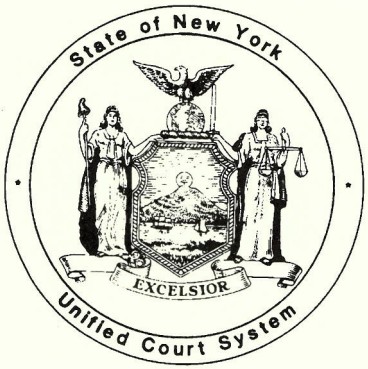
A GUIDE FOR THE USE OF THE COMMERCIAL CLAIMS PART



New York State Unified Court System

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WHAT IS THE COMMERCIAL CLAIMS COURT?

The Commercial Claims Court is an informal court where corporations, partnerships and associations can sue for money only, up to $3,000, without a lawyer.

For example, if you feel that a person or business damaged something of yours, you may sue that person or business for the monetary amount of your damages. You also may sue a person or business for money damages arising out of a dispute over a contract. You cannot, however, in Commercial Claims Court, compel that person or business to fix the damaged item or require the performance of the act promised in the advertisement. Your lawsuit can be only for money.

Most Commercial Claims Courts have a clerk who can assist you with the procedures for bringing your lawsuit. When this booklet mentions the clerk, and the court you are using does not have a clerk, you should seek the assistance of the judge.

WHO CAN USE THE COMMERCIAL CLAIMS COURT?

Any corporation, including a municipal corporation or public benefit corporation, partnership, or association, which has its principal office in the State of New York, or an assignee of any commercial claim[1], may file a claim. A corporation, partnership, or association may not bring more than five commercial claims actions or proceedings per calendar month anywhere in the State.

If you sue in Commercial Claims Court, you are the claimant (plaintiff); if you have been sued, you are the defendant. You can sue more than one defendant in the same case if necessary.

If you are sued, and you believe that a third party is responsible for the claim, you may be able to bring that party into the lawsuit as a defendant. Contact the clerk of the Commercial Claims Court for information about a "third-party action."

If you choose, you may be represented by an attorney at your own expense. In addition to being represented by an attorney, a partnership may be represented by any one of the partners, and a corporation may be represented by any authorized officer, director, or employee of the corporation provided that the representative has the authority to settle the case or to conduct the trial on behalf of the corporation. If there are attorneys on both sides, the case may be transferred to a regular part of the court.

WHERE ARE THE COMMERCIAL CLAIMS COURTS LOCATED?

Commercial Claims Courts are located in the New York City Civil Court (beginning 1/1/91), in all City Courts, and in the District Courts in Nassau

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[1]Collection agencies, or entities that take assignments of debts for the purpose of bringing an action in the Commercial Claims Court, may not use the Commercial Claims Court.

and Suffolk Counties. Consult your telephone book for the address and phone number of your local court and call that local court for information.

HOW DO I START A COMMERCIAL CLAIMS CASE?

You, or someone on your behalf, must come to the Commercial Claims Court to file a statement of your claim.

You should be prepared to give a brief written statement of the facts that form the basis of your claim. Check any documents relating to your case for the relevant dates and names. If you are suing on a contract or for property damage, you may claim interest as well as money damages.

If you are suing on a claim based on a consumer transaction — one where the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes — you must send a demand letter to the defendant at least 10 and no more than 180 days before you start the lawsuit. You can get a demand letter form from the clerk of the court.

You must sue in a court having a Commercial Claims Court in a county or district where the defendant lives or works or has a place of business.

You will be required to pay a filing fee of $20 plus the cost of mailing a notice of the claim to the defendant. You will also be required to file a verification that no more than five (5) commercial claims have been instituted by you anywhere in the State during the calendar month. In a claim based on a consumer transaction, you also will have to certify that you sent a demand letter.

