Matthew R. Goldammer

NAVIGATING THE LABYRINTH TO VICTORY: AN OVERVIEW OF CIVIL LITIGATION

MATTHEW R. GOLDAMMER

INTRODUCTION

Few people wake up and think, "Today, I'm going to file a lawsuit." Litigation is not an enterprise to be taken up lightly or on a whim. Indeed, litigation is often avoidable altogether—either because no dispute exists in the first place, or if there is a dispute, the parties can work out an agreement without litigation. The ability to resolve disagreements privately provides an insightful litmus test for the psychological health of a society. Accordingly, unless one is viciously litigious, filing a lawsuit is usually seen as a "last resort" to put to rest some quarrel that has persisted for some time.

If the disagreement is so deep and unrelenting that litigation is necessary, the situation has likely been a source of stress and worry for a long time. The need to retain a lawyer may only add to the anxiety. And once civil litigation commences, many people, through no fault of their own, are simply unaware of the procedural steps and stages. Instead, prior exposure to litigation is often only through encountering classics such as *12 Angry Men* or *To Kill a Mockingbird*, or through television dramas. These sources often focus on *criminal* prosecution, not civil litigation, and the cases usually culminate in a trial. For its part, civil litigation rarely proceeds to trial, with most cases settling out of court or decided on summary judgment. And the public's exposure to civil litigation often comes in the form of billboard and television advertisements for personal injury attorneys. These factors contribute to the general population's relative lack of familiarity with even the basics of civil litigation.

This article aims to bridge the gap—to provide a general overview of civil litigation accessible to a layperson so that, if the "last resort" situation materializes, the reader feels more prepared for what lies ahead. And even if the need for litigation

never arises, a general understanding of civil litigation increases appreciation for the legal system, which is an important foundation of civic education.

DEFENDANT'S PRELIMINARY STEP: ASSESSING INSURANCE COVERAGE

If you are sued, an important practical step even before retaining counsel is to determine whether any of your insurance policies may cover the claim. Many individuals and businesses carry policies that not only provide indemnity (payment of covered losses) but also impose a duty to defend. This coverage means that the insurer may be obligated to hire and pay for a lawyer to defend you in the lawsuit, even if the claim ultimately proves groundless.

Begin by gathering all potentially relevant policies in effect at the time of the alleged event (including older or "occurrence-based" policies that may still apply). Pay close attention to the policy language, especially the insuring agreement, definitions, exclusions, and notice provisions. Coverage often turns on how the complaint's allegations align with these terms. For example, a negligence claim causing "bodily injury" or "property damage" may trigger coverage under a standard liability policy, while intentional acts or certain business activities may be excluded.

Prompt notice to the insurer is crucial. Most policies require providing the insurer timely notice of the claim or suit, and failure to comply may jeopardize coverage. Typically, providing notice involves forwarding the complaint and any related documents to the insurer and formally requesting a defense.

If coverage is triggered, the insurer will usually appoint defense counsel. In some situations—such as where there is a potential conflict of interest—you may have the right to select independent counsel at the insurer's expense. But even where defense counsel is provided, disputes sometimes arise over the scope of coverage or the insurer's obligation to indemnify any judgment or settlement.

RETAINING COUNSEL

To file a lawsuit as a plaintiff, or to defend a lawsuit as a defendant, you are not *required* to retain an attorney. Instead, you are allowed to litigate the case on your own. This option is called proceeding *pro se*—representing yourself even as a non-lawyer. Such self-representation may save money, but it is generally unwise. In

our adversarial system where plaintiff and defendant litigate against each other, the *pro se* litigant often proceeds against professional attorneys on the other side, who are much more knowledgeable about the law at issue as well as more experienced at navigating the process. Unsurprisingly, most *pro se* lawsuits are unsuccessful.[1]

Accordingly, if you want to sue, or need to respond to being sued, your first step should be retaining an attorney. The importance of this step cannot be overstated. Your attorney will litigate the entire case on your behalf, including making strategic considerations based on the attorney's legal experience. Because clients often have much to lose—sometimes even their very livelihood—it is important that you retain an attorney who is not only competent but also someone you trust. The following considerations may help in the attorney search.

