

**Comments of Thomas M. Gordon, Senior Counsel
on the
Tentative Recommendation of the California Law Revision Commission
regarding
Jurisdictional Limits of Small Claims Cases and Limited Civil Cases
(Study J-1321)**

HALT, the nation's oldest and largest legal reform organization, has been working for twenty-five years to improve accessibility and accountability in the civil justice system. As part of this effort, HALT's Small Claims Reform Project has worked to publicize the existence and advantages of small claims courts, to educate legal consumers about their rights, and to advocate for systematic reforms in the operation of small claims courts. HALT is pleased that the Commission has undertaken this study of California's small claims system¹, and supports most of the changes proposed in the Tentative Recommendation.

HALT has long supported any changes to small claims courts that make them more accessible to the people they are intended to help. As the true "people's court," small claims court is the only court where people can resolve their disputes without the often unaffordable and unnecessary intervention of an attorney. Among the reforms that HALT recommends for small claims courts are raising dollar limits, providing help with enforcing judgments, allowing injunctive relief, discouraging the use of attorneys, holding evening and weekend sessions and making courts more understandable to their customers through the use of small claims advisors and explanatory written materials. California already has many of these positive attributes in its small claims system. The Commission's recommended changes also correspond with much of HALT's reform agenda, and would increase access to justice for the people of California.

Jurisdictional Limit

HALT applauds the Commission's recommendation that the small claims jurisdictional limit be raised from \$5,000 to \$10,000. The Commission could help consumers even more, however, if it recommended that the limit be raised to \$20,000. This is approximately the average price

¹ HALT also approves of the proposed increase in limited civil case jurisdiction from \$25,000 to \$50,000, as this increase would also improve access to the legal system for the average person.

of a new car or minivan. While purchasing a new vehicle is an important financial decision for most people, it is not one for which they consult an attorney or other outside expert. Similarly, Californians who are seeking resolution of disputes worth an equal value should be able to do so without outside expertise.

HALT has long publicized the problem of the “legal no-man’s land” where users of the legal system find themselves when their claims are too large for small claims court, but too small to make representation by a lawyer cost-effective. The Policy Studies Institute study commissioned by the Administrative Office of the Courts, which made recommendations much more cautious than those in the Tentative Recommendation, reported that cases of up to \$15,000 “are too low in value to pursue economically with an attorney.”² Even if this cautious estimate is correct, consumers should have the discretion to decide that a case worth slightly more than this amount would be better handled pro se. It therefore makes sense to allow consumers to pursue cases of up to \$20,000 in small claims court.

Most objections to raising the dollar limit have fallen into three categories: (1) concerns about increased caseloads, (2) a belief that small claims court should remain “small” and (3) apprehension over the perceived loss of due process in small claims court. These concerns, while well-intentioned, are misplaced.³

First, data from other increases in small claims jurisdictional limits show that such increases have a minimal effect on the caseload of the small claims courts. HALT’s California Small Claims Study shows that small claims filings increased from 515,364 to 548,339 – an increase of only 6.4 percent – in the year after California’s last increase in the jurisdictional limit.⁴ Furthermore, the caseload fell to 498,660 the following year, and has

² Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002), 59.

³ It is refreshing that none of the comments responding to the Tentative Recommendation have raised another common concern: loss of business to attorneys. In other states, organized bars have raised objections to increasing small claims jurisdictional limits because of this ill-founded fear. Such an objection is troubling on two counts. First, it is not true that higher dollar limits translate to fewer clients since, as noted above, it is not cost-effective to hire an attorney for cases worth such small amounts. Second, it is morally troubling when the bar – the guardians of the justice system – places its financial well-being ahead of its commitment to justice for everyone. Hopefully, the debate over this proposal will continue to avoid the taint of self-interest.

⁴ Coskie and Duong, *California Small Claims Study* (August 9, 2002), 13 (attached). Although the commission has seen this report in draft versions, the attached final version incorporates some technical corrections, and supersedes any previous versions.

continued to decline each year, both in number of cases and percentage of the total civil caseload.

