

Harvell and Collins, P.A., Quarterly Report

1107 Bridges Street
Morehead City, North Carolina 28557

phone 252-726-9050

facsimile 252-727-0055

charvell@harvellandcollins.com

wcollins@harvellandcollins.com

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*It is our pleasure to send you the September Edition of our **NEWSLETTER** for the year 2010.*

*This **NEWSLETTER** will concentrate on various legal concepts and we would suggest that you keep it with your important files to refer to from time to time.*

*For those of you who have not received our **NEWSLETTER** in the past and are new clients, our **NEWSLETTER** attempts to keep you informed of any new developments in local, state, and federal law that might affect your personal life or your business. The **NEWSLETTER** will advise you on these developments and, when appropriate, make suggestions that will help you deal effectively with these changes. Also, the **NEWSLETTER** will serve as a way to communicate with you. As always, if you would like to have us address a particular matter, please feel free to call or write, and we will address that issue in a future **NEWSLETTER**.*

We are now archiving our most recent Quarterly Newsletter on the website so that our clients may easily access this information once again by visiting our website at www.harvellandcollins.com.

AN INTRODUCTION TO LITIGATION

Harvell and Collins, P.A., is pleased to present the second and final issue of the Litigation Newsletter. In the last issue, we reviewed the initial stages of a civil lawsuit: I. Filing and Serving the Complaint; II. Filing the Answer and Countersuing the Plaintiff; and III. Written Discovery. In this issue, we will wrap up the mechanics of litigation by addressing the following stages: IV. Depositions and Other Discovery Procedures; V. Mediation and Arbitration; VI. Motions; and VII. Trial. As in the previous issue, all procedures and concepts referred to in this newsletter are taken from the North Carolina

Rules of Civil Procedure which govern the conduct of civil lawsuits in the District and Superior Courts of North Carolina.

IV. Depositions and Other Discovery Procedures

In the last issue, we learned that the attorney has a number of written tools which he can use to gather information to lead to the “discovery” of evidence which is in turn used to prove the case. The specific tools covered were “Interrogatories,” “Request for Production of Documents,” and “Request for Admissions.” While these procedures are often effective, sometimes the situation calls for the use of other, more specialized means.

Physical and Mental Examinations. In some cases, the mental or physical condition of one of the parties to the litigation can be an important issue. For example, if the Plaintiff is alleged to lack the mental capacity necessary to have executed a legal document, then a court-ordered mental examination may be necessary to determine if the allegation is true. Likewise, if it is alleged that the Plaintiff suffered physical harm as a result of the Defendant’s negligence, the Defendant may seek to have the Plaintiff physically examined to determine whether and to what extent she suffered harm.

In such a case, a party to the lawsuit must make a written motion asking the Court to issue an Order of Examination. If good cause exists, then the Court issues an Order setting forth the time, place, manner, conditions, and scope of the examination. Either party may request a copy of the written report of the exam, including all findings, test results, and diagnoses. However, to prevent revealing inappropriate or sensitive material, the Court can limit the scope of the exam and restrict what portions of the report are delivered.

Entry Upon Land. Often times a physical condition existing on real property can be relevant to the lawsuit. For example, a party may allege that real property he purchased is unsuitable for development and worth much less than the purchase price. Likewise, a plaintiff could allege that her apartment was rented by the landlord in an unfit or uninhabitable condition. A party wishing to investigate these allegations may request permission from the owner of the land to enter upon the land to test, sample, photograph, or observe its condition. As with the “Request for Production of Documents”, this request is made in writing and delivered to the other party. The opposition then has thirty (30) days in which to respond, designating the date and time of the inspection, and what tests or observations may be made. The parties typically work out the details, but the Court may be called upon to settle disputes. This discovery tool may be used not only upon the land itself, but also to inspect any building or manmade improvement on the land.

