

## CHAPTER 5

# Small-Claims Court

### *The “Fast Food” of the Legal System*

Nancy loved her apartment. Her place was close to the train, and she had a great relationship with her neighbors. The one thing Nancy didn't like was her landlord, Trent. Trent neglected his tenants. He once refused to fix a broken lock at the building's entrance until a tenant threatened to call the city. Nancy always tried her best to avoid any conflicts with him.

When Nancy was transferred to a new job in a different city, she moved out. She asked for the return of her \$1,400 security deposit. But Trent only returned \$560 to her, stating that the other \$840 was needed for repairs. Nancy was furious, and disputed the claims. Trent refused to budge. Nancy's friend suggested mediation, but Nancy didn't trust Trent to negotiate in good faith. She called a lawyer, who told her that filing a lawsuit and going through a trial would likely cost more than the \$840 for which she would be suing. But then the lawyer suggested small-claims court. The next day, Nancy went to her county courthouse and filed an action in small-claims court seeking the return of her \$840, plus five years' worth of interest. Shortly thereafter, Nancy was awarded a judgment in the amount of \$910, which was the amount of the security deposit she was owed, plus interest.

**S**mall-claims court is an informal and relatively inexpensive forum for resolving certain types of small disputes. There are typically no lawyers involved, the cases last an hour or less, and there isn't a jury.

Inexpensive, informal, and quick? It certainly sounds enticing. But there are a lot of factors you should consider before deciding that small-claims court is the right venue for resolving your dispute.

## STATE LAWS

Small-claims courts are state regulated, and are not governed by a federal system. This means that the rules, regulations, and limitations of small-claims court are controlled by fifty individual states, and differ from state to state. Small-claims courts usually are a part of your local district, county, or municipal court, and have different names in different places—in some states and counties they may be called **county courts** or **magistrate's**



### EVERY STATE IS DIFFERENT

In this chapter, we try to provide general information that applies to small-claims courts in every state. However, each state has its own procedures. If you are going to go to small-claims court, you must learn about the procedures applicable in your particular location. Sometimes there are different procedures for different areas in the same state. A large city might have one name for its small-claims court, and a rural area might have another; these two locations might even follow different procedures. In this chapter we will discuss procedures that are common in many small-claims courts. But remember: No single court will be exactly like the courts in our examples.

Every state has a trial court of general jurisdiction. If you're going to small-claims court, this is the court you're attempting to avoid. The **trial court of general jurisdiction** is where all kinds of lawsuits are heard, including cases involving large sums of money. In many states this court will be called the **district court**, which is the name given to trial courts in the federal system. But this type of court can also be known as the **superior court**, or the **court of common pleas**. In New York State, the trial court of general jurisdiction is called the **Supreme Court**. There are many more types of courts and names for those courts. You can find more information about trial courts of general jurisdiction in Chapter 6.



## TAX COURTS ARE THE EXCEPTION

There is one exception to the rule that small-claims courts are regulated by the states, and that is the federal tax court, which does hear small claims. A case will qualify for the small-case division of the federal tax court if the disputed amount is \$50,000 or less in any one tax year, including penalties.

The procedures followed in the small-claims division of the federal tax court are similar to those followed in other small-claims courts: the court is informal, the trial lasts less than an hour, and the parties usually don't need lawyers, though they can have them if they choose. Many cases settle before trial; generally the IRS will offer to settle for a smaller amount than is allegedly owed.

**courts.** Still, most states administer their small-claims court systems in a similar fashion. The information in this chapter is designed to help you regardless of where you live.

If you have specific questions about the small-claims court in your state, contact the small-claims court clerk of the district in which you are located. (See “The World at Your Fingertips” section at the end of this chapter for a Web address where you can link to the small-claims courts in your state.)

## LAWYERS IN SMALL-CLAIMS COURT

In most states, you may have a lawyer represent you in small-claims court if you wish. But just because you are allowed to bring a lawyer, doesn't always mean you should. In many cases it is not in your best interest to hire a lawyer, because the money you are seeking to recover can be lost in legal fees. In fact, most people in small-claims courts do not have lawyers. Happily, some studies show that small-claims plaintiffs representing themselves fare just as well as those with legal representation.



