Approved: 2-23-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on February 9, 1993 in Room 514-S of the Capitol.

All members were present except: All present.

Committee staff present: Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Art Brown, Mid-America Lumbermens Association
Bruce Harrington, Special Judge ProTem, Small Claims Court Division, District Court of Shawnee County
Ron Smith, Kansas Bar Association
Paul Shelby, OJA
Barbara J. Clinkscales, Appointee to the Board of Indigents' Defense Services

Others attending: See attached list

SB 150 - Raising amount of claim allowable in small claims procedure.

Art Brown, Mid-America Lumbermens Association, appeared in support of SB 150 stating lumber dealers prefer to use small claims court over liens to collect debts and the $1,000 cap excludes most of the collections they must make (Attachment 1).

Bud Grant, Kansas Chamber of Commerce and Industry, submitted written testimony in support of SB 150. (Attachment 2)

Bruce Harrington, Special Judge ProTem, Small Claims Court Division, District Court of Shawnee County, testified in opposition to SB 150 stating the purpose of small claims court is to give laymen access to the Court without having to pay an attorney perhaps more than their claims are worth (Attachment 3). He feels increasing the jurisdictional limit to $2,500 will encourage more businesses, banks and finance companies to use the Court, contrary to the original intent in its creation. Judge Harrington asked the Committee to amend the defendant's counterclaim procedure in the Small Claims Procedure Act to require mailing or Service of Process in a counterclaim to notify the other side prior to trial. The law now states the defendant may file a counterclaim at any time and typically they do so on the day of trial, necessitating a continuance. Should the jurisdictional limit be raised prompting more appeals, Judge Harrington also expressed concern that the mandatory attorney fee provision if a person appeals a decision in Small Claims Court and loses, has a "chilling effect" on appeals.

Ron Smith, KBA General Counsel, appeared in opposition to SB 150 and provided written testimony (Attachment 4). Mr. Smith emphasized that businesses with claims exceeding $1,000 have Chapter 61 Court as a recourse. He asked the Committee to leave the jurisdictional amount of Small Claims Court set at $1,000 and amend the definition of person in line 30 to mean only individuals.

Paul Shelby, OJA, appeared to express the concerns of the Judiciary with SB 150 (Attachment 5). He noted that raising the jurisdictional limit will result in an increase in case filings. The effective date of July 1 will require counties to reprint and replace forms in their mid-fiscal year at an estimated cost of $7,500. In addition, he advised that this proposal will increase post-judgment remedies, i.e., garnishments.

CONFIRMATION HEARING

Barbara J. Clinkscales, nominated to serve on the State Board of Indigents' Defense Services, appeared for a hearing on her appointment and reviewed her work experience for the Committee. Ms. Clinkscales advised that she has recently accepted a position as area attorney in the Hays Area Office of SRS. Senator Petty moved to recommend the confirmation of Barbara J. Clinkscales to the Board of the State Board of Indigents' Defense Services favorably. Senator Martin seconded. Motion carried.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for February 10, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 2-9-95

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Barbara J. Clinkscales	P.O. Box 722 Hays Ks.	BIDS
Ron Miles	Topeka	BIDS
Paul Shelby	Topeka	QJA
Cameron Brewer	"	KTLA
Mike Torrey	"	KGFA
Tom Wells	"	KCC
Jerel Wright	Topeka	KS Judicial Union Assn
BRUCE C. HARRINGTON	TOPEKA	SHAWNEE COUNTY SMALL CLAIMS
Donna Meister	Topeka	JUDGE Comm. Oversight Com.
George Wingert		Gov Office

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MID-AMERICA LUMBERMENS ASSOCIATION

MLA
ARKANSAS KANSAS
MISSOURI NEBRASKA
OKLAHOMA

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE

Senate Bill #150 Rm. 514-S February 9, 1993

Mr. Chairman, members of the committee, it is with pleasure and appreciation that I come to testify before you to voice our support for Senate Bill #150. My name is Art Brown, and I represent the Kansas Lumber Dealers Association.

Our support for this measure stems from some idiosyncrasies in our business that I feel it is important to point out to the committee.