Depositions. The deposition is one of the most oft-used and effective methods of discovery. It is essentially an open-ended question-and-answer session

conducted by the attorney. The opposing attorney also has an opportunity to ask questions of the person being questioned (the Deponent). The Deponent may be either a party to the litigation or a third person who is not directly involved. The deposition of a party is set by delivering written notice to that party's attorney setting forth the date, time and place of the deposition to be taken. For third parties, a subpoena must be issued. A subpoena is a court document signed by an attorney which orders the named person to appear for questioning. A copy of the subpoena is sent to the opposing attorney so she knows to appear and ask questions.

In some ways, a deposition is much like courtroom testimony one sees on television. The Deponent must take an oath or make an affirmation that the testimony they are to give is true to the best of his knowledge. There is a court reporter present to record the session. This testimony will later be reduced to written form and sent to the parties. In certain situations, it may be advisable to obtain a video deposition to demonstrate the physical or mental condition of the Deponent. This can be a costly practice and is therefore reserved for special cases.

As at trial, the opposing attorney can make objections, which are recorded. Unlike trial, the attorneys do not usually state the specific reasons for their objections and do not argue them on the record. In fact, in all but a few cases, the Deponents must answer the attorney's questions in spite of any objection made by the opposing attorney. However, questions which seek information that is subject to the attorney-client privilege (i.e., what you and your attorney talked about), or which are confusing in form, need not be answered.

Also unlike trial, the attorney will typically ask open-ended questions to try to elicit as much information as possible because this is an evidence gathering exercise, not an attempt to prove the case. The attorney may ask as many questions as she wants to ask. This means the deposition will continue so long as the attorney continues to ask questions, even if it takes several days to complete. However, the deposition can be terminated upon the motion of the opposing attorney, if it is being conducted in bad faith or to harass or embarrass the Deponent. This requires the involvement of the local Superior Court judge who will make this determination.

Due to the free-flowing nature of the deposition, it is highly useful in gathering information. However, it is not used in every case, since the cost associated with the court reporter's fee, producing the written record, and the time invested in preparing for and conducting the deposition, can be prohibitive in cases where a lower amount of recovery is sought.

V. Mediation and Arbitration

After the discovery process has been conducted and evidence compiled, it is time to think about proceeding to trial or possible settlement of the case. The Supreme

Court of North Carolina maintains a set of rules which require litigants to go through some form of pre-trial settlement procedure. The two most common mechanisms are Mediation and Arbitration.

Mediation. Mediation is a chance for the parties to a civil lawsuit to come together in an attempt to resolve the issues of the case without going to trial. In North Carolina, all civil litigants must submit to Court-ordered mediation. The parties will receive an Order from the Court directing them to designate a Mediator and select a place, date, and time for a “Mediated Settlement Conference.” This usually occurs soon after the Defendant files its Answer or other responsive pleading with the Court.

The parties have a ninety (90) day window in which to schedule and complete the Mediated Settlement Conference. The parties, through their attorneys, communicate with each other as to who will be selected to conduct the mediation, and when and where it will occur. In the rare instance when the details cannot be worked out between the parties, the Court will designate a mediator and set the details for the parties. Typically, the Mediated Settlement Conference is held at the offices of the attorney for one of the parties, but it does not have to be. In cases where the Plaintiff and Defendant live far apart geographically, the parties will meet at a neutral site.

Mediators are lawyers who have undergone certain training and received certification to conduct Mediated Settlement Conferences. Each local Court maintains a list of individuals who are qualified to perform this duty. Mediators are often retired judges, but this is not always so. The role of the Mediator is much like that of a judge in that he listens to both parties regarding the merits of their respective cases. However, the Mediator does not sit in judgment. Rather, the Mediator acts as a facilitator, working with both parties to reach a settlement.

When Mediation begins, both parties are together in the same room with the Mediator and the attorneys. Each side has an opportunity to present a brief summary of the facts, highlighting issues and facts which they feel strengthen their case. After that, the parties go into separate rooms. The Mediator works as a go-between, communicating offers of settlement and counter-offers between the Plaintiffs and the Defendants. A Mediator often takes time with the parties to point out the flaws in their case. This is particularly helpful in cases where the Plaintiff and Defendant are unwilling to compromise, since assisting the parties to understand the problems in their cases tends to help move them away from their positions and towards settlement.

