMMON LAW:** Body of law developed over a long period of time which derives its authority solely from usage and custom.

**COUNTER CLAIM:** The defendant sues the plaintiff for damages for which the defendant claims the plaintiff is legally liable or at fault.

**COURT RULES:** The rules governing legal proceedings in all courts.

**COURT OF APPEALS:** This court is established to review appeals from the trial court. It can affirm or overturn, in whole or in part, a trial court's decision. A party has a legal right to appeal any final decision of a superior court to the Court of Appeals.

**CROSS CLAIM:** The defendant brings a claim against another defendant in the same lawsuit or identifies a new party not previously named by the plaintiff in the lawsuit, asserting that party is responsible for the plaintiffs' damages.

**CROSS EXAMINATION:** The questioning of a witness by the adverse party.

**DECREE:** A judgment or order issued by a court.

**DEFAMATION:** Injury to a person's character, fame, or reputation by false and malicious statements.

**DEFAULT JUDGMENT:** When a defendant fails to formally answer a plaintiffs' complaint in a timely manner, the plaintiff may ask the court to enter a judgment against the defendant. Most often in personal injury cases, these judgments are set aside once the defendant begins to comply with the rules and initiates a formal defense by filing an answer.

**DEFENDANT:** The party the plaintiff claims is responsible for his/her damages and from whom the plaintiff seeks some form of relief.

**DEMAND LETTER:** A letter expressly stating a legal right and an amount due as reasonable compensation for injuries to person and/or property.

**DEPOSITION:** A form of discovery whereby the attorney calling for the deposition has the right to ask questions and obtain answers from a party, witness, or expert while that individual is under oath.

**DIRECT EXAMINATION:** The questioning of a witness by the attorney for the party on whose behalf the witness is called.

**DIRECTED VERDICT:** At the close of a plaintiff's case, a defendant asks the court to rule that the plaintiff has failed to put forth sufficient evidence, even when viewed in a light most favorable to the plaintiff, to support his/her claim. If the court so rules, the defendant is entitled to a dismissal without the defendant ever having to put on his/her case. Also, at the close of defendant's case, plaintiff can ask the court to rule in its favor with a directed verdict on liability or special damages.

**DISCOVERY PROCESS:** Procedure for examination of documentary and physical evidence, and questioning of witnesses and parties to uncover evidence which is reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained by the parties through interrogatories, requests for production of documents, depositions, and defense medical examination. Information that can be obtained in discovery is broader in scope than what is deemed to be admissible at trial.

**DOCKET:** A calendar or agenda of court proceedings prepared by the clerk of the court. For example, a trial docket is a list of cases set to be tried in a specified term.

**EVIDENCE:** Testimony, writings, material objects, etc. which are admissible and offered by a party to the trier of fact to prove the existence or non-existence of a fact.

**EXPERT WITNESS:** An individual who possesses specialized knowledge through skill, education, training, or experience beyond that of the ordinary person or juror, and whose knowledge will aid the trier of fact (jury, judge, arbitrator) in reaching a proper decision. Often, a health care provider who examines and evaluates a patient in anticipation of litigation.

**FEDERAL COURTS:** Courts of the United States created by Article III of the Constitution or by Congress. Lawsuits filed in federal court include cases in which an agency of the federal government is named as a defendant or where the plaintiff and defendant reside in different states.

**GENERAL DAMAGES:** Money damages for pain and suffering, disability, or reduction in quality of life.

**GUARDIAN:** A person with the lawful power and duty to take care of a person and manage his/her property and/or rights.

**GUARDIAN AD LITEM:** A guardian appointed by the court to represent the interests of a minor.

**HEARING:** Proceedings at which a judge, arbitrator or administrative officer makes determinations of fact or law after argument by both parties. Administrative hearings may be investigative or result in a final order or determination of the matter. Ex Parte hearing is when only one party is present, although notice of the hearing may be given to the other party.

**HEARSAY:** Refers to statements made by persons other than the person testifying. The statement is a mere repetition of what the witness has heard others say out of court, and is offered as proof in the matter on which the witness is testifying. Generally, hearsay evidence is not admissible and is excluded from consideration by the trier of fact; however, there are numerous exceptions. One exception to the rule is statements made for the purpose of medical diagnosis or treatment, including description of medical history, past or present pain, sensations, etc.

**HUNG JURY:** A jury which is unable to agree on a verdict after a suitable period of deliberation; sometimes referred to as a dead-locked jury. The result is a mistrial.

**INSURED:** The person who purchases an insurance policy or is otherwise covered by the policy.

**INDEMNIFY:** One party gives another party security for the reimbursement of payments required in case of an anticipated loss.

**INJUNCTION:** An order issued by the court prohibiting a person from or requiring him/her to perform some act.

**IME:** Insurer's refer to this as an "independent medical examination." Attorneys representing injured people refer to this as an "insurance medical examination." An insurer may require the injured person to attend an IME under the provision of the Personal Injury Protection (PIP) Policy or by a defendant after a lawsuit is filed in court. In either instant, the insurance company selects the doctor of their choice and pays for the examination.

