



A SURVEY OF
ALBANY SMALL
CLAIMS COURT
45 YEARS
LATER

SMALL CLAIMS, SMALL CHANGES

NEW YORK PUBLIC INTEREST RESEARCH GROUP
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Acknowledgements

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Established in 1976, the New York Public Interest Research Group Fund (NYPIRG) is a non-partisan, non-profit organization whose mission is to educate the public on policy issues and advance reforms, while training New Yorkers to be advocates. Governmental accountability, political reform, consumer protection, environmental preservation, health care, higher education, public health, and mass transit are among NYPIRG's principal areas of concern.

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Small Claims, Small Changes - A Survey of Albany Small Claims Court 45 Years Later

Executive Summary

The New York Public Interest Research Group (NYPIRG) conducted a survey of litigants in cases filed in the City of Albany Small Claims Court during 2021. This is a follow up to a 1978 NYPIRG report that surveyed parties to cases in the Albany Small Claims Court in 1977.

For this report, NYPIRG received survey answers from 42 respondents, 33 of whom were claimants and 9 of whom were defendants. This represents almost 10% of the overall total cases filed in the Albany Small Claims Court in 2021. In undertaking this survey, we hoped to answer whether conditions have improved for litigants in Small Claims Court in the 45 years since our previous report and provide policy recommendations to improve the Small Claims experience.

Have New Yorkers' experiences using the Small Claims Courts improved over the past 45 years? No. The survey responses, while comprising a limited data pool, strongly suggest that the Small Claims Courts are beset by the same problems that we saw in 1977. While the dataset is limited, the snapshot that emerges is consistent with NYPIRG's experience over the past few years counseling thousands of New Yorkers on using the Small Claims Courts and collecting judgments.

This survey is part of NYPIRG's ongoing interest in the Small Claims Courts, which includes running a consumer hotline – the Small Claims Court Action Center Project (SCCAC) – which provides help to Small Claims litigants over the phone.¹ NYPIRG also advocates for policy reforms to ensure that New York's Small Claims Courts fulfill their original mission: providing an inexpensive, fair and expedited opportunity for New Yorkers to have their day in court and ensuring that the largely *pro se* litigants in Small Claims have access to justice.

Key Findings:

- Just as in 1977, we learned that Small Claims litigants in the 2020's have a very difficult time collecting the judgments they win.
- Although nearly **80% of claimants surveyed said they won** their case, almost **75% of those who won failed to collect** a single penny of their judgment.²

¹ NYPIRG's Small Claims Court Action Centers provide information, assistance and counseling with consumer problems and in using the small claims courts. The Project is directed and supervised by staff attorneys with non-attorney staff, college interns and volunteers providing the bulk of the counseling. Legal advice and courtroom representation are not provided. Help is available to all parties and there is no means test to receive services.

² As mentioned above, the total data pool is small, and a total of 19 claimants surveyed were unsuccessful in collecting any part of their judgment. However, the large percentage of uncollected judgments is in line with our decades-long experience counseling Small Claims litigants, and are also in line with larger-scale surveys on this topic by NYPIRG and others.

- **53.8%** of claimants surveyed reported that they did not receive information on *how* to collect a judgment from the court.³
- **54.5%** of claimants surveyed who were unable to collect their judgment said they were unable to locate the defendant’s (judgment debtor’s) assets, while **13.6%** of those claimants said they simply didn’t know how to collect.
- Despite its shortcomings, **68.7% of survey respondents would use the Small Claims Court again and 75.7% of respondents are at least somewhat satisfied with the system overall** – demonstrating the importance of the “People’s Court” to its users.

Key Recommendations for Action:

Our report provides a number of different recommendations to reform Small Claims Court, based on the results of the survey as well as our many decades of experience monitoring the courts and providing counseling to thousands of litigants. New York State should take action through a combination of legislative reforms, administrative initiatives and furnishing of additional judicial resources to improve the Small Claims Courts, including:

- Providing judgment creditors more effective tools and information on how to collect their judgments;
- Following and enforcing existing laws to aid in the collections process;
- Providing more resources for courts to expedite cases; and
- Conducting a hearing on the Small Claim Courts in the State Legislature to hear from stakeholders and court personnel to help identify other solutions

³ As explained in greater detail below, the Court *does* provide information on how to collect judgments, but survey responses indicate that the current information is either insufficient or placed on court documents in a way that judgment creditors do not notice it.

Introduction

Small Claims Court, also known as the “People’s Court,” is a low-cost, informal court where individuals without attorneys can bring claims for relatively small amounts of money – up to \$10,000 in New York City, and \$5,000 or below in other jurisdictions around the state. The Court is utilized by, among others, tenants attempting to reclaim their security deposits; homeowners whose contractors have failed to perform services; employees who have experienced wage theft; New Yorkers claiming property damage; and consumers who have fallen prey to deceptive or fraudulent business practices. The Court is an indispensable forum for New Yorkers to win back their hard-earned money without the high cost of hiring an attorney (and most lawyers won’t take Small Claims cases).⁴ NYPIRG operates a statewide hotline called the Small Claims Court Action Center Project (SCCAC), where we provide free information, counseling and assistance guiding litigants through the Small Claims process, from filing the case to collecting judgments. We speak to some 800 people utilizing the Small Claims Courts every year and typically have several contacts with clients over the course of a counseling relationship.

In recent years, the People’s Court has experienced a dramatic decline in the number of case filings. In 1997, there were more than 90,000 cases filed in Small Claims throughout New York State.⁵ In 2021, there were only about 22,000 cases filed in the Small Claims Courts, including NYC Civil, City Civil and District Courts (Long Island).⁶ Even before the pandemic reduced caseloads, there were only about 34,500 cases filed in 2019.⁷ This amounts to a decrease in case filings of approximately 75% over a 25-year period.⁸ As one example of the precipitous decline in case filings, 1,129 cases were filed in Albany Small Claims Court in 1977 during the original survey, and just 400 cases were filed for this current survey in 2021 - a 64.6% decrease in yearly filings. While the drop off in case filings is startling, there’s no reason to believe that there’s been a corresponding decline over time in the types of problems that lead New Yorkers to use the courts.

