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**Hon. Philip S. Straniere**

*Supervising Judge of Civil Court,  
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**by Hon. Philip S. Stranieri**

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# *About the Author*

**Hon. Philip S. Straniere** was elected to the New York City Civil Court in November 1996 from the Second Civil Court District on Staten Island, and was reelected in 2006. In 2004 he was named an Acting Justice of the New York State Supreme Court and Supervising Judge of Civil Court, Richmond County.

Straniere received his JD from New York University School of Law and his BA (Magna Cum Laude) and MA in history from Wagner College on Staten Island. Prior to going on the bench he was in private practice for more than 20 years.

He is currently an adjunct assistant professor at St. John's University, where he has taught undergraduate law for over 30 years. He also taught at St. John's University in the College of Business Administration before becoming a judge, and served as an administrative law judge for the New York City Board of Education Impartial Hearing Office, the Taxi and Limousine Commission, the Parking Violations Bureau, and the Environmental Control Board.

Known for using humor as well as references to popular culture in his decisions, Judge Straniere has been the subject of articles in the *New York Times* and *The Wall Street Journal*. In addition, his writing style has been the subject of an academic paper presented to the Mid-Atlantic Popular/American Culture Association in 2011.

He is married to Jennifer and has three children — Gregory, Amanda, and Nicholas.

# *Dedication*

This book is dedicated to all the court clerks across the United States who every day answer the same questions over and over in an effort to make litigants' encounters with the court system as easy as possible; to all attorneys who volunteer their time to serve as arbitrators and in other roles so that small claims courts can handle the volume of cases they deal with on a regular basis; and to all of the judges who are committed to ensuring that every litigant gets his or her day in court and who, after sitting in small claims court, will turn to colleagues, staff, family, and friends and say, "You won't believe the case I just heard; you can't make this stuff up."

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# Contents at a Glance

---

<b><i>Introduction .....</i></b>	<b><i>1</i></b>
<b><i>Part I: Making Your Big Problem a Small Claim.....</i></b>	<b><i>5</i></b>
Chapter 1: Understanding the Ins and Outs of Small Claims Court .....	7
Chapter 2: Deciding if Your Case Belongs in Small Claims Court.....	15
Chapter 3: Evaluating Whether You Need a Lawyer .....	35
Chapter 4: Classifying Your Claim: Figuring Out What Kind of Case You Have .....	47
Chapter 5: What's the Damage: Understanding Different Types of Damages.....	67
<b><i>Part II: Getting Ready to Go to Court .....</i></b>	<b><i>83</i></b>
Chapter 6: Just the Facts, Jack: Gathering Your Information.....	85
Chapter 7: Dealing with the Clerk.....	95
Chapter 8: Informing the Defendant About the Case .....	103
Chapter 9: Looking at Your Options: Considering Alternatives to Trial.....	119
Chapter 10: In Your Defense: Advice for the Defendant .....	129
<b><i>Part III: Presenting Your Case in Court.....</i></b>	<b><i>139</i></b>
Chapter 11: Mastering Courtroom Etiquette .....	141
Chapter 12: Providing the Proof You Need to Make Your Case.....	159
Chapter 13: Handling Live Witnesses Well .....	173
Chapter 14: Sounding Like a Lawyer in the Courtroom.....	193
Chapter 15: Understanding the Judge's Decision .....	211
<b><i>Part IV: Dealing with Specific Problems .....</i></b>	<b><i>217</i></b>
Chapter 16: Getting Hit Where You Live: Contract Cases Involving Your Home ....	219
Chapter 17: Getting the Business: Suing over Business Transactions.....	235
Chapter 18: Getting Personal: Suing Those Closest to You.....	251
Chapter 19: Pardon My French: Understanding Tort Cases .....	263
Chapter 20: Looking at Legal Issues in the Internet Age.....	275
<b><i>Part V: Handling Post-Trial Issues .....</i></b>	<b><i>285</i></b>
Chapter 21: Getting the Verdict and Collecting Your Judgment .....	287
Chapter 22: Appealing a Decision .....	299

<b><i>Part VI: The Part of Tens</i></b> .....	<b>307</b>
Chapter 23: Ten Ways to Improve Your Odds of Winning in Court .....	309
Chapter 24: Ten Blunders to Avoid .....	313
<b><i>Glossary</i></b> .....	<b>317</b>
<b><i>Index</i></b> .....	<b>329</b>

