

By Chris E. Wittstruck, Esq.



Chris
Wittstruck

In the hierarchy of legitimate occupations, lawyers have often found themselves classified somewhere beneath used car salesmen. Likened to disease, society generally views the legal profession as something to be avoided in similar vein to the black plague. Everybody despises lawyers; until, of course, somebody needs one.

Partially fueling this scorn is the popular misinterpretation of a phrase from classic literature. In Shakespeare's *Henry VI, part 2*, the murderous Dick the Butcher utters the instruction, "*The first thing we do, let's kill all the lawyers.*" While in contemporary times these words are put forth as a rallying cry to render things right and just through eradication of the legal profession, in context the evil Dick offers the directive in furtherance of rebellion. In his view, the last thing a successful rebellion needs are learned folks who could protect individual rights and freedoms. Ironically, the correct comprehension of the phrase serves to conclusively validate the need for lawyers. In essence, skilled attorneys protect the little guys against tyranny, anarchy and other threats to liberty.

Of course, exacting justice without resort to the expense of an attorney is a worthy goal. This is especially true when the amount in controversy is relatively small. Consider the feedman who is owed \$1,500; the farrier who shod a few and is now owed \$500; the veterinarian chasing an owner for \$2,000; or the owner who can't get his \$2,500 share of purse earnings from a wayward partner. Unless the lawyer is the party's newly minted, green around the gills nephew, the legal fee involved would be the textbook example of diminishing returns.

Fortunately, every legal jurisdiction in America has devised a small claims court; a specialized forum where two opposing parties can meet, set forth their respective positions in plain terms, and have an impartial arbiter render a speedy and final decision that carries the weight of law... all without the need for, or cost of, lawyers. Yet, a healthy diet of *Judge Judy* is not the best preparation for entry into small claims court. Whether bringing the case or defending against it, there are things that are critical to know before entering the small claims' courtroom. While the laws and rules of every small claims court are different, here's a primer of what is generally involved:

Jurisdiction: Without exception, small claims courts are empowered to give money judgments only. You can't ask a small claims judge to award you possession of a horse, change registration papers, dissolve a partnership or prevent a horse from racing. Those types of matters involve a formal lawsuit in a higher court and usually require significant legal fees. How much money can a small claims judge award? Typically, the limits are within the \$3,000 to \$5,000 range. Thus, in a circumstance where unpaid bills continue to mount, it's important to bring a claim well before the monetary limit of the appropriate small claims court is exceeded. Otherwise, any claim filed will be limited to the jurisdictional maximum, no matter how much you are legitimately owed.

What is the appropriate small claims court? Generally, the court will have jurisdiction over the person sued (the defendant) only if he or she resides or works where the court is

located. So, if a partner residing in New York is looking for reimbursement for the portion of veterinarian bills owed by his Ohio partner, the New York court will not drag the Ohio resident into its court; the New Yorker should file his small claims action in Ohio.

Starting the Action: In most jurisdictions, the claimant goes to the proper courthouse during normal business hours and fills out a simple form, explaining in concise but brief terms what the claim is about and provides the name and address of the defendant. Unlike a traditional lawsuit, no formal complaint is required. The fee to start the suit is often dependent upon the amount of the claim, but usually doesn't exceed \$20. Most small claims courts notify the defendant via certified mail, return receipt requested. In New York City, for example, an additional first class mailing is sent. If the mail doesn't come back as undeliverable, it's presumed that the defendant received notice of the claim. Only if undeliverable is process service required and the cost thereof incurred. The cost in that circumstance could range anywhere from under \$100 to a few hundred dollars depending upon the circumstances. Luckily, this is a cost that might be added to a judgment if the claimant is successful.

If a small corporation or partnership is seeking money from a defendant, there are often special rules that permit these entities to act as claimants without the need for legal representation, despite the formal nature of the entity.

Both parties are advised as to the date and time the matter will be heard. Often, small claims actions are heard at night for the convenience of the parties. The period between filing the claim and the actual court date can be several weeks to several months depending upon the volume of claims and court resources allocated to handle them.

In most jurisdictions, defendants have the right to file a claim against the claimant to be heard at the same time the claimant's action is heard. The rules for filing this defendant's claim, called a "counterclaim," vary greatly.