In 1978, NYPIRG published a survey of litigants in Albany Small Claims Court entitled “Nowhere Else to Turn: A Study of the Albany Small Claims Court.”⁹ That study found, among other things, that over 30% of claimants who won judgments were unable to collect the full amount of judgment owed, and that 50% of claimants felt they did not receive adequate information on the collections process to confidently move forward on their own. As one of the leading advocates for Small Claims Court as a means for consumers to assert their rights, NYPIRG decided to survey litigants once again, 45 years later, and see if anything has changed.

⁴ In addition to Small Claims Courts, which is primarily for individuals to pursue litigation, the relevant Court Acts also provide for Commercial Claims Courts, effectively a small claims court for businesses. While this related court is not the focus of our work, we do provide assistance to litigants in this court from time to time.

⁵ *20th Annual Report of the Chief Administrator of the Courts* (1997), Page 9, Table 5, <https://ww2.nycourts.gov/sites/default/files/document/files/2018-05/ar20-1fin.pdf>.

⁶ *New York State Unified Court System, 2021 Annual Report*, Page 65, Table 9 and Page 66, Table 11, https://www.nycourts.gov/legacyPDFS/21_UCS-Annual_Report.pdf.

⁷ *New York State Unified Court System, 2019 Annual Report*, Page 41, Table 9 and Page 42, Table 11, https://www.nycourts.gov/legacypdfs/19_UCS-Annual_Report.pdf.

⁸ The Town Courts and Village Courts in most areas of the state have Small Claims Parts, but their data is not included in the state Office of Court Administration reports.

⁹ *Nowhere Else to Turn: A Study of the Albany Small Claims Court*, NYPIRG, 1978.

Findings

Like the survey published in 1978, the below findings are mainly pulled from survey respondents who were **claimants** in their Small Claims cases. We received far more responses from claimants than from defendants (33 responses versus 9). The below findings mainly focus on responses from claimants.

Issues with collections:

- An overwhelming majority of claimants surveyed (**78.8%**) said that they won their claim against the other party.
- Among these claimants who won their case, **74.1%** said that they *never* received the money they won.
- **53.8%** of claimants surveyed reported that they did not receive information on *how* to collect a judgment from the court.
 - It is worth noting that the court does provide basic collections information along with the judgment itself. The fact that a majority of respondents felt they did not receive adequate information, or did not know how to find this information on the documents they were provided, suggests a need for increasing the available resources to aid litigants in the collections process.
- **54.5%** of claimants surveyed who won their case (also called “judgment creditors”) said they were unable to collect their judgment because they were unable to locate the defendant’s assets, while **13.6%** of judgment creditors surveyed said they simply didn’t know how to collect.

Testimonial on Collections:

“I won a case in Albany Small Claims Court in 2021. The judgment debtor never acknowledged they owe the judgment and they never voluntarily paid me. The clerk provided basic instructions on sending an Information Subpoena to the judgment debtor. I also consulted the ‘Guide to Small Claims and Commercial Claims in the New York State City, Town & Village Courts.’ I found the guide confusing, which made it difficult to know the proper steps to take. I sent the information subpoena by certified mail, but the judgment debtor never responded. When I returned to the clerk, they said that the Affidavit of Service was invalid, because I mailed the subpoena myself rather than by someone who was ‘not a party’ to the action. I am still trying to locate the judgment debtor’s assets in order to collect the judgment. The process of trying to collect the judgment has been exhausting and it feels hopeless. Although it was fairly easy to win the case, it is very difficult to collect the money owed if the debtor doesn’t want to pay.”¹⁰

Barbara K.

- **69.3%** of respondents who contacted a Sheriff’s office said it was either ineffective or very ineffective when it came to assisting them.

¹⁰ Note: We first spoke to Barbara after she had taken the steps mentioned above and were not involved in helping her prepare for her court date.

- It is important to clarify that Sheriffs will typically only aid in the collections process once the judgment creditor has gathered adequate information on the judgment debtor's assets. Nearly all of the claimants who deemed the Sheriff's office ineffective also had difficulty locating the judgment debtor's assets. There is a connection, then, between the inadequate resources available to aid judgment creditors in the investigation process and the ability of the Sheriff's office to assist in collections.

Wait Times

- **66.7% of claimants** noted that the wait time between filing their case and appearing for the first court appearance was between 1 and 3 months.
- **12% of claimants** said that the wait time between filing their case and appearing for their first court appearance was longer than 3 months.
- **44.4% of defendants** said it took 1 to 3 months between the time of receiving notice of the lawsuit to their first appearance.
- **42.4% of claimants** said it took between 3-6 months from the initial filing of the case to a resolution of the case.

Overall Satisfaction with the Court

- **75% of claimants** said they were at least "somewhat satisfied" with their Small Claims Court experience.
- **70% of claimants** said they would use the Small Claims Court again.

Key takeaways

The main issue that has continued to plague claimants in Small Claims since our original survey was published in 1978 is judgment collections. Based on our survey, a far greater percentage of respondents who went to the City of Albany Small Claims Court in 2021 were unable to collect the judgments they were awarded than litigants in 1977 - approximately 30% in 1977 versus approximately 75% in 2021. Based on our decades of experiencing speaking to litigants and working on reforms, we believe poor collections rates result from a number of issues, including: lack of step-by-step information and support for the largely *pro se* litigants in Small Claims on how to collect; lack of resources and tools to help locate a judgment debtor's assets; and lack of compliance with laws on the books that were designed to help pressure judgment debtors into paying. We discuss recommendations for reforms in greater detail in the section below.

