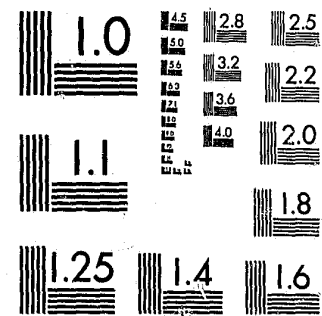


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THE STATE OF NEW YORK

IN SENATE

RELATIVE TO THE COMMISSION

ON LAW ENFORCEMENT AND PROSECUTION

AND THE JUDICIAL BRANCH

OFFICE OF THE CLERK

SENATE CLERK

EVERETT S. FINE, JR.
Executive Director

NEW YORK

THE SMALL CLAIMS COURT PROCESS

IN NEW YORK STATE

NEW YORK STATE COMMISSION
ON MANAGEMENT AND PRODUCTIVITY
IN THE PUBLIC SECTOR

NOVEMBER, 1978

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OVERVIEW

"The Supreme Court of the United States and the Court of Appeal will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the republic will be found in the treatment of the poor and ignorant; in indifference to this misery and helplessness lies disaster."¹

Purpose of the Court

The Small Claims Courts in New York State were established to provide "a people's court to which even the most humble may come for resolution of civil claims."² The impetus for establishing such a court was the overriding need to provide a forum to expedite quick and inexpensive resolutions of civil disputes between laymen who possessed claims economically impractical for representation by counsel. In response to these goals, the Small Claims Courts do not follow the rules and procedures governing practice in superior courts. Rather, they are obliged to render substantial justice according to the rules of substantive law and with disregard to rules of procedure, pleading and evidence that are properly within the expertise of the practicing attorney.

The essential elements of a successful Small Claims Court are that it be: inexpensive to use, efficient in its operation, easily accessible to the public, readily understandable to the layman and effective as a means of resolving civil disputes. If it is costly,

slow, difficult to reach, confusing or if its decisions can be rendered meaningless, it cannot be utilized fully by those whom it is meant to serve.

The Small Claims Courts have been popularly envisioned as "consumer" courts for petty disputes within the exchange relationship, but they are widely used for a host of other money controversies involving \$1,000 or less. Automobile accidents, landlord and tenant disputes, as well as alimony or other debt collection actions comprise a major portion of the claims instituted. Essentially, the court has jurisdiction over all non-equitable civil claims within its monetary limitations.

TABLE 1
Types of Actions in Small Claims Courts*

<u>Type</u>	<u>Number</u>	<u>Percentage</u>
Auto Accident	51	34
Consumer Fraud	35	23
Landlord/Tenant	17	11
Debt	15	10
Property	14	9
Contract	5	3
Negligence	2	1
Alimony	2	1
No Response	9	6
Total No. of Respondees	150	99

*Survey of 150 Bronx County Small Claims Courts litigants conducted by the Office of the Boro President, Robert Abrams, August, 1977. Appendix A, Question 1.

Brief History of Growth

The development of the Small Claims Court has reflected the changing needs of the State's population. The first Small Claims Court within New York State was established as part of Municipal Court of the City of New York in 1934. The old Justice of the Peace Court system, while rendering tolerable service in rural areas, was ineffectual in heavily populated cities. Operating under a fee system and without supervision, it became overly plaintiff-minded and often lent itself to injustice.³

The New York City Small Claims Court has served as a model for other Small Claims Courts in New York State. The enabling statute dictated a "simple, informal and inexpensive procedure for the prompt determination of each claims in accordance with the rules and principles of substantive law."⁴ In 1939, Section 220 of the Nassau District Court Act established Small Claims parts in the Nassau District Courts.

Considering the socio-economic and geographic diversity of New York State, it is not surprising that the need for such a forum was not readily apparent to all of the State's communities, the Justice of the Peace system seemed to fulfill their requirements. With the growth of suburbia, however, the traditional disparities between the urban dweller and the rural inhabitant became less distinct. Reacting to this stimulus, the Legislature in the early 1960's began to unify the procedures and practices of the entire

State's court system. As an outgrowth of this unification movement, a comprehensive approach to Small Claims Court was initiated, resulting in the creation of Article 18 of the Uniform Court Acts -- The Small Claims Act.

Article 18, which is modeled after the Small Claims provisions of the Municipal Court Act, was adopted in 1963 as part of both the New York City Civil Court Act and the Uniform District Court Act. In 1965, the Uniform City Court Act containing Article 18 was adopted establishing Small Claims Courts in the State's 61 cities outside of New York City. In 1975, universal accessibility to Small Claims Courts within the State's towns and villages was effectuated by the adoption of Article 18 to the Uniform Justice Court Acts.

The essential statutory provisions of Article 18 in these four unified court acts are identical. There are, however, jurisdictional differences among the acts which can have a significant affect on an individual's accessibility to the court. The New York City Civil Court Act provides for city-wide jurisdiction. The Uniform City Court Act provides for county-wide jurisdiction. The Uniform District Court Act restricts jurisdiction to within the district, and the Uniform Justice Courts Act limits jurisdiction to the town or village in which the court sits. Moreover, Section 1809 of the Uniform District Court Act differs substantially from the other Uniform Acts in that it permits

partnerships and associations to bring an action in Small Claims Court, whereas such plaintiffs are expressly denied access to the Small Claims Courts by Section 1809 of the other acts.

Monetarily, the Legislature has increased the court's jurisdictional ceiling regularly in response to inflationary pressures so that from its initial limitation not in excess of \$50 it can now hear any money damage claim of not in excess of \$1,000. A major dissimilarity exists, however, in courts operating under the Uniform Justice Court Act where the monetary limitation is not in excess of \$500.

The Need for Reform

Our survey of Small Claims Courts throughout the State has indicated a wide disparity in court rules and procedures among the different jurisdictions. Some of these disparities are dictated by statute, many, however, are discretionary. These discretionary differences can often be attributed to the diversity of the localities themselves and the resultant shifting needs of the local populace. Others, however, appear to be arbitrary determinations which frustrate rather than further the purpose of the court and the public's perception of it.

This lack of uniformity affects: the cost of bringing an action, the accessibility of the court to the claimants and the defendants, the use by the jurisdiction of Arbitrators and the standards and methods of selecting these voluntary Arbitrators. The most seri-

ous flaw within the Small Claims process remains unremedied -- the tenuous ability of judgment creditors to collect their awarded compensation.

This report will focus on these two aspects:

- the lack of uniformity among the State's jurisdictions and the extent to which the diversity affects court use; and
- a review of the judgment collection problem including current and proposed programs of relief.

UNIFORMITY

The Cost of Filing a Claim

Section 1803 of the Uniform Court Acts (NYCCCA, UDCA, UCCA and UJCA) provides that: "Small Claims shall be commenced upon the payment by the claimant of a filing fee of two dollars and the cost of registered or certified mailing." (New York City Civil Court Act Section 1803). The words "or certified" were inserted into the section by an amendment which became effective on September 1, 1977. This addition became necessary due to increases in the postal charges of registered mail; and were of such a magnitude that the Legislature believed they would impose financial hardships thus inhibiting prospective claimants from filing small claims.

In reality, the difference between registered and certified mailing in the Small Claims context is very slight. They both provide for a return receipt signed by the receiving party (defendant). However, registered mail does have the advantage of being carefully tracked from the time it is posted until it is delivered. Moreover, it is ideally suited for sending valuables through the mail as insurance coverage is available. Certified mailing is treated similar to first class mail but with the optional addition of the return receipt.