When we sell merchandise to an individual, company or whatever, and there is a problem in receiving the remittance for same, there is no way we can recover the merchandise and put it back into inventory for resale. An example is that if an automobile or a stereo system is repossessed for default of payment, it can be resold into the marketplace. Granted it would be at a reduced price, but still the opportunity exists to resell the product.

In our business, we cannot repossess a garage, a deck or a kitchen cabinet job. Once such merchandise becomes part of the structure, that is where it remains. These aforementioned items are just some of the several items or projects we get involved in where the merchandise we provide will sell in excess of $1,000.00, the current cap for settlements in small claims awards.

Some scenarios that come into play as to how a remittance is withheld from the dealer are items which are special ordered, and the customer does not feel what they received is what they ordered. This happens in cabinet doors if the wood is "too grainy", compared to a floor sample or picture. Even though disclaimers are given to the customer, it can present a problem and withholding of payment. Many times, an unforeseen circumstance develops beyond the control of the dealer or the customer. Job loss, divorce, or catastrophic and sudden illness can have a devastating negative impact on the best intentions to satisfy financial obligations. If no effort is made to satisfy such an obligation,

LUMBER GROWS ON TREES

SJ
2-9-93

Attachment 1

the settling of the issue through small claims court is frequently used to solve this problem.

One concern we have had with this system in the past is that at the current cap of $1,000.00, many times the merchandise we sell is well over that amount. In this event, we have to look to the filing of a lien. This we truly despise.

Liens are the most onerous of situations. For the dealers it is expensive, time consuming, and in almost all cases, is hardly worth the effort for the final amount of monies collected. Raising the cap to $2,500.00 would certainly put most of the items we sell in this range, excluding the sale of a new house or building. Small claims court is quicker and much more economical than filing a lien, and even though the untidy job of collecting an overdue account has no easy solution, most of our dealers prefer small claims court as a vehicle to do so.

I should emphasize at this point, that dealers make every effort to check the credit-worthiness of the people with whom we do business. With the inventory requirements of our business, and the thin margins dealers work off of, it does not take too many "sour deals" to put a dealer in a very dangerous financial situation.

Anytime you own a business, and sell to the public, there is an inherent risk involved. Once a product is taken out of the front door of any business, if for some reason you, as a business person, do not get paid for it, you have simply lost it. Even partial repayment does not make up for the time and effort to recover the same.

Certainly we are talking about a situation which is not the norm. Our dealers have overall excellent business relations with their entire customer base. They would not be in business it they did not. However, simply stated, there are times when circumstances prevent matters from being worked out as intended, with no clear fault intended by either party.

I would also point out that due to the environmental impact causing a tightening of timber supply, the price of lumber used in many of these projects is rising dramatically. I have attached a copy of an article out of "USA Today" to dramatize this point. When the price of the raw product suffers such a price shock,

the overall price of the entire project is affected. This also makes the current $1,000.00 cap outdated by todays standards.

Any time there is a measure presented to the legislature to help ease the job of collecting existing debt, we will support such action. Speaking for our lumber dealers, we are hopeful that this committee, and the legislature as a whole, supports this concept and will pass this bill favorably.

As always, it is a pleasure to address this committee, and I stand ready to answer any questions or visit with you about any part of my testimony today. Thank you.

F
VIA SATELLITE
USA TODAY
Money
WEDNESDAY, FEBRUARY 3, 1993

Wood costs climb 41%

By Linda Busche
USA TODAY

Buying a new house? Expect to pay more than you planned.

Rising lumber prices will cost you an extra $3,000.

"Lumber will be more expensive, and the cost will be passed along to the consumer," says Michael Carliner, an economist for the National Association of Home Builders.

Lumber prices are at a record high just as the home-building season looms in the Northeast and Midwest.

The average cost of framing lumber reached $376 per thousand board feet Friday, up 41% from $266 in January 1992. Most homes take about 10,000 to 15,000 feet of lumber — including more expensive wood such as doors, sashes, windows and millwork. The higher price of wood will add about $1,800 to the builder's cost — and $3,000 to the buyer's price.

Reasons for the increase:

▶ Environmental restrictions in the Pacific Northwest are the biggest culprit in reducing the supply of timber, the industry says. "If your tree has a (spotted) owl in it, you're dead," says Lloyd Irland, an Augusta, Maine, forestry consultant.

▶ Heavy rains in the South delayed log harvests.