Some litigants also contended with long wait times to have their cases resolved, with nearly half of respondents indicating it took between 3-6 months to resolve their case. Small Claims is intended to provide an expedited forum to resolve consumer disputes and eliminate many of the procedural hurdles that can drag out a case in the higher courts for years. While responses in Albany Small Claims did not demonstrate particularly egregious delays (besides a few outliers), our experience responding to calls on our statewide hotline has shown that other courts, namely in New York City, do experience significant delays between filing and the first court appearance.

Recommendations for Action

It is disappointing, but not surprising, that the problems identified in our 1978 report on the Small Claims Court persist and may have exacerbated over 44 years. The “People’s Courts” deserve and need attention from the Office of Court Administration and the Legislature in order to be a more effective forum for non-lawyers to obtain justice.

Listed below are some ideas for reforms in Small Claims Court. Our focus is on providing new tools for enforcement of judgments; ensuring compliance and enforcement of laws already on the books meant to aid in the collections process; providing more resources to Small Claims Courts to process cases more efficiently and aid *pro se* litigants at every step of the judicial process; and holding legislative hearings on the current state of Small Claims in New York. It is important to note that these recommendations are crafted not only from the results of the survey, but from our experience speaking to hundreds of Small Claims Court users every year.

1. Provide judgment creditors in Small Claims Court better tools to effectively locate and collect a judgment debtor’s assets. Previous studies of Small Claims Court by NYPIRG and other court watchdogs have shown that over 30% of judgment creditors are unable to collect a penny of their judgments.¹¹ The main obstacle usually is the inability of the judgment creditor to locate the debtor’s assets. Many *pro se* claimants are unable to invest the substantial time and effort to track down assets or pay for a thorough investigation to find the debtor. Here are some recommendations for how Small Claims Court can assist judgment creditors in enforcing their judgments:

a. Require judges to conduct a pre-judgment examination of the defendant during the hearing. The Small Claims statutes in § 1805(a) give judges the discretion to examine the defendant at the hearing in order to determine where they have assets and restrain the movement of those assets pending collection. An amendment to this provision (which has previously been proposed in the State Legislature) would *mandate* judges conduct this examination during the hearing in order to assist the claimant in identifying assets for collection.

b. Provide better enforcement of § 1812, a Small Claims provision that allows judgment creditors to bring a new proceeding for treble damages against judgment debtors with multiple unpaid judgments. Under § 1812 of the relevant Court Acts, judgment creditors can bring a new lawsuit for treble damages against defendants who have two other outstanding judgments against them, are businesses, and have judgments that arose in the course of business. In our experience assisting people with collecting judgments, this tool is almost never raised or suggested, and judgment creditors do not know how to locate the previous judgments they would need to raise such a claim. § 1811(d) requires the court clerk to index any unpaid judgments to aid in this process. Indeed, based on our anecdotal experience with clients on our hotline, updated indexes of unpaid judgments do not appear to be kept by the courts,

¹¹ *Nowhere Else to Turn: A Study of the Albany Small Claims Court*, NYPIRG, 1978; *Winning Isn’t Everything: A Study of the New York City Small Claims Court*, NYPIRG, 1976.

thereby making it difficult if not impossible to use this provision. This provision should be improved and enforced.

c. Increase access to public databases so that judgment creditors can locate judgment debtors and their assets. The biggest problem judgment creditors have in collecting judgments is that they cannot locate the judgment debtor's assets. Aside from sending out information subpoenas on their own, which can be a time-consuming, hit-or-miss process, judgment creditors should have access to databases of public records about the judgment debtor via the court clerk. This might include DMV information, property records, and any other public information that might help the judgment creditor locate the debtor. It also is worth exploring whether access to credit reports is a viable way to boost collection success.

d. Make the process of sending information subpoenas easier. Many successful claimants we surveyed were unaware that they would need to investigate and identify a judgment debtor's assets in order to move forward with the collections process. The court system must do a better job at educating the *pro se* parties who utilize the Small Claims Courts. Clearer materials, videos and better access to court personnel could improve collection outcomes. Clerks might also be able to provide additional support to *pro se* judgment creditors in filling out and serving information subpoenas on appropriate parties. While clerks already provide the necessary forms and basic information on how to send information subpoenas, many *pro se* judgment creditors are unaware of how to utilize this collection tool to maximize their chance of finding a debtor's assets.

2. Increase Staffing for the Small Claims Courts.

a. Increase the number of *pro se* clerks available for claimants. More than any other court, Small Claims is designed to allow New Yorkers to file claims and win money *without* needing to hire an attorney. In some areas, however, particularly in New York City, claimants are unable to reach clerks by phone for days at a time and are unable to get important questions about their cases answered. Small Claims Courts must be adequately staffed with clerks to provide litigants the assistance they need to properly file their claims and receive instructions on how to collect their judgments, if necessary. While in person staffing would be the best option, having centralized clerks prepared to answer questions from across the state – by phone, by instant chat, in video rooms – is worth exploring as a way to address this need. Attorneys earning continuing legal education credits, appropriately supervised law students and lawyers serving *pro bono* could augment court resources.

b. Court users should not experience overly long delays between filing and resolving their case, particularly when Small Claims is designed for an expedited proceeding. A solution is to increase the number of Small Claims judges, arbitrators and mediators. By increasing the number of judges, arbitrators and mediators in Small Claims, the court could begin to work through the immense backlog that exists and be able to schedule future court dates more quickly.

c. Expand virtual hearing pilot programs that were put in place during the pandemic. One way to try and work through the backlog is to provide additional resources to the virtual pilot programs that were initiated during the early days of the COVID pandemic. Although more research needs to be done, initial anecdotal reports indicate that these programs were successful and made appearances more efficient.¹²