Small Claims Court uses the mails to serve process on defendants. While the tracking of the process might afford a degree of assurance as to its delivery, it is not essential for the normal oper-

ation of the court. The court requires that it be informed that the summons has been received. This can be accomplished by means of the certified mail with the return receipt option.

It is surprising that many of the jurisdictions surveyed have continued to allow only registered mail. This, of course, is their option. The statute does not mandate the use of certified mail, but leaves the decision to the individual court. (See Table 2).

Note, however, the difference in cost to the claimant is substantial. As of May 29, 1978, the cost of a registered letter is \$3 plus the one-ounce postage charge of \$.15 and an additional charge of \$.45 for the return receipt. The cost to the claimant for filing a claim would be the \$2 fee plus registered postage of \$3.60 for a total expense of \$5.60. In contrast; the certified mail charge is \$.80 plus the one-ounce postage charge of \$.15 and the additional \$.45 for the return receipt. With the inclusion of the filing fee, therefore, its total charge to the claimant is \$3.40.⁵ This constitutes a difference of \$2.20 from which there is little advantage. This additional charge does not benefit the court in any way and we thus recommend that all jurisdictions use the certified mailing option as provided by the statute.

Note on Statistical Data

It is extremely difficult to collect statistical data on the Small

Claims System within New York State. The Office of Court Administration collects Small Claims caseload data solely from the City of New York. The data presented herein represents either a response from the jurisdiction to letters of inquiry addressed to administrative judges or information furnished by the Small Claims Clerks within the jurisdiction.⁶

A similar problem arose in ascertaining the number of town and village courts within a county. Neither the Office of Court Administration nor the Judicial Districts themselves could furnish an accurate accounting. They did, however, make available to us a mailing list of town and village justices by county from which we could determine an approximate number.

It is unfortunate that more pertinent information was not available and we recommend that the Office of Court Administration exercise its powers in this regard.

TABLE 2
The Cost of Filing a Claim

<u>Jurisdiction</u>	<u>Certified or Registered</u>	<u>Cost of Filing a Claim</u>
Albany	certified	\$3.40
Binghamton	registered	\$5.60
Buffalo	registered	\$5.60
Corning	registered	\$5.60
Elmira	registered	\$5.60
Geneva	registered	\$5.60
Glens Falls	registered	\$5.60
Jamestown	registered	\$5.60
Long Beach	certified	\$3.40
Nassau	certified	\$3.40
Newburg	certified	\$3.40
New York City	certified	\$3.40
Olean	certified	\$3.40
Oneonta	registered	\$5.60
Plattsburg	certified	\$3.40
Poughkeepsie	certified	\$3.40
Rochester	registered	\$5.60
Rome	registered	\$5.60
Schenectady	registered	\$5.60
Suffolk	certified	\$3.40
Syracuse	certified	\$3.40
Troy	certified	\$3.40
Utica	certified	\$3.40
Watertown	registered	\$5.60
White Plains	certified	\$3.40

Accessibility

To have an effective Small Claims Court, it is essential that the court be accessible to the people it was designed to serve. Accessibility is affected by: the convenience of the court's hours to the litigants, the number of cases per session, and the proximity of the physical plant to potential litigants. Our survey of jurisdictions has revealed a wide disparity as to this accessibility question.

The first major area of disparity to be reviewed is whether the court operates during the day or at night. (See Table 3) This can prove to be of crucial importance to both claimant and defendant. If the court sits only by day, smaller claims might not be instituted due to the financial sacrifice claimants would have to endure by giving up working hours. As Table 3 indicates, only the jurisdictions in and around the City of New York provide a night time court. In other jurisdictions, the loss of potential revenues must be assumed by the claimant.

The New York Public Interest Research Group (NYPIRG) study of the Buffalo Small Claims Court entitled, The People's Court reported that: "fifty-three point two percent (53.2%) (of claimants) had to lose work time in order to argue their case in court. In the words of one claimant, 'if you win, its (losing work time) not so bad. If you lose though, you are a double loser because of loss of a half day's work'"⁷ It is surprising that only 23.3 percent of those surveyed by NYPIRG found the court hours inconvenient.⁸

Unfortunately, it is not possible to estimate the number of potential claimants who are inhibited from using the courts because of this resulting financial sacrifice.

TABLE 3
Accessibility

<u>Jurisdiction</u>	<u>Day or Night</u>	<u>Per Week No. of Sessions</u>	<u>Yearly Caseload</u>	<u>Average No. of Cases per Session</u>
Albany	Day	5	1,200	4.6
Binghamton	Day	1	952	18.3
Buffalo	Day	2	3,462	33.3
Corning	Day	1	200	3.8
Elmira	Day	2	203	1.9
Geneva	Day	1	82*	1.6
Glens Falls	Day	1	96	1.8
Jamestown	Day	1	621	11.9
Long Beach	Day & Night	3	400*	2.9
Nassau District Courts	Day & Night	12	12,331	21.0
Newburg	Day	5	87	0.3
New York City	Night	17	63,620	72.0
Bronx County	Night	3	8,775	62.7
Kings County	Night	4	18,362	88.3
New York County	Night	5	17,427	67.0
Queens County	Night	4	16,115	77.5
Richmond County	Night	1	2,935	56.4
Olean	Day	1	207*	4.0
Oneonta	Day	2	175*	1.7
Plattsburg	Day	1	125*	1.7
Poughkeepsie	Day	1	220	4.2
Rochester	Day	2	2,367	22.8
Rome	Day	1	1,044	20.1
Schenectady	Day	5	541	2.1
Suffolk District Courts	Day	4	9,222	44.3
Syracuse	Day	2	501	4.8
Troy	Day	1	308*	5.9
Utica	Day	5	2,089	8.0
Watertown	Day	1	129	2.5
White Plains	Night	1	504	9.7

*Small Claims Clerk estimate..

The number of cases per session that a Small Claims Court hears has a profound effect on its accessibility. In New York City, for example, on any given night, an average of 72 cases are on the Small Claims Calendar (See Table 3). Seventy-two claimants and an equivalent number of defendants and/or their attorneys create a chaotic situation which can prove overwhelming to the uninitiated. Before the calling of the calendar, the Judge explains to all present that they must respond to the clerk's call, but does not explain any of their procedural rights that must be applied for at the calling of their case. The calendar is called precisely at 6:30 PM. If a claimant does not respond to the clerk's call, the action is dismissed. In 1977, 33 percent of the total claims disposed of in New York City Small Claims Court were dismissed for lack of appearance of the claimant or lack of appearance of both parties.⁹ Claimants unfamiliar with the court's procedure or simply lost in the chaos of the courtroom, can find their case dismissed simply by not responding to the clerk when called. A solution to this serious problem would be a reduction in the number of cases per session.

To compound this difficulty, the New York City claimant is not afforded the same access to the Small Claims Court as the State's other residents. The counties outside of New York City provide access to the Small Claims procedure through a variety of judicial forums.

Sixty-one cities outside of the City of New York are organized under the Uniform City Court Act (UCCA). Section 1801 of the UCCA empowers these courts with jurisdiction over any defendant who "either resides, or has an office for the transaction of business or a regular employment, within the county." (Emphasis added) These city courts provide a county-wide jurisdiction for any small claim. In fact, a number of counties (See Table 4) have more than one city court; all of which have county-wide jurisdiction. In Oneida County, for example, there are three city courts established under the UCCA (in Rome, Sherrill and Utica). With no other provisions in the UCCA regarding jurisdiction, claimants can forum-shop among these courts to find the one most beneficial to them.