▶ Builders hoard supplies as they anticipate shortages.

When builders break ground in April, they may face delays, if not shortages, says Gary Donnelly, executive vice president for the National Lumber and Building Material Dealers.

"There's a real squeeze. If home building really takes off, will we be able to get the wood to sell?" he wonders.

Irland doesn't expect shortages except for specialty items.

"You won't go to Grossman's and see no lumber in the yard, but if you have a special need, you'll have to wait longer and pay more." Grossman's is a home-improvement chain in the Northeast and California.

Some suppliers won't be able to provide the material at any cost, says economist Con Schallau of the American Forest and Paper Association.

Not so, says Bob Curtis of the Saratoga Lumber Traders, Ballston Spa, N.Y. "Prices should go back down in about two months. This happens all the time." That means homeowners may want to postpone a deck, garage or interior woodwork until prices go down. While delays and high costs are imminent, lower costs prompted by hoarding will follow.

It's business as usual, says Curtis, who ran a lumber company for 44 years. "This is what makes it fun."

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Businesses seek higher small-claims court caps

by Gary S. Ruderman

NATIONAL REPORT — Dealers and wholesalers are reporting that one of their lowest-cost legal options for recovering monies from non-paying accounts is effectively closed.

With few exceptions nationwide, creditors are averaging only slightly more than $2,400 in settlement awards when they sue a debtor in small claims court. That's because most states continue to have relatively low limits on the size of claims these courts will handle (*see chart*).

Because the settlement prospects are low, some attorneys won't handle small claims anymore. And unless a claim is over $10,000, it's generally too costly—in terms of legal fees and the time it takes to go through the legal process—for a creditor to bring litigation to an appellate court, the next step up from small claims in most states.

Consequently, some companies have found themselves in the unenviable position of reducing credit extension, hiring a collection agency or writing off the bad debt.

Debt exceeds small claims

Small claims has historically been a preferred remedy for individuals and companies that didn't want to employ a lawyer and wanted a quick settlement. But with the prolonged recession, and with a record number of companies and people filing bankruptcy in 1992, debt often exceeds small claims-award caps.

Right now, only Florida and Tennessee allow small claims awards up to $10,000. But many states recognize this is a problem, and are trying to accommodate creditors by keeping small claims as a viable option for legal redress.

Ohio, for one, has a recovery ceiling of $2,500, and efforts to raise the maximum recovery to $10,000 have been rejected. But the Ohio Council of Retail Merchants and the Ohio Association of Wholesale Distributors are working with lawmakers to draft legislation to set up a two-tier system.

The Council proposes a slight increase in the maximum for individuals and a separate $10,000 maximum for small businesses and sole proprietorships.

Dennis Downer, acting president of the North American Wholesale Lumber Association and an Idaho distributor, said NAWLA's American-based members are looking for ways to get their respective state legislatures to raise their small claims ceilings to $10,000.

For Downer's company—Downer's Intermountain Orient Inc.—such a change would eliminate the expense of collection agents and attorney's fees for its distribution centers in Alabama and New Mexico.

Walt Minick also favors raising the small claims ceiling. Minick is credit manager of Brown-Graves Lumber, a $52 million retailer with two yards in Ohio.

Minick said to collect a $2,500 debt, collection agencies charge anywhere from 25 percent to 50 percent of the debt. And the process could take as long as eight months.

He added that retaining an attorney—at $130 per hour plus 33 percent of the settlement award—also isn't financially practical on such a debt, especially if it takes nine to 18 months for a case to come to court.

Because most of Minick's debtors are small builders, such a long wait could jeopardize the likelihood of collection. "The small builder is generally in trouble and in a year or 18 months they'll close up and you're out. The money is worth cents on the dollar after 18 months."

Small claims not an option

For some retailers, small claims isn't a concern or even considered an option.

Terry Hill, spokesman for The National Federation of Independent Businesses, a 600,000-member group of small- and medium-sized business owners, including wholesalers, said there hasn't been an inquiry from members concerning small claims courts in the last few years.

Sydney Katz, chief financial officer of Grossman's Inc., a 140-store chain in the Northeast, prefers to turn any debt problems over to collection agents and attorneys.

"It's not time-beneficial for us to go into small claims court," Katz said.