First, the law is a vast, complicated, and dynamic field of knowledge. The age of the "generalist" attorney, who practices in every area of law, is basically over. Attorneys instead tend to specialize in certain legal areas: some attorneys may focus on personal injury law, others on employment law, still others on bankruptcy law, and so on. Another question is who the attorney typically represents: some attorneys tend to represent plaintiffs, while others represent defendants. Clearly identifying your legal needs is essential to begin narrowing down the possible list of viable attorneys.

Second, not all attorneys are equally competent. Although this fact might seem obvious, it is important to reiterate—just because attorneys in the United States all receive the same degree upon graduating from law school does not mean that they all have equal intelligence and experience. Accordingly, you should evaluate the attorneys' qualifications, including their education and other credentials, which state bar memberships they maintain, and whether they have received any bar disciplinary actions or complaints against them. If you know other individuals or nonprofit

[1] Organizations—including corporations, LLCs, and partnerships—generally cannot represent themselves *pro se* and must be represented by a licensed attorney.

organizations that have worked with attorneys in the past, personal referrals are also a great way to learn about the style, expertise, and abilities of an attorney.

Third, many attorneys offer free initial consultations. It is prudent to schedule such consultations with multiple attorneys to discuss your case. These meetings provide an opportunity to assess attorneys' communication style, responsiveness, and whether you feel comfortable working with them. Along with discussing the merits of your case, you should also inquire as to the attorneys' fee structure. Many attorneys charge an hourly rate, while others bill a flat rate or employ a contingent fee arrangement. (Generally, contingent fee structures typically apply to plaintiffs' attorneys in certain types of lawsuits, where the attorney gets paid a percentage of the award if you win.) Depending on the attorney-client relationship and the subject matter of the case, attorneys may be willing to represent you without fee, *pro bono publico*—"for the public good," usually shortened to *pro bono*.[2] In addition, you should also check whether the attorney has any conflict of interest that would prevent them from representing you impartially.

If you find an attorney that satisfies all, or even most, of these criteria, then the attorney may be a good candidate to represent you. Some attorneys require that you pay a retainer fee in advance. Review the retainer agreement to ensure that all stated terms reflect your understanding of the agreement.

OVERVIEW OF LITIGATION

Once you have retained an attorney, he or she will handle your case. But a final decision does not happen overnight; on the contrary, litigation often takes months or even years, depending on the complexity of the case. Therefore, it is beneficial to know the general procedural steps applicable in most cases to have a roadmap of what lies ahead during this period of your life.

Plaintiff's Preliminary Considerations

[2] Some *pro bono* arrangements may include attorneys' fees if you are successful, which would allow a *pro bono* attorney to be paid if you win.

If you believe you have suffered some harm and sue to make things right, you will be the plaintiff in the lawsuit. As the plaintiff, you are the driver of the lawsuit; it is your case, after all. But before filing suit, you must first address several preliminary considerations.

1. You must first decide what *type of dispute resolution* to pursue. Litigation occurs in a court, but another viable option can be alternative dispute resolution (ADR), such as mediation, arbitration, or negotiation, which takes place outside the traditional courtroom context. Sometimes, a form of ADR is required by contract. This introduction to litigation assumes that (1) no ADR method is required in your situation, and (2) you select litigation rather than these ADR methods.

2. You must identify the *parties* to the lawsuit. The United States inherited the adversarial system from Great Britain, which means that lawsuits typically have at least one plaintiff and at least one defendant who will litigate the case against each other.[3] Depending on the underlying facts of the case and other strategic considerations, you may be the sole plaintiff. If more people or entities were harmed, then multiple plaintiffs can be joined in a single lawsuit. Likewise, you may identify one or more defendants to be named in the lawsuit.