The Mediated Settlement Conference will continue so long as the parties are still willing to continue to work towards settlement. In some cases, a settlement is reached and the case is resolved. This occurs when an offer is made by one party, the offer is accepted by the other, and a report of settlement is filed with the Court. However, if it appears that the litigants cannot come to a compromise, the parties are at what is referred to as “impasse.”

Arbitration. The second common mechanism utilized for settlement of litigation is Arbitration. Arbitration differs from Mediation in that Arbitration is slightly more formal. Arbitration can be binding or non-binding. In binding Arbitration, the decision of the Arbitrator is final. In non-binding Arbitration, either party may appeal from the Arbitrator's decision by requesting a trial de novo, meaning that the decision is disregarded and a trial is held.

Court-Ordered Arbitration is only appropriate in select cases. The Court may order the parties to arbitrate in cases in District Court, meaning those where less than \$10,000.00 is at stake, and in those Superior Court cases where the amount in controversy is less than \$15,000.00. Arbitration may also be conducted where the parties agree in writing to submit to the procedure. The procedure is not appropriate in cases where the litigation involves complex legal or technical issues.

The process of Arbitration is much more similar to a civil trial in that it involves presenting evidence to a third party who makes a decision as to the outcome of the case. This person (the Arbitrator) is a lawyer and may be a judge. As with Mediators, the Court will have a list of qualified Arbitrators from which to choose. Although this procedure resembles a civil trial in many respects, the rules of evidence and procedure do not strictly apply as they normally would. The Arbitrator receives a brief list of issues and contentions submitted by the parties, as well as evidence in the form of witness testimony, documents, exhibits, and sworn or unsworn statements.

The Arbitration hearing usually lasts no more than an hour and is conducted in a courtroom or public meeting room. As with Mediation, the parties must attend or face sanctions from the Court. After the hearing is concluded, the Arbitrator will announce her decision as to the issues in the case (called the Award). The Award may include the amount of monetary compensation claimed, together with interest, and costs associated with arbitration, and attorney fees, if allowed.

If one of the parties is dissatisfied with the Award, he may file a written request for Trial de Novo with the Court within thirty (30) days of the Award. In the event that this does not occur, the Award becomes a final judgment in the case.

VI. Motions

After completing discovery, depositions, and pre-trial settlement procedures, it is almost time for trial. However, there are usually a few issues that need to be resolved prior to trial. For instance, what happens if one party has reason to believe the opponent is withholding information? What happens if someone who is not involved in the case needs to be joined as a party? What does the Plaintiff do if she obtains information during the litigation which changes the Plaintiff's version of events as set forth in the Complaint? These sorts of problems will have to be solved by one party filing a Motion.

A Motion is a document that is filed with the Court. In this document, the party asks the Court to take some action and sets forth reasons as to why the Court should do so. The opposing party may file a document in response to the Motion, but it is not a requirement. The Motion will be scheduled for a hearing and the parties will appear and make arguments as to why the relief should be granted or denied. The Court will make its decision and enter an Order accordingly.

Motion to Compel Discovery. When a litigant is asked to produce documents or to answer interrogatories, and he fails to do so, then the attorney may choose to file a Motion to Compel Discovery. Whenever a party fails to produce the required information, the party seeking discovery of the information files a motion with the court asking for an Order requiring the opposing party to answer. In order to obtain the discovery materials, it must be shown that the information or materials sought are in fact discoverable. This means that the interrogatories and requests must be intended to lead to the discovery of evidence and information that is both relevant to some issue in the case and can also be admitted into evidence in court. This is a very broad standard, which favors the production of evidence.