## TALKING TO A LAWYER

*Q. In my state, lawyers are allowed in small-claims court. Won't I always be at an advantage if I hire one for my case?*

A. Yes, but that doesn't mean you should. You might be more likely to win your case, but the cost of the lawyer might be more than the amount you collect from the other side. If your state provides an absolute right to appeal, you should consider representing yourself in small-claims court, after first trying to work out the dispute by negotiation or mediation. Then consult a lawyer only if the result in small-claims court is not satisfactory, or if the other side appeals. If you are not satisfied with the result in small-claims court, consult with a lawyer right away. The period within which you may take further action, such as appealing, might be very short. And if the other side appeals, you might need to take action very quickly or have your case dismissed.

—Answer by Judge Robert Shenkin,  
Court of Common Pleas of Chester County,  
West Chester, Pennsylvania

A few states do not allow lawyers into small-claims court at all. In addition, a few states allow only the **plaintiff** (the party who initiates a lawsuit) to use a lawyer if the **defendant** (the person being sued) chooses to use one first. In some states, lawyers are only allowed in small-claims court with the permission of the judge.

## CASES SUITABLE FOR SMALL-CLAIMS COURT

Small-claims courts primarily handle cases involving relatively small amounts of money. Each of the fifty states sets an upper limit (called the **jurisdictional limit**) on the amount of money

that can be sought in small-claims courts. Typically the jurisdictional limit is between \$2,000 and \$7,000, but some states have limits as high as \$15,000. These might seem like substantial amounts of money, but they are relatively small in comparison to the sums disputed in district or federal courts.

If you are seeking an amount that exceeds the small-claims limit for your state, you may still bring a case in small-claims court. But by suing in small-claims court, you will give up your claim to any amount over the jurisdictional limit. For instance, if you're a homeowner in California who believes a contractor owes you \$7,000, you may only claim and recover up to \$5,000 in small-claims court. You can't come back later and demand the other \$2,000—one bite is all you get. If you are in this situation, you'll need to decide whether it's more important for you to go to small-claims court to pursue some of the money, or bring your case in a higher court for a chance at all of the money. In this example, this decision might mean the difference between getting



### BEWARE OF EMPTY POCKETS

If a person has no money or assets, he or she may be **judgment-proof**. This means that he or she will not be able to pay you even if you win the case, and you might end up with no money. You can try to find out whether the person or business you want to sue has money or assets, whether they are close to bankruptcy, and whether other judgments have been made against them that have not been paid. To find this information, you might wish to review real estate records and court records. The INeed2Know website has some useful information about how to search for such information; visit [www.ineed2know.org/business/asset-search.htm](http://www.ineed2know.org/business/asset-search.htm).

If the opposing party is judgment-proof, you should think twice before pursuing a lawsuit that will cost you money and time, and may result in a judgment that you will never be able to collect. Remember that winning a case in small-claims court is not the same thing as getting paid.

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 **EXPLORE YOUR OPTIONS**

As you know from reading the previous chapters on negotiation, mediation, and arbitration, you have other options for resolving your dispute besides small-claims court. It is important to understand that, just because you *can* resolve a matter in small-claims court, it might not always be in your best interest to do so. In particular, you may want to consider whether you want the matter discussed in public, how the case might affect your reputation, and whether there will be opportunities for you and the other side to work together in the future.

In particular, you may wish to ask your local small-claims court clerk for help with mediation. Mediation of a small-claims case is mandatory in some areas of the country. In others, it is easily accessible on a voluntary basis, either right in the courthouse or at a nearby community mediation center. Contact a mediation center to enlist its help in bringing the other party to the table. (Chapter 3 contains more detailed information about mediation.)

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\$5,000 within a couple of months, or \$7,000 a year or two down the road, minus attorney's fees and court costs.

In order to find out the applicable limits in your state, contact the small-claims clerk of your local court. Most states provide this information online. (For more information, see the section titled "The World at Your Fingertips" at the end of this chapter.)