3. You must conceptualize what *remedies* you want to pursue—what you want the litigation process to achieve for you. There are many different types of remedies that a court may order, but for our current purposes, three main types are (1) damages; (2) injunctions; and (3) declaratory judgments. If you sue to receive money to make you whole, you sue for damages. If you sue to have the court order the defendant to do something or to refrain from doing something, you sue for an

[3] Declaratory judgment actions often present party alignments that can seem usual when compared to traditional plaintiff-versus-defendant litigation. Because the purpose of a declaratory judgment action is to obtain a binding determination of rights before (or apart from) coercive relief, parties who might otherwise be aligned on the same side of a dispute may appear as opposing parties in the case caption. Similarly, parties with contingent, derivative, or prospective interests in the outcome are frequently joined to ensure that the court's determination is comprehensive and binding. As a result, the formal designation of "plaintiff" and "defendant" in a declaratory judgment action may not neatly correspond to the underlying substantive positions of the parties.

injunction. If you sue to have the court declare the rights and obligations of the parties in the lawsuit, you sue for a declaratory judgment. A lawsuit may seek only one remedy or several at once.

4. You must determine *which court* will hear your case. A court may hear your case only if it has *jurisdiction* over the case. A court must have both personal jurisdiction over the defendant and subject-matter jurisdiction over the case.

Personal jurisdiction is the legal authority that a court has over individuals or entities within a specific geographic area, ensuring that the court has the right to hear a case involving those parties. Whether the court has personal jurisdiction is often determined by factors such as the defendant's residence, presence, or contacts within the jurisdiction. This analysis plays a crucial role in ensuring fairness and due process by preventing defendants from being brought before a court with which they have no meaningful connection.

Subject-matter jurisdiction pertains to a court's authority to hear cases of a particular type or subject. It establishes the court's competence to adjudicate specific legal matters, such as civil, criminal, family, or probate cases. Having the correct subject-matter jurisdiction is essential to ensure that cases are heard by the appropriate court with the expertise and authority to address the particular legal issues involved.

Several courts may qualify as having personal jurisdiction over the defendant and subject-matter jurisdiction over the case, so a third concept called *venue* is relevant to narrow down the court options and thus promote fairness and efficiency. Typically, the plaintiff may file a lawsuit in the jurisdiction where either the plaintiff or the defendant resides. This decision is often a primary consideration in personal injury, family law, and many other types of cases. If the dispute is related to a specific event or contract, the lawsuit may be filed in the jurisdiction where the event occurred or where the contract was supposed to be performed. Venue disputes are common in cases involving accidents, property disputes, or breach of contract.

State courts have general jurisdiction, meaning a plaintiff may file most types of cases in state court. Federal courts, however, have limited jurisdiction, meaning

only certain types of cases can be filed there. Three types of federal subject-matter jurisdiction should be noted here.

First, *federal question jurisdiction* arises when a case involves a question or issue arising under federal law—the United States Constitution, federal statutes and regulations, or treaties. If the legal dispute hinges on a federal law, it falls under federal question jurisdiction.

Second, *diversity jurisdiction* applies when (1) the parties involved in the case are from different states, and (2) the amount in controversy exceeds a specified threshold (currently $75,000). The rationale for this type of federal jurisdiction is to ensure fairness by allowing parties to litigate in a neutral federal forum when there could be concern about bias in state courts.

Third, *supplemental jurisdiction* allows federal courts to hear related state law claims that arise from the same set of facts as the federal claims in a case already before the court. The idea behind this type of federal jurisdiction is to avoid piecemeal litigation and efficiently resolve related claims.

Now, of the first two types of federal subject-matter jurisdiction, a case is brought under *either* federal question jurisdiction *or* diversity jurisdiction. But both types of cases can have supplemental jurisdiction over state law claims, if applicable.