When the claim is filed, the clerk will tell the claimant when the case will be tried. The clerk will then send the notice of claim to the defendant by both certified mail and ordinary first class mail. The notice of claim tells the defendant when the case will be tried and gives a brief statement of your claim and the amount of money you are seeking. If the copy of the claim sent by ordinary mail is not returned as undeliverable within 21 days (30 days for a claim based on a consumer transaction), the defendant is presumed to have received notice even if the claim sent by certified mail has not been delivered.

If the notice is not delivered by the post office, the court will set a new trial date and tell the claimant how to arrange for personal service of the notice of claim on the defendant. Personal service may be made by any person (including a friend or a relative) who is 18 years of age or older, except that you or any other party to the action may not serve the notice of claim.

If service of the notice cannot be made upon the defendant within four months of the date when the action was first started, the action will be dismissed without prejudice to your bringing the action at a later time.

A Commercial Claims case will not proceed to trial until the defendant has been served with a notice of claim.

MUST I KNOW THE DEFENDANT'S CORRECT NAME?

When filing a Commercial Claims case, the claimant must provide the name and address of the person or business being sued. If you do not know the correct legal name of the defendant, you can sue using any name under which the defendant does business. However, you should go to the office of the County Clerk in the county where the business is located to find out who owns the business and the legal name of the business. The County Clerk's office keeps a record of the names under which businesses are operated.

If you discover the defendant's correct "legal" name before the trial date, return to the Commercial Claims Court and have the case papers changed to state the correct name of the defendant.

WHAT IS A COUNTERCLAIM?

Sometimes the defendant may have a claim against the claimant and may countersue the claimant in the same case. This is known as a "counterclaim," and it can be made for up to $3,000 in money damages. The defendant must come to court prepared to prove the counterclaim and should make the counterclaim known to the judge or arbitrator on the date of the trial. The judge then may either proceed with the trial or adjourn it for a short period of time. If you receive notice of a counterclaim against you, contact the Commercial Claims Court to see what procedures you should follow. Be prepared to try both your own case and the counterclaim at the time of the trial.

Any counterclaim for more than $3,000 cannot be brought to a Commercial Claims Court; it must be brought in another part of the court or in another court.

ADJOURNMENTS

Adjournments in Commercial Claims Court are discouraged. Only the judge can grant an adjournment. However, either party may request the hearing be rescheduled in the evening, provided that such evening hours do not cause unreasonable hardship to either party. If you are the defendant, you must request an evening hearing within 14 days of receipt of the notice of claim.

If you are going to ask for an adjournment, notify the other party in advance. Either you or someone on your behalf should appear in court to explain to the judge why you cannot be ready for trial. Some courts permit adjournments to be requested by mail or by telephone (adjournments by telephone are not available in New York City and in Nassau and Suffolk Counties), and you should contact the court to find out the method of adjournment. If you do not have a good excuse, your request may be denied and, if you are not ready to go to trial, your case may be dismissed, or if you are the defendant, an award may be made against you without your having been heard.

WHAT SHOULD I DO AT TRIAL?

On the date set for trial, you should arrive at the court before the calendar of cases is called. Contact the Commercial Claims Court to find out the hour at which court begins. If the claimant is late, the case may be dismissed.

If the defendant is late, a default judgment against the defendant may be granted.

When you arrive, check the Commercial Claims calendar posted on the wall outside the courtroom, or with the clerk if there is no calendar posted, to see that your case is scheduled.

When the clerk calls your case, stand and state your name and tell the court that you are ready to proceed with your case. If you are requesting an adjournment, tell the clerk at that time. The trial is a simple, informal hearing before a judge or arbitrator.

SHOULD I CHOOSE A JUDGE OR AN ARBITRATOR?

In many courts, only judges are available to try cases. However, in New York City, Nassau and Westchester Counties, the cities of Buffalo and Rochester and some other locations, both judges and arbitrators are available to try cases.

An arbitrator is an experienced lawyer who serves without pay. Where arbitrators are used, there usually are many arbitrators available and only one or two judges. Your case can be tried by an arbitrator if both sides agree. If you and the defendant agree to have your case heard by an arbitrator, the case probably will be heard sooner because there are more arbitrators than judges.