Typically, the party defending against a motion to compel is refusing to produce the information or documents based on some objection. A responding party can use the following objections: (1) the discovery questions are not sufficiently narrow; (2) the questions are an undue burden on the party; (3) the questions are not aimed at producing relevant information; (4) the information sought is the attorney's work product; or (5) the information is protected by the attorney-client privilege. The attorneys for the parties then appear in court to argue the motion. If the motion is granted, then the party who has failed to produce the discovery may be subject to sanctions such as paying the opposing party's attorney fees associated with the motion. If the party continues to fail to produce discovery, then the sanctions may be continuing in nature, meaning that the refusing party can be ordered to pay the opposing party's attorney fees for each failure. In extreme cases, the court can hand down sanctions so severe as to prohibit a party from continuing to assert a legal claim or defense, or to strike portions of the Complaint or Answer entirely.

Motion to Dismiss; Motion to Strike; Judgment on the Pleadings. Sometimes matters can be resolved by motions and without result to a trial or evidentiary hearing. These motions may resolve some, or all, of the claims or issues in the case.

One such motion, a Motion to Dismiss tests the legal sufficiency of the Plaintiff's pleadings. In other words, the Defendant asks the judge to make a determination as to whether the information set forth in the Complaint is enough to state a case for recovery. This does not take into account any of the evidence or discovery in the case,

but rather focuses on whether the Plaintiff's legal claim passes muster. A Motion to Dismiss can be filed at any time, but is often made part of the Answer.

A Motion to Strike is used when pleadings are presented that contain unnecessary, superfluous, or legally invalid statements. For instance, if a Plaintiff attempts to present a legal claim that is not recognized in North Carolina, the Defendant can move to strike that portion of the Complaint. Likewise, if a Defendant presents affirmative defenses which are not applicable to the case, then the Plaintiff can move to have those matters stricken. If the Motion to Strike is granted, the offending statements are deleted as if they were never there.

Another tool for resolving the case is what is referred to as a Motion for Judgment on the Pleadings. This is not an often-used motion because Judgment can be had on the pleadings only where they fail in some respect. This comes up in the context of a deficient Answer, meaning that the Plaintiff's Complaint has stated a legal case for recovery and the Defendant's Answer either fails to deny liability or fails to present any valid defense. When the Defendant fails to adequately defend in this manner, the Plaintiff is entitled to a Judgment in his favor, marking the end of the case.

Motion for Summary Judgment. Other than a Motion to Dismiss, a Motion for Summary Judgment is perhaps the most commonly occurring motion in civil litigation. Unlike the previous motions already discussed, a Summary Judgment motion takes into account discovery materials and other evidence that has been gathered in the case. This includes any and all answers to interrogatories, documents produced, all admissions which are on file with the court, all pleadings which are verified as true by the party, and any affidavits that have been filed. (An affidavit is a factual statement which is signed and sworn to by the individual making the statement.)

Either party may move for a Summary Judgment at any time prior to trial. The object of the motion is to demonstrate that there is no issue of fact which deserves to be determined at a trial, leaving the application of the law up to the judge. In a Motion for Summary Judgment, the parties present all evidence which supports their cases. If, after presenting all of the evidence to the judge, the judge determines that there are no facts which are in dispute, he or she will then apply the law to the facts of the case to achieve a result. Summary Judgment can be granted to either the Plaintiff or the Defendant, and the party responding to the motion is entitled to move for Summary Judgment orally at the time of the hearing.

Since every party is entitled to a day in court, Summary Judgment is not lightly granted. The evidence must clearly and overwhelmingly support one side's legal view of the case in order for Judgment to be granted. The nature of the legal claim has much to do with whether the motion will be granted. For instance, contract interpretation is a matter that can usually be determined by a judge. Therefore, courts are much more likely to grant a Summary Judgment where a contract or a lease is involved. On the

other hand, negligence tends to deal with whether the actions of one of the parties were reasonable. In such cases, whether a party's actions were reasonable is almost always a factual issue that will be submitted to a jury.

VII. Trial

If, after discovery, motions, and any mediation have been completed, the case is still not resolved, then it will proceed to trial. The actual date of trial is worked out between the parties and the trial court administrator.