3. Ensure that Small Claims judges are being properly trained to utilize all available legal tools. Judges in Small Claims Court have several unique statutory tools in the Small Claims laws to help promote just outcomes and support *pro se* litigants. However, in talking to tens of thousands of litigants in Small Claims over the years, NYPIRG has found that these tools are rarely, if ever, fully utilized or even raised by Small Claims judges. OCA must provide better training to ensure that judges are following the Legislature’s statutory directives and informing *pro se* litigants of their rights, particularly when they are suing businesses represented by counsel. Three key tools that are frequently overlooked include:

a. Judges are required to inquire about a defendant business’s licenses and trade associations. § 1804 of the court acts¹³ requires judges to inquire as follows: “In every small claims action, where the claim arises out of the conduct of the defendant’s business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member.” Based on our observations of court proceedings and the reports from clients, judges do not routinely make these required determinations, thereby depriving claimants of useful information that judges must elicit.

b. Judges can refer particularly unscrupulous defendants to the Attorney General. § 1805(d) of the various court acts provide that judges may refer cases to the Attorney General if they find the defendant has engaged in “repeated fraudulent or illegal acts” in the course of business. We believe judges are not making an inquiry to determine whether a defendant has engaged in such conduct and not making appropriate referrals to the Attorney General. This process could be facilitated by providing direct access portals for judges to file such referrals with the Attorney General from the bench.

c. Expand 1805(d) to include referrals to licensing agencies. In addition to alerting the Attorney General, judges should notify licensing agencies if the defendant is licensed and the judge makes a finding of fraudulent or illegal acts. This process could

¹² *Reimagining Access to Justice: Should we Shift to Virtual Mediation Programs Beyond the COVID-19 Pandemic, Especially for Small Claims?* Donna Erez-Navot, New York State Bar Association, <https://nysba.org/reimagining-access-to-justice-should-we-shift-to-virtual-mediation-programs-beyond-the-covid-19-pandemic-especially-for-small-claims/>.

¹³ The four court acts – New York City Civil Court Act, Uniform District Court Act, Uniform City Court Act and Uniform Justice Court Act – contain nearly identical small claims court sections, Article 18. The acts also contain Article 18-A, which establishes the Commercial Claims Part courts, essentially a small claims court for businesses, with various limitations on use set out in the court rules.

be facilitated by providing direct access portals for judges to file such agency notifications from the bench.

d. Judges can order an examination of the defendant’s assets *prior* to entering a judgment to aid in collection efforts. § 1805(a) of the various court acts allows a judge to “order the examination of or disclosure by the defendant and restrain him to the same extent as if a restraining notice had been served upon him after the judgment was entered.” Often, judgment creditors are unable to locate a judgment debtor’s assets during the collections process, and judges can assist by ordering an examination of assets prior to entry of the judgment. In our experience, this provision is rarely – if ever – used.

4. Hold a legislative hearing on the Small Claims Courts. There has been no dedicated legislative hearing on the functioning of the state’s small claims courts in memory. A public hearing would provide an opportunity to hear from court personnel, service agencies and litigants about how well the court acts, court personnel, systems and judgment collection agents are doing and whether the “People’s Court” is living up to its mission to administer justice quickly, inexpensively and without the assistance of a lawyer.

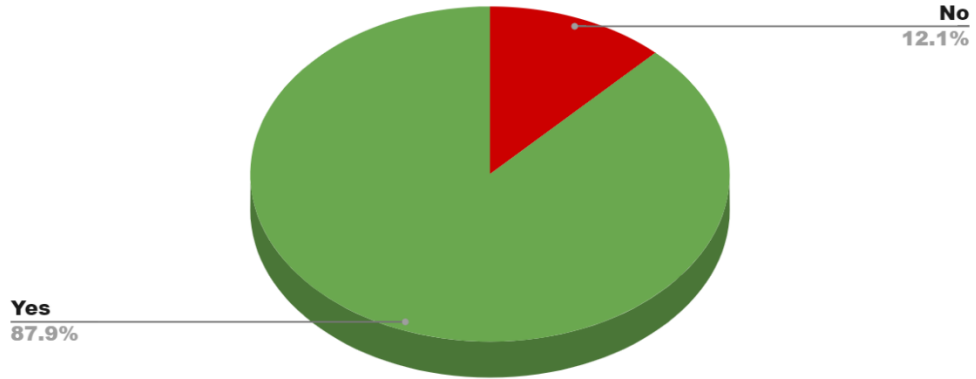
Methodology

Survey data was obtained by surveying claimants and defendants in cases filed in the City of Albany’s Small Claims Court during the calendar year 2021. 400 cases were filed that year. The Albany Small Claims Court provided us with the addresses of all 800 parties – 400 claimants and 400 defendants. The Office of Court Administration provided this data, per the data agreement, for the “limited purpose of conducting a one-time survey of litigants (claimants and defendants) in Albany City Small Claims Court.” We were able to then use the court’s online database as well as public records searches to obtain the names of all claimants and defendants. In addition, public record searches identified phone numbers for a small number of the claimants and defendants.