Do not hesitate to have your case tried by an arbitrator. He or she will apply the same law to your case as the judge would apply. The hearing before an arbitrator is less formal, and you may not be as nervous as you might be before a judge. When an arbitrator determines a case, the decision is final, so that there is no further appeal by either the claimant or defendant.

ARE THERE ANY JURY TRIALS?

The claimant in a Commercial Claims action cannot demand a jury trial. A defendant, however, may demand a trial by jury. If a defendant demands a jury trial, the defendant must pay a jury fee and file a $50.00 "undertaking" (security) with the court to guarantee the payment of costs that may be awarded against the defendant. The defendant also is required to make an affidavit specifying the issues of fact which the defendant desires to have tried by a jury, and stating that such trial is desired and demanded in good faith. The Commercial Claims Clerk will answer your questions regarding the procedures for obtaining a jury trial. Jury trials are held before panels of six jurors.

PREPARING FOR TRIAL

1. Evidence

Before trial, you should gather all the evidence necessary to prove your claim or your defense. Anything that will help prove the facts in dispute should be brought to court. This includes photographs, written agreements, an itemized bill or invoice that is receipted or marked "paid," written estimates of the cost of service or repairs, a receipt for the purchase of an item or the payment,

of a debt, cancelled checks, and correspondence. If you rely on estimates, two different written itemized estimates of the cost of repairs or services are required. If possible, merchandise that is in dispute should be brought to court.

Testimony, including your own, is evidence. Any legally competent witness whose testimony is important to your case may testify. This can be a person who witnessed your transaction or someone whose special knowledge and experience makes him or her an expert on the cost of the services or repairs that were provided or may be required.

You may have to pay an expert witness for his or her time.

2. Subpoenas

If you are unable to get a witness to appear voluntarily, you may apply for issuance of a subpoena to the clerk of the Commercial Claims Court, who will give you the necessary information.

A subpoena is a legal document that commands the person named in the subpoena to appear in court. An expert witness may not be compelled to testify by subpoena, but you may pay the expert witness for coming to court to testify.

You also may apply to the clerk of the Commercial Claims Court for a "subpoena duces tecum," which is a legal document that directs someone to produce a bill, receipt, or other written document or record you need.

Either party may apply for a subpoena up to 48 hours before the trial date.

You may arrange for service of the subpoena and the payment of a $15.00 witness fee and, where appropriate, travel expenses for the person subpoenaed. Except where the travel is entirely within a city, a subpoenaed witness is entitled to 23 cents a mile as travel expense to and from the court from the place he or she was served with the subpoena. Service of the subpoena may be done by any person (including a friend or relative) who is 18 years of age or older, except that you or any other party to the action may not serve the subpoena.

HOW IS A TRIAL CONDUCTED?

The claimant's case is presented first. After being sworn as a witness, the claimant will tell his or her version of the incident. All papers or other evidence should be shown at this time. When the claimant has finished testifying, the judge or arbitrator or the defendant may ask some questions to clarify matters. The claimant may present other witnesses in support of the claimant, and they, too, may be questioned by the judge or arbitrator or the defendant.

The defendant will then be sworn and tell his or her side of the story and present evidence. The defendant also may present other witnesses. The claimant or the judge or arbitrator may ask questions of the defendant and the witnesses called by the defendant.

If you are suing a business, be certain to ask the defendant's witness the full and correct legal name of the business and the name of the person who owns the business. If the name of the business is different from the name you wrote in your notice of claim, ask the judge or arbitrator to make any correction in the name on your notice of claim.

After all the evidence is presented, the judge or arbitrator will consider the evidence and render a decision. The decision will be mailed to the parties within a few days after the hearing. In rare cases, the decision may be announced immediately after the trial.

WHAT HAPPENS IF ONE PARTY DOES NOT APPEAR?

If the claimant does not appear in court when the calendar is called, the case will be dismissed.