Common matters handled in small-claims court include disputes involving

- debts;
- repayment of loans;
- failure to provide agreed-upon services;
- breach or cancellation of contracts;
- minor personal injuries;
- breach of warranty—for example, when a purchased product is defective or not as advertised;

- property damage;
- evictions; and
- return of property—for example, when a person borrows something and does not return it.

However, not all disputes can be settled in small-claims court. Types of cases that generally *cannot* be brought in small-claims courts include

- criminal matters;
- class-action lawsuits;
- cases arising from traffic violations;
- divorce proceedings;
- bankruptcy filings;
- name change requests;
- guardianship requests; and
- any kind of lawsuit against a state, the federal government, or a federal agency.

### WHERE CAN YOU SUE?

Where should you bring a case in small-claims court? The answer is that it typically depends on where the person you are suing (the **defendant**) lives or works. Generally, you can sue someone close to their home or job. In some cases you can also bring suit in the area where the disputed activity took place. For instance, in a case about stolen property, you can sue where the theft took place. In a breach-of-contract case, you can sue where the contract was signed. And in a case arising from personal injury, you can generally sue where the accident occurred. Note that if the defendant doesn't live or do business in your state, and the matter in dispute did not take place in your state, then you will have to bring suit in the state where the defendant lives or does business, or in a state where you can prove a connection exists.

For example, suppose Katharine lives and works in Brussels, Illinois. She owns a riding stable and provides horseback-riding lessons to local children and summer tourists. One tourist,



## STATUTES OF LIMITATIONS

**A statute of limitations** is a law that establishes a time frame within which you must file a case (the term is often also used to refer to the time frame itself). Different states have different statutes of limitations for different kinds of cases. For example, if you are suing to recover money for a breach of contract, the statute of limitations might be three years. This means that if you do not file a lawsuit within three years of the alleged breach, you will no longer be allowed to bring suit at all.

If something has happened to you that you think may give rise to a lawsuit, you should act without delay. For purposes of the statute of limitations, the clock usually starts ticking when the damage or injury occurs, but sometimes won't start until you become aware of the damage or injury. If you have waited a while before bringing suit, you might want to consult with a lawyer to find out if the statute of limitations will pose a problem in your case.

Bernard, injures his toe while participating in the lessons. Bernard is a resident of Ann Arbor, Michigan. His toe injuries cost him a total of \$2,200 in medical expenses, and he wants to sue Katharine in small-claims court in Ann Arbor. However, because Katharine does not live or conduct business in Ann Arbor, and because the injury didn't occur in Ann Arbor or anywhere else in Michigan, he cannot do so. If Bernard wants to sue Katharine, he must do so in the small-claims court near Brussels, Illinois.

## SMALL-CLAIMS COURT PROCEDURES

Once you determine that your case is appropriate for small-claims court and where to file, you will need to follow the steps required by the courts in your state. While the applicable



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procedures vary from state to state, most states require that plaintiffs

1. file a complaint and pay a filing fee, and
2. **serve** (i.e., notify) the defendant, and submit proof of notification to the small-claims court.

This section will discuss these steps in more detail.

### **Filing a Complaint**

To file a complaint, you will need to obtain the proper complaint form from the small-claims court in your area. On the form, you will typically need to write your name and address, and the name and address of the person or business against whom you are filing the claim. You will need to know if the defendant is an individual or a corporation; this information is generally available from your state government, and usually can be obtained online. Don't assume that just because you are dealing with a business you should sue in the name of that business. For example, if you think that Mike's Hardware Store owes you money, but Mike's Hardware Store is not a corporation, you will need to find out the name of the business owner (probably someone named Mike) and sue that particular person. But if the business is a corporation, you will want to list the corporation as the defendant. On the complaint form, you will also have to provide the amount of money in dispute, and list the reasons you are seeking payment from the defendant.

Be clear and concise when you give your reasons for seeking payment. You may want to use numbered paragraphs or bullet points. Remember: The more clearly you provide the relevant information, the more likely a judge will be to understand the basis of your complaint before the hearing.

In many jurisdictions, complaint forms are available on the Internet. Some states even allow you to fill out and submit complaint forms online. Most states' complaint forms look similar. The filing fees vary by state, but generally are around \$30.