City courts are not the only forums within a county which have Small Claims jurisdiction. Courts organized under the Uniform Justice Court Act (UJCA) provide for Small Claims jurisdiction within the State's towns and villages. The UJCA differs from the other uniform acts both as to its monetary ceiling (\$500)¹⁰ and its territorial jurisdiction (defendant must reside or have an office for the transaction of business or regular employment within the municipality).¹¹ It serves, however, to provide an easily accessible forum for many potential litigants throughout the State.

In Nassau County and in half of Suffolk County, Small Claims Courts are organized under the Uniform District Court Act (UDCA Article 18). These "district" courts were designed to eliminate town and village courts by providing judicial forums at centralized locations within sections of the county. UDCA courts can be viewed as somewhat of a compromise between the Uniform City Courts (UCCA) and the Uniform Justice Courts (UJCA). The monetary ceiling of UDCA courts is identical to that of the UCCA (\$1,000 UDCA Section 1801), but their territorial jurisdiction is similar to the UJCA in that defendant must reside or have an office for the transaction of business or regular employment within the district (UDCA Section 1801). This provision can be confusing to potential claimants who must locate the correct district in which to bring the action. Moreover, the days and times of Small Claims hearings vary from district to district. The system does, however, provide for a far more accessible court than the UCCA or the New York City Small Claims Court.

Table 4 indicates the effect of these forums on accessibility to the populace of every county in the State. It is interesting to note that the New York City counties (with the exception of New York County) are among the least accessible both in terms of the number of people per court and the distance a resident must travel to present a claim.

The survey of the Bronx County claimants seems to underline the findings of Table 4. Fifty-three percent desired a Small Claims Court to meet regularly in their neighborhoods. (See Appendix A, Question 11-A2).

TABLE 4
Population and Geographical Accessibility

County	City and District Court	Town and Village Courts*	Total No. of Courts	Population	Court to Population Ratio 1	Population Accessibility Rank	Square Miles	Court to Square Miles Ratio 1	Geographical Accessibility Rank
Albany	3	14	17	287,580	16,916	51	526	30.9	18
Allegany	0	32	32	50,435	1,576	3	1,047	32.7	23
Bronx	1	0	1	1,355,482	1,355,482	60	41	41.0	42
Broome	1	21	22	219,376	9,972	47	714	32.4	21
Cattaraugus	2	36	38	84,521	2,224	11	1,318	34.7	29
Cayuga	1	28	29	77,833	2,684	18	698	24.1	5
Chautaugua	2	29	31	147,156	4,747	34	1,081	34.9	30
Chemung	1	14	15	100,377	6,692	41	415	27.7	7
Chanango	1	22	23	47,531	2,067	8	903	39.3	40
Clinton	1	16	17	81,979	4,822	36	1,059	62.3	53
Columbia	1	20	21	55,722	2,653	17	645	30.7	17
Cortland	1	16	17	47,804	2,812	20	502	29.5	13
Delaware	0	20	20	47,071	2,354	13	1,443	72.2	55
Dutchess	2	24	26	234,511	9,020	45	813	31.3	19
Erie	3	33	36	1,089,327	30,259	54	1,058	29.4	12
Essex	0	19	19	35,378	1,862	7	1,823	95.9	60
Franklin	0	21	21	44,765	2,132	9	1,674	79.7	57
Fulton	2	10	12	54,719	4,560	33	498	41.5	44
Genesee	1	14	15	60,509	4,034	29	501	33.4	26
Greene	0	15	15	37,955	2,530	16	653	43.5	46
Hamilton	0	10	10	5,080	508	1	1,735	173.5	62
Herkimer	1	26	27	67,969	2,517	14	1,435	53.1	50
Jefferson	1	31	32	90,762	2,836	21	1,294	40.4	41
Kings	1	0	1	2,408,234	2,408,234	62	70	70.0	54
Lewis	0	21	21	25,198	1,200	2	1,291	61.5	52
Livingston	0	18	18	56,892	3,161	24	638	35.4	33
Madison	1	19	20	65,469	3,273	25	661	33.0	24
Monroe	1	22	23	708,642	30,810	55	675	29.3	11
Montgomery	1	10	11	55,729	5,066	37	408	37.1	39
Nassau	7	0	7	1,403,289	200,470	57	289	41.3	43
New York	2	0	2	1,429,033	714,517	59	23	11.5	3
Niagara	3	13	16	237,521	14,845	48	532	33.3	25
Oneida	3	33	36	266,077	7,391	42	1,223	34.0	27

TABLE 4 con't.

County	City and District Court	Town and Village Courts*	Total No. of Courts	Population	Court to Population Ratio 1	Population Accessibility Rank	Square Miles	Court to Square Miles Ratio 1	Geographical Accessibility Rank
Onondaga	1	27	28	472,708	16,882	50	794	28.4	8
Ontario	2	18	20	85,060	4,253	31	651	32.6	22
Orange	3	23	26	241,811	9,300	46	833	32.0	20
Orleans	0	11	11	38,328	3,484	27	396	36.0	34
Oswego	2	24	26	109,651	4,217	30	964	37.1	37
Ostego	1	26	27	58,021	2,149	10	231	8.6	1
Putnam	0	9	9	69,276	7,697	43	231	25.7	6
Queens	1	0	1	1,963,705	1,963,705	61	108	108.0	61
Rensselaer	2	16	18	153,377	8,521	44	665	36.9	36
Richmond	1	0	1	325,159	325,159	58	58	58.0	51
Rockland	0	15	15	251,114	16,741	49	176	11.7	4
St. Lawrence	1	33	34	117,048	3,443	26	2,768	81.4	58
Saratoga	2	22	24	143,980	5,999	38	818	34.1	28
Schenectady	1	6	7	157,348	22,478	53	207	29.6	14
Schoharie	0	17	17	28,574	1,681	5	624	36.7	35
Schuyler	0	11	11	17,823	1,620	4	330	30.0	16
Seneca	0	11	11	34,036	3,094	23	330	30.0	15
Steuben	2	38	40	101,003	2,525	15	1,410	35.3	32
Suffolk	5	5	10	1,253,550	125,355	56	929	92.9	59
Sullivan	0	20	20	60,278	3,014	22	980	49.0	47
Tioga	0	10	10	47,937	4,794	35	524	52.4	49
Tompkins	1	12	13	83,669	6,436	39	482	37.1	38
Ulster	1	22	23	153,761	6,685	40	1,141	49.6	48
Warren	1	11	12	52,531	4,378	32	887	73.9	56
Washington	0	20	20	54,638	2,732	19	836	41.8	45
Wayne	0	21	21	82,543	3,931	28	606	28.9	10
Westchester	6	35	41	879,241	21,445	52	443	10.8	2
Wyoming	0	17	17	38,576	2,269	12	598	35.2	31
Yates	0	12	12	20,817	1,735	6	343	28.6	9
New York State	71	1,099	1,170	18,075,487	15,449	--	47,831	40.9	--

*Town Courts frequently have concurrent jurisdictions with Village Courts within a town. Where that has occurred, only one court was counted. In Suffolk County there are five Town Courts that are not within the jurisdiction of Suffolk District Courts. All of the Town and Village Courts in Nassau County were ignored.