Even in Florida, Fort Lauderdale's Causeway Lumber prefers to use attorneys, according to the retailer's credit manager.

Tom Palie is credit manager of Allied Plywood Corp., a 14-branch lumber and building materials distributor based near Boston. Palie said a hike to $10,000 in the small claims cap (from Massachusetts' current $1,500) would mean he'd be going to that court for 90 percent of his cases, versus the 90 percent of the cases which now go to attorneys for litigation in a higher court.

Palie and his branch managers use the small claims courts to go after delinquent debtors like cabinet shops. He usually gets a court date within 30 days and, most times, gets a default judgment when the defendant fails to show. The small claims court process costs his company $30 to $40.

Sometimes Palie has to get a court order for payment or a lien on the debtor's assets in order to collect. "You have to do a lot of work yourself rather than an attorney," said Palie.

Last year, the law firm Allied had been using for these cases notified the company it would no longer handle cases where the potential award was less than $5,000.

"Attorneys don't want to waste time on small claims," said Paul Mignini, president of the 60-member state and regional National Association of Credit Managers. At present, Mignini said, his association was not focusing efforts on the federal level, leaving it to the state and regional affiliates to work for change. In late November, he said there was very little being done on the state level.

Maximum small claims court awards by state

State	Amount
Alabama	$ 1,500
Alaska	5,000
Arizona	1,000
Arkansas	300
California	5,000
Colorado	2,000
Connecticut	1,000
Delaware	2,500
Dist. of Columbia	2,000
Florida	10,000
Georgia	5,000
Hawaii	2,500
Idaho	2,000
Illinois	2,500
Indiana	3,000
Iowa	2,000
Kansas	1,000
Kentucky	1,500
Louisiana	2,000
Maine	1,400
Maryland	2,000
Massachusetts	1,500
Michigan	1,500
Minnesota	2,000
Mississippi	1,000
Missouri	1,500
Montana	2,500
Nebraska	1,800
Nevada	1,500
New Hampshire	1,500
New Jersey	1,500
New Mexico	5,000
New York	2,000
North Carolina	1,500
North Dakota	2,000
Ohio	2,500
Oklahoma	3,000
Oregon	2,500
Pennsylvania	4,000
Rhode Island	1,500
South Carolina	2,500
South Dakota	2,000
Tennessee	10,000
Texas	2,500
Utah	1,000
Vermont	2,000
Virginia	1,000
Washington	2,000
West Virginia	3,000
Wisconsin	2,000
Wyoming	2,000

Can't handle higher volume

The judiciary's opposition to higher claims caps has to do with an overcrowded docket. "Small claims courts can't handle the volume $5,000 and $10,000 cases would generate," said Arthur C. Kellman, a White Plains, N.Y., City Court judge and chairman of the American Bar Association's small claims committee.

"Our own state's limit is $2,000 and that's probably sufficient. Some states are $5,000 and $10,000. That is an unreasonably high cap," Judge Kellman said.

Responding to business pressure, New York State opened commercial claims courts in 1991 for claims from partnerships, associations and proprietorships, but limited the number of cases in each venue to a maximum of five per month. "Otherwise ,we get innundated by collection agencies," Kellman said.

Art Brown

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 150

February 9, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Judiciary Committee
by
Bud Grant
Executive Director
Kansas Retail Council

Mr. Chairman and members of the Committee:

Thank you for the opportunity to use this written testimony to express support for SB 150, which would raise the limit in the Small Claims Court from the current $1,000, exclusive of interest and costs, to $2,500. Because KCCI's annual CAUCUS takes place today, this is the one day I am unable to testify.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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The small claims court was established to provide a simple, informal procedure people to settle certain legal problems cheaply and quickly. It has served the public well. Unfortunately, the dollar limit has not been adjusted rapidly enough to keep up with changes in consumer prices.

As an example, it is not unusual for a grocery store of any size to collect worthless checks totaling several thousands of dollars monthly. Thanks to action by the Kansas Legislature in 1985, many of these checks are made good. But, those not made good can easily total more than $1,000, and if broken up into groups with small totals, the limitation of ten cases in small claims court in one year comes into play.

Because of this, I urge you to support SB 150 and enhance the availability and use of the Small Claims Procedures Act.

