



HOW TO USE SMALL CLAIMS COURT

15th District Court
101 E. Huron St.
P.O. Box 8650
Ann Arbor, MI 48107-8650
Civil Division
(734) 222-3389

WHAT IS A SMALL CLAIMS LAWSUIT?

If you feel that a business or individual owes you money, you may bring a lawsuit against that business or individual in the small claims division of District Court. The most you can collect is \$3,000.00. If the amount you wish to collect is over that amount, you may still bring a small claims lawsuit if you are willing to forego any amounts claimed over the jurisdictional limit. There are no lawyers, no jury and no appeals in small claims court.

You may sue to recover damages to your vehicle from an automobile accident. However, **the other driver must have been at fault and you can only claim that amount not paid by insurance up to \$500.00.** You must also be covered by "No Fault" insurance.

REMOVAL TO DISTRICT COURT

Before commencement of a trial, the plaintiff or defendant may demand that the trial be conducted before a district court judge. Otherwise, a magistrate will conduct the hearing. Neither party may be forced to give up the right(s) to have an attorney, to have a jury decide the case or to appeal the judge's decision. A lawsuit started in the small claims division may be "removed" or transferred to the general civil division of the court. Either party may remove the case to the general civil division at any time *prior* to the commencement of the hearing. Should the lawsuit be removed to the general civil division, you may wish to consult a lawyer.

STARTING A SMALL CLAIMS LAWSUIT

Who to Sue
Before filing a small claims suit you should determine whether the party you wish to sue is an individual, a partnership or a corporation. Corporations must be sued through their "resident agent" or the officers of the corporation. All Michigan Corporations

must have a "resident agent". You may obtain information regarding corporations by contacting the Michigan Department of Treasury in Lansing. If you are suing a partnership or an individual doing business you must correctly state the name of the business or partnership being sued. Information regarding local businesses can be obtained from the County Clerk's Office located at 200 N. Main Street, Ann Arbor.

Where to Sue

You must file your case in the District Court where the defendant lives, is established or is employed or in the District Court where the action arose. The 15th District Court serves the City of Ann Arbor. It is not enough that the plaintiff (party starting suit) lives in Ann Arbor.

After you have determined who and where to sue, the next step is to file an **Affidavit and Claim** with the court. To do this you must go in person to the court office and fill out the form given to you by the clerk. On this form you must provide the full and proper address and name of the person you are suing, how much money you are suing for and the reason for the suit. The Affidavit and Claim form may be printed on-line at <http://courts.michigan.gov/scsca/courtforms/smallclaims/scindex.htm>

When you file your claim with the clerk, you should bring along copies of any written evidence you may have to

support your claim (such as a bill of sale, receipt, a guarantee form, lease, accident or promissory note). Remember to provide a copy for the court and a copy for each defendant.

The filing fee for a small claims lawsuit ranges from \$25 to \$65 depending on the amount claimed. If you win your case all costs may be added to the amount of the claim. Fees are not returned if you do not win the case. You may not file more than five (5) Small Claims cases in one (1) week. If a person is indigent or receiving public assistance it is possible to have the filing fee suspended. Ask the clerk about this.

SERVING THE SUIT PAPERS

When a claim is filed a hearing date is set. The defendant must be notified that you are suing. This is done by:

- Certified Mail** – addressed to addressee only, return receipt requested. You must pay the postage costs. (see clerk for prevailing postal rates and any exceptions allowed).
- Personal Service** – any legally competent adult who is not a party or an officer of a corporate party may deliver the affidavit to the defendant(s). The service fee is \$19 plus mileage. (see clerk for prevailing mileage rate).

Partnerships or corporations are personally served when a copy of the affidavit is left with one of the company's officers or its resident agent. (The officer's names are listed on the annual report filed with the County Clerk or State Treasurer along with the name of the resident agent).

A partnership or corporation may also be served by handing the affidavit to a person in charge of the office and sending a copy of the affidavit by registered mail to the partnership or corporation at its main office. This last type of service is called "Substitute Service" and should be used only if personal service cannot be made. Remember that if you use a court officer to serve the affidavit they are not a detective and must rely on information given by the plaintiff in order to locate the defendant(s). Be sure you have the correct address of the defendant(s).

If the papers are not served, or if the defendant cannot be found at least seven (7) days prior to the hearing date, the plaintiff may apply to the clerk for a new hearing. This is called an "alias" and no additional filing fee is charged. It is a good idea to check at the post office for a better address.

Also, check the "expiration date" in the lower left corner of your affidavit. It will expire if more than 91 days have elapsed from the date filed in court. You may ask to have the original affidavit extended; **however, you must**

apply before the original 91-day period ends. (see clerk for forms). If the affidavit has expired, you must file a new affidavit and claim and pay a new filing fee.

Before the Hearing

Before trial, prepare by lining up any witnesses or evidence you have to support your claim. Witnesses may be ordered to court by a "subpoena" signed by the judge or court clerk. Subpoenaed witnesses are required to be paid a fee of \$6 for a half day of \$12 for a full day and .20 cents per mile. Either party can subpoena witnesses and costs are recoverable by either party.

SETTLEMENT PRIOR TO HEARING

Suits frequently arise because of the failure of the parties to communicate with each other. Time and money can be saved if the parties meet and attempt to settle the dispute **before** coming to court. If the parties to the suit pay or agree to terms before the court date, **put it in writing, have both sides sign it and file a copy with the Court.**

THE HEARING

Your hearing will take place at the court where you filed your claim. Be there on time. Be sure to bring all your papers or evidence with you and make sure your witnesses will be there on time.

Your case will be called when it is time for the hearing and you and the defendant will appear before the magistrate. The magistrate will ask you to state your claim. Tell what happened to you in your own words and why you think the person or business owes you money. Witnesses will also be allowed to tell what they know about the case in their own words. The person you are suing will have an opportunity to explain their side of the case. Listen carefully, because it is up to you to make sure all facts of the case are presented fairly and completely. The magistrate's judgment is final unless appealed **within** seven (7) days. A judge's decision is final.

If you fail to appear, the claim may be dismissed or the case may be continued to another date. If the defendant fails to appear and the court determines that proper notice was provided, a default may be entered in your favor.

What if the Defendant has a Claim?

If the defendant(s) has a claim against the plaintiff, he/she may file a written counter claim. It is the same as making two lawsuits into one. If the defendant(s) has such a claim, he/she should also file an "Affidavit and Claim" form – add the words "Counter Claim" and file the original with the Court and mail a copy to the plaintiff (a filing fee is not paid).

POINTS TO PONDER

This pamphlet attempts to offer an overview of the Small Claims court and its procedures. It is not a complete statement of law.

Try to settle the matter out of court, even up to the day of the hearing. If settlement is reached, get it in writing.

Before filing a case consider whether you will be able to collect a judgment from the person or business you are suing. Sometimes collecting the judgment can be the most difficult aspect of a lawsuit. Please read "Collecting Money from Small Claims Judgment" pamphlet available from the clerk.

If you require an evening or weekend court date the request must be made in writing, supported by reason(s) and presented when you file your case.