A Small Claims Court Arbitrator is an attorney who serves gratuitously in resolving any case upon the express consent of both parties. The consent of the parties to submit their dispute to the Arbitrator is vital as to protect the parties' constitutional rights of due process. The submission to arbitration constitutes a waiver of the right of appeal. The Arbitrator's decision is usually non-appealable (unless it can be established that the Arbitrator exceeded his or her authority or has rendered a decision not based in substantive law). The parties should be informed of this waiver both by the judge in open court and the Arbitrator individually, and the consent should be recorded as part of the permanent record. An example of such a form is that which is used in New York City Small Claims Court. (See Appendix B).

Small Claims Courts are uniquely suited for decisions rendered by Arbitrators. Claims are restricted to relatively simple controversies. If a claim is perceived as being too complex for ready resolution, it can (by means of the courts discretionary powers) be removed to the regular Civil Court.¹² The first duty of a hearing officer (Judge or Arbitrator) is to attempt to effectuate a settlement between the parties, and only when this mediation proves fruitless should the officer exercise adjudicatory powers. An experienced attorney can elicit responses from both sides of the dispute in much the same manner as he or she deals

with prospective clients: with a clear explanation of the rules of substantive law, the attorney/arbitrator has the expertise to encourage settlements and, if need be, render a proper decision.

It is unfortunate that few of the jurisdictions surveyed have this technique (See Table 5). The use of arbitration constitutes a major savings in judicial cost effectiveness.

For example, while a New York City Civil Court Justice earns approximately \$42,000 per annum in salary alone, the Arbitrator serves gratuitously. While the Judge has overall responsibility for the operation of the court, New York City Arbitrators discharge 78 percent of all cases that went to trial.¹³ Chief Judge Joseph Falco of Syracuse estimates that since the initiation of arbitration on March 15, 1978, 98 percent of all small claims have been heard by the Arbitrators.¹⁴

In developing an arbitration system, the jurisdiction's greatest difficulty is in enlisting a sufficient number of attorneys willing to donate their time and expertise to the court. Article 18 of the Small Claims Act does not make any reference to the Rule of Arbitrators, thus the means of their selection and their requisite legal qualifications are in the discretion of each jurisdiction. Three general programs appear to be in current use:

1. New York City Plan
2. Syracuse Plan
3. Buffalo Plan

TABLE 5
Arbitrator Utilization

<u>City</u>	<u>Use of Arbitrators</u>	<u>Total Number of Small Claims 1977</u>	<u>Day or Night</u>
Albany	Yes	1,200*	Day
Binghamton	No	952	Day
Buffalo	Yes	3,462	Day
Corning	No	200	Day
Elmira	No	203	Day
Geneva	No	82*	Day
Glens Falls	No	96	Day
Jamestown	No	621	Day
Long Beach	No	400*	Day & Night
Nassau	Yes	12,331	Day & Night
Newburg	No	87	Day
New York City	Yes	63,620	Night
Olean	No	207*	Day
Oneonta	No	175*	Day
Plattsburg	No	125*	Day
Poughkeepsie	No	220	Day
Rochester	No	2,367	Day
Rome	No	1,044	Day
Schenectady	No	541	Day
Suffolk	No	9,222	Day
Syracuse	Yes	501	Day
Troy	No	308*	Day
Utica	No	2,089	Day
Watertown	No	129	Day
White Plains	Yes	504	Night

*Estimates by Small Claims Clerks.

New York City Plan

New York City Small Claims Court enjoys two distinct advantages vis-a-vis other jurisdictions in its selection of Arbitrators: it has a large pool of potential Arbitrators to draw from as New York is the largest city in the State, and its Small Claims Court is a night court. The importance of the night court advantage cannot be underestimated for the attorney is not asked to sacrifice normal business hours in order to serve the court. This freedom allows the New York City Court to be very selective in appointing Arbitrators. Arbitrators are required to have been admitted to practice law for at least 10 years (as required for a civil court judge). They qualify for such duty only after participation in an orientation seminar conducted by the Administrative Judge, and only after being duly sworn in by him to so perform. Arbitrators are assigned by the Administrative Judge in regular order to serve in those parts and on such nights as they select. Eight hundred lawyers serve gratuitously as Arbitrators within the New York City system.¹⁵

Syracuse Plan

On March 15, 1978, the Appellate Division permitted the City Court of Syracuse to initiate an arbitration program within its Small Claims Court.¹⁶ Unlike New York City, the Syracuse Small Claims Court is in session during the day starting at 2:00 PM every Tuesday and Friday.¹⁷ Potential Arbitrators, therefore, must donate part of their working day. The court requires Arbitrators to have

been admitted to the practice of law for at least three years and, of course, to serve without compensation.¹⁸ It has been suggested by opponents of arbitration that the court would be unable to attract a sufficient number of volunteer attorneys to make such an idea practical. Yet, in Syracuse, this fear seems to have been largely imaginary. Following an appeal by Chief Justice Joseph Falco, a list of 90 Arbitrators has been formed from which a regular schedule of duty can be created. While the program cannot as yet be accurately evaluated, it has been implemented and should prove to be beneficial to both the court and the public.

Buffalo Plan

Under the Buffalo program, Arbitrators are selected from attorneys who are present in Small Claims Court representing clients of their own and who then volunteer to act as Arbitrators in other actions.¹⁹ This system has the advantage of providing a readily available workforce without the need of administrative oversight and suits well the informal nature of Small Claims proceedings. It does not, however, require any legal background beyond having been admitted to practice. Moreover, it might give rise to an appearance of professional impropriety. In the one case, the attorney is an advocate before a tribunal and must zealously represent and protect the rights of the client. In the other case, however, the attorney serves as a judicial officer, the Arbitrator and must perform the impartial role of adjudicator, rising dispassionately above the

dispute in search for the truth. The appearance of these contradictory roles in the same session of the Court may undercut the public's acceptance of the professionalism of an Arbitrator.

Chief Judge H. Buswell Roberts of the City Court of Buffalo estimates that slightly more than half of the litigants agree to arbitration.²⁰ In contrast, the NYPIRG study of the Queens County Small Claims Court, Winning Isn't Everything shows 78 percent of the surveyed claimants submitted to arbitration.²¹ In the survey of Bronx County Small Claims Court, 60 percent of those responding utilized arbitration (See Appendix A, Question 4). Perhaps the hesitancy of the Buffalo claimants to use the speedier arbitration method might be traced to Buffalo's program for the selection of an Arbitrator.

Arbitrators serve to expedite the large number of controversies which Small Claims Courts handle. While the system might prove to be impractical in smaller cities, it should certainly be examined by courts with heavier caseloads. Small Claims Courts render substantial justice and within its informal procedures the Arbitrators can operate effectively.

THE PROBLEMS WITH COLLECTION

The difficulties inherent in collecting unsatisfied judgments permeate our entire civil court system. Edward Pechler, Sheriff of the City of New York, reported that approximately 50 percent of all judgments referred to his office remain unsatisfied.²² This flaw in the civil court system where claimants are afforded the benefits of counsel, is magnified in the Small Claims parts where inexperienced judgment creditors attempt to collect their awarded compensations. Andrew Odell, Director of the New York City Department of Investigation, revealed that 65 percent of all Small Claims executions given to the City Marshalls were unsatisfied in 1975.²³

This problem breaks down into three distinct areas of analysis: what the claimant is expected to do before trial; what claimant is asked to do after the judgment has been rendered; and the likelihood that the claimant will be informed of these responsibilities.