District Court of Kansas
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Bruce Harrington
Judge Pro Tem
Small Claims Division

Room 305
Shawnee County Courthouse
Topeka, Kansas 66603

February 8, 1993

TO THE COMMITTEE ON JUDICIARY - KANSAS STATE SENATE

RE: SENATE BILL 151

Dear Senators:

My name is Bruce C. Harrington, Special Judge Pro Tem - District Court of Shawnee County, Kansas, Small Claims Court Division. I have been the Small Claims Court Judge in Shawnee County, Kansas, since March, 1978, under special appointment from the Third Judicial District, Shawnee County, Kansas. I have handled all of the Small Claims Court work during that fifteen (15) year period of time.

Through the transition of the Small Claims Procedure Act since 1978, I have seen increases in the jurisdictional amount of the Court from $300.00, originally, to $500.00, to the current level of $1,000.00.

Nine-hundred-fifty-seven (957) Small Claims Court cases were filed in Shawnee County, Kansas, in 1992, which was down somewhat from previous year filings.

I am dramatically concerned about the proposed raise of the jurisdictional limit to $2,500.00. This concern is based upon personal observation in the Court for fifteen (15) years here in Shawnee County, Kansas. My concern is not a personal one, because the number of cases filed is of little consequence to me; however, I can truly say that the increase in the jurisdictional limit to $2,500.00 will dramatically increase the Court's case load in Shawnee County, Kansas, and undoubtedly, across the State of Kansas. I would estimate a one-hundred percent (100%) increase in the case filing.

It has been my experience in Shawnee County, Kansas, that

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Attachment 3

banks, finance companies and businesses have used the Court more and more for collection work. I do not believe it was the legislative intent when the Small Claims Procedure Act was adopted to have banks, finance companies and other businesses use the Court with regularity. Those institutions have full availability to collection under Chapter 61, Limited Actions provisions, of the Kansas Code of Civil Procedure.

The $2,500.00 is a large sum of money to subject a person to the loss of without benefit of an attorney. I realize, of course, that a denovo appeal in Small Claims Court to the District Court is provided for in Statute; however, the mandatory attorney fee provision of the Act, in my view, has a substantial "chilling effect" to an appeal. If you file an appeal and don't win, you are subjected to mandatory attorney fees, and in my mind, that provision was placed in the law for no other reason but to discourage appeals. I know of no other civil litigation, besides divorce and a few selected statutory procedures, where a party is subjected to the payment of attorney fees upon appeal.

Much more importantly is the access of the individual to the Court on a day-to-day basis. Surely, it was the legislative intent to allow the "small guy", who had a $300.00 or $400.00 claim, access to the Court without having to pay an attorney as much, if not more, than his claim was worth. To open the jurisdictional limit to $2,500.00 will allow a flood of collection cases into the Small Claims Court that, in my view, do not belong there. I deal with laymen, non-lawyers, who are not schooled, trained or sophisticated in procedural or technical matters of law. Such persons are generally petrified of the procedure when they appear before me, and it is my belief that at least seventy-five percent (75%) of the people that I see on a daily basis in the Small Claims Court have never been in a Court of Law before. I use a very simplified procedure, I do not hold laymen to the standard of law that lawyers are held to, but nothwithstanding that, increasing the jurisdictional limit will increase the volume of claims, the intensity of the proceedings, the complexity of the proceedings, and generally create havoc in a Court where only laymen are allowed in the first instance. The potential for violence between litigants is high in the Small Claims Court already, and the loss of $2,500.00 will surely provoke potentially violent situations among laymen.

Also, I believe there is a great flaw in the Defendant's

Claim or Counter-claim procedure that must be addressed. When an original action is filed, Summons is served by the Sheriff, at least five-days notice is given of the pendency of the action. Under the Counter-claim or Defendant's Claim procedure, a Defendant may file a Defendant's claim at any time, and typically, I have Defendants walk into Court and hand me the Counter-claim on the morning of trial, with the other side having no notice of the same whatsoever. Typically, I have to continue the case because the person being claimed against has not prepared for the Defendant's claim, does not have paperwork or materials present in Court to defend the same. I suggest strongly that a provision be put that a Counter-claim must be filed and either mailed or served within five (5) days of the impending trial so as to give both parties equal opportunity to know what will come before the Court, to prepare and defend against the same.