# Table of Contents

---

## ***Introduction ..... 1***

About This Book .....	1
Conventions Used in This Book.....	2
(Not So) Foolish Assumptions .....	2
How This Book Is Organized .....	2
Part I: Making Your Big Problem a Small Claim .....	3
Part II: Getting Ready To Go To Court.....	3
Part III: Presenting Your Case In Court .....	3
Part IV: Dealing with Specific Problems .....	3
Part V: Handling Post-Trial Issues .....	3
Part VI: The Part of Tens.....	4
Icons Used in This Book .....	4
Where to Go from Here.....	4

## ***Part 1: Making Your Big Problem a Small Claim ..... 5***

### **Chapter 1: Understanding the Ins and Outs of Small Claims Court. . . 7**

Starting Down the Road to Small Claims Court .....	8
Doing It Without a Net — Or a Lawyer .....	9
Understanding Why Small Claims Court Rules Seem So Confusing.....	10
Getting the go signal for small claims court.....	11
Being rejected by the small claims system .....	11
Preparing for Your Big Day .....	12
Showing Up in Court .....	13
Living Through the Aftermath .....	13

### **Chapter 2: Deciding if Your Case Belongs in Small Claims Court . . 15**

Why Small Claims and Not Regular Court .....	15
Evaluating Your Decision to Go to Court .....	16
Keep It Civil: Civil Suits versus Criminal Cases .....	18
Knowing what a civil suit covers .....	19
Knowing what is not a civil suit .....	20
Understanding the laws of your state.....	21
Limiting your options: Subject matter jurisdiction .....	22
The goal of substantial justice .....	22
Law versus Equity Compensation .....	23
When it's all about the money: Law cases.....	24
When money isn't everything: Equity cases .....	25



When Small Claims Court Is Not For You .....	26
When you want too much money .....	26
When you want to sue the government .....	29
When you want to sue a charity .....	31
When you want to bring a suit against bankrupt defendants .....	32
When you want to sue the deceased.....	33

### **Chapter 3: Evaluating Whether You Need a Lawyer ..... 35**

Going It Alone: Heading to Court Lawyer-Free .....	35
Understanding What a Lawyer Can Do for You .....	36
Recognizing When You May Need a Lawyer .....	38
When the defendant has a lawyer .....	38
When you sue a corporation or business.....	39
When you sue a government agency.....	40
Choosing the Right Lawyer for Your Situation .....	40
Smart ways to find good lawyers .....	41
Put it in writing: Protecting yourself with a retainer.....	42
Paying Up: Dealing with Lawyer Fees .....	43
Taking your case on a contingency agreement .....	43
Paying by the hour.....	44
Agreeing to a flat fee.....	45
Getting free legal services.....	46

### **Chapter 4: Classifying Your Claim: Figuring Out What Kind of Case You Have ..... 47**

Classifying Your Case.....	47
Breaking promises: Contract agreements .....	48
Causing harm: The law of torts .....	53
Determining Who's Really at Fault .....	58
Contributory and comparative negligence.....	60
Understanding assumption of risk .....	61
Pointing the finger — last clear chance .....	61
Realizing Why Personal Injury Claims Aren't Brought in Small Claims Court .....	62
Acting Fast: Time Is of the Essence.....	63
Time's up! Checking out the statutes of limitations .....	63
Statutes of limitations in different states.....	64
Laches can lock your case out of court .....	65

### **Chapter 5: What's the Damage: Understanding Different Types of Damages ..... 67**

Classifying Your Damage Claim .....	68
Making you whole: Compensatory damages in contract cases .....	68
Compensatory damages in negligence cases.....	69

Knowing the consequences: Collecting on consequential damages .....	73
When you'd rather be right than rich — nominal damages .....	74
Behaving badly can be costly — punitive damages .....	75
Liquid Gold: Dealing with Liquidated Damages .....	77
Agreeing ahead of time on liquidated damages .....	77
Differentiating between liquidated and unliquidated debts .....	78
Getting What's Coming to You — And Then Some .....	79
Collecting interest and other additional monies .....	79
Expenses that aren't really damages .....	80
Mitigation of damages: Reducing what the defendant owes you .....	81

## ***Part 11: Getting Ready to Go to Court* ..... 83**

### **Chapter 6: Just the Facts, Jack: Gathering Your Information ..... 85**

Determining Who Your Defendant Is .....	85
Providing the defendant's address .....	86
Identifying the defendant .....	87
Looking for the right business .....	88
Tracking an elusive defendant .....	89
Knowing your role: Recognizing who you are in court .....	90
Making a minor point: Cases involving minors .....	91
Bringing a Case to the Right Location .....	91
Gathering Your Facts .....	93
Making a list and checking it twice .....	93
Writing it down for the clerk .....	94