5. You must determine whether your case is *justiciable*—whether the particular matter you seek to bring is appropriate for judicial review and intervention by a court. Several doctrines govern justiciability, all of which must be satisfied for you to bring your case before the court.

First, you must have *standing* to sue. In other words, you must establish (1) an injury that is concrete and particular, not hypothetical or abstract; (2) causation (a direct connection between the alleged injury and the defendant's conduct); and (3) redressability (a likelihood that a favorable court decision will remedy the injury).

Second, you must establish that your case is ready to be adjudicated. This analysis focuses on two sides of the same coin: *ripeness* and *mootness*. You must establish your case is *ripe*—the case has matured to a point where the issues are fit for judicial decision. The court considers whether the harm you allege is actual or

imminent, rather than conjectural or hypothetical. If your case is not yet ripe, it is nonjusticiable, and the court will decline to hear your case.

You must also establish your case is *not moot*—a live controversy must exist and remain throughout all stages of the legal process. If events have transpired in a way that makes it impossible for the court to grant effective relief, the case may be considered moot and therefore nonjusticiable, and the court will decline to hear your case.

Furthermore, your case must *not* present a *political question*—it must not involve matters that are inherently political and better addressed by other branches of government.

Finally, if you plan to file your case in federal court, your case must *not* merely seek an *advisory opinion*—if the case is hypothetical, abstract, or lacking adverseness, it may be considered nonjusticiable as an advisory opinion. Some state courts permit issuing advisory opinions,[4] as do some state attorneys general and government agencies. By contrast, the "case or controversy" requirement of Article III of the United States Constitution has been interpreted to prohibit federal courts from issuing advisory opinions. Instead, a concrete, live dispute with adverse parties must exist throughout the lifespan of a case for a federal court to render a decision.

Step One: Pleadings

Plaintiff's Perspective

Once these preliminary considerations are addressed, you are ready to file suit. Because the Federal Rules of Civil Procedure apply to all federal courts across the country, whereas state courts each have specific rules applicable to that state, this article references the Federal Rules of Civil Procedure when discussing the procedure as you prepare for trial. Note that some of these rules and processes may vary quite a bit in the state courts, depending on the state in which you litigate.

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[4] In Colorado, Florida, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, and South Dakota, the state constitution authorizes state courts to issue advisory opinions in certain situations. In Alabama, Delaware, and Oklahoma, statutes provide such authorization. *See* RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 58 (7th ed. 2015).

To begin a lawsuit, you must file a *complaint* with the court that will adjudicate the case. Fed. R. Civ. P. 3. The complaint must contain three components: (1) a short and plain statement of the grounds for the court's jurisdiction; (2) a short and plain statement of the claim to show that you are entitled to relief; and (3) a demand for the relief sought (think the *remedies* you seek). Fed. R. Civ. P. 8(a). For this second component, most complaints provide the factual background to describe the who, what, where, when, and how of the situation that has led to the lawsuit. Remember that all you must show at this first stage of the lawsuit is that your version of what happened is *plausible*. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

Once you file the complaint and pay the filing fee, then you must *serve* each defendant with a *summons* and a copy of the complaint (collectively called "process") within 90 days. Fed. R. Civ. P. 4(c)(1), (m). This step, called *service of process*, is to provide defendants with notice that you have filed a lawsuit against them; otherwise, they may not know that the lawsuit has begun. Personal service of process is considered the gold standard—handing the documents directly to the defendant in person. But sometimes that method of service is unavailable if, for example, the defendant's location is unknown, or the defendant is not a natural person but instead a legal person like a corporation. Rule 4 of the Federal Rules of Civil Procedure allows for alternative methods of service depending on the defendant and the circumstances. Note that state courts have different rules governing service of process.