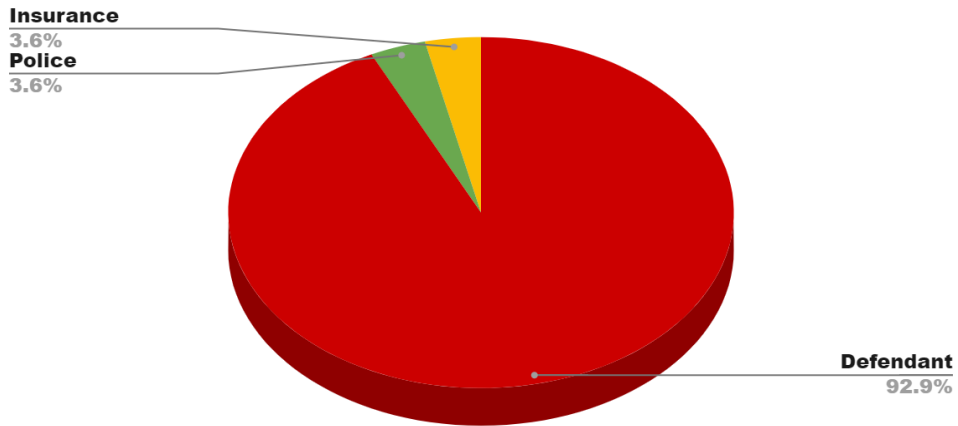
We mailed questionnaires to all 800 claimants and defendants via the U.S. Postal Service. Student volunteers made two rounds of calls to the small number of phone numbers we had obtained. Finally, we sent follow up postcards to all addresses. The option of a confidential web portal was set up to obtain additional responses online. We received a total of 42 responses, including 33 from claimants and 9 from defendants. Our analysis focuses mainly on responses from claimants, as we received more data from them. Also, the original survey from 1978 focused on claimant responses, which provides a basis to compare and contrast experiences over time. While the overall sample size is small, the responses are consistent with NYPIRG’s experience counseling New Yorkers through Small Claims Court issues.

Full Results for Claimant Survey Responses

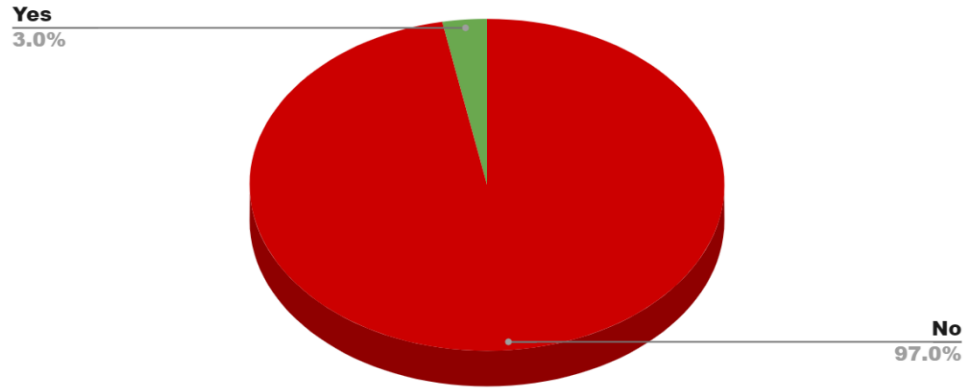
Did you try to settle the dispute before filing the case in court?



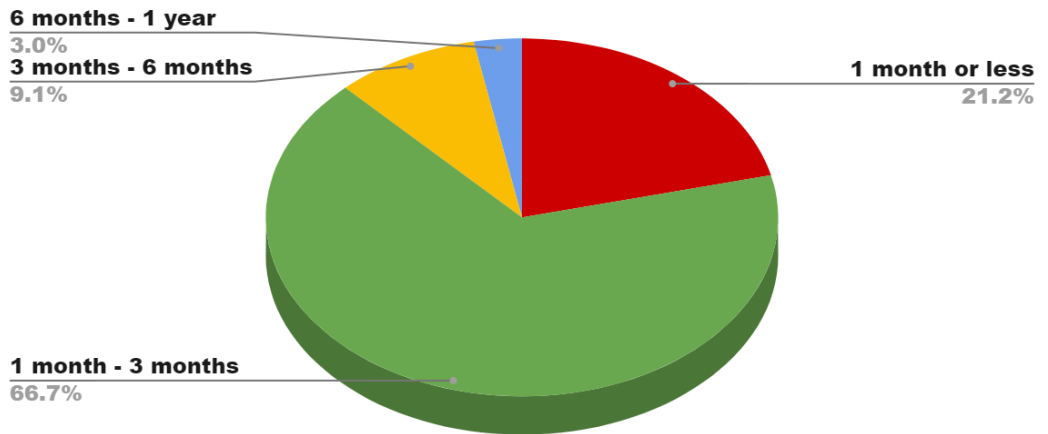
If yes, who did you contact? (circle all that apply)



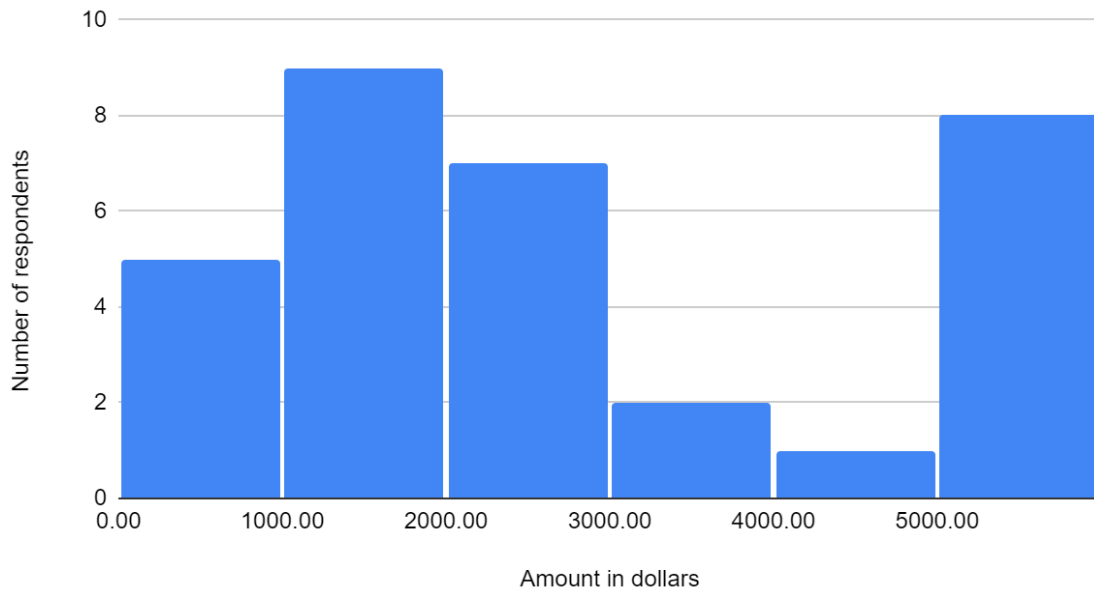
**Were you represented by an attorney in this case?
(circle one)**