### **Chapter 7: Dealing with the Clerk ..... 95**

Understanding How and Why Clerks Rule the Legal World .....	95
Respecting the clerk's knowledge .....	96
Getting off on the right foot with the clerk .....	96
Being prepared for meeting the clerk .....	97
Information Every Clerk Needs .....	98
Determining whether you want a jury trial .....	98
Say what? Arranging for an interpreter .....	99
Proclaiming yourself a senior citizen .....	100
Making the clerk aware if you have a disability .....	100
Pay Up: The Filing Fee .....	101
Paying the filing fee .....	101
Filing more than one case at a time .....	102

**Chapter 8: Informing the Defendant About the Case . . . . .103**

Serving Papers: The Service of Process.....	104
You've got mail: Delivering through the post .....	105
Making it personal: Handing it over via personal delivery.....	107
Substituted service: Giving it to someone else .....	108
Conspicuous service: Going to the tape .....	110
Self-service: Serving the defendant yourself .....	110
What to do if none of the other methods works.....	111
Preparing for Battle: What to Expect from the Defendant .....	112
Counterclaims: When the person you're suing sues you .....	113
Counterclaims that exceed the court limits .....	114
When the person you're suing blames someone else:	
Third-party actions .....	115
Cross-claims: When defendants point fingers at each other.....	116

**Chapter 9: Looking at Your Options:  
Considering Alternatives to Trial . . . . .119**

Understanding Alternate Dispute Resolution (ADR) .....	119
Meeting in the middle through mediation.....	120
Going through arbitration.....	121
Participating in a preliminary conference.....	124
Settling Rather Than Going to Trial .....	125
Deciding where to settle .....	126
Entering into an oral agreement .....	127
Spelling out the terms .....	127

**Chapter 10: In Your Defense: Advice for the Defendant . . . . .129**

Taking Action when Served with a Claim .....	129
Ignoring a summons at your peril.....	130
Refusing certified mail isn't a good strategy .....	131
Pleading for mercy: Reading the plaintiff's documents .....	132
Considering settlement.....	132
Preparing Your Response.....	133
Considering getting a lawyer.....	133
Preparing your answer.....	134
Going to Court.....	136
Keeping quiet as a trial strategy .....	136
Having your say.....	137

***Part III: Presenting Your Case in Court..... 139*****Chapter 11: Mastering Courtroom Etiquette . . . . .141**

Mastering First Impressions in Court .....	141
Dressing for success: Your appearance at your appearance.....	141
Knowing what to expect when you show up.....	144
Minding your manners .....	146

Dealing with the Judge.....	147
Discovering who will hear your case .....	147
Requesting a judge.....	148
Asking for a judge to be removed.....	149
Getting Over the Courtroom Jitters .....	150
Going to court before you go to court .....	151
Protecting Your Case by Making a Record.....	152
Recognizing what constitutes a record.....	153
Going off the record.....	154
Getting a Postponement .....	154
Asking for an adjournment or continuance.....	155
Marking the case as final.....	157

## **Chapter 12: Providing the Proof You Need to Make Your Case . . . . 159**

The Proof Is in the Pudding: Gathering Evidence .....	160
Carrying the burden of proof .....	161
Looking at direct versus circumstantial evidence.....	163
Knowing your enemy: Discovery of the facts.....	164
Subpoenaing information.....	166
Submitted for Your Approval: Presenting Evidence .....	168
Placing photographs into evidence.....	169
Putting documents into evidence.....	171
Submitting evidence when you're the defendant .....	172

## **Chapter 13: Handling Live Witnesses Well . . . . . 173**

Choosing Not to Be Your Own Witness .....	173
Sending someone to court in your stead.....	174
Using a power of attorney.....	174
Calling the Defendant as Your Witness .....	176
Questioning Witnesses .....	178
Explaining question categories .....	179
Asking leading questions .....	180
Presenting Affidavits in Place of Live Witnesses .....	183
Impeaching a Witness .....	184
Bringing in an Expert Witness.....	186
Recognizing the economics of paying an expert .....	187
Establishing a witness as an expert.....	188
Keeping Your Cool When Your Witness is Lying.....	190
What to Do When Your Witness Doesn't Show Up .....	191

## **Chapter 14: Sounding Like a Lawyer in the Courtroom . . . . . 193**

Understanding and Making Motions .....	193
Understanding what a motion is.....	194
Getting a flavor of pre-trial motions .....	196
Making motions during trial .....	198
Finishing up with a post-trial motion .....	199