**IMPEACHMENT:** A technique used during cross-examination to discredit a witness's testimony. Impeachment can be accomplished in a number of ways: by demonstrating and emphasizing the difference between the witness's testimony at trial and a prior statement, showing bias, showing erroneous assumptions made by the witness in drawing conclusions, etc. The intent of impeachment is to show the jury that the witness cannot be believed.

**INSURER:** The underwriter or insurance company with whom a contract of insurance is made.

**INTERROGATORIES:** A discovery device consisting of written questions submitted by one party to another party. Written answers to interrogatories are given under oath.

**JUDGMENT:** A final order which puts an end to a lawsuit. The judgment states the final amount of any monetary award made to a party by a judge, jury or arbitrator, as well as which party must pay for it.

**JUROR:** A member of the jury.

**JURY:** A group of persons selected from the citizens of a particular district who are temporarily invested with the power to indict a person for a criminal offense or to decide a question of fact in a civil case and award damages. In personal injury cases, either party may ask for a jury trial. Depending on the court, a jury will consist of 6 or 12 people. With a six-person jury, five out of six jurors' votes are needed for a verdict. With a twelve-person jury, ten jurors are needed for a verdict; twelve out of twelve are needed for a criminal conviction.

**LAWSUIT:** A claim or cause of action instituted or pending between private persons or entities in a court of law. In order to properly commence a lawsuit, a complaint must be filed with the court and the defendant must be served or given a copy of the summons and complaint.

**LAY WITNESS:** A person, with knowledge based on his/her first-hand observations, whose testimony is helpful to determine the facts at issue. Liability lay witnesses testify regarding the facts of the accident. Lay damage witnesses testify regarding the plaintiff injuries and the effects of those injuries on the plaintiffs' lifestyle.

**LEADING QUESTION:** A question which suggests an answer with which the witness is asked to agree. Form of questioning used during cross-examination and generally not permitted during direct examination.

**LIABILITY:** Responsibility or fault for an incident resulting in injuries and damages to person and/or property.

**LIEN:** An encumbrance on property to secure payment of a debt. A health care provider has a right to place a lien on a claim to guarantee that his/her bills will be paid when the case concludes.

**LIQUIDATED DAMAGES:** The amount of money agreed upon by the parties to a contract that must be paid by one or the other in the event that contract is breached.

**LITIGATION:** The process of filing a lawsuit and then prosecuting it or defending against it. Discovery will begin after a lawsuit is filed.

**MALPRACTICE:** Misconduct in a professional capacity through negligence, carelessness, lack of skill, or malicious intent.

**MEDIATION:** A procedure by which an impartial third person meets with all the parties and attempts, in an informal setting, to find common ground so that a compromise can be reached to settle the claim or complaint.

**MINOR:** A person who is under the age of legal competence. In most states, a person less than eighteen (18) years old.

**MISTRIAL:** Trial which is terminated before its normal conclusion. The judge may declare a mistrial because of some extraordinary event, prejudicial error that cannot be corrected, or because of a hung jury.

**MITIGATE:** To diminish or reduce. An injured party has the duty to mitigate his/her damages, including pain and suffering, by taking reasonable steps to get better.

**MOTION:** A formal written request submitted by a party to a court on a specific issue for consideration and resolution.

**MOTION IN LIMINE:** A motion requesting the court to exclude or limit certain types of documentary evidence and/or testimony which is not relevant to the issues or is unfairly prejudicial. Most commonly done prior to commencement of the trial.

**NEGLIGENCE:** Failure to exercise ordinary care or caution.

**NEGLIGENCE PER SE:** Negligent as a matter of law. In these instances a plaintiff does not have to prove that the defendant's actions or inaction fell below a reasonable standard of care -the mere violation of the statute is sufficient proof of negligence.

**OBJECTION:** Used to call the court's attention to improper evidence or procedure. Objections also serve to identify evidence or legal issues that may be taken up on appeal to a higher court.

**OPENING ARGUMENT:** The attorneys' first opportunity to tell the jury or other trier of fact what the case is about, including what evidence will be revealed through the witnesses' testimony and exhibits.

**ORDER:** A directive of a judge.

**PARTY:** A person or entity that takes part in a legal proceeding or transaction.

**PERJURY:** False or misleading testimony while under oath to tell the truth. It is a criminal offense.

**PLAINTIFF:** The party who requests damages and initiates a civil lawsuit.

**PLEADINGS:** The formal, written documents filed by the parties with the court which set forth or elaborate on, their respective claims and defenses.

**POWER OF ATTORNEY:** A letter or document authorizing one person to act as an agent or attorney for another.

**PREJUDICE OUTWEIGHS PROBATIVE VALUE:** Rule of evidence which provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger that it may confuse or mislead the jury, or unfairly prejudice the opposing party.

**PRIVILEGE:** Protection against disclosure of information based on communications made in confidence between parties having legally protected relationships. Based on the policy that it is better to have frank, open communications between parties in certain relationships by protecting these communications from disclosure in litigation. Pertains to communications between attorney/client, doctor/patient, priest/penitent, and husband/wife.