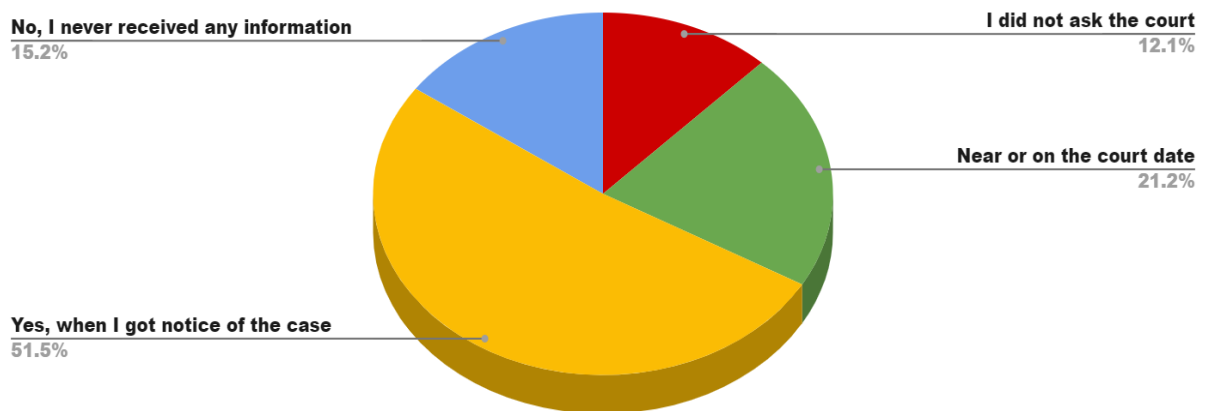
**How long did it take from the time of filing the
case to your first appearance in court? (circle one)**



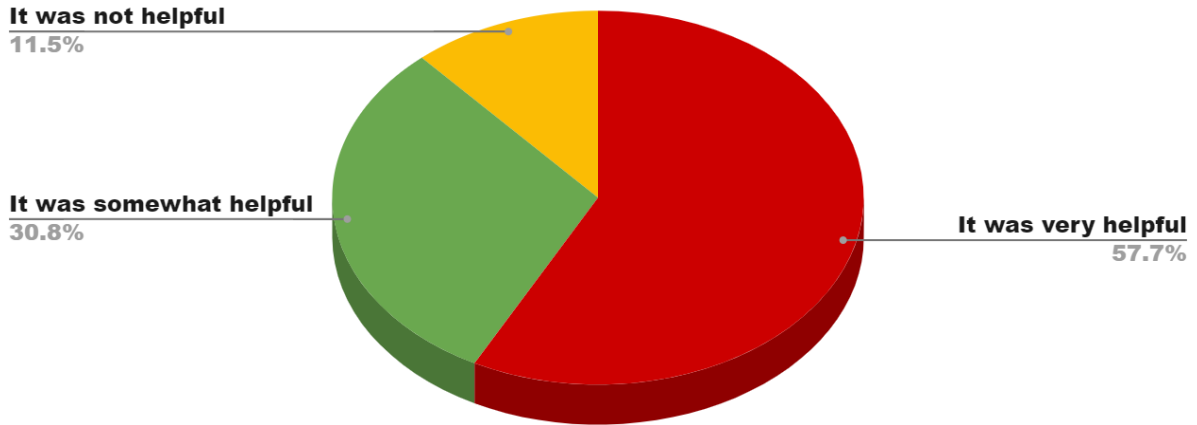
How much did you sue for? (List dollar amount)



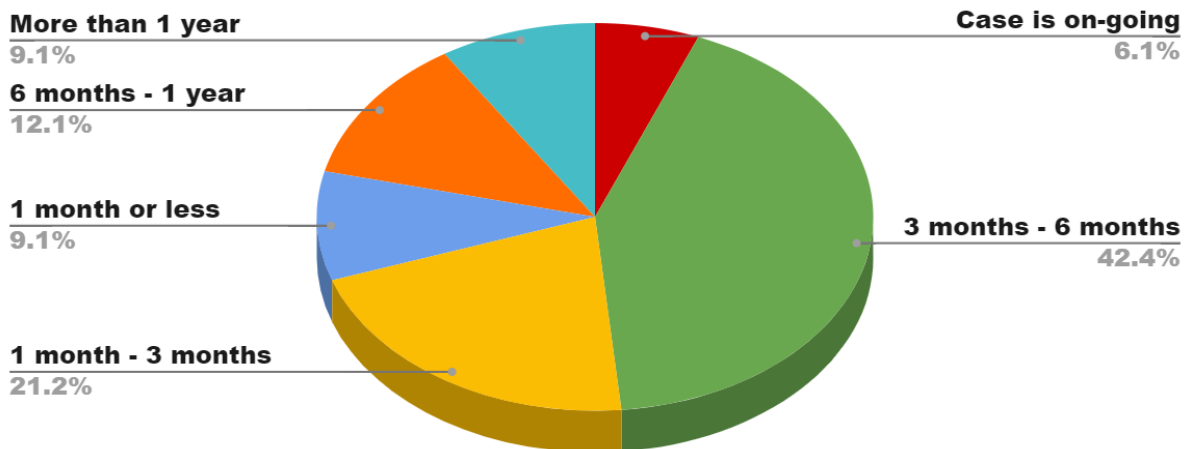
Did you receive information regarding court procedure from the clerk or other court personnel at any point before or during the proceeding? (circle one)