Standard of Proof. In civil litigation, the Plaintiff must typically prove its case to the "trier of fact," whether that be a judge or a jury, by "the greater weight of the evidence." This means that there must be more evidence for the Plaintiff than for the Defendant, regardless of by how small a margin. It is appropriate to think of it as the "more likely than not" or the "50.1% vs. 49.9%" standard of proof. In special cases, such as where the Plaintiff is seeking to correct a deed, the standard of proof is more difficult. That standard is called "clear, strong, and convincing evidence." It is a much higher standard to prove, but it is still short of "beyond a reasonable doubt" which is the standard in a criminal case. The clear, strong, and convincing standard, though not easily quantified, can be thought of as roughly eighty (80%) percent certainty.

Pre-Trial Matters. Before the trial can get underway, there are some preliminary matters that must be resolved. The first is the Pre-Trial Order. Among other things, the Pre-Trial Order regulates what evidence will be submitted at trial. It keeps the trial focused on the key issues in the case and prevents unnecessary questioning and presentation of evidence. The Order is completed by the attorneys for the parties. Each presents a list of potential witnesses, documentary exhibits, and issues which they intend to present at trial. Also, matters which are not of great significance can be agreed upon by stipulation. This helps simplify the case because neither party will have to prove secondary but necessary facts, such as the authenticity of documents presented to the court. Each party's attorney signs the Order and it is filed with the court.

The second matter resolved prior to trial is a special kind of motion that occurs only at trial. It is called a Motion in Limine. A Motion in Limine is an attempt by a party to exclude particular evidence or testimony that the opposing party intends to introduce at trial. The opposing party will generally know what testimony will be introduced based on discovery and the Pre-Trial Order. Testimony is excluded based on the application of the rules of evidence that govern courtroom proceedings. For instance, if testimony could be hearsay, irrelevant, or improper under some other rule, a party may seek to have the judge make a preliminary ruling on whether the testimony may be admitted. The parties present their reasons why a particular piece of evidence should or should not be allowed to reach the jury. The judge then has a number of options. He may (1) exclude the evidence entirely; (2) allow it all to come in; (3) allow it all to come in, but

limit its use; (4) allow just part of the evidence to come in; or (5) postpone ruling on the evidence until it comes up at trial. When the judge makes a ruling, it streamlines the conduct of the trial, since the parties will not spend time arguing about the evidence while the witness is on the stand.

Jury Selection. After the evidentiary disputes are settled, it is time to pick the jury. Juries are not an automatic fixture in the courtroom. One of the parties must request a jury by serving his written “Jury Demand” on the opposition within ten (10) days of the last pleading (usually the Answer). The demand can also be incorporated into either the Complaint or the Answer.

If either of the parties submits its request, then there will be a jury trial. Of course, we have all received a notice to report for jury duty. Those who appear at court to perform jury duty make up what is referred to as the jury pool. The jury itself is comprised of twelve (12) individuals who must render a unanimous verdict. However, the parties may stipulate that the jury may have fewer than twelve (12) members and that the final decision need not be unanimous.

The jury is selected by calling up twelve (12) members of the jury pool at a time and asking them questions one by one. The attorneys for the parties ask questions of the members about their education, work experience, and background. There is some strategy involved in this process, as the attorney may feel that one juror may look at the facts more favorably than another. The attorneys also ask questions of the jurors to see if they have any biases or if they know the persons involved. Each party has the opportunity to strike jurors from the jury. That is done by means of a “challenge” which can either be for cause (bias, relationship with one of the parties) or not for cause. Each party is limited to eight (8) challenges without cause. Challenges for cause are unlimited. After the jury is selected, the members are sworn in and the trial begins.

Opening Statement. The trial begins with opening statements. The opening statement is a chance for each side to address the jury and to give a forecast of the evidence. The Plaintiff typically goes first. In making this statement, the attorney is introducing the jury to the parties and the issues involved in the case, and familiarizing them with the key facts. Technically, the opening statement must not be argumentative, but the attorney certainly uses the opening statement to draw attention to those facts which tend to support his case.