Similar results have occurred in nearly every other jurisdiction that has increased its small claims jurisdictional limit in the last decade. Twenty-one states reported caseload data for their small claims courts for the year before and after a jurisdictional increase.⁵ Of the 26 increases for which data was available, only two resulted in a caseload increase of greater than 10 percent, and only three others resulted in an increase of over 5 percent. Of the remaining 21 jurisdictional increases, eight corresponded with a *decrease* in caseload.

Second, the belief that small claims court should remain “small” can perhaps be blamed on the assumption that the name of these courts indicates their most important feature. However, the feature that most defines a small claims court is not the size of claims it allows, but its simplicity of use. California law states, “In order to resolve minor civil disputes expeditiously, inexpensively and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.”⁶ A court that hears only cases worth under \$100 but allows motions and discovery would hardly be recognizable as a small claims court. However, if California were to raise its small claims jurisdictional limit to \$20,000, it would not change the fundamental nature of these courts, which is to simply and quickly resolve everyday disputes between people in an affordable manner.

Finally, the idea that increasing the jurisdiction of small claims courts will result in a denial of due process is based on the false dichotomy that the alternative to small claims court is representation by a lawyer. This is simply not true. The decision the legislature must make for Californians with cases worth under \$20,000 is not whether they will use courts with limited procedure or courts with full procedure. Rather, it is a choice between courts with limited procedure and no courts at all.

Opponents of an increased dollar limit have raised the argument that for many people \$10,000 is a substantial sum and deserves all the procedures

⁵ See attached summary: “Effect of Increasing Small Claims Jurisdictional Limit on Caseload”. HALT surveyed every state that had raised its small claims jurisdictional limit between 1993 and 2002. Arizona, Arkansas, Hawaii, Illinois, Louisiana, Maine, Nevada, New Hampshire, New Mexico, North Dakota, Utah, Virginia and Wyoming were unable to provide caseload numbers for the relevant periods.

⁶ Cal. Code Civ. Proc. Section 116.120(b).

of traditional superior court, or at least economic litigation procedures. These opponents miss the point. While \$10,000 or \$20,000 is certainly a substantial sum of money, litigants in cases worth such an amount are not well served by having to navigate a maze of procedures by themselves. Yet this is exactly what such litigants will have to do, since it is not cost-effective to hire an attorney for these cases. Perhaps in an ideal world, all litigants would have access to counsel. However, since there is no civil *Gideon* right in sight, we must deal with the facts that not everyone can afford to hire a lawyer, and for those who can afford to, it may not be cost-effective to do so. The court system is therefore obligated to meet the needs of pro se litigants. Expanding the availability of small claims court is a far better way of meeting those needs than allowing pro se litigants to become trapped in the labyrinth of higher court procedures.

Additional objections are raised in the case of small claims defendants who, opponents of an increase claim, are particularly hampered by the inability to retain counsel since they did not choose this forum to resolve their dispute. Of course, such defendants would arguably be no better off if they could be represented by an attorney at trial, since such representation might cost more than the amount at stake in the suit. Nonetheless, the unavailability of counsel at trial does not mean that small claims defendants are unable to receive any legal assistance. First, these users of the court system can take advantage of the services of the small claims advisory service, an option not available to litigants in the “full service” courts. Additionally, these litigants may seek out unbundled services from an attorney, which could include anything short of entering an appearance.

Small Claims Advisory Service

Critics of an increased jurisdictional limit have claimed that weaknesses in the small claims advisory service are a sufficient argument against increasing the dollar limit. It is encouraging, therefore, that the Commission has recommended complementing an increased jurisdictional limit with improvements in the advisory service. HALT supports the Commission’s proposal of funding additional services through higher filing fees for cases over \$5,000, provided such fees are reasonable (as the proposed \$40 filing fee is). HALT also supports the proposal that providing advice on collection procedures be made an explicit part of the duties of a small claims advisor. Except for raising the jurisdictional limit, this is the

most important reform for small claims courts nationwide, and the area in which California's system is most in need of reform. In too many instances, a plaintiff finds that a verdict in her favor is not the end of her journey through the legal system, but the beginning. Any help that courts can provide with the collection process relieves consumers of a considerable burden.