The Small Claims Court is the only judicial forum where a claimant is encouraged to present his or her case pro se.²⁴ The system, however, is hesitant to abandon its time-honored traditions of rules and practice. To be sure, often constitutionally and statutorily it cannot. The claimant usually confronts these hurdles without legal counsel or assistance, and frequently without any

foreknowledge of their existence. The Court assumes that the claimant has brought his or her action against the legally correct defendant. It assumes that the claimant will furnish legally binding evidence of damage. It assumes that the claimant is aware of the difficulties in the collection process which demands that the claimant locate the defendant's assets and that an improverished person is virtually judgment proof. In truth, however, claimants are for the most part unaware of any of these assumptions. Unfortunately, the court seems unconcerned with the claimant's ignorance and its resultant effect.

More often than not, the claim is initiated in a fury of righteous indignation: the cleaner has ruined the claimant's \$100 dress! Who does she sue? If she has a receipt, the claimant will look for the cleaner's name on it. But this receipt can be in any name. It can announce the cleaners as "E-Z Cleaners" when the corporation's legal name is "XYZ, Inc." The Small Claims Clerk might advise her to verify the legal name with the County Clerk, but often will not. The Court itself is disinterested. It will adjudicate the claim in the name provided whether or not the defendant is correctly named. One cannot collect a judgment against "E-Z Cleaners" from "XYZ Cleaners". The judgment is valueless.

Legislation has frequently been presented to permit a claimant to secure a legally binding judgment against a corporation under any name which it holds out to the public.²⁵ While commendable, this legislation gives rise to a serious constitutional difficulty.

The form of service of a Small Claims complaint is through the mail, and defendants must be afforded the knowledge of a pending suit and the opportunity to defend themselves. An incorrectly named defendant might not be aware of the charge.

Although all of the courts (and a few private and public consumer groups) publish claimant's guides to Small Claims Courts,²⁶ these publications are rarely provided in sufficient numbers to accommodate every Small Claims litigant. In addition, few guides are published in languages other than English; a problem which severely inhibits ethnic communities from full access to the courts. Claimants must rely on the Small Claims Court Clerks who often are far too understaffed to provide adequate counseling.²⁷

A program which does provide adequate counseling is currently in operation at the East Harlem Small Claims Court. Funded by the Model Cities Program of the Department of Housing and Urban Development, it provides bilingual communication both in the Clerk's Office and during the court proceedings. The New York City Department of Consumer Affairs provides consumer advocates who offer advisory assistance to prospective claimants.²⁸ Under the auspices of former Administrative Judge Edward Thompson, the New York City Small Claims Court experimented with a program of volunteer attorneys to provide similar assistance. This project, unfortunately, was not greeted with enthusiasm and has thus been unable to provide a sufficient staff to have made a meaningful impact.

Legislation was proposed which would have provided for:

A natural person who is a party may be assisted by a friend. The court may also use the services of para-professionals to assist natural persons to the extent that money is appropriated or granted to the court for this purpose. The term "assist" as used in this section shall not mean participation in the proceedings in a representative capacity.²⁹

This proposal might have eliminated some of the more flagrant problems in the system (e.g. suing in the legally incorrect name). It nevertheless was not passed possibly due to its initiation of a new court expenditure and possibly because it offends the essential ideal of Small Claims Court -- that parties are to represent themselves. Without the enactment of similar legislation, however, the inherent problems of the uninformed claimant will simply remain unchanged.

The naivety of claimants is also apparent during the trial itself. Evidence of damages, despite the relaxed rules of the court, must be clearly documented in paid bills, not in estimates. Claimants have the right to subpoena witnesses and/or professional verifiers of damages (mechanics) but are frequently unaware of this right or how to make use of it. The courts do inform claimants of these necessities but give little guidance in how to fulfill them. An exception can be found in the Nassau District Court which has composed a claimant's checklist to alert potential plaintiffs as to the possible pitfalls as well as their responsibilities and rights. (See Appendix C).

The Assembly Judiciary Committee in their report, Your Day (or Night) In Court proposed a model consumer guide for use in all of the State's courts. (See Appendix D). This guide has the advantage of being short, easy to read and yet comprehensively outlines the difficulties claimants must overcome to ensure a reasonable expectation of success.

If claimants have been successful throughout the adjudicatory process, they are still confronted with the frustrating problem of trying to collect their money. The survey of Bronx County claimants reveals that 35 percent of the successful claimants have not been able to collect their money. (See Appendix A, Question 7). The New York Public Interest Research Group's studies of the Queens³⁰ and Buffalo³¹ Small Claims Courts report similar findings. The central problems are the judgment creditor's ignorance of the complexity of the collection process and the active role they must play for its successful completion.

Upon receipt of the decision (usually three or four days after the hearing), the claimant is advised to contact the defendant and request payment. (See Appendix E). If payment is not forthcoming within 10 days, the court suggests that the claimant contact the Sheriff or Marshall. This is essentially the last contact the court has with the case. It will not act as a collection agency. If the judgment debtor is recalcitrant, the judgment creditor's legal avenues within the system are limited to the Sheriff and/or the Marshall.

The Marshalls receive fees based on a percentage of the collected revenues. They act essentially as private entrepreneurs in the collection business to make a profit. The \$1,000 maximum monetary jurisdiction of Small Claims Court does not make collecting a Small Claims judgment financially attractive of them.

Judgment creditors must depend, therefore, upon the Sheriff.

The Sheriff, before taking any action, expects the judgment creditor to locate the defendant's assets: the name and location of the defendant's bank, business and employer. Without this information, the Sheriff will not commence any collection activities. In addition, the claimant must pay a \$10 fee. (See Appendix F).

The process of locating the judgment debtor's assets often proves to be an impossible task for average judgment creditors if they do not seek outside assistance. The Sheriffs admit that even when the judgment creditor has supplied all the pertinent information, the chances of collecting the judgment remain poor.³² The Sheriff is extremely reluctant to act if the judgment is rendered as a result of defendants not appearing at trial (inquest). In 1977, 18.6 percent of all claims disposed of in the New York City Small Claims Court were the result of such a default judgment (inquest).³³ New York City's Sheriff Pechler maintains that there are constitutional due process questions which inhibit his office from attaching assets as a result of such a judgment.³⁴

To encourage greater interest within the Office of the Marshall and the Sheriff, Sections 1812 of the New York City Civil Court Act, Uniform City Court Act, Uniform District Court Act and Uniform Justice Court Act provide that: treble damages and attorney fees can be recovered where three or more Small Claim judgments are ignored by a party. However, the section does not apply to ordinary private individuals who fail to pay judgments based on disparate incidents. It only affects judgments that arise from similar and repeated courses of conduct. It also permits a defense of the lack of resources to further thwart collection. Neither the court personnel interviewed nor Sheriff Pechler could recall a single application of this provision.³⁵ It would indeed be the enterprising claimant who would be aware of this provision, and the tenacious judgment creditor who could find the necessary two other outstanding judgments.

The Assembly has proposed (A.8012) that the Sheriff create a Small Claims sheriff's bureau in each county of New York City to deal exclusively with the collection of Small Claims judgments. However, as it does not provide for the employment of additional sheriffs the bill met strong resistance from the Sheriff's Office. While the creation of such a bureau might prove beneficial to judgment creditors, it does little to relieve the underlying problem of locating the judgment debtor's assets.

In the private sector, NYPRIG's Small Claims Action Center provided a more meaningful service to judgment creditors. Established in

1977, under a one-year grant from Citibank, the Action Center assisted 1,300 judgment creditors in obtaining information subpoenas, locating the debtor's assets and negotiating with judgment debtors to establish payment schedules. During their one year of existence, the Action Center collected over \$60,000 on behalf of small claimants with unpaid judgments. Unfortunately, this project was of limited duration and has ceased its operation.³⁶ It does give an indication, however, as to what can be done. A similar program could be established under State auspices utilizing Comprehensive Employment and Training Act (CETA) personnel. This would have a two-fold effect: it would provide a service which is needed and at the same time train an unskilled workforce in an area which has the potential of generating private sector employment.

