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# FORUM

## SMALL CLAIMS ARE BIG BUSINESS IN OKLAHOMA†

Robert L. Spurrier, Jr.\*

### I. INTRODUCTION

The Oklahoma Small Claims Procedure Act<sup>1</sup> (the Act) was enacted by the Oklahoma legislature in 1968 and amended on several occasions thereafter. Its stated purpose is to provide a means of handling small civil suits in an informal manner with "the sole object of dispensing speedy justice between the parties."<sup>2</sup> In passing this statute, Oklahoma has joined the states heeding the call, first voiced by Roscoe Pound<sup>3</sup> and later sounded by consumer advocates, to provide a simplified process for the resolution of minor disputes. The need fulfilled by the procedure is evident from the number of cases which have been processed under the small claims mechanism. In 1970, 34,695 small claims were filed in Oklahoma;<sup>4</sup> by 1976 the total had jumped to 63,795;<sup>5</sup> and the Administrative Director of the Courts' projection for 1985 exceeds 122,000 small claims cases.<sup>6</sup> In terms of the civil caseload of the district courts, small claims accounted for almost 40% of the

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1. OKLA. STAT. tit. 12, § 1751-1771 (Supp. 1978). All citations to the Act will be to the current code, as the text will focus on the Act as currently amended.

2. OKLA. STAT. tit. 12, § 1761 (Supp. 1978).

3. R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906).

4. ADMINISTRATIVE DIRECTOR OF COURTS, REPORT ON THE JUDICIARY 114 (1969-71).

5. ADMINISTRATIVE DIRECTOR OF COURTS, REPORT ON THE JUDICIARY, 117, 119, 124 (1976).

6. ADMINISTRATIVE DIRECTOR OF COURTS, REPORT ON THE JUDICIARY 104G (1975).

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filings for 1976, the last year for which statewide totals are available.<sup>7</sup> An estimate of the dollar amounts involved in 1976 exceeds thirteen million dollars.<sup>8</sup> By any of these measures—number of filings, proportion of case load, or amount in controversy—the small claim has become a significant aspect of Oklahoma litigation.

Because of similar experiences in other jurisdictions, legal scholars have begun to focus on the operations of the small claims resolution process in both normative and empirical fashion.<sup>9</sup> While a number of writers have criticized the adversary system and have recommended an arbitration or conciliation approach to small claims,<sup>10</sup> Oklahoma has chosen to retain the adversary model in an informal setting. The purpose of this article is to outline briefly the Oklahoma small claims procedure and to present empirical findings from a sample of 1,500 Oklahoma small claims cases in 1977 to provide a basis for analysis of the handling of small claims in Oklahoma.<sup>11</sup>

## II. THE OKLAHOMA STATUTORY SCHEME

The Act aims at simple, swift, and inexpensive justice for the parties to most minor civil disputes—up to a statutory maximum of \$600.<sup>12</sup> The only significant limitations in the Act exclude libel and slander suits<sup>13</sup> and bar collection agencies, collection agents, and assignees of claims from using the small claims procedure.<sup>14</sup> There is no limitation to suits by corporations or government agencies.

In seeking to achieve the goal of simple justice, the Act provides for trial to the court alone as the normal procedure with an informal disposition of the issues.<sup>15</sup> The trial judge is given the power to call

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7. ADMINISTRATIVE DIRECTOR OF THE COURTS, REP. ON THE JUDICIARY 117, 119, 124 (1976).

8. This estimate is derived by taking the mean claim for the 1500 cases used as the data base for this article and multiplying by the number of 1976 cases. See note 11 *infra* and accompanying text.

9. For an excellent summary of the literature, see Yngvesson & Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature*, 9 LAW & SOC'Y REV. 219 (1975). See also *Report on the National Conference on Minor Disputes Resolution*, A.B.A. REP. (1977).

10. T. McFadgen, *Dispute Resolution in the Small Claims Context: Adjudication, Arbitration, or Conciliation?* (1972) (unpublished thesis). This work is discussed at length in Yngvesson & Hennessey, *supra* note 9.

11. These cases are from the seventh, ninth, and fourteenth districts. The seventh district (Oklahoma County) and fourteenth district (Tulsa County) were selected as the state's two most populous counties. The ninth district (Payne County) was selected to provide a nonurban district that was easily accessible to the authors.

