

Claims/Legal Glossary



A

ACV (Actual Cash Value)

The amount equal to the replacement minus depreciation of a damaged or stolen property at the time of the loss.

Additur

An increase by a judge in the amount of damages awarded by a jury.

Adjuster

A person who investigates and settles losses for an insurance carrier.

Admissible

A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

Affidavit

A written or printed statement made under oath.

Affirmed

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

Alternative Dispute Resolution (ADR)

A procedure for settling a dispute outside the courtroom. Most forms of ADR are not binding and involve referral of the case to a neutral party such as an arbitrator or mediator.

Amendment

A party can amend his or her petition, appeal, application for review or other pleadings or process at any time by leave of the court.

Answer

The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

Appeal

A request made after a trial by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct.

Appellant

The party who appeals a court's decision, usually seeking reversal of that decision.

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Appellee

The party who opposes an appellant's appeal, and who seeks to persuade the appeals court to affirm the district court's decision.

Appraisal

An estimate to determine the value of property at the time of a loss.

Arbitration

A form of alternative dispute resolution where an unbiased person or panel renders an opinion as to responsibility for or extent of a loss.

B

Bench Trial

The trial of a matter where the court sits without a jury; trial by judge only. Both parties must waive any constitutional or statutory right to trial by jury.

Bodily Injury

Physical injury to a person, including death.

Brief

A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.

Breach

The breaking or violating of a law, right, or duty, either by the commission or omission of an act.

Burden of Proof

The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case.

C

Case Law

The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions.

Case Scheduling Order

When an initial pleading is filed and a new civil case file is opened, the Clerk will prepare and file a scheduling order that will set the time period between filing and trial and the scheduled events and deadlines for that type of case.

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Causation

The relationship between an event and a possible cause of damage or injury.

Cause of Action

A legal claim.

Challenge for Cause

Objection to the seating of a particular juror for a stated reason (usually bias or prejudice for or against one of the parties in the lawsuit). The judge has the discretion to deny the challenge. Distinguished from peremptory challenge, which they party can usually exercise as a matter of right.

Claim

Request by a policyholder or third party from an insurance company for compensation of losses covered by insurance.

Claimant

A person requesting an amount for covered losses from the insurer.

Class Action

A lawsuit brought by a representative member of a large group of persons on behalf of all the members of the group.

Comparative Negligence

Under this concept, a claimant can recover damages even though guilty of some negligence. Recovery is reduced by the amount or percent of that negligence.

Compensatory Damages

Damages awarded to compensate the nonbreaching or injured party.

Complaint

A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

Conflict of Interest

A situation in which regard for one duty leads to disregard of another.

Consolidation

Combining two or more actions involving the same parties or issues into a single action through court order.

Continuance

Deferment of a trial or hearing to a later date.

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Counterclaim

A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.

Crossclaim

A claim brought by a plaintiff against a co-plaintiff or by a defendant against a co-defendant.

D

Damages

Money that a defendant pays a plaintiff in a civil case if the plaintiff has won.

Declaration Page

A page in a policy with basic information that identifies the policyholder, the property covered, the coverages, and the premium amounts.

Deductible

The amount a policyholder agrees to pay before the insurance company covers a loss.

Default Judgment

A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.

Defendant

In a civil case, the person or organization against whom the plaintiff brings suit.

Defenses

There are several defenses to civil liability including but not limited to comparative negligence, assumption of risk, causation, etc.

Deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

Depreciation

A decrease in the value of property due to wear, age, or other cause.

Disclosure

Requirement of parties to automatically share routine evidentiary information that would otherwise be available during discovery.

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Discovery

Procedures used to obtain disclosure of evidence before trial. The tools of discovery include interrogatories, depositions, production of documents or things, permission to enter land or other property, physical and mental examinations, and requests for admission.

Discovery Motions

Motions filed during the discovery process that include but are not limited to protective orders and motions to compel.

Dismissal with Prejudice

Court action that prevents an identical lawsuit from being filed later.

Dismissal without Prejudice

Court action that allows the later filing.

Dispositive Motion

A motion asking the court to eliminate some or all of the claims in a case at various stages of a lawsuit; e.g., motion for default judgment, motion to dismiss, motion for summary judgment.

Due Process

In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property; the right to be heard.

Duty

Obligatory conduct owed by a person to another person.