Defendant's Perspective

If you are served with a complaint and a summons to appear in court, you are the defendant in the lawsuit. Unless you waive service under Rule 4(d), you have 21 days to respond to the complaint after being served. Fed. R. Civ. P. 12(a)(1)(A)(i). You have two options: (1) file an answer; or (2) file a motion. If you file an answer to the complaint, you provide a response to each of the complaint's paragraphs—either *admitting* the allegation, *denying* the allegation, or stating you *lack sufficient information* to admit or deny the allegation. You may also raise *affirmative defenses* in your answer, which are legal arguments that, if proven, would defeat the plaintiff's

claims even if all the allegations in the complaint were true. Common affirmative defenses include statute of limitations, contributory negligence, and waiver. If applicable, you may also assert *counterclaims* against the plaintiff. Counterclaims are separate claims that defendants believe they have against the plaintiff arising from the same set of facts.

If you file a motion, you have several options to choose from. The most common motion at this stage is filing a *motion to dismiss*, meaning that you think that the case is deficient from the start and should be dismissed. Fed. R. Civ. P. 12(b). Many motions to dismiss are under Rule 12(b)(6) of the Federal Rules of Civil Procedure, where the defendant argues that the plaintiff has failed "to state a claim upon which relief can be granted." If you file this motion, you contend that the plaintiff's complaint does not contain enough factual allegations or legal grounds to support a legitimate case. This motion suggests that even if everything the plaintiff says is true, the law does not recognize the plaintiff's situation as one where the court can provide a remedy or relief.

If you file any motion, the court must issue an *order* resolving it—either *granting* the motion (you win) or *denying* the motion (you lose). Typically, upon the filing of a motion, the nonmoving party (here, the plaintiff) will file a response brief arguing why the motion should be denied, and then you may file a reply brief responding to the response's arguments and reasserting why the motion should be granted.

Once the court has received all the filings, it takes the motion under advisement. The court may hold a *hearing* where the attorneys for each party make arguments in the courtroom, and the court may choose to issue an *oral ruling* granting or denying the motion at the end of the hearing. If the motion requires more in-depth legal reasoning, the court will issue a *written order* granting or denying the motion, which will take longer to issue than a simple oral ruling.

If your motion to dismiss is granted *without prejudice*, then the plaintiff may examine the deficiencies of the complaint, improve the complaint accordingly, and refile the case. If the motion to dismiss is granted *with prejudice*, then the case is

done and cannot be refiled. If the motion to dismiss is denied, then you must file an answer to the complaint. After the answer is filed, the case proceeds to the next stage of litigation: discovery.

Step Two: Discovery

The discovery stage of litigation takes place between the parties. Both parties gather and exchange information related to the case. Rules 26 through 37 of the Federal Rules of Civil Procedure govern discovery, which are designed to ensure transparency and fairness by allowing each side to learn about the evidence, witnesses, and legal arguments that the other party intends to present during the trial. Discovery serves as a fact-finding process, helping parties understand the strengths and weaknesses of their cases and encouraging settlement negotiations.

Several discovery instruments can be sent to the opposing party to obtain information about the case.

1. *Interrogatories* are written questions that one party sends to the other, seeking specific information about the case. The responding party must answer these questions under oath.

2. *Document requests* are written requests seeking relevant documents from the other party, such as contracts, emails, letters, reports, and any other materials that may be pertinent to the case.

3. *Depositions* are oral examinations of witnesses, including the parties involved and potential witnesses. Attorneys question witnesses and a court reporter records the responses in a transcript. Depositions are usually conducted under oath.

4. Other discovery instruments may include *physical or mental examinations* or, if the case has expert witnesses, *expert witness disclosures*.

If you believe that the opposing party is not adequately cooperating in the discovery process, you may file a *motion to compel* with the court. Conversely, if you believe that the opposing party is not entitled to certain information, or that even if the party is legally entitled to the information it should nonetheless be kept confidential, you may file a *motion for a protective order* with the court. Ultimately, the discovery stage may take several months, but it is critical for both the plaintiff

and the defendant to build a solid case and be prepared for the possibility of going to trial. Discovery helps prevent surprises during the trial and ensures a fair and just resolution of the legal dispute.

