

## **SMALL CLAIMS BASICS**

### **What are your rights as a defendant? The who, what, where and why of small claims collection lawsuits And what to expect at the pretrial hearing**

If you have been served with a lawsuit filed by a company or person (“the plaintiff”) for a debt, you probably have a lot of questions. The court papers or “lawsuit” may:

- Have been filed by a company you may not be familiar with
- Be for amounts you may not agree with
- Or be over a debt that you have already paid off, is too old to collect or has already been discharged in a bankruptcy case.

If you have questions or disagreements about the amounts demanded in the lawsuit or whether you owe any money at all to the company filing the lawsuit, you have the right to have your day in court. It is especially important to respond to the lawsuit by attending the pre-trial hearing, which gives you a chance to talk with the judge and other party directly. This hearing gives you your opportunity to inform the court you have questions about whether you owe the company suing you any money or to question the amount of money owed. If you do not go to this hearing, a judgment will probably be entered against you.

Often, there are not enough documents attached to the lawsuit for you to make an informed decision about whether you owe money to the plaintiff or if it is really your debt at all. If you go to the pre-trial hearing, you have the right to formally ask the plaintiff for documents proving you owe any money to the plaintiff and the amount of money you owe. The pre-trial hearing is not your final trial, it is your chance to let the court know whether you “admit” or “deny” the debt and to get a future time and date for your final trial. You may also be offered a chance to mediate your case for free at the pre-trial hearing.

You may receive some documents from the law firm filing the lawsuit offering you a chance to settle the lawsuit before you go to the pre-trial hearing. These settlement offers may be sent to you even before you have had a chance to have your questions answered about the amounts owed or whether you owe anything at all to the company filing the lawsuit.

If you have questions about the lawsuit, you should attend the pre-trial hearing to learn more about your options. At the pre-trial hearing, the judge or hearing officer may inform you of an opportunity to mediate your case for free. If you are offered settlement documents, or an option to mediate your case, you may want to seek the help of a lawyer to make sure the terms of this binding agreement are fair. You should check the amounts owed, the interest rates and other terms such as a potential waiver of a the right to contest the future loss of a portion of your pay check or bank account (garnishment/attachment) if you do not pay as required by the agreement.

Please call a lawyer or your local legal aid office if you have questions about:

- Your rights as a defendant
- The lawsuit filed against you
- The company suing you
- The documents attached to the lawsuit
- Or the court process.

Your local court or voluntary bar association may offer a free class with information about the small claims process. You also may want to check with the clerk of the court in your area either in person or through the Internet to see what informational opportunities are available in your area.

### **General information - frequently asked questions**

**Q.** What if I do not know the company suing me?

**A.** Generally, the plaintiff is required to prove:

- It owns the debt
- You are responsible for the debt
- The exact amount of the debt, in order to obtain a judgment against you.

If the Plaintiff can prove these requirements, you may still have a legal defense or legal reason as to why you should not have to pay this debt. Sometimes you know the plaintiff, but often, you may not be familiar with the plaintiff, which will claim it bought your debt from another company or person you owed money to. The plaintiff bringing the lawsuit must prove it owns your debt or the amount owed by legally proper proof, sometimes called “evidence.”

**Q.** What if I recognize the company suing me but do not agree with the amount the plaintiff says I owe?

**A.** The plaintiff is required to prove the amount of money it claims you owe. You may think the plaintiff has included charges that are not yours, charged the wrong interest rate or included charges for credit products you did not request. If you do not agree with the amounts sought, you have the right to formally request legally proper proof of the amounts.

**Q.** What if this is an old debt or account?

**A.** Sometimes, companies wait too long to bring lawsuits. If this happens, you may have a “statute of limitations” defense that, if properly raised and proven, can lead to the case being dismissed. You may want to talk to an attorney if you think the debt is too old to be the subject of a lawsuit. Additionally, you may have claims against the company suing you if they have wrongfully filed the lawsuit.