The New York City Department of Consumer Affairs has initiated a more formal assistance program. If the judgment debtor is a business which must be licensed by the Department, a warning letter is sent to it alerting the licensee that it must promptly pay any final judgment of the court or the license will not be renewed. Robert Egan, Deputy Commissioner of the New York City Department of Consumer Affairs feels that such a program instituted on a Statewide basis could have a beneficial impact.³⁷ The Assembly Judiciary Committee apparently agrees. In their report, Your Day (or Night) In Court, they recommend that all State licensing

statutes be similarly amended. The report recommends that all license applicants to certify that any judgments have been discharged, appealed or are being paid over an extended time period.³⁸

The most effective means to implement such a program would be to charge either the Secretary of State or the State Consumer Protection Board with this responsibility. There are two reasons why it is vitally important that this procedure remain centrally administered. First, many corporations conduct business in more than one jurisdiction making it extremely difficult for a local agency to bring the necessary pressure to bear. Second, the State-wide system of local consumer agencies is extremely weak. While all of the State's 57 counties outside of New York City have a Weights and Measures Department, these agencies are generally not interested in judicial actions. They will refer complaints to the Small Claims Court, but will do nothing beyond that (although they do have licensing powers).

It is the Consumer Affairs Departments which are primarily interested in the rights of the individual consumer. New York State Association of Counties lists only six Consumer Affairs Departments among the State's 57 counties outside of New York City.³⁹ With a lack of cohesive consumer affairs network, the overall responsibility must lie with the State.

APPENDIX A
Results of Bronx Survey
150 Respondees

Question #1 - What type of case did you have in Small Claims Court?

	<u>Number</u>	<u>Percentage</u>
1. Auto Accident	51	34
2. Landlord/Tenant	17	11
3. Consumer Fraud	35	23
4. Other	38	25
a. Debt	15	10
b. Property	14	9
c. Contract	5	3
d. Negligence	2	1
e. Alimony	2	1
5. No Response	9	6

Question #2 - How much did you sue for?

	<u>Number</u>	<u>Percentage</u>
1. \$1-\$100	23	15
2. \$101-\$200	24	16
3. \$201-\$300	24	16
4. \$301-\$400	15	10
5. \$401-\$500	18	12
6. \$501-\$600	8	5
7. \$601-\$700	6	4
8. \$701-\$800	6	4
9. \$801-\$900	6	4
10. \$901-\$1,000	18	12
11. No Response	2	1

Question #3 - Did you and the other person agree to settle the case?

	<u>Number</u>	<u>Percentage</u>
1. Yes	26	17
2. No	124	83

Question #4 - Who heard the case?

	<u>Number</u>	<u>Percentage</u>
1. Judge	36	24
2. Arbitrator	90	60
3. No Response	24	16

Question #5 - Who won the case?

	<u>Number</u>	<u>Percentage</u>
1. You Won	123	82
2. They Won	10	7
3. No Response	17	11

Question #6 - If you won, how much money were you awarded?

	<u>Number</u>	<u>Percentage</u>
1. \$1-\$100	31	21
2. \$101-\$200	33	22
3. \$201-\$300	19	13
4. \$301-\$400	11	7
5. \$401-\$500	11	7
6. \$501-\$600	7	5
7. \$601-\$700	1	1
8. \$701-\$800	3	2
9. \$801-\$900	2	1
10. \$901-\$1,000	5	3
11. No Response	17	11
12. Lost	10	7

Question #7 - Have you collected the money?

	<u>Number</u>	<u>Percentage</u>
1. Yes	85	57
2. No	53	35
3. No Response	12	8

Question #8 - If you have collected the money, please answer these questions - 85 affected questionnaires.

A. How long did it take to collect the money?

	<u>Number</u>	<u>Percentage</u>
1. Immediately	7	8
2. Within One Week	18	21
3. Within One Month	40	47
4. Within Six Months	12	14
5. Within One Year	2	2
6. Longer	1	1
7. No Response	5	6

B. Did you have to contact the other person to get the money?

	<u>Number</u>	<u>Percentage</u>
1. Yes	42	49
2. No	37	43
3. No Response	6	7

C. If you did contact the other person, how many times did you do so?

	<u>Number</u>	<u>Percentage</u>
1. Once	14	16
2. Twice	7	8
3. Thrice	6	7
4. Four Times	4	5
5. More than Four Times	10	12
6. No Response	44	52

D. Did you do anything else to get your money?

	<u>Number</u>	<u>Percentage</u>
1. Nothing		
a. Yes	47	55
b. No	25	29
c. No Response	13	15
2. Contacted Small Claims Court		
a. Yes	11	13
b. No	1	1
c. No Response	73	86
3. Contacted Sheriff's Office		
a. Yes	9	11
b. No	1	1
c. No Response	75	88
4. Contacted Marshall's Office		
a. Yes	7	8
b. No	1	1
c. No Response	77	91
5. Other		
a. Yes	5	6
b. Attorney	5	6
c. No	1	1
d. No Response	74	87

E. If you contacted the Court, the Sheriff or the Marshall, which of them were helpful?

	<u>Number</u>	<u>Percentage</u>
1. Court	2	2
2. Sheriff	5	6
3. Marshall	5	6
4. Other	1	1
5. No One	3	4
6. No Response	60	81

Question #9 - If you have not collected the money, please answer these questions - 53 affected questionnaires.

A. What did you do to try to get your money?

	<u>Number</u>	<u>Percentage</u>
1. Nothing		
a. Yes	3	6
b. No Response	50	94
2. Called other person on the phone?		
a. Yes	28	53
b. No Response	25	47
3. Wrote letter to the other person?		
a. Yes	16	30
b. No Response	37	70
4. Contacted Small Claims Court?		
a. Yes	28	53
b. No Response	25	47
5. Contacted Sheriff's Office?		
a. Yes	36	68
b. No Response	17	32
6. Contacted Marshall's Office?		
a. Yes	17	32
b. No Response	36	68

B. If you contacted the Court, the Sheriff or the Marshall, which of them were helpful?

	<u>Number</u>	<u>Percentage</u>
1. Court	0	0
2. Sheriff	7	13
3. Marshall	1	2
4. No One	11	21

C. Do you plan to do anything else to try to get your money?

	<u>Number</u>	<u>Percentage</u>
1. Yes	26	49
a. Private Consumer Group	6	11
b. Go Back to Court or Sheriff	6	11
c. Get a lawyer	5	9
d. State Consumer Group	3	6
e. Employer or Carrier	2	4
f. Superior Court	1	2

	<u>Number</u>	<u>Percentage</u>
g. Establish Part Payments	1	2
h. Private Action	1	2
2. Waiting	9	17
3. No	10	19
4. No Response	8	15

Question #10 - Based on your experience, do you think you would use Small Claims Court if a similar situation happened in the future?