E

Evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Exclusion

A provision in an insurance policy that excludes and/or limits certain coverages.

Exposure

A measure of possible future losses which may result from an event or occurrence.

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F

Filing

The depositing of documents with the court or with other public officials to become preserved as part of the official record.

First Party Claim

A claim filed by an insured against his or her own insurance policy.

G

General Damages

Damages awarded to an injured person for intangible loss which cannot be measured directly by dollars (pain and suffering).

H

Hearsay

Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial.

I

Impeachment

The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached".

In camera

Latin, meaning in a judge's chambers. Often means outside the presence of a jury and the public. In private.

Indemnification

The act of compensating for a loss.

Independent Medical Exam (IME)

A medical evaluation by a neutral party that is used to resolve questions about your medical condition.

Interlocutory Appeal

Appeal from an interlocutory order (a temporary order determining an intermediate issue during the course of litigation).

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Interpleader

An equitable action in which a debtor, not knowing to whom among his creditors a certain debt is owed, will petition the court to require that the creditors litigate the claim among themselves; a procedure often used by insurance carriers which will deposit the proceeds of a policy in court where several persons with conflicting rights have made claims.

Interrogatories

A form of discovery consisting of written questions to be answered in writing and under oath.

J

Joinder

Uniting several causes of action or parties in a single suit.

Joint and Several Liability

A legal principle that permits the injured party in a tort action to recover the entire amount of compensation due from any defendant who is able to pay, regardless of the degree of that party's negligence.

Judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

Jurisdiction

The legal authority of a court to hear and decide a certain type of case.

Jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

Jury Instructions

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

L

Lawsuit

A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Letter of Representation

A document sent from an attorney to an adverse party advising that the attorney represents a specific person or business.

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Liability

Responsibility to another for one's negligence that results in injury or damage.

Lien

A charge, hold, claim, or encumbrance upon the property of another as security for a debt.

Litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

Loss

Direct and accidental damage to an insured's property which is the bases for a claim.

Loss of Use (WA)

Compensation for a substitute vehicle for a reasonable amount of time while the insured vehicle is being repaired.

M

Mandatory Arbitration

The hearing and settlement of a dispute involving a money judgment by a third party whose decision is binding on the parties.

Mediation

A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them reach resolution.

Mistrial

An invalid trial caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Mitigation

The obligation to prevent or reduce the amount or likelihood of a loss.

Motion

A request by a litigant to a judge for a decision on an issue relating to the case.

Motion in Limine

A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

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N

Negligence

Failure to exercise reasonable care that a prudent person would have used under the same or similar circumstances.

Notice of Appearance

A written document filed with the court to notify the court and the other parties that a party wishes to appear in or receive notice of the proceedings.

O

Objection

The process by which one party tries to prevent the introduction of evidence or the use of a procedure at a hearing. An objection is either sustained (allowed) or overruled by the judge.

Occurrence

An accident that results in bodily injury or property damage during the period of an insurance policy.

Offer of Judgment

Where the defense offers judgment against themselves, if the plaintiff accepts the offered settlement amount. If the plaintiff declines the offer and does not receive a judgment greater than the offer, the plaintiff is responsible for defense cost after the offer was declined.

On the Merits

A judgment, decision, or ruling that a court will make based on the law, after hearing all of the relevant facts and evidence presented in court.

Opinion

A judge's written explanation of the decision of the court.

Oral Argument

An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

P

Peremptory Challenge

A court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason.

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Personal Injury Protection (PIP)

First-party, no-fault coverage in an automobile insurance policy in which an insurer pays, within the specified limits, the wage loss, medical, hospital, and funeral expenses of the insured.

Personal Jurisdiction

Power which a court has over the defendant's person and which a court must have before it can enter a judgment affecting the defendant's rights.

Plaintiff

A person or business that files a formal complaint with the court.

Pleadings

The beginning stage of a lawsuit in which parties formally submit their claims and defenses.

Pool

An association organized for the purpose of absorbing losses through a risk-sharing mechanism thereby limiting individual exposures.

Precedent

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court; stare decisis (Latin for "to stand by things decided").

Preponderance of the Evidence

Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; more probably true than not. The amount of evidence that must be presented to prevail in most civil actions.

Pretrial Conference

A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

Prima Facie

Latin for "at first sight"; a cause of action or defense that is sufficiently established by a party's evidence to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party.