Step Three: Summary Judgment

Around the close of discovery, once fact-finding has been completed sufficiently, any party may file a *motion for summary judgment*. This motion asks the court to make a decision in your favor to eliminate the need to go to trial. The motion should identify each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the party filing the motion shows that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

If the court grants your motion for summary judgment on a certain issue, then you win on that point and no trial is needed for that issue. If you move for summary judgment on all counts and the court grants the motion, then the need for trial is eliminated completely and you win the entire case. If the court denies your motion even in part, then some aspect of the case is still unresolved, and the parties proceed to trial.

Step Four: Pretrial

Before the trial commences, several preliminary steps must be completed. The court may hold pretrial conferences to discuss issues related to the case, streamline the trial process, and encourage settlement. The judge may also set deadlines for submitting evidence and other pretrial matters. If you want to prevent the opposing party from presenting certain evidence during trial, you may file a *motion in limine*, a motion "at the threshold" of trial, arguing why such evidence should be excluded. If you wish to prevent the opposing party from presenting expert witness testimony during trial, you may file a *Daubert* motion. This type of motion is named after the Supreme Court case *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which established the standards for admitting expert scientific testimony in federal court. The way the court rules on these motions will give the parties notice of what evidence—and how much evidence—will be allowed during trial.

Throughout the pretrial phase, parties often engage in settlement negotiations to resolve the case without going to trial. Settlement negotiations may have commenced long before the pretrial phase, but because the parties know that a trial is imminent, settlement negotiations often ramp up considerably in the weeks before trial. These discussions can involve direct negotiations, mediation, or arbitration. If a settlement agreement is achieved between the parties, then the case may be *voluntarily dismissed* short of trial. If a settlement agreement is not achieved, then the case proceeds to trial.

Step Five: Trial

A trial will look different depending on who the *fact-finder* is, namely, who listens to evidence during trial and then decides the case's outcome. Some trials proceed as a *jury trial*, where a jury is the fact-finder. The jury members listen to the evidence presented during trial and then deliberate in secret, ultimately deciding in favor of the plaintiff or defendant.

Other trials proceed as a *bench trial*, where the judge is the fact-finder. There is no jury for a bench trial; the parties simply present their evidence to the judge and the judge issues a written opinion explaining the findings of fact and conclusions of law in favor of the plaintiff or defendant.

If the case proceeds as a jury trial, a jury must be selected before opening statements may begin. The process of selecting a jury is known as *voir dire*. Derived from an Anglo-Norman common law term meaning "to speak the truth," attorneys for both sides, as well as the judge, question potential jurors to ensure a fair and impartial jury is chosen to hear the case. To narrow down the jury pool to the requisite number of jurors to sit on the jury, attorneys have two means of striking jurors: (1) challenges for cause, and (2) peremptory challenges. Attorneys can request that the judge dismiss potential jurors "for cause" if they believe a juror cannot be impartial or meet other legal requirements. This may be due to a juror's connection to the parties involved, potential bias, or other disqualifying factors. Attorneys also have a limited number of peremptory challenges, which allow them to dismiss a potential juror without providing a specific reason. However, peremptory challenges cannot be

used to exclude jurors based on race, gender, or other protected characteristics. Once both sides have completed their questioning and exercised any challenges, the final selected jurors, along with alternates, are seated. Then the trial may begin.