Limit of Two Small Claims Per Year Exceeding \$5,000

HALT agrees with the basic premise embodied by this provision: that small claims court should be a "people's court" and not an adjunct to the collections industry. However, allowing only two larger claims per year is unduly restrictive. Many sole proprietors and other small businesses may face multiple disputes each year worth more than \$5,000. These individuals and small businesses should have reasonable access to the small claims system. Allowing small claims judges discretion to grant leave to file additional large claims would protect the rights of individuals who engage in a large amount of commerce without turning the small claims system into a collections factory.

Special Jurisdictional Limits for Claims Against Guarantors

HALT agrees with the Commission's recommendation that these special limits be eliminated in the interest of simplicity.

Award of Attorney's Fees in a Case That Could Have Been Filed as a Small Claims Case But Was Not

HALT agrees with this provision and encourages such efforts to promote the use of small claims courts.

Conclusion

HALT is pleased with the recommendations of the Commission. The proposed increase in the small claims jurisdictional limit, while not large enough to entirely eliminate the "legal no-man's land," is a large step in the

right direction. Furthermore, the other proposed reforms will help California maintain its position as the national leader among small claims court systems. HALT would like to thank the Commission for taking these steps to assist users of the legal system, and urges it to take one additional step towards this goal by increasing its recommended small claims jurisdictional limit to \$20,000. We look forward to the Commission's final recommendation and the implementation of these reforms in 2005.

Effect of Increasing Small Claims Jurisdictional Limit on Caseload

Alabama

Fiscal Year	Dollar Limit	Number of Cases Filed	Percentage Change
1996	\$1,500	107,916	
1997	\$3,000	112,794	+4.3%

Alaska

1997	\$5,000	11,469	
1998	\$7,500	10,757	-6.6%

Colorado

1995	\$3,500	16,899	
1996	\$5,000	16,843	-0.3%
2001	\$5,000	14,961	
2002	\$7,500	15,591	+4.0%

Connecticut

1994	\$2,000	66,839	
1995	\$2,500	64,413	-3.8%

Florida

1996	\$2,500	112,813	
1997	\$5,000	116,903	+3.5%

Idaho

1999	\$3,000	465	
2000	\$4,000	378	-23.0%

Indiana

1996	\$1,000	77,496	
1997	\$3,000	79,495	+2.5%

Iowa

1995	\$2,000	77,506	
1996	\$4,000	79,129	+2.1%

Kansas

1994	\$1,000	15,493	
1995	\$1,800	16,023	+3.3%

Massachusetts

1993	\$1,500	126,472	
1994	\$2,000	127,780	+1.0%

Michigan

1999	\$1,750	89,842	
2000	\$3,000	98,173	+8.5%

Minnesota

1994	\$6,000	83,752	
1995	\$7,500	83,660	-0.1%

Missouri

1994	\$1,500	20,154	
1995	\$3,000	20,226	+0.3%

Nebraska

1995	\$1,800	10,958	
1996	\$2,100	10,999	+<0.1%
2000	\$2,100	9,462	
2001	\$2,400	9,919	+4.6%

New York

1994	\$2,000	100,912	
1995	\$3,000	97,833	-3.1%

North Carolina

1993	\$2,000	237,729	
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1994	\$3,000	239,540	+0.8%
1999	\$3,000	278,311	
2000	\$4,000	287,505	+3.2%

Ohio

1992	\$1,000	90,370	
1993	\$2,000	86,523	-4.4%
1995	\$2,000	78,669	
1996	\$3,000	79,914	+1.6%

Oregon

1997	\$2,500	65,177	
1998	\$3,000	59,171	-10.1%
1999	\$3,500	57,816	
2000	\$5,000	64,054	+9.7%

South Dakota

1997	\$4,000	31,255	
1998	\$8,000	31,363	+0.3%

Vermont

1992	\$2,500	11,733	
1993	\$3,500	10,811	-8.5%

Washington

2000	\$2,500	23,306	
2001	\$4,000	24,296	+4.1%