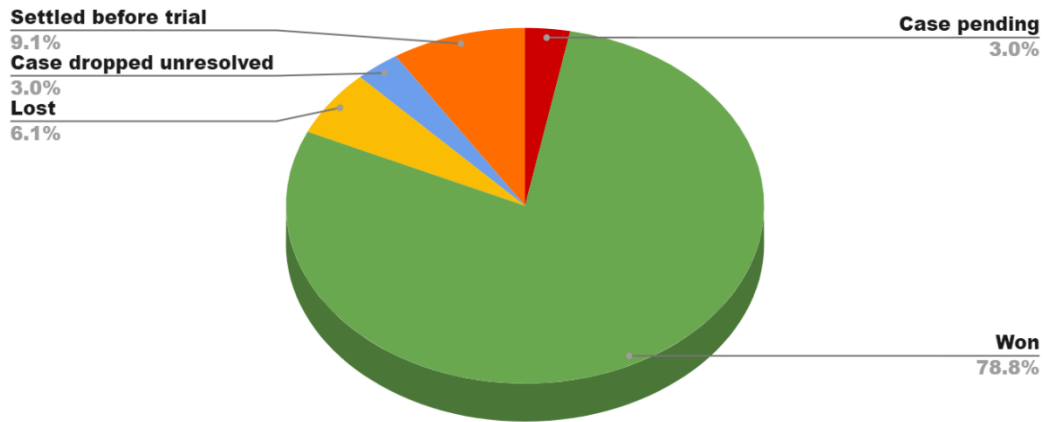
If you did receive information regarding court procedure from court personnel, was it helpful? (circle one)



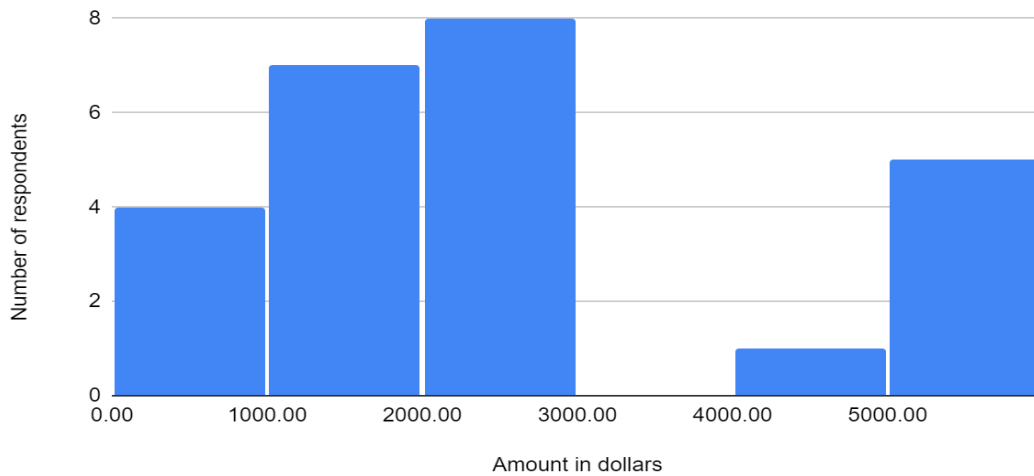
How long did it take from the time of filing the claim to resolution of the case (either settlement or judgment)? (circle one)



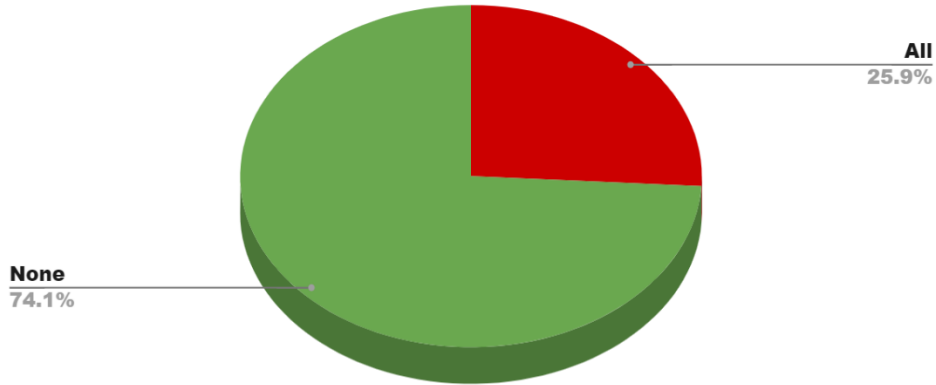
Did you win or lose the case? (circle one)



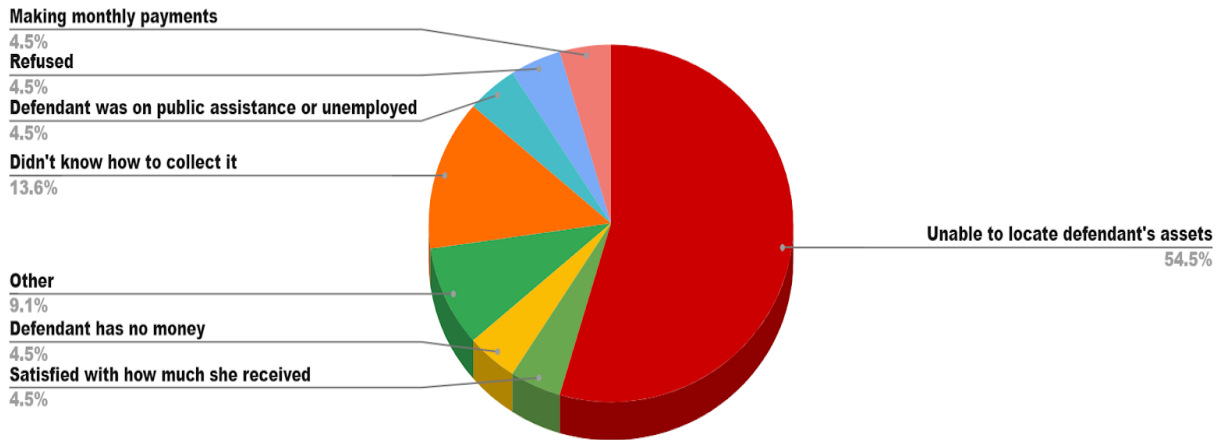
If you won a judgment, how much were you awarded by the court? (list dollar amount)