**Q.** What if the debt was discharged in a bankruptcy case?

**A.** Sometimes, companies buy debt that has already been discharged in a bankruptcy case. It is illegal for them to sue you for this debt. If the discharge is properly raised and proven it may lead to the case being dismissed. You may need to talk to an attorney to determine if your debt was properly discharged in bankruptcy and, therefore, uncollectable. You may have claims against the company suing you if they have wrongfully filed the lawsuit

**Q.** What should I do if I agree with the claims raised in the lawsuit?

**A.** If you agree that you owe the money claimed in the lawsuit to the company suing you, you can go to the pre-trial hearing and let the clerk of court know you do not dispute the debt. If you can afford to pay the debt, then pay. If you cannot afford to pay, you can set up an agreement to start paying while at the pre-trial hearing. Make sure you are definitely able to afford the amounts you agree to pay. Also, make sure the interest rate charged is proper. The “judgment interest rate” is less than the contract rate. As of January 2012, the interest rate is 4.75 percent. The rate can change every three months.

Also, you may be able to settle the debt for less than the amount the plaintiff is requesting. If you agree to a lesser settlement amount, make sure you get a copy of the settlement agreement (including amount and interest rate) in writing and signed by the plaintiff.

**Q.** What should I do if I do not agree with the claims raised in the lawsuit?

**A.** If you believe you do not owe the debt at all, do not owe the amount listed in the complaint, do not recognize the name of the plaintiff suing you, feel it has waited too long to sue you or believe you have other defenses, you should talk to an attorney before deciding how to respond to the complaint. You may have defenses to the lawsuit that you must properly present to the court, maybe in writing.

You may also have claims that you can raise against the company suing you.

**Q.** Am I required to prove I do not owe the money or the amount claimed in the lawsuit?

**A.** The plaintiff has the initial responsibility of proving its case. If the plaintiff can prove the case, the result will be the same as if you admit the debt and a judgment will be entered against you. The plaintiff must use proper, legal proof to show that:

- The lawsuit involves a debt that you promised in writing to pay
- The exact amount you owe
- And that it owns the debt.

However, if the plaintiff cannot prove each of these “elements,” the judge may dismiss the case.

**Q.** What will happen at the pre-trial hearing?

**A.** When you attend the pre-trial hearing you may be called by the clerk of courts or bailiff to the front of the room. The judge, hearing officer or a clerk of court representative will ask if you admit or deny the debt in your case. If you deny that you owe the debt to the plaintiff, or if you

disagree with the amounts sought, or if you advise the court that you have a legal defense, then you may be offered an opportunity to “mediate” your case. Mediation is an opportunity for the parties to agree upon a settlement amount if you believe you may owe the debt.

If you do not agree at mediation, your case will be set for a trial date in the future. You do not have to hire an attorney to represent you at trial; however, it may be a good idea for you to consult an attorney as soon as possible to learn how to present your case at trial. Your local court or voluntary bar association may offer a free class with information about the small claims process. You may want to check with the clerk of the court in your area in person or through the Internet to see what informational opportunities are available in your area.

**Q.** What happens if I lose the case?

**A.** If you raise legal defenses or do not respond at all to the lawsuit, a judgment will be entered against you. A judgment is a legal document signed by the judge that sets out the amount that you owe the plaintiff and may include attorney’s fees, costs and interest. It is a document that will become public record and may also be recorded by the plaintiff.

The court cannot make you pay the judgment; however, the plaintiff may take actions to try to collect. For example, after a judgment has been issued, the plaintiff may try to garnish your wages, freeze your bank account or take your other property you own. The judgment creditor cannot do this until after it has obtained another legal paper called a Writ of Execution or Writ of Possession from the court. However, you may have an exemption (a legal defense) to garnishment/levy to save your assets and income from being seized. If a judgment is entered against you, you may want to promptly contact an attorney.

[Revised: 3/12]