Raising Objections.....	201
Looking at what an objection is .....	201
Raising common objections .....	202
Ruling on objections.....	203
Introducing Evidence .....	204
Handling hearsay .....	205
Looking at the best evidence rule.....	208
Understanding the parol evidence rule .....	209

## **Chapter 15: Understanding the Judge's Decision .....211**

Receiving Your Judgment.....	211
Understanding a Loss .....	212
Getting the Brush-Off: Being Dismissed.....	213
Dealing with Defaults .....	214
Winning because the defendant never answered.....	215
Winning because the defendant didn't respond to a motion.....	215
Seeing Inquest Judgments .....	216

## ***Part IV: Dealing with Specific Problems ..... 217***

### **Chapter 16: Getting Hit Where You Live: Contract Cases Involving Your Home .....219**

Looking at Disputes between Landlords and Tenants .....	219
Suing over the security deposit .....	220
Getting your security deposit back.....	221
Keeping the security deposit as a landlord.....	222
Going to Court with the Condominium or Homeowner's Association .....	230
Disagreements over Down Payments .....	232

### **Chapter 17: Getting the Business: Suing over Business Transactions .....235**

License to Sue: Cases Involving Unlicensed Businesses .....	235
Buyer Beware: The Downside to Hiring Unlicensed Businesses .....	238
Bringing a Case over a Car .....	240
Making lemonade: Using lemon laws .....	240
Seeking redress on repairs .....	241
Suing an Airline over Lost Luggage .....	242
Making the Moving Company Make Good.....	243
Dealing with damages.....	244
Escaping extra charges .....	245
Suing a Store for a Refund .....	246
Getting Your Just Deserts: Collecting Your Wages .....	246
Understanding Bailments .....	247
Types of bailment .....	247
When bailments occur .....	249



**Chapter 18: Getting Personal: Suing Those Closest to You . . . . . 251**

Neither a Borrower nor a Lender Be.....	251
Breaking Up — and Sometimes Getting Together —	
Is Expensive to Do.....	254
Buying or borrowing together.....	254
Dealing with wedding-related lawsuits .....	255
Looking at Pet Lemon Laws.....	258
Hassling with the Health Club.....	259
Paying for Professional Services .....	260
Lawyers and accountants .....	260
Doctors.....	261

**Chapter 19: Pardon My French: Understanding Tort Cases . . . . . 263**

Battling with the Neighbors .....	263
Tangling over trees.....	264
Fighting over fences .....	267
Disputing over driveways .....	267
Wrangling with Rover: Pet Disputes.....	268
Making a Case for Malpractice .....	269
Open wide! Dental malpractice .....	269
Taking the vet to court on Fido's behalf .....	270
Turning the tables: Suing your lawyer .....	270
Suing over Property Damage .....	272
Causes of floods: Water mains and sewer backups.....	272
Damages: Proving the value of property .....	274

**Chapter 20: Looking at Legal Issues in the Internet Age. . . . . 275**

Making Agreements on the Internet.....	275
Determining the contract terms .....	276
Entering an e-signature .....	279
Understanding arbitration clauses.....	280
Determining where the contract was performed .....	281
Determining whether you can sue.....	282
Finding out what state's laws apply .....	283
Providing E-Evidence .....	283

***Part V: Handling Post-Trial Issues . . . . . 285*****Chapter 21: Getting the Verdict and Collecting Your Judgment . . . 287**

Waiting for the Decision .....	287
Counting the Ways You Can Collect .....	288
Entering into a payment plan .....	289
Enforcing your judgment .....	290