	<u>Number</u>	<u>Percentage</u>
1. Yes	110	73
2. No	28	19
3. Do Not Know	6	4
4. No Response	6	4

Question #11 - Would you be more likely to use Small Claims Court again --

A. If the courts were open on Saturday?

	<u>Number</u>	<u>Percentage</u>
1. Yes	66	44
2. No	9	6
3. No Response	75	50

B. If the courts were open on Sunday?

	<u>Number</u>	<u>Percentage</u>
1. Yes	37	25
2. No	14	9
3. No Response	99	66

C. If the courts met regularly in a widely advertised place in your neighborhood?

	<u>Number</u>	<u>Percentage</u>
1. Yes	80	53
2. No	15	10
3. No Response	55	37

D. If claims could be filed at a variety of locations around the Bronx?

	<u>Number</u>	<u>Percentage</u>
1. Yes	64	43
2. No	17	11
3. No Response	69	46

E. If you could file a claim by mail?

	<u>Number</u>	<u>Percentage</u>
1. Yes	74	49
2. No	20	13
3. No Response	56	37

APPENDIX B
Waiver Consent
COPY

CIVIL COURT OF THE CITY OF NEW YORK
Small Claims Part, County of

vs.

S.C. No. _____ 19 _____

Our consent is hereby given to submit this controversy to _____
as Arbitrator, pursuant to the Civil Court Code and the Rules on Arbitration of
the Civil Court by which we agree to be bound.

Upon the filing of the Arbitrator's award, judgment with disbursements and
costs shall be entered by the Clerk of the Court. The controversy involves
_____ and is more particularly set
forth in the notice of claim.

WE WERE INFORMED THAT ARBITRATOR'S AWARD IS FINAL, AND THAT NO APPEAL WILL
BE PERMITTED.

Dated _____ 19 _____

Attorney for Claimant

Claimant in Person

Attorney for Defendant

Defendant in Person

OATH OF ARBITRATOR

I, _____, the arbitrator designated in the above entitled case,
do hereby solemnly swear that I will well and faithfully and impartially and to the
best of my ability hear and determine as arbitrator the controversy in the above en-
titled case.

Sworn to before me this _____

_____ day of _____ 19 _____

J.C.C.

LITIGANTS WERE INFORMED THAT ARBITRATOR'S AWARD IS FINAL AND NO APPEAL IS
PERMITTED.

Arbitrator

ARBITRATOR'S AWARD

The undersigned, the arbitrator in the above entitled case, having heard
the disputants, makes this finding and award:

_____ is entitled to recover from _____
the sum of \$ _____.

Arbitrator

Dated _____ 19 _____

APPENDIX C
Small Claims
COPY

Instructions for proving damages under circumstances where a party has paid for services or repairs.

If you are a party in a small claims suit and your claim is for money damages arising out of injury inflicted upon your property or as a result of your claim of any kind you have been required to spend certain sums for services or repairs of one kind or another, there is a method by which you can prove those damages at the trial providing you carefully follow these instructions.

If, for example, you are suing the owner and operator of a motor vehicle for negligently causing damages to your automobile as a result of a collision and you have had your car repaired and have paid the repairman his bill, the Clerk of the Court will provide you with certain forms to assist you in proving the amount of your damages at the trial. It must be born in mind however, that this method cannot be used under circumstances where you have not had the car repaired or having the car repaired have not paid the mechanic's bill. This is not a matter of court policy but is the law of the State of New York.

One other factor to bear in mind is that even though you show proof of damages to the court, you are still required to prove all the other elements of your case as well. In the example mentioned above not only are you required to prove the damages to your automobile but you must also prove that the defendant was negligent in causing the damage to your car and that you were free from any fault in order to recover.

If you have paid the repairman or other person for the repairs or services, you may use the court forms mentioned which will be furnished by the clerk. Be guided by the following instructions.

1. Prepare the form entitled "Small Claims-Proof of Damages" in duplicate. You should complete and sign the upper portion of the form and the repairman or serviceman should complete the lower portion of the form under the words "Verified Statement of Person Furnishing Repairs or Services." The person who signs the lower portion of the form must do so before a Notary Public.
2. When this has been done, attach the repairman's bill or invoice which must be either receipted or marked paid. You should also obtain the bill or invoice in duplicate attaching one copy to each of the forms. It is most important that both copies of these documents are either receipted or marked paid by the repairman.
3. Send one copy of the form with the bill or invoice attached to your adversary via United States mail. This must be mailed at least 15 days before the date of your trial.
4. After the form has been mailed to the other party, you must complete the form entitled "Affidavit of Service by Mail of Notice of Intention to Introduce Itemized Bill" and sign it before a Notary Public.

5. File the other copy of the form with the bill or invoice attached and the Affidavit of Service by Mail with the Clerk of the Court prior to the day of trial or you may bring the form and the attachment and affidavit to court on the day of trial.

In those instances where you are unable to prove your damages in the above manner, you will of course be required to prove them by testimony of witnesses or other admissible proof. As in the example given, if you have not had your automobile repaired it will be necessary for you to have an expert witness testify in your behalf. You, yourself, if you are not an auto expert cannot testify as to the cost of repairs to the car. You must have an expert testify as to those facts. The court does not supply the expert and you must do so.

Arthur F. Gange
Chief Clerk

DC 255-A
M-793 1/75

COPY
SMALL CLAIMS -- PROOF OF DAMAGES

DISTRICT COURT OF NASSAU COUNTY

_____ District _____ Part

Plaintiff,

-against-

Defendant.

Index No. S.C. _____

PLEASE TAKE NOTICE that pursuant to CPLR 4533-a the undersigned intends to offer in evidence at the trial of this action an itemized bill (or) invoice for services and/or repairs, a true copy of which is annexed hereto.

Dated: _____, 19____.

Plaintiff

Verified Statement of Person Furnishing Repairs or Services

STATE OF NEW YORK)
COUNTY OF _____) SS.:

I, _____, having
(name)

been duly sworn state,

1. I am _____ of

_____ which has supplied the services and/or repairs
Name of Company

set forth on the attached document for which I (or) said company have received payment in full.

2. No part of the said payment received has been, or will be, refunded to the said debtor.

3. That the amount itemized on the annexed document are the usual and customary rates charged for the services and/or repairs listed by me (or) said company.

4. I have read and know the contents of the attached document and all the material appearing thereon is true and correct.

Sworn to before me this

_____ day of _____, 19____.

Signature

Notary Public

COPY
AFFIDAVIT OF SERVICE BY MAIL OF NOTICE
OF INTENTION TO INTRODUCE ITEMIZED BILL

STATE OF NEW YORK)
COUNTY OF _____) SS.:

_____ being duly sworn, deposes and says:
name

That on the _____ day of _____, 19____, deponent served the within notice of intention to offer an itemized bill, verification and itemized bill upon _____ the defendant in this action at _____ address _____ by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Signature

Sworn to before me this

_____ day of _____, 19____.

Notary Public

DC-2809. 10/76
DC-255B.

COPY
APPENDIX D
Small Claims Court-Information Package

I. INTRODUCTION

The small claims court is a part of the court whereby a person using a simplified procedure may sue for a sum of money not to exceed \$1,000.00. Because the rules of evidence and normal courtroom procedure are not followed, a lawyer is generally not necessary.

II. HOW TO SUE IN SMALL CLAIMS COURT

In order to sue in small claims court the following procedure should be followed:

1. Go to the clerk of the small claims court and supply him with the following information:

A. Your name and address;

B. Exact name and address of the person, business or corporation who is to be sued. If you are suing a business, firm or corporation, use of the exact name is important. Should you be successful with your lawsuit, you will be unable to enforce a judgment if it contains the wrong or an inexact name. To determine the exact name of a business or corporation, go to the County Clerk of the county in which the business is located or check with the Secretary of State in Albany.