When you file your complaint form with the small-claims

court clerk, he or she will provide you with the date and time at which your case will be heard. Most small-claim courts will set a trial date that is thirty to ninety days after your complaint is filed.

### Notifying the Defendant

After you have filed a claim with the appropriate small-claims court, you must notify the defendant that a case has been filed against him or her. Occasionally the court itself will take care of sending notice, but more often you will be responsible for providing notice to the defendant. You must notify the defendant through a formal legal process called **service**. Service procedures require that the defendant be given a copy of the complaint within a certain time period; the specific time limit is



### COUNTERCLAIMS

If you decide to sue a person in small-claims court, that person may be able to bring a counterclaim, or countersuit, against you. A **counterclaim** is a claim by the defendant against the plaintiff. For example, suppose Nancy moves out of her apartment and files suit against her landlord in small-claims court. The landlord may file a counterclaim asserting that she owes him money because she caused damage to the carpet in the apartment. If Nancy sues for the return of \$1,400, and the landlord has spent \$1,900 to replace the carpeting, then he may countersue Nancy for the additional \$500.

If a defendant brings a counterclaim against you, you will have to defend yourself against that claim at the hearing. If the other side seeks an amount that is above the jurisdictional limit of the small-claims court, then the case can be transferred to the trial court of general jurisdiction. Trial courts are still state courts, but they are much more formal, and both sides generally have attorneys.



## TALKING TO A LAWYER

*Q. I am a small-business owner being sued in small-claims court by a former employee. Is it advantageous for me to countersue so that the case moves to regular civil court?*

A. Maybe. But if the case is transferred to a trial court, you will need a lawyer, and the cost of a lawyer might be more than the amount in dispute. Your former employee might also get a lawyer, and decide that the value of his or her case exceeds the limit on small-claims cases in your jurisdiction. If that happens, you could find yourself in a much more precarious position than when the matter was in small-claims court. Of course, you cannot file a counterclaim against your former employee without a reasonable basis for doing so, and the desire to move your case to a different court does not itself constitute a valid basis for filing a counterclaim. Rather, you will need to have some real basis for claiming that your former employee is liable to you.

—Answer by Judge Robert Shenkin,  
Court of Common Pleas of Chester County,  
West Chester, Pennsylvania

determined by the local small-claims court, but is usually approximately thirty days. When the document has been appropriately delivered, the defendant has been **served**.

In order to serve a defendant with a document, you need to follow the exact procedures established for your jurisdiction. Sometimes you can simply mail the complaint to the defendant, but usually ordinary mail is not sufficient. Certified or registered mail is generally required, in which case you must get a return receipt signed by the defendant to prove that he or she actually received the document. Other courts require that someone physically present the defendant with a summons or copy of the complaint. Ask the clerk in your small-claims court what service procedures are required.

These formal requirements for delivering documents to defendants exist for a good reason. Bringing a lawsuit, even in small-claims court, is a serious matter. Service rules are designed to ensure that defendants are notified of lawsuits, and thus have the chance to defend themselves in court.

### PREPARING YOUR CASE

Once the defendant has been properly notified about the case and a court date is set, both sides should begin preparing their cases. In preparing your case, consider what information the judge will need in order to rule in your favor, and how you can present this information clearly. Bear in mind that the judge might not be a lawyer; in some states a law degree is not required in order to become a small-claims court judge. However, even if the judge is not a lawyer, he or she will almost always have some type of legal training and will have heard many, many cases similar to yours.

#### Evidence

Good, well-prepared evidence is your best friend in small-claims court, and failure to provide necessary evidence will destroy your chances of winning. Trials in small-claims court are brief. Both parties have a limited time to tell the judge their side of the story, and it can be difficult for a judge to make a ruling based solely on each person's version of events. That is why it is important to provide the judge with evidence that supports your story and proves your case.

There are different forms of evidence that you may bring to trial to support your case. The most common forms of evidence are:

- **Eyewitnesses.** These are people who saw firsthand the events affecting your case. For example, in a case about a car

accident, you might have an eyewitness who saw one car hit another, and noted the license plate numbers.