Locating Assets .....	296
Tracking down information .....	296
Getting an information subpoena .....	297
<b>Chapter 22: Appealing a Decision .....</b>	<b>299</b>
Deciding to Appeal .....	300
Beating the time clock: Appealing on time .....	300
Determining if you have the right to appeal .....	301
Weighing the cost of an appeal .....	302
Appealing Even if You Win .....	303
Having Your Case Heard .....	304
Posting a bond or the judgment amount .....	304
Monitoring the status of an appeal .....	305
Choosing to use a lawyer .....	305
Looking at the possible results .....	306
 <b>Part VI: The Part of Tens .....</b>	 <b>307</b>
<b>Chapter 23: Ten Ways to Improve Your Odds of Winning in Court ...</b>	<b>309</b>
Remembering That Substantial Justice Is the Goal .....	309
Creating the Right Message .....	309
Preparing to Appeal .....	310
Choosing the Right Location .....	310
Reviewing Legislation .....	311
Treating the Clerk Kindly .....	311
Making Lists, Checking Them Twice .....	311
Looking Good in Court .....	312
Investigating the Facts .....	312
Establishing a Dollar Amount .....	312
 <b>Chapter 24: Ten Blunders to Avoid .....</b>	 <b>313</b>
Heading for Court Before Thinking about Alternatives .....	313
Failing to Prepare Adequately .....	313
Assuming the Judge Understands What You're Talking About .....	314
Deciding against Using a Lawyer .....	314
Refusing to Listen .....	315
Not Making Things Clear .....	315
Lacking Vital Information about the Court .....	315
Having the Wrong Attitude .....	315
Underestimating Your Opponent .....	316
Making the Wrong Monetary Decisions .....	316
 <b>Glossary .....</b>	 <b>317</b>
 <b>Index .....</b>	 <b>329</b>

# Introduction

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**I**f you're reading this book, it's a fair bet that you're interested in suing somebody — or that somebody has decided to sue you. If you're getting ready for your day in court, reading this book can dramatically increase your chances of winning by helping you prepare and avoid the pitfalls that derail so many small claims cases. Because I'm a judge, I approach your courtroom education from the other side of the bench, so I can tell you what you're likely to do wrong — after all, I see it every day.

Going to small claims court isn't like going to traffic court — you're going to need to be better prepared than you would to fight a \$100 speeding ticket. But it's not rocket science, either. You don't have to be the cousin of a lawyer or a part-time brain surgeon to find out how to gather information, present it in a logical way, and avoid irritating the court so much that your case gets thrown out because the judge doesn't like you.

Be forewarned: I'm not giving you legal advice and I'm not guaranteeing that you'll win your case. In some cases, I may even convince you to resolve your dispute outside of the courts. I'm simply trying to point out common errors parties on both sides of the litigation process make that prevent them from presenting their case in the best possible light. The task is further complicated by the fact that each state has slightly different rules for their small claims court, so it's important that you check your local court and not just plunge ahead blindly like the proverbial bull in a china shop.

## *About This Book*

This book will discuss everything you need to know about small claims court. Much of the information centers around the plaintiff — the person bringing the suit against someone else — but I also address issues that interest the defendant. Much of the information in this book applies to both parties.

You may be avoiding reading a book on this topic, even though you desperately need the information it contains, because you're afraid it's going to be

- ✓ Too dry and difficult to plow through in an afternoon
- ✓ Full of confusing jargon and information
- ✓ Boring beyond belief

I've tried to ensure that this book is none of these things, because I wouldn't want to read it if it were, either. The court system is sometimes dry and dull enough on its own; my job in this book is to make the information both easily accessible and easily understandable — as well as a bit funny where possible. And believe me, court is often quite funny, whether intentionally or unintentionally so.

## *Conventions Used in This Book*

It's too cumbersome to use the term "he or she" all the time when talking about judges, defendants, and plaintiffs, so I alternate them with each chapter, using male pronouns in odd-numbered chapters and female pronouns in even-numbered chapters. Please note that throughout this book, the word *guy* is used in its most common meaning and refers to both men and women — sort of like *actor* in the movie industry.

New terms that may be unfamiliar to you are italicized the first time I use them; you can look them up in the glossary at the back of the book.

## *(Not So) Foolish Assumptions*

I'm going out on a limb here and making some brazen assumptions about you. These are

- ✓ You're either suing someone or being sued in small claims court.
- ✓ You have already been to small claims court and want to know what you did wrong so you can do it right next time.
- ✓ You have a secret interest in becoming a judge and trying small claims court cases.

If none of these describe you, you're still more than welcome to read this book.

## *How This Book Is Organized*

Books must be organized, or you'll never find the information you need. This one is well organized into sensible parts, because I'm a judge and have a logical mind.

## ***Part I: Making Your Big Problem a Small Claim***

Going to small claims court always involves an issue you consider a big problem, or you wouldn't go through all the trouble to do it. In this part, I help you determine whether your case belongs in small claims court in the first place. I also assist with the big decisions — such as how much money you'd like to get and whether you need a lawyer to help you get it — before you take the next step and file.

## ***Part II: Getting Ready to Go to Court***

Preparing to go to court can take a lot of prep work. If you don't have all the paperwork and information you need, or if you don't properly identify your opponent in court, you have no chance of winning. This part tells you what to do ahead of your court date.