I realize this will cause additional clerical time, but it is patently unfair for a person to be presented with a Counter-claim seconds before a case is tried when he had no previous knowledge of the need to defend the same. Once again, in Limited Actions, or Chapter 60 litigation, lawyers are typically involved, and Counter-claims are filed long before the actual trial on the merits. In Small Claims Court, without lawyers being involved, we often have "trial by ambush" in regard to a Counter-claim. This is a serious flaw that must be corrected because it is an ongoing problem on a daily basis in my Small Claims Court.

Over the past fifteen (15) years, I have seen Small Claims Court go from the "people's court" to the businessman's court, and I respectfully submit to the Judiciary Committee that the businessman has full access to the Court by way of Limited Actions, Chapter 61 proceedings, or Chapter 60 District Court proceedings. I am seriously concerned that the jurisdictional limit increase will erode the man-on-the-street's access to the Court, and more importantly, his ability to effectively deal with monetary issues involving $2,500.00.

In addition, more and more frequently we see corporations appearing in the Small Claims Court represented by counsel because their house counsel is an officer of the corporation, and therefore, the corporation has benefit of an attorney, and the

man on the street does not. A very unfair balance is then created in the procedure.

I urge the Judiciary Committee of the Kansas State Senate to leave the jurisdictional limit at the sum of $1,000.00, and to change the Counter-claim procedure so that, at a minimum, mailing, or Service of Process, is required to notify the other side prior to trial.

Respectfully submitted,

BRUCE C. HARRINGTON
Judge Pro-tem
Shawnee County District Court -
Small Claims Division

BCH:jsl

KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: **Members, Senate Judiciary Com.**

FROM: **Ron Smith, KBA General Counsel**

SUBJ: **SB 150, Small Claims**

February 9, 1993

KBA POSITION

The Board of Governors of the Kansas Bar Association opposes further expansion of the small claims court jurisdiction.

SUMMARY

SB 150 further erodes the original doctrine behind Small Claims Courts. Businesses faced with a $2,500 claim against them would not hesitate to consult an attorney. Yet this bill denies that right to ordinary citizens.

By continuous expansion of the jurisdiction limits, small claims court is becoming a business collection court where businesses try to avoid the slightly higher filing fees of Chapter 61 while at the same time denying the defendant access to an attorney.

What the proponents want to achieve through expansion of the jurisdiction limit can be accomplished in Chapter 61, without changing the law.

Finally, an argument can be made that the Legislature, by allowing corporations to appear in a court of record without an attorney, is violating the Kansas Supreme Court's case law and the Court's inherent authority to regulate the practice of law.

BACKGROUND

Small claims courts were originally to be "people's courts" to resolve small disputes. There is nothing "small" about a $2,500 claim. If you examine the interim Judiciary Committee reports of 1972 and 1973, small claims was never intended to be a collection system for businesses — even though the legislature that enacted the bill defined "person" to include corporations. It was contemplated that individuals would be suing other individuals, not corporations versus corporations or other individuals. *[Meyers, "The Pro Se Small*

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient. SJ

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Attachment 4

Claims Court i: hicago: Justice for the Little Guy: , 72 Northwestern L.R. 947, at 948 (1978)].

Quick, inexpensive justice was the object. Many other states do not allow corporations to appear in small claims court.

Our Supreme Court has ruled that four categories of individuals may appear in the courts of this state in a representative capacity like an attorney: (1) members of the bar, (2) temporary law-trained permittees who are applicants for the Bar, (3) legal interns supervised by attorneys, and (4) "nonlawyers who may represent only themselves and not others." *[State ex rel Stephan v. Joan Adam,* 243 Kan. 619, 760 P.2d 683, 686 (1988)]

Nothing in *Adam* permits nonlawyers, even full time employees of corporations, to represent corporations in our courts.

Deciding who can practice law is an inherent power of the Judiciary. They may share it with the legislature, but it is the Court's power. *State ex rel Stephan v. Williams,* 246 Kan 681, 793 P.2d 234, at 241 (199). The Court has not spoken to the issue of whether corporations may appear as plaintiffs in small claims court without an attorney and represented by a full time employee.

