

Client Handbook:

Lawsuits

TABLE OF CONTENTS

The Big Picture

Road Map to a Lawsuit

Settlement versus trial

The Legal Process

Outline the problem: Pleadings

Discovery: Documents and depositions

Moving forward: Motions (Requests to the Court)

Trial

Persuasion

Strategy and Tactics

Exhibits

Testimony

The Trial itself

The Court's Decision

Post-Trial

Not quite over yet

Late Motions

Appeal

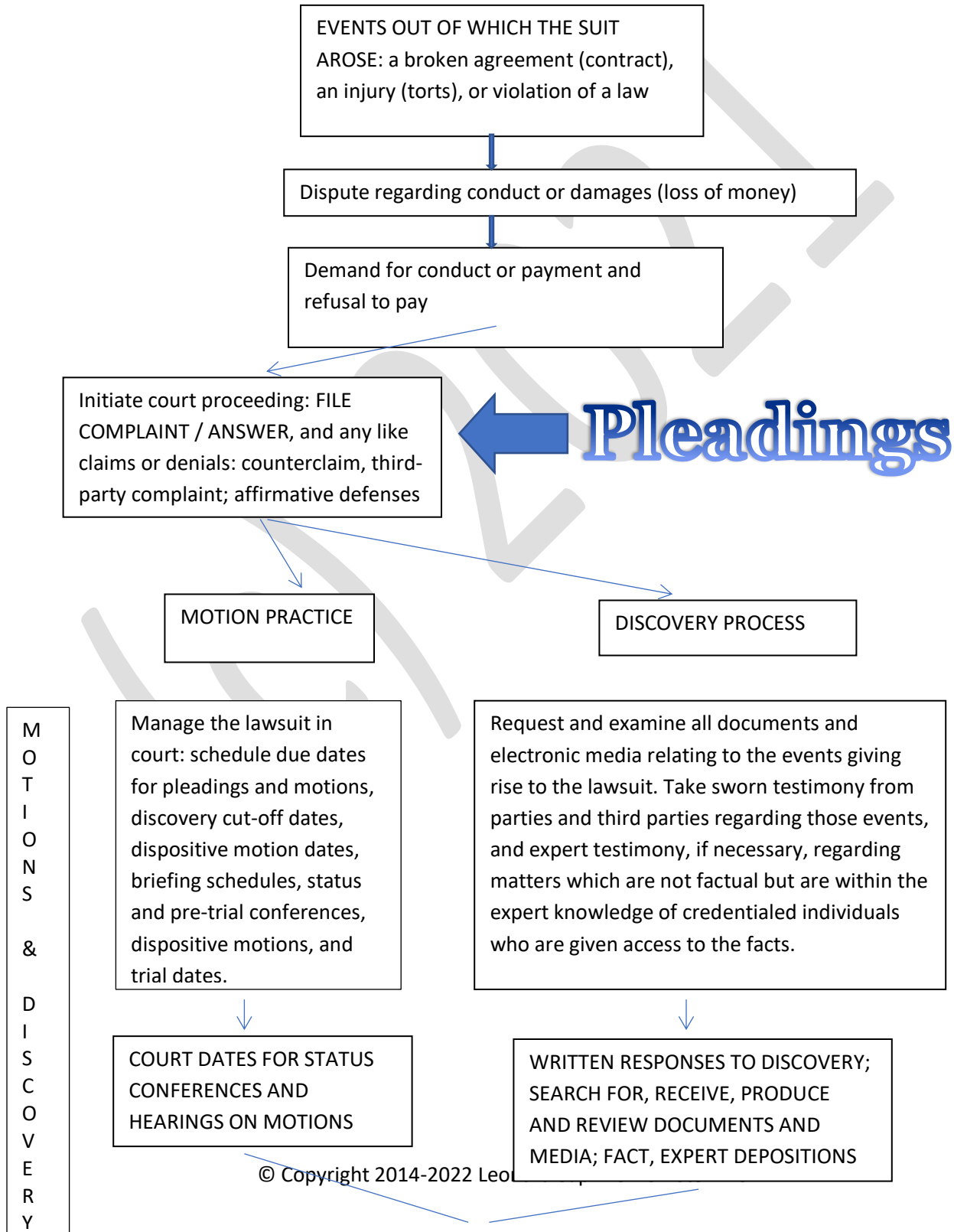
Execution of the judgment

GLOSSARY

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The Big Picture

Road Map to a Lawsuit: What to Expect



**Resolve
by
motion
without
trial**

DISPOSITIVE MOTIONS: motions challenging the legal or factual basis for the complaint or any of the pleadings, and alleging that there is no basis to continue to trial:

MOTION TO DISMISS (based on admitted facts: may have been brought at any time in the action, even before discovery is complete);

MOTION FOR SUMMARY JUDGMENT: alleging lack of sufficient factual basis

The point of these motions is to terminate the action short of trial.