## ***Part III: Presenting Your Case in Court***

Even if your notes and paperwork are in pristine order, you can blow your case by not presenting to the right person at the right time in the right way. In this part, I explain how to avoid making any missteps that will compromise your case.

## ***Part IV: Dealing with Specific Problems***

You may be hungry for more information about cases similar to yours. In this part, I describe some of the most common types of small claims cases and how to prepare specifically for them.

## ***Part V: Handling Post-Trial Issues***

When the verdict comes in, you may not like it. This part tells you what to do if you're not happy with the judge's decision. I also talk about what to do if you're ecstatic with the decision but the defendant has disappeared into the sunset without paying you a dime of what she owes.

## *Part VI: The Part of Tens*

If you're into short sound bites, the Part of Tens chapters will appeal to you. They're short, pithy, and they address two of the most important aspects of small claims court: ways to increase your chances of winning and common mistakes to avoid.

### *Icons Used in This Book*

Obviously, I think every word in the book is essential to someone, or I wouldn't include it. But some bits of information are more important than others, so I mark them with an icon that identifies them as something you should pay extra attention to.



The "Remember" icon sits next to information I hope stays in your head long enough for you to get to the courtroom and use it.



The "Tip" icon gives insider info it would take years to discover on your own. Because you probably don't have time to become a judge before your case goes to court, I give you the tips I've gleaned.



I'm only going to warn you if I think the information I'm giving is essential to not messing up your case.



Because law can be a little complex, I use it occasionally to point out particularly technical details.

### *Where to Go from Here*

*For Dummies* books are designed to be modular, which means you don't have to read them cover-to-cover from the first page to the last. The information in each chapter is complete on its own, so if you're going to court in an hour and just want to know what to wear, turn to Chapter 11 where I explain how your appearance can affect your case. If you've got a few weeks to prepare, take the time to read through a chapter, digest what's in it, and then move on to the next, if you want. Or if you find the book so fascinating that you just can't put it down, feel free to read through the entire thing in one sitting.

## Part I

# Making Your Big Problem a Small Claim



For additional guidance understanding legalese, check out [www.dummies.com/extras/filingandwinningsmallclaims](http://www.dummies.com/extras/filingandwinningsmallclaims).

## *In this part . . .*

- ✔ Get to know the specific rules of small claims court, how the system works and how to navigate it, and the key ways in which small claims court differs from other courts.
- ✔ Gain insight from a practicing judge on what types of complaints are best suited to be resolved in small claims court, and what alternatives exist outside of the court system.
- ✔ Get ready to represent yourself in small claims court by knowing how to select, work with, and pay for a lawyer to consult with you on preparing your case, should you choose to work with one.
- ✔ Recognize the various classifications of cases, from contract breaches to personal injuries, and know which kind of case you are dealing with and what you hope to gain from your day in court.
- ✔ Understand how to arrive at and justify monetary amounts when requesting compensation from a defendant, and familiarize yourself with the monetary rules of the court to better your chances of getting what is fair.
- ✔ Check out [www.dummies.com/extras/filingandwinningsmallclaims](http://www.dummies.com/extras/filingandwinningsmallclaims) online for free information on important things to do before filing for court.



## Chapter 1

# Understanding the Ins and Outs of Small Claims Court

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### *In This Chapter*

- ▶ Making a decision to go to court
  - ▶ Going to court without a lawyer
  - ▶ Wrapping your head around the rules
  - ▶ Preparing yourself for court
  - ▶ Showing up to make your case
  - ▶ Getting back to normal life post-court
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**M**ost people don't really want to court. It's stressful, it can be expensive, and it takes a big chunk of time out of what I assume for most of you is a busy enough schedule. Of course, there are exceptions: Lawyers go there because that's their job, and people who love drama — and create lots of it in their daily lives — may find going to court to get people to listen to them somewhat addicting.

If you're an average Joe or Jane, staying out of court probably seems like a better idea to you, until something happens that seems so unfair that you start considering going to court to get it resolved. If that happens, then this book can help you figure out the best way to go forward with the greatest shot of getting what you want out of small claims court.

In this chapter, I give you a quick overview of small claims court, why it exists, and a quick analysis of whether it's where you should be to resolve your problem. The information here gives you an overview of the kinds of topics covered in greater detail throughout the book.

## *Starting Down the Road to Small Claims Court*

Why are you going, or considering going, to small claims court? Everyone has different reasons, but usually frustration, aggravation, and a sense of outrage at the way a business or personal transaction has turned out is the impetus.