- **Photographs.** The best photos are clear and properly labeled. For example, in a case about breach of contract for shoddy construction, you might bring photos showing a leaky roof and cracked walls.

- **Written contracts or other written documents.** Written documents are very helpful in any breach-of-contract case. However, many contracts—particularly for small amounts—are **oral contracts**, in which the parties spoke about the terms of their agreement but didn't put anything in writing. An oral contract is a valid contract and you can sue if it is breached, but the terms of an oral contract are harder to prove than those of a written one. On the other hand, anything in writing that tends to confirm your version of events will probably be accepted as evidence, particularly if it is signed or was written by the other side.

- **Receipts.** These can be useful proof that a person has been paid.

- **Cancelled checks.** Cancelled checks can provide evidence that you have paid a person, and that he or she has cashed the checks.

- **Expert witnesses.** In most small-claims cases, an expert witness will not be necessary, nor will it be worth the expense. However, you may wish to hire an expert witness in some cases. For example, if you are suing a contractor for poor workmanship, it will be very helpful to have another contractor—preferably one in the same line of work—explain to the judge the problem with the defendant's work. If you had to hire someone to fix the defendant's mistakes, the person who fixed the work would probably make an excellent witness.

- **Letters.** Letters can provide good written evidence of what actually happened—for example, letters to a person who owes you money can be evidence that you asked him or her to repay the debts. However, letters to or from people other than the defendant may or may not be acceptable evidence in your local small-claims court.

Always be sure to have all the evidence you can muster to prove your case. For example, if you are suing a dry cleaner for losing an expensive suit, it is essential that you prove you actually dropped off the suit. A receipt or claim slip from the dry cleaner will be very helpful. If you are suing a contractor for failing to provide adequate services, examples of good evidence would include the repair contract itself, eyewitnesses or an expert witness (such as another contractor), and photographs. When trying to figure out what evidence would be best, ask yourself: If you were the judge, what would you require as proof of your claim?

If you want to submit the evidence of an eyewitness who does not want to come to court, that person may be able to write a letter containing the relevant information. However, not every small-claims court will accept letters or written statements from witnesses. If you can submit a letter from a witness, it should contain the following:

- The date of the statement and location at which it was written
- The name of the court and presiding judge (if you know it)
- The names of the parties and the case number
- The witness's name and occupation
- How, when, where, and what the witness observed—i.e., everything that he or she saw, heard, touched, or smelled that bears upon your case

Check with court personnel in your local small-claims court to find out whether it will accept letters from witnesses. Even if the court does allow letters from witnesses, personal testimony is preferable and should be used whenever possible.

It is a good idea to bring copies of any documentary evidence or photographs for the judge, yourself, and the other party. The judge may have questions about the evidence, and all parties can refer to their copies in order to answer the questions. Having enough copies of your evidence will make it easier on the judge, because you will not have to pass evidence back and forth. Having copies also shows the judge you are prepared and organized, which is always appreciated.

 **A SAMPLE LETTER FROM AN EYEWITNESS**

A letter from a witness might look something like this:

800 Ocean View Lane  
San Diego, California

March 31, 2006

Mr. John Smith, Presiding Judge  
Small-Claims Court  
San Diego, California

Re: Oren Sachar v. Lynn Cohn  
Small Claims Case No. 99999

Your Honor:

My name is James Stein. I work as a technician at Superior Sound, which is located in San Diego, California. I am thirty-two years old.

On March 19, 2006, at around 3:00 P.M., I witnessed two movers drop a television while I was inside the residential home located at 7242 Birchcreek, San Diego, California.

I was inside the home with my fiancée and our real estate agent because we were considering making an offer to purchase it. After viewing the dining room, I moved into the living room where two gentlemen were attempting to move a black big-screen television. I was about twenty feet away from them when the television fell, and I was able to see what happened very clearly. The television fell on its screen side, hitting a chair on its way down. No one other than the movers was in the room at the time; my fiancée was upstairs with the real estate agent. I did not get the movers' names, but I do remember that both had dark hair and were wearing blue overalls. I do not recall how tall they were, but neither struck me as very short or very tall. Moments later, when we had left the house and I got into our agent's car, I told her to wait so that I could write down the name written on the side of the truck the movers were using. It was "StudentsMoveU4cheap." I then got the homeowner's number

from the agent, and left him a phone message telling him what had happened.