Plaintiff’s Presentation of Witnesses and Exhibits. After the opening statements are concluded, the parties put on evidence and call witnesses. The Plaintiff, bearing the burden of proof at trial, goes first. The witnesses are present in the courtroom because they have received a subpoena directing them to appear for trial. Any witness identified in the Pre-Trial Order, whether they be identified by the Plaintiff or the Defendant, may be called to testify by either party. The attorney attempts to elicit testimony in support of the case, but he must ask open-ended questions. That means

that the Plaintiff's attorney cannot ask questions which suggest the answer. Instead, he must ask questions such as "What did you do?", "What happened next?", etc. If he fails to do so, then the Defense can object and the Judge will direct him to rephrase the question. The witness testifies based on facts which are within that person's firsthand knowledge. Every witness makes an oath or affirmation prior to testifying, and a court reporter is present to create a written transcript of the proceedings.

Objections. If a witness attempts to testify in a way that is objectionable under the rules of evidence, the opposition may object and the judge will make a ruling. If opposing counsel feels the evidence should be kept out because of technical reasons, but the examining attorney feels very strongly that it should be allowed to be heard by the jury, the parties will have to argue the evidentiary matter. The jury is excused from the room before this occurs. If the judge rules against the examining party, the attorney may ask to make an "offer of proof". This means that the examining attorney will continue to ask the witness questions outside of the presence of the jury, so that the testimony will appear on the official transcript. The testimony during an offer of proof is not considered by the judge or the jury, but it is recorded by the court reporter. This is an important function, especially if the matter is appealed, as it allows the higher court to make its own ruling.

Cross-Examination and Re-Direct. After the Plaintiff's attorney is finished questioning the witness, the Defendant's attorney may conduct a cross-examination. This is done by the use of "leading" questions which suggest the answer and call for a yes-or-no answer. The goal of the Defendant's attorney is to attempt to undermine the credibility of the testimony and perhaps the witness as well. There are a number of different tactics for doing so, but one common way is to present former statements (such as a deposition) which contradict the witness' in-court testimony. Attorneys refer to this as "impeachment." Any document can be used to impeach a witness. For example, the criminal records of the witness can be used to undermine her credibility cast doubt on her testimony. When the Defendant finishes the cross-examination, the Plaintiff's attorney may have the witness further expound on his earlier testimony in order to repair any damage to the credibility of the testimony. This part of the examination is referred to as re-direct. If new information is covered on re-direct, then there may be more cross-examination, but the Plaintiff has the last word.

Laying a Foundation. The Plaintiff may call as many witnesses as are necessary to develop the facts of the case, but the judge may limit testimony from witnesses that will be cumulative. Witnesses may be called to testify to many facts in the case, or perhaps one or two facts. For example, a witness can be called to lay a foundation for the admission of evidence. Documentary evidence, such as a Will or a Contract, is not automatically admitted. Instead, a witness must testify that she is familiar with the document and knows when it was made, who made it, under what circumstances, and so forth. If a proper basis is established, then the document can be marked as an exhibit and "published" (shown) to the jury.

Motion for Directed Verdict. After the Plaintiff's presentation of evidence is finished, the judge will then consider Motions for a Directed Verdict from each party. A motion for a directed verdict is made orally during the trial, usually by both parties. The parties try to convince the judge to make a determination as to the outcome of the trial by showing that the facts, when viewed in a light most favorable to the opponent, do not present a case worthy of submission to the jury. To prevail on such a motion is a difficult task because it essentially means that there is no way a jury could render a verdict for the opponent. The judge usually refrains from making a ruling on directed verdict until after the Defendant presents his case, at which time the motions may be renewed.