Preparing for Court: Rather than adherence to strict rules, small claims judges are charged with achieving "substantial justice between the parties." While formal rules of evidence are relaxed, claimants still have the obligation to prove their case. If a witness is necessary to help establish or refute a claim but refuses to come to court, either party can ask the court to subpoena the witness. Also, both parties are expected to have at the ready all bills, agreements, correspondence and other documents necessary to support or defend against the claim. If the claim involves property damage, most courts require either a paid, itemized repair bill, or three written estimates.

Frankly, the hard part about small claims court is not going before the judge; it's making sure that all of the proverbial ducks are in a row before arriving in the courtroom. The actual trial may take no more than five to ten minutes. If a party is woefully unprepared, they run the risk of getting a result they didn't expect, but that due to their lack of preparation they richly deserve.

Conduct at the Trial: Quite simply, get right to the point! For example, "Your honor, I'm a licensed veterinarian. I performed services on this gentleman's racehorses. I billed him

\$750.00, and he hasn't paid me. Here is the itemized bill." From that point forward the judge or, in some cases, an arbitrator will ask the claimant pointed questions to help flesh out the matter: "What types of services did you perform?" "What is the reasonable value of your services?" "What is Clenbuterol?" "What does the word "Coggins" exactly mean?", etc. The defendant will then have an opportunity to ask the claimant his own questions, called "cross-examination." Claimant's witnesses, if any, the defendant and his witnesses then have their say, and the foregoing cross-examination procedure is utilized so as to ensure that all relevant facts and positions are brought out fully and in logical fashion.

Regarding the trial, there are some basic tips to remember:

- 1) A party should never talk over the other party or the judge, or raise his voice. If the judge thinks one party is being particularly obnoxious, mere human nature dictates that the position of this particular party will most likely be frowned upon. Put simply, be civil and polite or the odds of prevailing go way down.
- 2) A party should always answer questions directly and to the point. If it appears a party is attempting to wiggle out of giving a straight answer, then the judge is going to assume that the truthful answer to the associated question would not be in that party's favor.
- 3) A party should come to court dressed as if they were attending a wedding, funeral or other formal occasion. Court is never a "dress down" event. Proper grooming and attire is an exhibition of respect that resonates even before the party begins to speak. If a party is wearing shorts, sneakers and chewing gum, a poor image is created that is hard to dispel, even if that party's position is otherwise strong.

After all testimony is completed, the court usually reserves decision, meaning that unlike made-for-television court proceedings the court's ruling, known as a judgment, is unknown to the parties until they receive it in the mail a few days after the trial.

Enforcing the Judgment: If either party receives a monetary judgment, the court usually provides an explanation as to how to get the sheriff, marshal or other local official to enforce the award. It's helpful to give information such as where the party that has now been lawfully found to owe money banks or has other assets, or receives a paycheck. In this way, the bank account can be restrained and levied upon, or the paycheck can be garnished in accordance with the enforcement laws of the jurisdiction. Additionally, if the party has a license issued by a racing commission, it might be quite effective to file the judgment with that commission, inasmuch as most states will suspend a party's license for financial irresponsibility if that party refuses to satisfy a monetary judgment.

Better Yet...: The good news is that the overwhelming majority of lawsuits, both big and small, are settled before the parties are ever heard. Many are intimidated by the thought of going near a courthouse, and sometimes all it takes for a claimant to get a check in the mailbox is for the defendant to receive a small claims summons in his mailbox. Also,

many courts attempt to mediate disputes between the parties right before testimony is taken. If proving a certain claim is problematic, accepting only part of what may be due might be better than going through a trial and receiving nothing. Like placing a bet, the parties must independently handicap the strength and weaknesses of their respective positions before wagering upon a judge to rule in their favor. Settlements are favored by the court system; trials are not.

How popular are small claims actions? In the first three months of 2011, over 5,400 hundred small claims actions were commenced in the courts in New York City alone. If you feel that you have been wronged in a way that puts you out of pocket a few thousand dollars, consider handling the matter yourself in a small claims forum without paying a lawyer. Don't worry; lawyers will figure out how to survive somehow!

Chris E. Wittstruck is an attorney, a director of the Standardbred Owners Association of New York and a charter member of the Albany Law School Racing and Gaming Law Network.