The attorney general has opined that a municipal ambulance service can appear in small claims court without an attorney. The opinion reviews only the statutes, not the constitutional foundation behind those statutes.

Under the rule of construction that inclusion of some excludes all others, the Kansas Su ne Court has excluded all other .onlawyers from appearing in a courtroom representing corporations, governments, partnerships or other entities unless they have an attorney. Since small claims procedure prohibits attorneys, all others except for individuals should be excluded from appearing in this court.

Laymen Representing Others

For over a century, the Kansas Supreme Court has held that corporations cannot appear in courts of record without an attorney. [*Union Pacific Railway Co. v. McCarthy*, 8 Kan 125 (1871); *Union Pacific Railway Co. v. Horney*, 5 Kan 340 (1870). See more recent cases in *Depew v. Wichita Retail Credit Ass'n*, 141 Kan. 481, 42 P.2d 214 (1935); *State ex rel v Perkins*, 138 Kan 899, 28 P.2d 765 (1934).]

The small claims court is a court of record. Generally it is municipal court which is not a court of record.

Let me give you some examples why we think letting corporations use small claims court is not a good idea.

In the past, some attorneys have collected fees from their clients in small claims court -- where the attorney appears as the claimant and their former client cannot use an attorney. *Hickman v. Frerking*, 4 K.A.2d 590, 609 P.2d 682 (1980). Thankfully this practice does not often occur. But it does occur. The small claims law gives these attorneys power to collect additional mandatory attorney fees on top of disputed attorney fees if the

defendan ;hts the small claims judgment by an appeal, and loses.

From an equal protection viewpoint, however, so long as the legislature allows businesses to appear in small claims court to collect debts, you must allow attorneys to do the same.

A lawyer's former client may have a counterclaim for legal malpractice. Or the attorney bringing the claim may have filed too many small claims cases in the past year (ten is the maximum). Yet how do unsophisticated clients know enough of the law to check this matter out?

Defendants may feel the fees being sought by the attorney are excessive. Yet they rarely know this without consulting another attorney. Many clients also do not know about the *ex parte* right of clients to have fee agreements in writing, and reviewed by a court. [See M.R.P.C. 1.5.]

If you increase the jurisdiction limit, you increase the incentive for this type of activity, and compound the potential for unfairness.

Unauthorized Practice of Law

In *State ex rel Stephan v. Williams*, supra, Attorney General Stephan brought a *quo warranto* action against Mr. Williams who was representing farmers in foreclosure actions without a law license. Mr. Williams' argued he represented The Kansas Territorial Agricultural Society, a quasi-public corporation created in 1858 to represent agricultural interests during efforts at forming a Kansas constitution.

Mr. Willian ctivities regarding the procedure of handling a lawsuit were predictably burdensome on the district court. He was enjoined under threat of contempt of court from representing people in courts in Kansas under <u>any</u> pretext.

SB 150 bill would allow Mr. Williams or a disbarred lawyer to be hired by a large business to prosecute small claims up to $2,500 in value, so long as the fiction is maintained that he is a "full-time employee." Is it the Legislature's view that such persons should have this right and the Supreme Court would have no authority to do anything about it?

Mr. Williams and any disbarred attorney can handle his or her own personal debts in small claims or any other court. Nothing requires any individual to hire an attorney. Such former attorneys can clerk for practicing attorneys, but they cannot meet with clients. They cannot handle any one else's legal matters, or give legal advice, or appear in *any court* on behalf of a client. *In re Wilkinson,* 251 Kan. 546, 834 P.2d 1356 (1992)

SB 150 says all these things that *Wilkinson* prohibits are lawful if performed in small claims court as a full time employee of a corporation. This development is the same as if you enacted a statute that said, in effect, "regardless of Supreme Court action, the legislature can allow a disbarred attorney a limited practice of representing corporations in debt collection matters." Such a statute would, in my opinion, violate Judicial Power.

Abuse

Finally, while the District Court Clerks can speak for themselves, I surveyed all 105 Kansas District Court Clerks as part of my responsibilities as staff for the KBA's Unauthorized Practice of Law Committee headed by David Waxse of Overland Park. Several are concerned about the growing "abuse" of the small claims system.