12. OKLA. STAT. tit. 12, § 1751 (Supp. 1978). The limit was raised from \$400 in 1976.

13. *Id.*

14. *Id.*

15. OKLA. STAT. tit. 12, § 1761 (Supp. 1978).

witnesses and to order the production of documents when he deems it appropriate.<sup>16</sup> The Oklahoma Court of Appeals has noted that the legislature intended the Act:

to establish an informal court, void of rigid restrictions with little or no regard to the technicalities pertaining to the rules of evidence, and the assumption by the judge of direct affirmative authority to control all aspects of a hearing with the sole object of dispensing speedy justice between the parties.<sup>17</sup>

The court went on to note with approval that "the judge in a small claims action has enormous discretionary power to render fair, impartial and speedy justice."<sup>18</sup> However, the discretionary authority of the judge is not unlimited, and due process requirements must be met. A small claims default judgment was set aside upon a finding that the judge had not required supporting evidence for the issue of damages on an unliquidated claim.<sup>19</sup> Likewise, a small claims judgment was reversed where there was no supporting testimony to substantiate an award based on assertions in the plaintiff's affidavit.<sup>20</sup>

Either party to a small claims action may request a trial by jury by filing a \$30 fee and by notifying the opposing party at least forty-eight hours in advance of trial.<sup>21</sup> A challenge to the advance notice requirement as violative of the Oklahoma Constitution article II, section 19, was rejected by the Oklahoma Supreme Court.<sup>22</sup> The court held that the Act "does not preclude a litigant the right of trial by jury but simply prescribes the procedure for obtaining a jury trial. The procedure is not unreasonable."<sup>23</sup> Discussions with judges who handle small claims in the districts studied indicated that a demand for a jury trial is highly unusual in proceedings under the Act.<sup>24</sup>

In addition to the informality of the actual trial of the issues, the Act provides a simple means of filing small claims and reduces pretrial activity. A short affidavit form is provided for filing a small claim, and the Act provides that the court clerk must draft the complaint at the

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16. *Id.*

17. *Black v. Littleton*, 532 P.2d 486, 487 (Okla. Ct. App. 1975).

18. *Id.*

19. *Graves v. Walters*, 534 P.2d 702 (Okla. Ct. App. 1975).

20. *Lee Wayne Co. v. Pruitt*, 550 P.2d 1374 (Okla. Ct. App. 1976).

21. OKLA. STAT. tit. 12, § 1761 (Supp. 1978).

22. *Royalpark-Moore v. Hubbard*, 508 P.2d 1064 (Okla. 1973).

23. *Id.* at 1066.

24. Judge Rakestraw of Oklahoma City indicated that the demand was made on occasion as a dilatory device, but that the judicial tactic of immediately asking the sheriff to summon a jury had always put a halt to the stalling and led to a bench trial immediately.

plaintiff's request.<sup>25</sup> The affidavit may either be filed in person or mailed to the court—a provision which may make filing easier for those who work during normal court hours. The ordinary means of providing notice to the defendant is by certified mail; however, the plaintiff may elect personal service.<sup>26</sup> The defendant is not allowed to file an answer under the statute;<sup>27</sup> he simply appears on the date set for trial and presents his side of the case. To eliminate complications between the filing of the complaint and the trial, the Act prohibits depositions, interrogatories, and other discovery devices.<sup>28</sup> Joinder of additional parties and intervention are also barred.<sup>29</sup>

A defendant may avoid the simple trial contemplated by the Act and secure a formal trial in the district court by one of two means. He may file a counterclaim exceeding the \$600 jurisdictional limit,<sup>30</sup> or he may pay a \$35 fee forty-eight hours in advance of the trial.<sup>31</sup> While the second method may have once been used indiscriminately by defendants wishing to harass small claims plaintiffs, an amendment to the Act now requires an award of attorney's fees should the plaintiff prevail in district court.<sup>32</sup> This change reduces the potential for defeating the purpose of the small claims process by routine filings of motions to transfer to the regular civil docket.<sup>33</sup>

The goal of dispensing swift justice in small claims cases is indicated by the provisions of the Act which require trial within thirty days after the filing of the plaintiff's affidavit, provided that service on the

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25. OKLA. STAT. tit. 12, § 1754 (Supp. 1978). Such assistance is to make certain that plaintiffs unfamiliar with the law will not be deterred by the legal language. However, the availability of such assistance was not uniform in the three districts.

In Tulsa County the clerks were quite detailed in their instructions to the would-be plaintiffs and assisted them in many ways; in Payne County the single clerk was helpful but did not actually fill out forms; in Oklahoma County the clerks were pleasant but gave less specific advice. Perhaps the most obvious factor accounting for the difference was that the Tulsa clerks were all persons with long experience in the small claims court while the Oklahoma clerk's office experiences a rapid turnover of personnel. The senior clerk working directly with small claims had been on the job less than a year. The difference in experience levels of the personnel may also explain some of the discrepancies in record-keeping among the courts. Even in what is supposed to be a unified court system in Oklahoma, the records-keeping task appears to be managed at the will of the local clerk. The Payne County system changed in mid-term when a new clerk took over.