Defendant's Presentation of Evidence. Now that the Plaintiff has completed the presentation of its case, it is time for the Defendant to put on its evidence. The rules for questioning of witnesses apply in the same way they did earlier, but the roles are reversed. The Defendant's attorney must ask open-ended questions and the Plaintiff's attorney is allowed to cross-examine the witness by the use of leading questions. The Defense has an opportunity to conduct a re-direct in order to restore the credibility of the testimony in the same way the Plaintiff did earlier. As before, after the Defendant submits his case to the jury, the parties can revive their earlier motions for directed verdict. However, now the judge has heard the case as presented by both parties, and may be more inclined to make a ruling to determine the outcome of the case.

Closing Statement. If no directed verdict is granted, the attorneys for the parties proceed to make their closing statement. Typically the Defendant goes first and the Plaintiff has the benefit of the last word to the jury. Unlike the opening statement, the closing statement can be more argumentative in its tone because the facts have been presented to the jury. The attorneys may try to focus the jury's attention on a couple of key facts or they may try to take a more broad approach. Though there are many approaches to the closing statement, it is the party's last opportunity to convince the jury that its theory of the case is correct and it is entitled to a verdict.

Instructing the Jury. Following the closing statements, the judge will instruct or "charge" the jury. Typically, the jury is instructed on its role in weighing the evidence. The jury will receive basic instructions on the burdens of proof applicable to the Plaintiff's claims and the Defendant's affirmative defenses. The jury will also be told what facts it must find in order to support a particular legal claim or defense. If there are any special matters which a party wishes to submit to the jury, that party may submit a request for special jury instructions to the Court. Of course, the opposing party may object to the submission of these issues to the jury. The judge will make a ruling as to whether the requested instructions will be allowed. If they are allowed, then the judge will read those instructions aloud as well.

Deliberation and Verdict. After the jury is charged, they will leave the courtroom in order to begin deliberations in the jury room. As a default rule, the jury must reach a unanimous result with all twelve (12) members voting in unison for a particular issue. Of course, there could be any number of issues or claims submitted to the jury for consideration. It is possible, and in most cases permissible, for the jury to come back with different votes on the issues. For instance, it is possible that the Plaintiff has proven that she was damaged by Defendant's negligence, but that the Defendant has also proven that the Plaintiff's negligence contributed to her loss, preventing her from recovering. In most cases where a monetary award is sought by the Plaintiff, the jury will also have the role of determining what amount of money or "damages" the Plaintiff is entitled to recover.

Changes to the Verdict. The jury's verdict is not usually disturbed. However, if the judge believes that the result reached by the jury is so fully unsupported by the evidence submitted at trial, then the judge may grant Judgment Notwithstanding the Verdict (JNOV). It is very rare for a judge to issue JNOV; however, it usually occurs in cases where the judge feels the jury's decision was clearly made in error. The verdict can be disturbed if the judge uses his discretion to adjust the amount of damages awarded. The damages can be adjusted up (additur) if too low or down (remittitur) if the award is excessive. Again, these are rare occurrences.

Right to Appeal. Finally, if either party is aggrieved by the decision of the jury, or by a ruling made by the judge, then they may appeal the decision to the Court of Appeals. That right of appeal is automatic. The parties must file their Notice of Appeal within thirty (30) days of the adverse ruling, decision, or verdict. This begins a very complex timeline of actions which must be completed in order to preserve and perfect the party's appeal. If the appeal to the Court of Appeals is unsuccessful, then the party may appeal to the state Supreme Court. That appeal is heard at the discretion of that Court.

Conclusion

This concludes Harvell and Collins, P.A.'s Litigation Newsletter. We hope that you have enjoyed learning about the inner workings of civil litigation. As you may have gathered, civil litigation is an incredibly complex and sensitive process. The practical and legal considerations that play a part in creating a successful case can be numerous and challenging. As always, the attorneys of Harvell and Collins, P.A., look forward to assisting you in all of your civil litigation matters.

Postscript

This writing is intended to generally familiarize you with various legal issues. The scope of this document is necessarily limited, and consultation with your attorney should always precede taking any action.