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Supersize Small Claims

By David A. Giacalone



ADVOCATE

There oughtta be a (better) law.

Our courts need major re-programming, to make them accessible, client-centered dispute resolution centers — instead of the expensive, complicated, lawyer-centered bureaucracies they have become.

Total court reform is indeed a big, complex job. But our lawmakers could give a big chunk of the civil justice system back to the people by simply increasing the dollar limits allowed in small claims courts. By permitting claims up to \$20,000 in these user-friendly "people's claims courts," we could greatly increase access to justice, and greatly decrease the time and money spent to resolve the everyday disputes of consumers and small businesses.

Come a Long Way?

A visiting Martian would be perplexed by the state of our Republic in Year 2000. On the one hand, we have an educated, prosperous, resourceful population that embraces the opportunities of the age of information and computers. On the other hand, despite a representative form of government, we have a judicial system that still treats the populace like medieval serfs — like simple, illiterate folk, too lowly to bring our legal disputes directly before a court, and beholden to a scholarly barrister class to "represent" us in seeking justice (for a princely fee, of course).

In the early 20th Century, when our Martian observer last visited America, things seemed to be improving. At that time, we had a legal profession led by reform-minded titans, such as Louis Brandeis, who used their influence to create a system of small claims courts in the name of "Justice for All". Using simplified procedures and rules of evidence, those courts allowed anyone to bring everyday consumer claims and simple business disputes before a judge for a quick, inexpensive resolution.

A century later, that same legal profession has become the greatest (maybe the only) beneficiary of our complicated Byzantine court system, and the biggest impediment to its reform. Instead of producing champions like Brandeis, even its liberal wing seems content to become tobacco case

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billionaires and apologists for Bill and for the status quo. The result, as Ralph Warner (lawyer-turned-Self-Help-guru) has recently pointed out, is that "over 150 million citizens of the 'Land of the Free' are legally disenfranchised" from our expensive, inaccessible court system.

Despite their May Day platitudes, the lords of the legal profession are not going to democratize our legal system. If there is ever going to be a modern Magna Carta to assure universal access to our courts, the serfs are going to have to rise and take them back — with the help of politicians wise enough or scared enough to put the Peoples' interests over those of the legal establishment and their Political Action Committees.

The Problem with Tiny Claims

For decades, small claims courts have proven that the average person can resolve disputes quickly, cheaply and effectively, without using lawyers. As they now exist, however, small claims courts have become irrelevant to most Americans — a downscale judicial stepchild, unfamiliar to most of the public, and relegated to handling cases too insignificant to warrant or attract lawyers.

The dollar limits are simply too low: in two dozen states, the maximum monetary award granted in small claims courts is \$3000 or less. It's \$1000 in Virginia, and in Washington State it's \$2500. Only two states (Delaware and parts of Tennessee) allow claims as high as \$15,000. These paltry limits are outdated anachronisms at a time when the average new automobile sells for \$24,000, and many kitchen renovations include \$5,000 gas ranges and \$4,000 refrigerators.

As a result, many consumers and small businesses must give up valid claims that would otherwise be highly appropriate for the user-friendly small claims format, because hiring a lawyer would make the claim far too expensive to pursue in other courts. Others are forced to take uncomplicated cases they could easily handle themselves to higher courts, where they pay hefty legal bills for lawyer services they don't really need.

The \$20K Upgrade Solution

In response, HALT, (a national consumer organization for legal reform, found at www.halt.org), launched a project in 1998 to greatly expand the jurisdiction of these people's courts, calling for states to raise the limits to \$20,000. HALT's Small Claims Reform project is promoting model legislation, which would also allow such courts to issue injunctive relief (ordering a party to stop or to take certain action), and eliminate lawyers in small claims courts (as has been done successfully in six states: Arkansas, California, Idaho, Michigan, Nebraska, Virginia).

HALT has it right. Upgrading "small" claims courts to "people's claims courts", with realistic dollar limits, is the best and quickest way to help ordinary people take charge of their own routine legal needs.

Other access-friendly reforms — such as increased use of computerization, plain-English forms, and self-help advisors at court — deserve support (and will be discussed in this column in coming months). But raising the dollar limits to \$20,000 is clearly the most effective single step to making small claims courts relevant and responsive to a 21st Century nation and economy.

Bar to Reform

To no one's surprise, the organized bar has been hostile or cool to such proposals, characteristically casting its opposition in the patronizing guise of protecting their clients. (See ABA Journal, Dec. '98, at 18). When a modest bill to raise New York's limit from \$3,000 to \$5,000 was proposed in 1999, the New York Bar Association took no position on the proposal, which never came to a vote in the legislature, after being favorably voted out of committee.

Improving access to justice, while saving consumer and taxpayer dollars, is a theme that should be popular with everyone for all parties (political, cocktail, as well as litigation). But, HALT's efforts have had only minor success to date. In a nation that loves lawyer-bashing and lawyer jokes, the lack of political support for court reform can be understood only in the context of the immense power of the legal establishment and its mighty efforts to preserve control of our justice system.

In this election year 2000, we serfs ought to start asking our local and national leaders just whose side they are on in the battle to win back our courts. "\$20K in Y2K" would be a very good political motivation litmus test.

David Giacalone practiced law for more than 20 years — a decade at the Federal Trade Commission, then as a divorce mediator and children's lawyer. He recently hung up his lawyer's sword, preferring to use pen and PC as a consumer advocate. He currently resides in Rochester, N. Y.

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