**Prepare
for trial**

Preparation for trial. Choice of documents and testimony to present at trial, based on theory of the case, strategy and tactics. Preparation of exhibits / media for trial. Preparation of witnesses and experts to testify. Draft of trial brief, opening and closing statements, motions to exclude issues or evidence from trial.

**Attempt to
settle before
trial**

FINAL PRETRIAL CONFERENCE WITH THE JUDGE, AND ATTEMPTS TO SETTLE. Parties should have a good idea of the strengths and weaknesses of their case.

TRIAL



JUDGMENT

Court decides the matter and enters a written decision in the record



POST-TRIAL MOTIONS – Attempts to alter or amend the judgment in the trial court (before appeal)



APPEAL

Attempt to have a “higher” or supervisory court overturn or modify the judgment of the trial court



EXECUTION OF JUDGEMENT

Collection of the judgment from the debtor party

Settlement versus trial

Once the matter has been filed, it will be resolved only by settlement or trial. The advantage of settlement is that the matter is ended with certainty and without asking a third party to write the decision for you—you and the other party write it together. The advantage of trial is that the parties need never to agree with each other, yet the matter has been finally determined. Settlement is certain and almost always cheaper. Trial is only certain after appeal, and even then, the judgment must be **collected** from the losing party.

The Legal Process

Outline the problem: Pleadings

The pleadings tell the court about the dispute and set the limits for appropriate inquiry for documents and testimony. Plaintiff files a complaint; the defendant files an answer to the complaint (and adds any counterclaims). Pleadings can be changed, in the discretion of the court, up to and even after trial, yet, they set the boundaries for the proceedings.

Discovery: Documents and depositions

Between filing the pleadings and proceeding to trial, American courts allow a protracted period to accumulate evidence, which is usually chiefly documents and testimony. Since both sides get to review the other side's evidence before trial, and must show their own evidence, this period of accumulating evidence and testimony will vary according to the facts of the case.

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Moving forward: Motions (Requests to the Court)

During the preparation period, both sides are looking to see if they can short-circuit the trial process by showing the court that no real dispute exists that requires a trial. That is done on the legal level (no right to win, under the law, even if all facts are as stated) or on the factual level (the other party does not have enough evidence to justify having a trial).

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Trial

If trial is required, once the evidence accumulation period is over a trial date is set for presentation of the witnesses and any documentary or other evidence. Trials are time-consuming and expensive because the parties must **persuade** the court to find in their favor. A convincing narrative weaving together the available facts is required, and the bits and pieces of evidence presented to court must be presented in such a way as to bring this narrative to life.

Persuasion

Strategy and Tactics

Exhibits

Testimony

The Trial itself

Trial is simply the presentation of the accumulated evidence to persuade the Court to decide the case in one's favor. Each side presents its evidence and the other side can test the narrative by its questions. If both sides have some evidence, the court will decide whose view of the matter is more likely to be true and find accordingly.

The Court's Decision

The court's decision will be enforced, if necessary, with the power of the state: money can be taken from bank accounts, property sold. Before these stages, however, the parties are allowed to try to persuade the Judge to change the Court's opinion, or persuade a court of appeals that the trial court made substantial legal errors.

Post-Trial

Late Motions

Appeal

Execution of the judgment

Once all appeals have been exhausted, the Court's decision must be obeyed. If a party claims to have no means to satisfy the judgment, the courts can be used to compel third parties, such as banks, or title holders, to surrender a party's assets to the successful party. Parties must submit to cross examination about what assets they have and where they may be found.

GLOSSARY

Jurisdiction – power of the court to rule on the dispute and over the parties to it

Plaintiff – the party bringing the dispute to the court’s attention

Complaint – initial pleading of the plaintiff: why plaintiff is seeking the court’s aid

Defendant – the party brought to court by the plaintiff to resolve the plaintiff’s claim

Answer – initial pleading of the defendant: why defendant need not comply with plaintiff’s request.

Summons – Legal document asserting the court’s jurisdiction over the defendant and requiring the defendant to appear and answer the charge, or suffer entry of judgment in defendant’s absence

Motion – a request to the Court to use its powers to help the parties proceed in the case

Order – a court’s decision on a motion of the parties, or spontaneously (*sua sponte*) to move the case forward

Interrogatories – questions the other party must answer which may have the effect of testimonial evidence

Document Requests – requests for documents in the hands of the opposing party which will be used as evidence in the trial, or may lead to other evidence

Summary judgment – a motion by one party alleging that the other party has insufficient evidence to proceed to trial. An attempt to conclude the matter without a trial.

Subpoena – a legally enforceable request to an outside party to provide testimony and/or documents relevant to the dispute

Direct Examination – presentation of a party’s own witnesses

Cross Examination – critical examination by the opposing party of the testimony provided by a party’s witnesses

Judgment – The Court’s final and appealable decision on the merits of the matter in light of the evidence submitted by the parties

Appeal – An attempt to revise the judgment by alleging that the Court erred in a significant way during the trial, or in its reasoning that led to its Judgment

Citation – a legally enforceable request that the recipient produce assets to satisfy the judgment, or information leading to the location of such assets

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