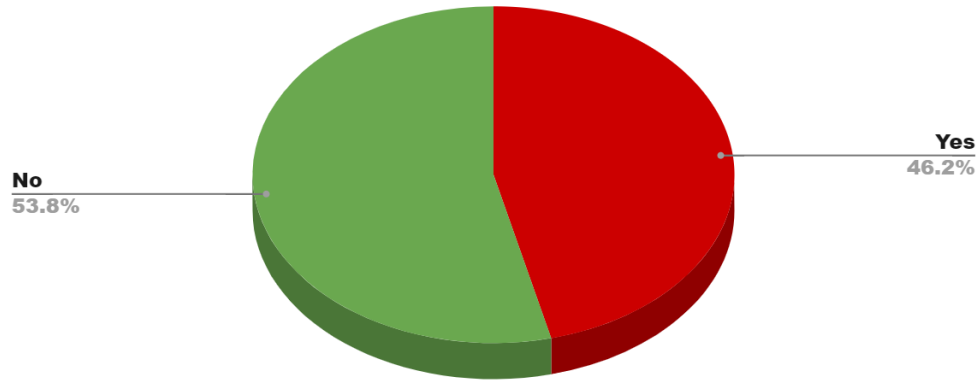
If you won a judgment, did you actually receive your money? (circle one)



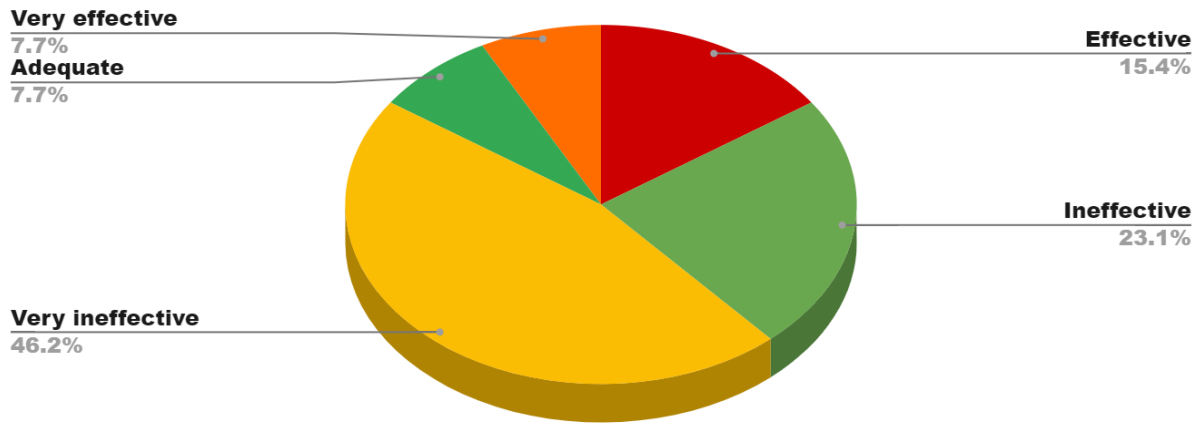
If you received none or only part of the judgment you were awarded, why? (circle one)



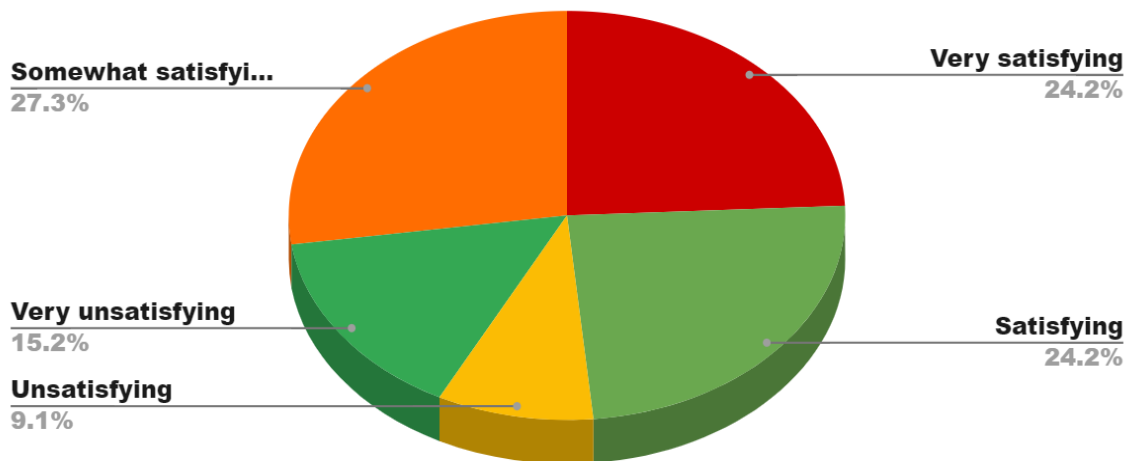
Did you receive information from the court on how to collect the judgment? (circle one)



If you used the services of a Sheriff or Marshal to collect the judgment, how would you rate them? (circle one)



How would you rate your experience with the Small Claims Court system overall? (circle one)



Would you use Small Claims Court again?

