

The Journey of Litigation

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about litigation. When you get involved in litigation, you might be told it's a very long process. There's a lot to it.

It can be really expensive. We've talked about litigation a lot on this program and some of the challenges associated with it. But a fun fact is that most litigation matters don't go all the way to trial. Which is a good thing for the courts and for taxpayers, as that would be a huge burden.

Right now already, it takes a long time to get to trial, if you do go to trial. It could take, depending on the jurisdiction, a year or more sometimes to fully get to trial. Part of that is it's a busy system. But most matters resolve. And there's a couple different ways and we won't go through all of them today that, things get resolved before trial, but one way is in [00:01:00] pre-motions that happen before that stage where you're actually in front of the judge and there's witnesses and all that you might see on tv. So from a legal perspective what are some ways that folks end up not going to trial, Russell?

Russell Berger: Yeah, obviously you can settle a case and you can settle a case at any time. So that's one way. From a motion standpoint, in most forms of civil litigation, there's two primary exit points. One is a motion to dismiss, which gets filed after a complaint, and another is a motion for summary judgment, which gets filed later after you go through all of discovery. Not often. Sometimes mostly all discovery, sometimes sooner. And what a motion to dismiss basically says is, if you're going to get it granted, it's because the court's going to determine that, even if everything the other side says in the complaint is true, it doesn't amount to a cause of action.

It's not actionable. I'm going to kick this out. Why bother? Because what they're alleging doesn't mean they get a recovery anyway, so let's not bother. And in contrast to summary judgment is, we've got all these [00:02:00] facts out on the table through the discovery process, both sides can present them in writing.

And even if I take the facts in the most favorable light to the plaintiff, the defendant's motion says it's still not a viable cause of action that I can award a recovery on, and I agree. So I'm going to kick the case out because the facts don't support as we now know them through discovery, the facts don't support a recovery here. So those are the big points. Obviously, motion to dismiss a lot better if you're a defendant to get out on because it's way earlier in the process. It saves you a bunch of time, money, heartache of going through the litigation process. But because of that, the standard's a lot higher.

It's hard to get a motion to dismiss granted because judges understandably want to give it room to play out. And if there's any gray area, they're inclined to say no, let's let discovery play out and we will revisit this later on.

Sarah Sawyer: It can be a bit confusing, putting all of these pieces together and settlement, as you mentioned in the beginning, is something that can always happen, in the beginning of a case all the way through leading up to trial. You could be right in the middle of it. But what you've just described, [00:03:00] have a more formalized process to it, and it still takes, in a lot of instances sometime to get there. And a lift. And you mentioned discovery. You mentioned getting all those pieces together.

So a lot of times you're further along in the process. Not always the case. Sometimes, it can be the kind of case where these things happen right up front depending on how the facts are. But, it definitely is a very common practice and something that can be a little bit confusing and how things get disposed of without actually getting in front of a judge.

Because I think there is a thought that everything's gotta play out in front of the judge, like in a trial setting, like you've seen, in the movies. But these are just a couple of ways that might not be the case and some might be finalized and done with when you don't see all that play out.

Well thanks Russell. We'll see you next time.

Russell Berger: Thanks, Sarah.

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