

Filing a Lawsuit

If you are unable to resolve a billing or payment dispute informally, you may wish to file a lawsuit. A lawsuit may be filed in Small Claims Court, District Court, or Superior Court, depending upon the issues and the amount in controversy.

In order for an auto body shop to bring a lawsuit based upon an insurer's failure to pay, **THE AUTO BODY SHOP MUST FIRST OBTAIN AN "ASSIGNMENT OF RIGHTS" FROM ITS CUSTOMER.** The forms that should be used in obtaining an assignment of rights are at pages 6-6 and 6-7 within this manual. By signing this form, the customer gives his or her personal right to sue the insurer to the auto body shop. **WITHOUT AN ASSIGNMENT OF THE CUSTOMER'S RIGHTS, THE AUTO BODY SHOP DOES NOT HAVE THE RIGHT TO SUE THE INSURER DIRECTLY FOR UNPAID AMOUNTS.**

SMALL CLAIMS COURT

The Small Claims Court is popularly known as "the people's court." It is an informal and inexpensive forum that is designed to help you settle disputes of \$2,000.00 or less. You can sue in this Court without the representation of an attorney because the more formal procedures that are characteristic of other Courts are not required. Instead there are easy-to-follow rules, and you are allowed to present your own evidence and speak in layperson's terms.

As a plaintiff in Small Claims Court, you waive all rights to have your case heard before a judge and jury. Often, a clerk magistrate will hear and rule on your case. The plaintiff also waives all rights to appeal a decision rendered in Small Claims Court. The defendant, on the other hand, has the right to appeal to a District Court judge or a jury.

You can file suit in the Small Claims Court where either of the parties lives or has a usual place of business. To file suit, obtain a "Statement of Claim and Notice" form from the Small Claims Court Clerk. Be prepared to provide the precise legal name and address of the party you are suing. The legal name of a business may be on file in the town hall where it is located; the legal name of a corporation is on file with the Secretary of State's Office.

You can only sue for money in Small Claims Court. The amount of your claim should include the actual amounts unpaid; any additional costs, such as postage or photocopying, which you incurred due to the unpaid amounts; and Court costs. At the time of filing, you must pay a small Court entry fee. This fee and any other Court fees will be assessed against the defendant if you win your case.

If you are suing under Chapter 93A, the Consumer Protection Act, you must notify the Clerk of that fact in your claim.

The Clerk will provide you with a copy of your completed form, which will include the date and the time of trial. The Clerk will then send a copy of your completed form to the defendant. Contact the Clerk the week before your case is scheduled to make sure that the defendant received your complaint and filed an answer, and that the case will proceed on the specified date.

For further information, you may contact the Small Claims Advisory Service, Phillips Brooks House, Harvard University, Cambridge, MA 02138, (617) 497-5690.

DISTRICT AND SUPERIOR COURT

In general, cases which are determined to have no reasonable likelihood of recovery in excess of \$25,000 are heard in District Court. Cases which are determined to have a reasonable likelihood of recovery in excess of \$25,000 are heard in Superior Court. The Clerk of the Court in which the case is filed makes these determinations, based upon the information contained in the complaint. Although exceptions exist, these generalizations represent the norm.

District and Superior Court litigation proceedings are much more formal and rule-oriented than proceedings in Small Claims Court. It is recommended, therefore, that you consult an attorney regarding all claims amounting to more than \$2,000 in damages. Although you are allowed to file cases in these Courts without an attorney's representation, the procedures can be very confusing and your case may be dismissed for failure to comply with the appropriate rules.