If the defendant does not appear, the court will direct an 'inquest'' (hearing). That means that the claimant will go before the judge or arbitrator to present evidence to prove his or her case without the defendant presenting any evidence. If the claimant's case is proved, a ''default'' judgment will be awarded against the defendant.

If a default judgment is granted because the defendant did not appear, or the case is dismissed because the claimant did not appear, the losing party may ask the court to re-open the case and restore it for a trial upon a showing of good cause. Contact the clerk for the procedure used to re-open the case. The clerk also will set a date when both sides are to return to court.

On the return date, the judge will decide whether to re-open the case. However, both sides should be prepared for trial in the event the case is re-opened.

SETTLEMENTS

In a lawsuit, one of the parties must always lose. Although you believe you are entitled to win, the judge or arbitrator may rule against you. Therefore, parties to a commercial claims action are encouraged to settle their cases whenever possible. You should seriously consider a reasonable offer of settlement.

If the case is settled before the day of trial and the money has been paid, notify the clerk by mail. You do not have to appear in court.

If a case is settled but the money has not been paid, or if settlement talks are not completed, the claimant should appear in court so that the case is not dismissed and ask the judge for ''adjournment pending settlement.'' A new date then will be set for trial. If the settlement does not work out, both parties should appear in court on the new adjourned date, prepared for trial.

CAN I APPEAL THE CASE IF I LOSE?

If your case was tried by a judge, you may appeal the decision if you believe justice was not done. You cannot appeal if your case was tried by an arbitrator.

Technical mistakes made during the trial are not grounds for reversal. The appellate court will consider only whether substantial justice was done.

Very few Commercial Claims cases are appealed. The expense of appealing is rarely justified in a Commercial Claims action. Taking an appeal may require retaining an attorney. In addition, the party who is appealing must purchase a typed transcript of the trial proceedings from the court reporter, or from the court when audio recording of the trial is authorized. If no stenographic minutes were taken, the party appealing will be required to prepare a statement of what took place during the proceeding, or in some courts, the judge or clerk will write this statement. If a statement is used, the party who is not appealing will have an opportunity to offer changes to the statement.

If you decide to appeal, you must file a notice of appeal and pay the required fee within 30 days after the judgment is entered. Consult the Commercial Claims clerk if you want further information about starting an appeal.

The party appealing the judgment can temporarily prevent its enforcement pending the decision on the appeal. To do this, a bond or undertaking must be filed with the court to guarantee payment of the judgment should the party lose the appeal. If you receive a notice of appeal, you should call the court to find out if an undertaking has been posted; if not, you may take steps necessary to collect the judgment immediately, or you may wait until the appeal has been decided.

WHAT DO I DO IF I WIN?

If the claimant wins, the court will enter a judgment for a sum of money. The court also may require the claimant to take certain action - for example, return damaged merchandise to the defendant - before entering judgment.

HOW CAN I COLLECT MY JUDGMENT?

Winning a judgment does not guarantee you will collect.

The court provides some help in collection of judgments. For example, prior to rendering judgment, the court can order the defendant to disclose his or her assets and restrain the defendant from disposing of them. However, you must take the necessary steps to obtain payment of your judgment.

After winning a judgment in your favor, you should try to contact the losing party to collect your judgment. If the defendant does not pay you, you may need the services of an enforcement officer - a sheriff, city marshal, or a constable. You must provide that office with the information needed to locate assets (money or property) of the defendant, and the enforcement officer then

can seize those assets to satisfy your judgment. The enforcement officer may request mileage and other fees before he or she seizes the assets. In many circumstances, these fees later can be added to the original judgment amount you receive from the defendant.

Property which may be reached by an enforcement officer includes: bank accounts, wages, houses or other real estate, automobiles, stocks and bonds.

