

## So You've Been Sued: A Primer on Civil Litigation

People often say that we live in a “litigious society,” and while you may or may not agree with this statement, you at least ought to know what to expect if you are sued. Our civil justice system is adversarial, which means that a lawsuit is a contest between the parties – the plaintiff and the defendant -- who present their cases to a neutral judge or jury. To start the lawsuit, the plaintiff files a complaint with the court setting forth his or her claims and serves it on the defendant.

### **Avoid Default**

If the defendant does not respond to the complaint within twenty days after being served, the plaintiff can seek a default, which means that all of the allegations in the complaint are admitted, even baseless ones. In other words, you lose. To avoid a default, make sure that staff members know to advise you immediately if a complaint is served, and not to put it on your desk with the rest of the day's mail where it can be missed.

### **Contact Your Insurance Agent and Get a Lawyer**

Upon receipt of the complaint, immediately forward a copy to your insurance agent. If you don't, you risk losing any coverage for the claim. If you have an attorney, also forward him or her a copy. If you don't have an attorney, get one. If your insurance policy covers the plaintiff's claims, the insurance company will hire a lawyer to defend you. Otherwise, you will have to pay your lawyer, usually on an hourly basis, plus his or her costs. Most lawyers will want a substantial retainer to secure payment.

### **Tell Your Lawyer Everything**

Before responding to the complaint, your lawyer should meet with you to discuss the case. Your discussions are confidential and privileged, so tell him or her everything and don't “spin” the facts. And don't talk about the case with anyone other than your lawyer.

### **Consider Settlement**

Although no lawyer can predict the outcome of any case, your lawyer should be able to give some impressions on how to address the plaintiff's claims, including the possibility of settlement. Many defendants tell their lawyers that they want justice and would rather pay their lawyer than pay the plaintiff. While that might be music to some defense lawyers' ears, and the notion of justice shouldn't be dismissed lightly, you should always weigh the costs and benefits of litigation versus settlement.

### **Weigh the Risks and Costs**

For example, few claims are completely meritless, so there will be at least some chance that you will lose. You should weigh that chance against the size of the potential

verdict – your “exposure” – and then estimate the potential litigation expenses to come up with an amount that you might be willing pay. Keep in mind that, with a few notable exceptions, there is no “loser pays” rule in Florida, and therefore you likely will not be able to recover your attorney’s fees from the other side if you win.

### **Discovery**

If you decide to litigate, your lawyer will respond to the complaint and the parties will begin discovery. In discovery, each side gathers or “discovers” evidence for trial. Discovery can be very expensive, as the parties may be required to produce large numbers of documents, answer written questions, and attend depositions, all with their lawyers’ involvement.

### **Mediation: Another Chance to Settle**

As the lawsuit moves forward, the parties generally get a good idea of the “value” of the case, and therefore cases usually settle. To facilitate settlement, most courts require the parties to mediate. Mediation is a confidential meeting with a neutral lawyer, the “mediator,” who will attempt to broker a settlement.

### **Prepare for Trial**

If you can’t settle, you will go to trial. Trials are stressful and expensive for clients and nothing like what you see on television. Your lawyers will spend most of their waking hours preparing for the trial, and you and perhaps some of your employees will need to take significant time away from work to assist in preparation, testify, or attend the trial. Jury trials are notoriously difficult to predict, as only the close or difficult cases go to trial. For that reason, it is important that you select your lawyer carefully and only hire someone with significant trial experience.

Hopefully this article gives you some idea of what to expect if you are sued, but every case is different, and this article is no substitute for actual legal advice.