For example, should you sue "Joe's Garage" when the correct name is "Joe's Garage Service, Inc.," any judgment you may obtain may not be enforceable by the court, sheriff or marshall.

C. The amount of the claim, up to a maximum of \$1,000.00. This should include all your provable damages plus any expenses or losses incurred because of your claim.

D. The fee for filing a small claims action is \$2.98.

2. Once this information is supplied to the clerk he will fill out the summons and mail it to the defendant by registered or certified mail, return receipt requested. The clerk will also give you the date for your hearing.

III. WHO WILL DECIDE YOUR CLAIM?

In some small claims courts you will get a choice whether you want your claim decided by a judge or an arbitrator.

If both parties agree, the claim can be referred to an arbitrator. The only difference between a judge and an arbitrator is that there may not be an appeal from a decision rendered by an arbitrator.

Arbitrators are attorneys with several years experience, who serve without compensation. They are usually recommended as qualified to serve by local bar associations.

IV. COURT PROCEDURE

On the day of your hearing you will be required to appear in front of either a judge or an attorney who will first listen to you and then to the defendant. He will then decide if your claim has merit and the amount of damages to be awarded, if any.

The rules of evidence and court procedure do not apply in the small claims court. You will be permitted to tell your story in your own words. However, you must bring proof of your damages, such as paid medical or repair bills.

After hearing the testimony, the judge or arbitrator will reach his decision and, if you are successful, a judgment will be automatically entered by the clerk of the court.

V. ENFORCING YOUR JUDGMENT

Obtaining a judgment in your favor does not mean that the person you sued (the defendant) will pay it. The judgment merely signifies that the person you sued owes you a specified amount of money. If the judgment is not paid it is up to you to

initiate enforcement procedures.

If the defendant fails to pay the judgment, you should go to the sheriff of the county within which the defendant resides or works. The sheriff will attempt to collect the judgment on your behalf, after you pay him the advance fee (called mileage) of \$5.00. To assist the sheriff, give him as much information as you can about the defendant, such as bank accounts, property owned and place of work. When and if the sheriff is able to collect the judgment he will mail you a check.

Additionally, you can go to the court clerk and have an information subpoena and restraining notice issued. This will serve two objectives: (1) to determine what assets the defendant has from which the judgment can be satisfied, and (2) to stop the defendant from transferring his assets until he pays the judgment.

COPY
APPENDIX E
Small Claims Part
Civil Court of the City of New York

County of

S.C.# 197_

Re: Claimant _____

Defendant _____

Decision in the above action is as follows:

J.C.C. Arbitrator

If the claimant recovers, the Clerk shall enter judgment for the amount of the award, plus interest and disbursements.

If the judgment is not paid within 10 days, fees paid by the claimant to the sheriff in an attempt to collect the judgment will also be added to the judgment. See the Clerk in Small Claims for the correct amount of your judgment.

You should first contact the party you sued or party's attorney (if party was represented by attorney) and request payment.

If they fail within ten days to pay then contact by phone or in person the Sheriff's office in the County where the party who owes you money may have property. If you do not know where he has property, then you must contact the Sheriff's Office in the County where he resides.

Sheriff's Offices

County	Address	Telephone #
Bronx	851 Grand Concourse, Bronx, NY 10451	293-3900
Kings	Municipal Bldg., Brooklyn, NY 11201	643-2076
New York	31 Chambers St., New York, NY 10007	566-3738
Queens	County Court House, L.I. Cny, NY 11101	392-4950
Richmond	County Court House, Staten Island, NY 10301	447-0041

Give the Sheriff's Office the following:

S.C. # of your case which appears above, including year, and the County where case was tried.

Your name, address and telephone # (if you have one).

The name and address of the defendant.

Your knowledge, if any, of nature and location of any property belonging to defendant.

Your judgment is good and valid for a period of 20 years.

If you do not collect it at first you may make further efforts to collect at later dates.

COPY
APPENDIX F
Sheriff's Instructions to Small Claims Creditors

RETURN TO: SHERIFF, CITY OF NEW YORK

- New York County Division
31 Chambers St., NYC 10007
- Kings County Division
Rm. 1100 Municipal Bldg.
Bklyn, NY 11201
- Queens County Division
Old County Courthouse
L.I. City, NY 11101
- Bronx County Division
851 Grand Concourse, Bx, NY 10451
- Richmond County Division
358 St. Marks Pl., S.I., NY 10301

In order for the Sheriff to aid you in attempting to collect your judgment, you must supply information as to property of the defendant. Listed below are some categories of useful information.

1. Bank Accounts
Bank name and location _____
2. Business Premises
Type and location _____
3. Employment
Employer's name and address _____

If you are unable to supply any useful information at this time, wait until you have such information. You must pay a filing fee that cannot be refunded.

If you have supplied useful information, complete the bottom of this form and return the form with a \$10.00 money order.

1. Your name _____
Address _____
Telephone number _____
2. Defendant's name _____
Address _____
Telephone number _____
3. Court Index #SC _____ / _____
year
Address of Court _____

*Send a \$20.00 money order if you have supplied the defendant's place of employment to cover the first stage filing fee.

FOOTNOTES

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3. Ibid., p.1.
4. McKinney's Consolidated Laws of New York, Annotated Book 29A Judiciary Part 3 Court Acts, Article 18 New York City Civil Court Act, Section 1804.
5. Postage Information supplied by the Office of Bronx County Postmaster Francis Viola.
6. Inquiry letters replied to by seven Administrative Judges. (See Bibliography).
7. New York Public Interest Research Group, The People's Court, A Study of the City of Buffalo Small Claims Court (1978), p.7.
8. Ibid., p.27.
9. Office of Court Administration, Small Claims Summary, 1977.
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11. Ibid.
12. Manual Small Claims Part - Civil Court of the City of New York, p.3.
13. Ibid., p.9.
14. Falco, Joseph F., Chief Judge, City Court of Syracuse, Letter to Leonard H. Bloom, May 16, 1978.
15. Manual Small Claims Part, p.9.
16. Chief Judge Falco's letter.
17. Ibid.
18. Ibid.

19. Roberts, H. Buswell, Chief Judge, City Court of Buffalo, Letter to Leonard H. Bloom, June 13, 1978.
20. Ibid.
21. New York Public Interest Group, Winning Isn't Everything - A Study of the New York City Small Claims Court System, p.7.
22. Pechler, Edward, Sheriff of the City of New York, Interview with Gerald Ryan, January 24, 1978.
23. Odell, Andrew L., Written Statement Presented to the New York State Assembly Judiciary Committee Public Hearing on Small Claims Courts, January 27, 1977, p.4.
24. Letters from Administrative Judges.
25. Assembly Bill A.8013 (Cooperman)
26. Manual Small Claims Part - Civil Court of the City of New York; Town and Village Small Claims Guide; A Guide to Small Claims in the District Court of Nassau County.
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28. Manual Small Claims Part - Civil Court of the City of New York, p.11.
29. Assembly Bill A.8015 (Cooperman and Schumer).
30. Winning Isn't Everything, p.6.
31. The People's Court, p.11.
32. Pechler Interview, January 24, 1978.
33. Office of Court Administration, Small Claims Summary 1977.
34. Pecher Interview.
35. Ibid.
36. Rosenberg, Jane Interview with Gerald Ryan, June 1, 1978.
37. Egan, Robert J., Interview with Gerald Ryan, March 28, 1978.
38. New York State Assembly Standing Committee on Judiciary, Your Day (or Night) In Court, p.36.
39. New York State Association of Counties, Roster, 1977.

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