LOCATING ASSETS

1. Information Subpoenas

If a Commercial Claims judgment has been entered in your favor you may obtain an information subpoena or subpoenas from the Commercial Claims clerk upon payment of a $2.00 fee. If you request it, the clerk will assist you in the preparation and use of the information subpoena forms. Some stationery stores also sell information subpoena forms.

An information subpoena is a legal document that may help you to discover the location of assets of the judgment debtor (defendant). It is a legal direction to a person or institution to answer certain questions about where the assets of the defendant are located. The information subpoena may be served upon the judgment debtor and upon any person or corporation that you believe has knowledge of the judgment debtor's assets - for example, the telephone company, landlord, or bank. Separate forms are used for service on the judgment debtor and service on any other person or corporation.

The person or corporation served with an information subpoena must answer the questions served with the subpoena within seven days of receipt.

The information subpoena, accompanied by two copies of a set of written questions, and a prepaid addressed return envelope, may be served by ordinary mail or by certified mail, return receipt requested. Except where service is to be made upon the judgment debtor, a fee of 50 cents also must accompany the subpoena.

2. Bank Accounts and Wages

One simple way to improve the chances of collecting your judgment is to learn the name and address of the bank where the defendant keeps a savings or checking account. A way to do this is to look at the back of a cancelled check you or a friend may have given to the defendant. With this information, the enforcement officer can seize money in the defendant's account and use the funds to satisfy your judgment.

Another way is to find out the name and address of the defendant's employer. If you sued an employed person, you may be able to collect your judgment out of his or her salary. To do this, the enforcement officer can serve an "income execution" on the employer of the judgment debtor. This execution requires the debtor's employer to pay 10% of the judgment debtor's salary to you until the judgment is paid, provided the debtor's gross earnings are above a certain minimum amount set by federal law (currently $127.00 per week).

3. Real Property

If defendant owns real property in the county, you may be able to collect your judgment from its sale. The clerk will direct you to the proper office where you can check property ownership. You will have to obtain a transcript of your Commercial Claims judgment from the court and file it with the County Clerk. You then should consult the sheriff, who may conduct a sale at public auction. It is your responsibility to prepare the papers required to sell the property. The sheriff, after deducting his or her fees and expenses, and, after paying off any prior mortgage, tax liens, and judgments, will send the balance to you up to the amount of your judgment, plus interest.

4. Personal Property

Your judgment can be paid from the sale of defendant's personal property, such as automobiles, stocks and bonds and equipment. Contact the enforcement officer for details of the expenses and fees required. It is your responsibility to prepare the papers required to sell the property.

If you give an enforcement officer the model, year, and license plate number as well as the location of the defendant's automobile, the officer can seize it, sell it at auction and pay your judgment with the proceeds. You can check with the New York State Department of Motor Vehicles to learn whether defendant owns an automobile (Fill out form FS-25). You can also find out from the Department of Motor Vehicles (Form MV-905) whether a bank or finance company already has a claim against defendant's car.

If the defendant has a large unpaid auto loan, a bank or finance company might be entitled to payment of the loan from the sale of the defendant's vehicle before your judgment can be satisfied.

OTHER ENFORCEMENT PROCEDURES

1. Claims Based on Motor Vehicle Ownership

If your claim was based on the defendant's ownership or operation of a motor vehicle, you may be able to have the Department of Motor Vehicles suspend the defendant's drivers license and auto registration until the judgment is paid. To take advantage of this procedure, you must have a judgment for over $600 which has remained unpaid more than 15 days after it becomes final. Ask the clerk for details of this procedure.

2. Licensing Agencies

If the judgment debtor is engaged in a business that is licensed or certified, you may notify the appropriate state or local authority if the judgment remains unpaid 35 days after the judgment debtor receives notice of entry of the judgment. The failure to pay a judgment may be considered by the licensing authority as a basis for the revoking, suspending, or refusing to grant or renew a license to operate a business.

If the judgment debtor is a business that the court finds to be engaged in fraudulent or illegal conduct, you have the right to notify the Attorney General and, if the business if licensed, the appropriate licensing authority as well.