If you could solve things in another way, you probably would. Many litigants say they end up in small claims court because the person they're having a problem with doesn't seem to be listening to them or responding to what's an important issue to them. Some of these situations may be better resolved outside of the court system through mediation or conciliation.

Let's say you threw a garden party in an effort to spiff up your social standing in your neighborhood — you know, tea, crumpets, watercress sandwiches, and the like. You decked yourself out in your white linen suit. You were strolling your garden, greeting neighbors, when the dog next door, Tiny, greeted you by putting his muddy paws on your suit and licking your face.

Although everyone had a good laugh at your expense and the incident won first prize in a funniest video contest, your neighbor refused your request that he pay for the dry cleaning bill for your suit. Not only did he refuse, but he insists you pay the veterinarian's bill because his dog is allergic to linen.

Rather than challenge your neighbor to a duel, you decide to take a more civilized approach and call your lawyer, who tells you that the legal fees involved would be more than any money you may recover. You call several other lawyers and get the same response.

Well, don't despair. Throw your shoulders back, lift your head up high, and put a smile on your face. There is hope. You have a remedy tailor-made (pardon the expression) that suits situations like yours. It's called small claims court.

Small claims court is part of the court system available in every state. It's a court where you don't need a lawyer, where the rules of evidence are not strictly applied, and where the goal is to obtain "substantial justice" for the parties in an expeditious manner. Substantial justice is explained in Chapter 2.



But don't run out and file just yet. Because there are 51 different small claims courts in the United States — the 50 states and the District of Columbia — it's important that you check with your local court system before you start your lawsuit, because not every state permits the same kind of case to be brought in small claims court.

## Doing It Without a Net — Or a Lawyer

A book such as this one is very handy to the average citizen who has not passed the bar, because small claims court is a court where lawyers are not only not required but in some places actually prohibited. Yes, you read that correctly: Some courts actually prohibit lawyers in small claims court, which makes it a unique place ripe for human error.

Did you ever hear the saying, “A person who represents himself has a fool for an attorney?” Or is it, “A person who represents himself has a fool for a client?” The point is that someone going to court without legal representation is the sort of thing you’ve always heard is a really bad idea. The people who get most upset about self-representation are called lawyers or attorneys or counselors.

Small claims courts operate on the assumption that you don’t need a lawyer in order to have your case presented easily and decided fairly. Because lawyers have chosen the law as a profession, they generally don’t like programs where legal services are available to just anyone — and at no cost or very little. You have a job, right? And you wouldn’t be happy if someone found a method of doing your job without having to pay you for it, so too lawyers are often skeptical of ideas that reduce potential income sources.

Well, if lawyers control state legislatures — which may actually be a myth — how did we end up with small claims courts all over the country? It’s really very simple. It’s called *small* claims court for a reason. The amount of money you can sue for is limited; In fact, in most places, it’s downright puny. Each state has set a limit as to what is the most money you can sue for in small claims court.



The cost of using a lawyer to represent you on your small claims court case in all likelihood would exceed the amount of money you potentially can recover, making it really hard to hire counsel. This makes the lawyers feel much better about letting you represent yourself.

Don’t think that my intent here is to bash lawyers. Small claims court can’t function without the thousands of attorneys who volunteer their time to serve as arbitrators in small claims courts throughout the United States. The court system couldn’t handle all of the cases brought in small claims court each year in a timely manner if every lawsuit had to be heard by a judge. It would be remiss of me not to recognize the contribution of members of the bar in every jurisdiction who help make the American court system function.

That being the case, if at times throughout this book, it seems as if I’m throwing lawyers under the bus, I ask forgiveness and I promise not to shift into reverse after they’re on the ground. To find out more about how lawyers fit into the small claims court system, check out Chapter 3.

## **To broadcast or not to broadcast? That is the question**

For those of you who are not currently starring on your own reality show, small claims court may be your opportunity to obtain your 15 minutes of fame. The producers of courtroom television shows and their offspring — both legitimate and illegitimate — often send staff members to small claims court to sift through the filings and identify potential cases to be heard before all of America on one of these television programs.

If the staff members think the case you filed with the small claims court clerk sounds interesting, the producers send you and your opponent a letter asking if you want to have your dispute heard on television. If you both agree to do this, you sign a contract with the television show producers and the case is decided under the rules established by the production company and not in your local small claims court. The production company's rules determine how the case will proceed and whether you have any recourse after the television judge decides the case in the event you're dissatisfied.