In my understanding, the court case arising from this incident is scheduled for April 18th, 2006. I will be traveling at that time, and will not be able to appear in court.

Sincerely,

James Stein

## THE HEARING

On a specified date, you will have to attend a hearing in small-claims court. Small-claims courts are usually much less formal than other state or federal courts. Even so, you should be sure to stand when the judge enters the court, and keep the following tips in mind:

- Be courteous to the judge at all times
- Don't be afraid to ask the judge a question if you don't understand something
- Don't interrupt the other side
- Don't yell, curse, or roll your eyes
- Turn off your cell phone or pager
- Dress appropriately, in order to demonstrate that you respect the court. While a suit isn't necessary in small-claims court, you should dress nicely—as if you were attending church, temple, or mosque.

In a small-claims court hearing, the plaintiff presents his or her case first, followed by the defendant. If you are the plaintiff, you will have a short amount of time in which to explain to the judge what happened to you, what you are seeking from the court, and why you are entitled to it. An effective way of doing this is to begin with what happened. For example, if you are suing a moving company for dropping your television and breaking it, start by telling this to the judge. At this point, don't bother explaining why you were moving out of the house, or when you



bought the television and how much it cost. Then tell the judge the amount for which you are suing.

Have all of your physical evidence ready when the judge asks for it. At this point in the proceedings, the judge will probably take a couple of minutes to process your situation and ask you questions (e.g., “How did this happen?” or “How do you know that the defendant dropped your television?”). This will give you the opportunity to tell your story. You should tell your story in a well-organized way that makes it easy for the judge to understand.

Keep in mind that, while you and the opposing party are intimately familiar with your case, the judge is not. Your story might make perfect sense in your head, but if you relate the events out of order, the judge might find it very difficult to follow. A good way to organize your presentation—whether you are the plaintiff or the defendant—is to make a list of the things you want to say, and organize them in the order you want to say them. For each point you plan to make, note any evidence you will use to prove that point. As with any other dispute resolution procedure, the more prepared you are, the better your chances of achieving a favorable outcome.

The plaintiff will present his or her case first. The sidebar below provides some tips on how the plaintiff might prepare and present his or her case.



### **AN EXAMPLE OF A PLAINTIFF'S PREPARATION LIST**

In the example of the broken television set, the plaintiff's preparation list might look like this:

- StudentsMoveU4cheap.com dropped my 62-inch television on March 19th, 2006.
- I am asking for \$2,345.64 plus court costs because this is what I paid for the television on January 3rd, 2006. The television is totally broken and cannot be repaired. I bought the television at TV Land.

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- *Give judge and defendant a copy of the receipt for the television, and the quote from the TV repair shop stating that it would cost more to repair the TV than it is worth.*
- I hired the defendant, StudentsMoveU4cheap, on March 3rd 2006.
  - *Give judge and defendant a copy of the contract I signed when hiring them, and the receipt that proves I paid them.*
- According to the contract, they are responsible for any damage to things they move.
  - *Refer judge and defendant to section 8(b) of the contract I just handed them.*
- I was not at home to see them drop the TV, but I know that it was working in the morning when I left the house, and wasn't working when I got home.
  - *My wife is here to testify to the same thing. (Wife testifies.)*
- I have a witness who saw the movers drop the television. This person was looking at the house as a potential buyer and was in the living room when the TV fell. Unfortunately he couldn't make it to this hearing because he is traveling, but he wrote the following letter.
  - *Hand judge and defendant letter from witness.*
- I also have pictures of the TV after it was moved that show the crack on the outside of the frame.
  - *Show judge and defendant pictures. Tell judge when you took the pictures, and let him know that each one is dated. Show him a receipt that proves when and where the pictures were developed.*
- On March 20th, 2006, I called the owner of the moving company to let her know what happened, at which point she told me she would get back to me.
- The owner called me back on March 31st, 2006, and told me that she spoke with the movers, and that they remember that the television was already broken when they got there.