Part of their concern was the workload on their office, but also the number of businesses using small claims and the number of claims such businesses file. One said a business may file ten claims in the name of the business, the owner then files a new set of claims in his own name.

Some clerks feel powerless to deny someone the right to file a small claim. While petitions are subscribed and sworn to (K.S.A. 1990 Supp. 61-2713), clerks do not have time to research the jurisdictional veracity of the claim.

In Douglas County in 1989 and 1990, business plaintiffs represent nearly a third of total small claims filings in that county during that time.

RECOMMENDATIONS:

Let me suggest two things.

First, businesses which desire to collect debts exceeding $1,000 can do so now — in Chapter 61 Court. The jurisdiction of Chapter 61 is unlimited, thus a $2,500 claim easily could be handled there. The court costs are not significantly higher than in small claims, considering the size of the claim.

I am precluded by the Model Rules of Professional Conduct from even suggesting that corporations can go into Chapter 61 court and file and prosecute these collection actions without an attorney because to do so might be encouraging the unauthorized practice of law.

If I am asked whether some businesses use Chapter 61 court without an attorney to collect bills exceeding $2,500, I don't know for certain but it would not surprise me that they do. Most Chapter 61 cases end up the same way small claims actions end up — with a default judgment for the plaintiff. Then the problem becomes collecting the judgment. It is up to the Judges who see a corporate employee appearing before them to decide whether to allow the practice.

While I do not know for certain, I would not be surprised that small businesses are allowed to collect bills in Chapter 61 without an attorney.

Second, if the proponents of SB 150 use my first suggestion, they don't need this bill. Nevertheless, I would suggest leaving the jurisdictional amount set at $1,000 and then amend the definition of "person" in line 30 to mean only individuals, not the other entities listed there. This amendment would conform our small claims act to its original purpose, and conform these statutes with Kansas case law.

Thank you.

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Senate Bill No. 150
Senate Judiciary Committee
February 9, 1993

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for the opportunity to appear today to discuss Senate Bill No. 150, which amends the small claims procedure act.

This proposal increases the maximum amount claimed from $1,000 to $2,500, which causes concern to the Judicial Branch. Enactment of this bill will increase judicial business in the district courts to a marked degree.

In 1973 when the small claims procedure act first became law, the docket fee was $5, the upper limit was $300, and the number per year per plaintiff was five.

Historically, increasing the jurisdictional amount has caused an increase in the number of small claims filed. For example, in 1979 the upper dollar limitation was raised to $500; the following year small claims cases had increased to 15,045 cases from 11,875, an increase of 27%.

In 1986, the upper dollar limitation increased to $1,000 and number per year per plaintiff increased to 10. Filings increased to 17,773 from 15,096, an increase of 17%.

I might add that in each of the above cases there was no reduction in Limited Civil Action filings and we certainly do not expect any reduction with this proposal. The increase in small claims filings that followed the 1979 amendment was accompanied by a substantial increase in limited actions filings as well. In FY1987, the number of limited actions filed increased by slightly over 1000, despite the increase in the small claims limit.

We anticipate a caseload increase of 27% because there is no increase in docket fee (a factor which tended to moderate the 1986 increase) and second, the proposed increase is greater in magnitude than increases in the past.

In 1992, 17,540 small claims cases were filed statewide. We would anticipate an increase of about 4,736 cases.

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Attachment 5

Small Claims cases often take more judicial and clerical time than other cases filed with the court, because many of the persons filing cases are not familiar with any of the court's forms or procedures. Because they are unfamiliar with the system causes more time in the hearing trying to explain the process; continuances are common due to the defendant not being prepared. An increase of this magnitude would require additional clerical and perhaps even judicial help in some districts.

This bill, if approved, is effective July 1st and it changes forms. Changes of this sort in mid fiscal year for counties would require reprinting and replacing forms in 105 counties at an estimated cost of $7,500.

Another concern of ours would be post-judgment remedies. The increase in cases will generate an increase in these remedies. Last year in Shawnee County, the court issued 14,591 garnishments (2,872 were for nonwage). This proposal will increase the post-judgment workload dramatically.

I might remind the committee that K.S.A. 61-2707 excludes representation by an attorney in small claims actions except on appeal. The higher claim the greater the need for legal representation.

We urge the committee to consider our concerns with this bill.