**PREPONDERANCE OF THE EVIDENCE:** Degree of evidence necessary for a plaintiff to win in a civil case. Evidence which is of greater weight or more convincing than the evidence which is offered in opposition. On a scale of 1 to 100, fifty-one percent (51 %) or better

**PRO SE:** When a party does not retain an attorney and appears for and represents himself/herself in court.

**PROTECTIVE ORDER:** If an objection is made to a discovery request because it seeks information of a sensitive nature, is not relevant, or is harassing in nature, a motion is made for a protective order. A common example is medical information that is clearly irrelevant to the injuries claimed, will not lead to admissible evidence, and which is of a sensitive nature. The court may grant a protective order allowing a party or witness to not comply with a discovery request for that information. In some instances, protective orders may allow the defense attorney to review the information, but will dictate how the information is to be stored, who has access to it, and what happens to the information once the case concludes.

**PROXIMATE CAUSE:** Refers to a cause which leads directly, or in an unbroken sequence, to a particular result. It is an element of negligence.

**REASONABLE MEDICAL CERTAINTY:** Standard for admission into evidence of opinions of a health care provider concerning his/her patient's condition, diagnosis, or prognosis. A doctor's opinion cannot be based on possibilities, but rather must be founded on probabilities. Reasonable medical certainty means "more probably than not."

**RELEASE:** Waiver, relinquishment, or giving up a right, claim, or demand.

**RELEVANT EVIDENCE:** Evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Generally, only relevant evidence is admissible.

**RULES OF EVIDENCE:** Rules of law which determine which testimony, documents, etc. should be submitted for consideration by a judge or a jury, and the weight such evidence is to be given in determining a question of fact.

**SERVICE OF PROCESS:** Refers to the rules of law prescribing the manner, and upon whom, a summons and complaint giving a defendant notice of a lawsuit, must be served. The person giving notice must be someone other than a party to the lawsuit, who is eighteen (18) years or older, and competent to be a witness.

**SETTLEMENT:** A final resolution of a claim by agreement between the parties.

**SMALL CLAIMS COURT:** Court of limited jurisdiction available for resolution of disputes by the parties without attorneys. Original purpose was to "bring justice home to every man's door". Limited to claims not in excess of a dollar amount set by local rules. Parties represent themselves at the hearing. Attorneys are restricted from participating.

**SPECIAL DAMAGES:** Fixed costs or expenses attributable to any injury or loss, including past, present, and future income loss, treatment costs, and other out-of-pocket expenses.

**STATUTE:** Written law enacted by the legislature.

**STATUTE OF LIMITATIONS:** Laws enacted by every state which govern the time frame when a lawsuit must be filed, and beyond which the claim can no longer be made. Statutes of limitation differ from state to state and according to the nature of the claim.

**SUBPOENA:** A written command requiring a person to appear at a certain time and place to give testimony at a deposition or other proceeding.

**SUBPOENA DUCES TECUM:** A written command requiring a witness to produce documentary or other tangible evidence he/she possesses or controls and which is relevant to matters at issue in the case.

**SUMMARY JUDGMENT:** A procedure by which one party seeks to persuade the court that there is no genuine issue or controversy regarding material facts, and accordingly, that the party filing the motion is entitled to prevail as a matter of law.

**SUMMONS:** Notice to all defendants that a lawsuit has been commenced, that they have been named as a defendant, and that they must answer the complaint within a specified number of days (commonly 20 days) or a default judgment may be taken against them.

**TESTIMONY:** A formal statement, by a party or witness in a case under oath. Statement may be verbal or written.

**TORT:** French word meaning "wrong". Body of law which determines rights and liabilities when property is damaged or a person is injured, through negligent or intentional conduct.

**TORTFEASOR:** One who has committed a tort.

**TRIAL:** judicial examination and determination of legal and factual issues between the parties to an action. Maybe civil or criminal. In a trial by jury the jury decides questions of fact with the judge determining the law to be applied. In a trial by judge, he/she decides both the facts and the law to be applied.

**TRIAL DE NOVO:** Means "new trial."

**TRIER OF FACT:** The decision maker who will hear the evidence and decide the outcome of a claim. Can be an arbitrator at a hearing, or a judge or jury at trial.

**VENUE:** Relates to determination of which county a lawsuit should be filed in. In personal injury cases the plaintiff may sue the defendant in the county where the defendant resides, has his/her principal place of business, or where the accident took place.

**VERDICT:** The definitive answer given by the jury concerning the issues the judge asked them to resolve.

**VOIR DIRE:** Part of the jury selection process. A number of prospective jurors are selected and seated in the jury box. The judge and/or lawyers ask a series of questions to disclose any predisposition or biases that may impact their judgment. Generally, each party is entitled to three preemptory challenges by which prospective jurors can be removed without cause. If the judge so finds, jurors may also be removed for cause due to obvious bias or other reasons demonstrating an inability to serve.

**WAIVER:** A knowing, intelligent, and voluntary surrender of a known right or claim.

**WITNESS:** Someone with knowledge pertaining to the facts of the case. Each party identifies his/her witnesses prior to trial or arbitration.