**AN EXAMPLE OF A DEFENDANT'S PREPARATION LIST**

Assuming the defendant in this example is the owner of the business StudentsMoveU4cheap.com, the defendant's preparation list might look something like this:

- It is true that we moved the plaintiff's television.
- I spoke with the employees (Seth and Brian), who moved the television. They specifically remember the frame being cracked, because Seth cut his hand on it while moving the television.
  - *Seth testifies about the cut on his hand.*
- I know that the plaintiff and his wife said the television was not broken when they left, but they had potential buyers in and out of the house all day. Any one of them could have broken it.
- I am not sure what the witness saw, but maybe it had to do with my employee cutting his hand.
- I felt bad about the television, and that they were not at the house while we were moving, so I offered to give them a \$100 discount.
- We are pretty good at what we do, and that is why we have been in business eighteen years with no complaints.
  - *Hand judge and plaintiff copy of business review published in San Diego Times.*

After the plaintiff has spoken, the defendant has a chance to present his or her version of events. If you are the defendant, you will have read the complaint, and will probably have a pretty good idea of what the plaintiff will say and what evidence the plaintiff will present. There are often surprises, however, so you need to be flexible. The above sidebar provides some tips on how the defendant might prepare and present his or her case.

## APPEALS

Whenever you go to court, there is always a chance that the judge will rule against you and that you won't achieve the result you wanted. Small-claims court is no exception. After both sides present their cases, the judge will make a decision and rule accordingly. Most states allow the losing side to appeal or challenge the judge's decision. An appeal must be filed within a certain period of time, usually between ten and thirty days after the decision has been made.

In some states, such as California, an appeal will automatically result in a new trial, sometimes called a **trial de novo**. In this type of trial, the court will hear the case without regard to what happened at the first hearing. The parties start over from scratch. For example, suppose Brenda and Shanterria go to small-claims court in California over a dispute about a used car that Brenda sold to Shanterria. Shanterria insists that Brenda



### DEFEND YOURSELF!

Sometimes defendants don't want to show up at court; they think that if they don't go, nothing can happen to them. But nothing could be further from the truth. Failure to appear in court will almost certainly result in a **default judgment** against the defendant for the full amount sought by the plaintiff, plus court costs. This means that the plaintiff wins her or his case without having to argue it or even produce evidence.

Even if you are sure that you'll lose your case, it is still worth going to court so that the plaintiff has to present his or her case. Perhaps the plaintiff will not have sufficient evidence to convince the judge that he or she should win. If you don't go to court, you will lose the opportunity to ask for court orders that may help you. If you lose in some states, for example, you can ask the judge to let you make payments in installments. This alone can be a good reason to show up.

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sold her a lemon, and that Brenda should pay the cost of repairs in accordance with the state's lemon law. Brenda claims that Shanterria's failure to properly operate the stick shift caused damage to the car. In addition, Brenda argues that the state's lemon law does not apply, because she sold the car before the law took effect. The judge rules in Shanterria's favor and orders Brenda to refund Shanterria's money. In California, cases may be appealed over issues of fact (as opposed to issues of law), so Brenda can appeal on the grounds that the judge made the wrong decision about who damaged the car.

In other states, however, a court may not reconsider the facts of your case in an appeal; instead, an appeal may arise only from an allegation that the judge made a legal mistake. In such a state, Brenda would be unable to appeal on the grounds that the small-claims-court judge made the wrong decision about who damaged the car. The judge's decision on that issue would be final. Instead, Brenda could only base an appeal on the issue of whether the state's lemon law applies to her case. This is not an issue relating to the individual facts of the case; rather, it is an issue relating to the way in which the law *applies* to those facts.

If you lose your case in small-claims court and think you may have grounds for appeal, talk with the small-claims clerk to find out what rules apply to appeals in your jurisdiction.

In most states, you are entitled to have a lawyer represent you in your appeal. However, small-claims appeals sometimes are handled separately from regular cases, and often use the same relaxed procedures as the original hearings. If you are in a state that handles appeals in this manner, you might consider representing yourself and proceeding without a lawyer for the

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## JURY APPEALS

A few states permit jury trials on appeal, but most states don't. To find out the rules in your state, talk to the clerk at your small-claims court.