The advantage of having your case heard on television is that everyone is a winner in that they're compensated by the producers. If you're bringing the case and you win, the producers pay you the amount of the judgment awarded by the television judge. The person you're suing doesn't

lay out a cent. That person is also paid a fee for agreeing to have the case heard on television and appearing on the program. If you don't prove your case, and the television judge rules against you, both you and the person you are suing are compensated by the production company.

You may be thinking, fame and/or fortune, what's the downside? Well, as I mention, the entire proceeding is subject to the terms of the contract you sign with the producers. This means you may be sacrificing any rights you would have under the laws of the state in which you live and agreeing to be bound by the rules of the television show. Should there be a dispute between you and the producers, you may be subjecting yourself to the law of a different state, such as the state where the television show is filmed. You may be limiting your monetary compensation should the show not be broadcast on television for any reason. You'll also be subject to the editing discretion of the production company. This means you can end up looking like the complete incompetent your mother-in-law always thought you were.

If you and your opponent both decide that television is me, you can close this book and save yourself the trouble of reading it, because nothing that happens on television is even remotely like going to real court.

## ***Understanding Why Small Claims Court Rules Seem So Confusing***

Although you may not need a lawyer to use small claims court, you may need one to ferret out your state's various rules and regulations.

The information you need about the procedures of small claims court are contained in your state's statutes. You may not be able to find it conveniently located in just one section of your state's law — you may have to skip around to various statutes to figure out what court to file in, what procedures to

follow, and what rules of evidence are used in small claims court. Sometimes the rules may also be contained in some local regulation as well as in the state law.

Even after you find the information, understanding the statutes may require a lawyer or at least a reference to a legal dictionary, as many states still use terms that have been applied since colonial times from *common law* rather than plain language to describe the process and your rights.



Check whether your court system or the state bar association has some user-friendly pamphlets or websites that explain how small claims court operates in your area.

## ***Getting the go signal for small claims court***

Because every state is different, I can only generalize about your state's rules about small claims court. But generally, small claims court maybe an option for you if you meet three criteria:

- ✓ You're looking for a limited amount of money.
- ✓ The transaction arose locally rather than across county or state lines.
- ✓ The potential defendant is a readily identifiable individual or business.

See Chapter 2 for all the details about determining whether you belong in small claims court, or whether just knocking on your neighbor's door and apologizing for all the scenes you caused in the last month may be more appropriate.

## ***Being rejected by the small claims system***

Sometimes it's evident from the start that you and small claims court aren't a match made in heaven. For example, you don't belong in small claims court if:

- ✓ You want a remedy or result other than money, such as forcing someone to meet the terms of a contract or stopping your neighbor from doing something that really annoys you.
- ✓ You're looking to win enough money from the defendant to retire to a tropical paradise and never have to handle money again in your life.
- ✓ You want to sue so many people that you need a sports arena to seat them all and interpreters from every member nation of the UN.

## *Preparing for Your Big Day*

One thing that becomes apparent as you read this book, which I'm assuming that you find it so informative and entertaining that you read it from cover to cover and give as a holiday gift to all your friends and some of your enemies, is that preparation is the key to success.

Preparation for small claims court means:

- ✓ Knowing what kind of claim you have. Do you have a contract claim, property damage claim, or something else? (Chapter 4 can help you figure it out.)
- ✓ Figuring out how much money to seek and properly classifying your damage claim. (Chapter 5 explains money matters.)
- ✓ Determining who you're planning to sue: Is it a person or a business? If the defendant is a business, you need to know whether it's a sole proprietorship, a partnership, or a corporation. Chapter 6 tells you how to ferret out this information.
- ✓ Discovering the procedures used in your local court. (The clerk has all the answers; find out how to work with the clerk in Chapter 7.)
- ✓ Planning what you intend to do when you get to court. (Chapter 11 can help you avoid making a fool of yourself in court.)
- ✓ Deciding how to present your case. (Turn to Chapter 12 for tips on this.)

### **Finding specifics on your type of case**

Because small claims cases tend to fit into certain general categories, I've picked out some of the more typical situations I've seen in court to give a more detailed treatment as to what to expect and how to better prepare your case.

Chapter 16 talks about contract cases that involve where you live; landlord and condominium disputes both fit into this category.

If you're doing battle with a business, turn to Chapter 17 for details on what this entails. Chapters 18 and 19 discuss all the things that go wrong in daily living, such as arguments associated with weddings in Chapter 18 and irritating situations with the neighbors in Chapter 19. If you're struggling with issues rising from Internet transactions, Chapter 20 can help you succeed in court.