Privilege

In evidence, certain subject matters are not subject to disclosure or discovery and cannot be asked about in testimony.

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Promissory Estoppel

Equitable doctrine allowing the court to enforce a promise even though a valid contract was not formed when a person reasonably acted in reliance on that promise. Promissory Estoppel allows the court to compensate the person for their expenditures and/or to avoid the unjust enrichment of the other party.

Pro Se

Representing oneself.

Property Damage

Physical damage to property.

Proximate Cause

An unbroken chain of events between an event and damage.

Punitive Damages

Damages awarded over and above compensatory damages in order to punish the defendant for malicious, wanton, willful, reckless, oppressive, or fraudulent conduct. Punitive damages are imposed to compensate the Plaintiff for mental anguish, shame, degradation, or other aggravations beyond actual damages.

R

Reasonable Person Standard

A phrase used to denote a hypothetical person who exercises the qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. This term is commonly used in torts, where the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

Release

A written document whereby some claim, right, or interest is revoked against whom the claim, right, or interest could have been enforced.

Remand

To send back.

Remittitur

The reduction by a judge of the damages awarded by a jury.

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Removal

A change in place or position; a petition made by a defendant to transfer a case from one court, where the plaintiff originally brought the action, to another court.

Request for Admission

A formal court process by which one party request that another admit the truth of the matters set forth in the request; admission of undisputed facts.

Request for Production

A formal court process by which one party requests that another produce certain documents or other tangible items.

Reserve

The amount set aside as the estimated cost of a claim.

Res Judica

Latin for “a matter already judged”; the principle that a cause of action may not be relitigated once it has been judged on the merits; also known as Claim Preclusion.

Respondeat Superior

A legal doctrine that holds an employer legally responsible for the wrongful acts of an employee if such acts occur within the scope of employment; Latin for let the superior reply.

Reverse

The act of a court setting aside the decision of a lower court. A reversal is often accompanied by a remand to the lower court for further proceedings.

Rule 12

Civil Rule 12 (CR 12) dictates when a responsive pleading is due, certain defenses that may be made before filing a responsive pleading, and when and how those defenses may be raised.

S

Salvage

Recovery made by an insurance company by the sale of property which has been taken over from the insured as a part of loss settlement.

Service of Process

The delivery of the summons and complaint to the appropriate party.

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Settlement

Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.

Special Damages

Compensation awarded for actual economic losses, such as medical expenses and lost wages.

Statement

A declaration of fact.

Statement of Claims

A summary of the facts supporting a case.

Statement of Damages

A defendant in a civil action may at any time request a statement from the plaintiff setting forth separately the amounts of any special damages and general damages sought.

Statute

A law passed by a legislature.

Statute of Limitations

The period of time during which a notice of claim or civil claim must be filed.

Subpoena

A command issued under a court's authority, to a witness to appear and give testimony.

Subpoena duces tecum

Latin for "bring with you"; a command to a witness to appear and produce documents.

Subrogation

Process by which one insurance company seeks reimbursement from another company or person for a claim it has already paid.

Summary Judgment

A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the material facts of the case, and one party is entitled to judgment as a matter of law.

Summons

A document signed by a deputy clerk ordering a person to appear before the court to respond to a complaint.

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Supplement(al)

Completing or making an addition to.

T

Testimony

Evidence presented orally by witnesses during trials or before grand juries.

Third party claim

A claim filed against another person's insurance policy.

Tort

A civil, not criminal, wrong. A negligent or intentional injury against a person or property, with the exception of breach of contract.

Total Loss

A vehicle is declared a total loss when the cost of repairs exceeds the actual cash value of the vehicle.

Trial

A judicial examination of issues between parties.

U

Under/Uninsured Motorist

A form of insurance that pays the policyholder and passengers for bodily injury caused by the owner or operator of an uninsured or inadequately insured automobile.

Unliquidated claim

A claim for which a specific value has not been determined.

V

Venue

The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

Verdict

The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

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Vicarious Liability

The assignment of liability to a person or entity that did not cause the injury or loss but has a legal relationship to the party that was negligent (e.g., employee/employer).

Voir Dire

Jury selection process of questioning prospective jurors, to ascertain their qualifications and determine any basis for challenge.

W

Witness

A person called upon by either side in a lawsuit to give testimony before the court or jury.