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same reasons you chose small-claims court initially. If you intend to represent yourself in an appeal, go to the courthouse prior to your court date and observe a few small-claims appeals to develop an idea of how they are handled.

### COLLECTING AN AWARD

If you are the plaintiff, winning a case usually means that you are entitled to the amount of money you were seeking from the defendant. If you win a case in small-claims court, the judge usually will issue a decision stating that you won, and ordering the defendant to pay you a sum of money. Surprisingly, the decision alone is enough to satisfy some plaintiffs—even if they don't



#### TALKING TO A LAWYER

*Q. If I go to small-claims court and I am not happy with the result, couldn't I mediate or negotiate the settlement later? Is it a good idea to start in small-claims court and negotiate or mediate if I lose?*

A. In most states, the decision of a small-claims court is final and binding if no one appeals within a specified period of time, usually about thirty days. If you lose in small-claims court and don't appeal, or don't even have the right to appeal, you will probably be in a very weak position for purposes of mediating or negotiating any further. In order to preserve any hope of winning your case, you will probably have to file an appeal as a protective measure.

Remember: It is not a good idea to start in small-claims court. Try to negotiate or mediate first, and then go to court—even small-claims court—only if you cannot resolve the dispute any other way.

—Answer by Judge Robert Shenkin,  
Court of Common Pleas of Chester County,  
West Chester, Pennsylvania

collect a cent of the judgment. Some people simply want to hear a judge say that they are right, and the defendant is wrong.

However, most people want to receive the money they are owed. If a judge rules in your favor and the defendant is a business or person of substance (i.e., a person of good character) with roots in the community, you will probably be paid without difficulty. Unfortunately, however, it may take additional effort to collect money from some defendants.

After ruling on your case, the judge might create a payment schedule, but will not participate in the collection process. Every court has its own procedures for collecting on a judgment. If you don't get paid, you might be able to get an order requiring the defendant's employer to pay some of the defendant's wages directly to you. Or, if you can locate the defendant's bank account, you might be able to get an order directing the bank to pay you the amount you are owed from that account. Or perhaps you can require the defendant to disclose his or her income or assets in response to a series of written questions (sometimes called **interrogatories in aid of execution**) or in a question-and-answer session under oath (called a **deposition**). But if the defendant doesn't pay you voluntarily, collecting on your judgment will require you to make more filings and expend even more effort.

### THE WORLD AT YOUR FINGERTIPS

- For a comprehensive guide to small-claims courts, including links to information about small-claims courts in every state, visit [www.consumeraffairs.com/consumerism/small\\_states.htm](http://www.consumeraffairs.com/consumerism/small_states.htm).
- Nolo.com, one of the leading publishers of legal self-help titles and articles, has published *Everybody's Guide to Small Claims Court*, which provides more detailed information about small-claims court procedures, and tips for representing yourself in small-claims court. The book is available from the Nolo.com website, [www.nolo.com](http://www.nolo.com).
- Remember: Small-claims courts procedures are different in every state. However, some states' websites do provide useful

general information. Visit the website of the Virginia state courts at [www.courts.state.va.us/pamphlets/small\\_claims.html](http://www.courts.state.va.us/pamphlets/small_claims.html) for some straightforward information about small-claims courts procedures in that state. In addition, the Connecticut courts website at [www.jud2.state.ct.us/Small\\_Claims/](http://www.jud2.state.ct.us/Small_Claims/) includes answers to many questions about that state's procedures, as well as links to sample forms.

### REMEMBER THIS

- Small-claims courts are also known as “magistrate’s courts” and “county courts.” All small-claims courts impose caps on the amount of money that can be sought in any case.
- Small-claims court can provide a low-cost alternative to litigation in a public setting. You can participate in small-claims court without a lawyer, and your case can be resolved relatively quickly.
- Small-claims courts are regulated by the states. It is important that you get information specific to your small-claims court from your local courthouse.
- Before you sue someone in small-claims court, make sure that litigation is the best way to resolve your issue—and not negotiation, mediation, or arbitration.