Civil trials proceed along similar lines to criminal trials, with which people tend to be more familiar from television and movies. Both sides present opening statements, providing factual narratives about what evidence will be presented at trial. Then the plaintiff—who bears the burden of proof—presents his case-in-chief, presenting witnesses to testify about what happened in the situation that led to the lawsuit. The defendant need not present any witnesses but may choose to do so. After the defendant has completed his case-in-chief, then the parties present closing arguments, which summarize the evidence presented during trial and contend what that evidence means. But civil trials differ from criminal trials in a significant way—the burden of proof required of the plaintiff in a civil case is quite different from the government's burden in a criminal case. In a *criminal* case, the government must prove its case *beyond a reasonable doubt*, which is a very high, demanding standard to reach. In a *civil* case, however, the plaintiff generally must prove his case by a *preponderance of the evidence*, meaning that the plaintiff shows that his version of the facts is more likely true than not. This standard has often been illustrated as reaching 50.0001%, a much easier burden of proof to reach than "beyond a reasonable doubt."

After closing arguments, the fact-finder—the jury in a jury trial, the judge in a bench trial—receives the case and proceeds to deliberate. The culmination of the deliberation process is reaching a *verdict*. In the federal system, the jury's verdict must be unanimous. Fed. R. Civ. P. 48(b). In some state systems, however, a jury may return a verdict by only a majority. Ultimately, the jury announces its decision—usually a verdict in favor of the plaintiff or the defendant, though rarely the jury may find for neither party. The most common example of this scenario is a hung jury, where the jurors cannot reach the required level of agreement after deliberation. The court typically declares a mistrial, and the case remains unresolved. The parties may choose to retry the case before a new jury, settle, or otherwise dispose of the case.

Step Six: Post-Trial Motions

It is a common misconception that a jury verdict constitutes the "last" moment of a case; that is not often true. After a trial concludes, both parties have the opportunity to file *post-trial motions*, which ask the court to take specific actions or reconsider certain aspects of the case. These motions are part of the post-trial process and can play a crucial role in shaping the final outcome. Two common post-trial motions are (1) a *motion for judgment notwithstanding the verdict* (JNOV), and (2) a motion for a new trial. You may file the former to ask the court to overturn the jury's verdict because, as a matter of law, there was insufficient evidence to support the jury's decision. It essentially argues that no reasonable jury could have reached the verdict based on the evidence presented at trial. The "no reasonable jury" standard required for a JNOV motion is a difficult bar to reach; courts are appropriately deferential to the jury as a factfinder and will deny the motion if a reasonable jury could have decided the way the case's jury did.

You may file a motion requesting a new trial on the grounds that errors occurred during the original trial that significantly affected the outcome. Reasons for a new trial might include legal errors, misconduct by jurors, newly discovered evidence, or other circumstances that could have impacted the fairness of the trial.

Step Seven: Judgment and Appeal

If the court denies any post-trial motions, then the court is ready to enter final judgment in accordance with the verdict. Once final judgment is entered in favor of the plaintiff or defendant, the losing party has 30 days to file an appeal. Not all losing parties file an appeal; perhaps they lack sufficient funds to litigate the appeal or they simply want an end to the litigation. But if an appeal is filed in a federal district court case, the appeal will be heard in the federal circuit court of appeals that has jurisdiction over appeals from that district. On appeal, the issue is no longer *factual* (whether the defendant did the complained-of action, etc.) but rather *legal* (whether the district court applied the law correctly). Generally, a panel of three judges will hear oral argument on the appeal and later decide it through a written opinion, which usually either *affirms* the district court's judgment or *reverses* it. If the appellate

panel reverses the district court's judgment, it usually *remands* the case back to the district court for further proceedings.

The losing party at the circuit court of appeals may petition for the United States Supreme Court to hear the case, seeking a *writ of certiorari*, often called a "cert" petition. The Supreme Court grants only about 1% of cert petitions, so in all likelihood the circuit court's decision will be the last word.

CONCLUSION

Litigation is a long, methodical process, often taking months (if not years) to complete. If life goes smoothly, this article will simply present you with abstract knowledge not to be applied to your daily life. But if you ever need this article on a more practical basis, fear not. Because stress is often eased by moving from the unknown to the known, this article has sought to provide an overview of the litigation process so that you have a better sense of what lies ahead. If the system works the way it should, a *just* result will be achieved.