26. OKLA. STAT. tit. 12, § 1755 (Supp. 1978).

27. OKLA. STAT. tit. 12, § 1758 (Supp. 1978).

28. OKLA. STAT. tit. 12, § 1760 (Supp. 1978).

29. *Id.*

30. OKLA. STAT. tit. 12, § 1759 (Supp. 1978).

31. OKLA. STAT. tit. 12, § 1757 (Supp. 1978).

32. *Id.*

33. The judges interviewed indicated that some corporate defendants had made use of this tactic prior to the adoption of the amendment to the Act but that since that time it has been an unusual occurrence.

defendant was given at least seven days prior to trial.<sup>34</sup> In the three districts surveyed, judges indicated that they are willing to grant continuances for good cause, and state records for 1976 indicate a large number of pending cases. These figures are probably misleading because cases in which there has been no service are often carried as pending for several months before being removed from the docket.<sup>35</sup>

In terms of inexpensive justice, the Oklahoma system seems well adapted to meeting the needs of small claims litigants. The filing fee for a small claim is five dollars (fifteen dollars in the case of replevin of personal property),<sup>36</sup> and there is a two dollar charge for service by certified mail.<sup>37</sup> Thus for seven dollars a claim for up to \$600 may be filed, and the filing and service fees will be awarded to the successful plaintiff.<sup>38</sup> If the plaintiff elects to use personal service on the defendant, the cost increases from the two dollars for service by certified mail to the applicable sheriff's service fee which is also recoverable as costs.<sup>39</sup> Unless the plaintiff wishes a jury trial, he incurs no other court-related expenses. Even more important in terms of expense to the parties is the informal procedure of small claims which is designed to eliminate the need for counsel. Legal fees could frequently preclude the filing of small claims cases, allowing many wrongs to go unremedied. Oklahoma does not bar attorneys from small claims court, as does California,<sup>40</sup> but it does indirectly discourage attorney participation by limiting fees to 10% of the award in default cases<sup>41</sup>—which make up the majority of small claims actions.

The final expense which the successful plaintiff may incur involves the collection of his judgment. Entry of the decision on the judgment docket is a prerequisite to a lien and costs three dollars under a 1978 amendment to the Act.<sup>42</sup> If further actions are necessary to enforce the judgment, the costs are assessed against the judgment debtor and thus present no increased financial barrier to the plaintiff.<sup>43</sup>

Overall, the statutory provisions for the handling of small claims in Oklahoma provide a speedy, inexpensive, and informal method of

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34. OKLA. STAT. tit. 12, § 1756 (Supp. 1978).

35. According to the clerks, the long-pending cases are dismissed during the summer months when there is time to go back through the files during the lull in filings.

36. OKLA. STAT. tit. 12, § 1764 (Supp. 1978).

37. *Id.*

38. *Id.*

39. *Id.*

40. CAL. CIV. PROC. CODE § 117.4 (West 1978).

41. OKLA. STAT. tit. 12, § 1751 (Supp. 1978).

42. OKLA. STAT. tit. 12, § 1771 (Supp. 1978).

43. OKLA. STAT. tit. 12, § 1770 (Supp. 1978).

disposition of minor civil disputes. While it can be argued that the \$600 jurisdictional limit should be raised, that removal to the regular civil docket should be made more difficult, and that lawyers should be discouraged to a greater extent from participating in small claims, these would constitute minor adjustments to the small claims process. On the surface, at least, the Act demonstrates a considered approach to the problem of small claims. The issue next to be considered is the statute's operation in practice.

### III. SMALL CLAIMS IN OPERATION: THE 1977 SAMPLE

The literature on small claims resolution in the United States makes a number of observations on the process, some based on unsystematic impressions and others supported by more careful empirical studies.<sup>44</sup> This article will now focus upon an empirical examination of small claims court operations in three Oklahoma counties—Tulsa (fourteenth district), Oklahoma (seventh district), and Payne (ninth district). Small claims hearings were observed in each of the districts to gain an appreciation of the way in which cases were treated, but such observations were conducted over only a brief period. A more systematic approach was adopted through the examination of a random sample of 1,500 cases from the 1977 docket records—500 from each district. These sample cases form the data base from which the tables presented below are compiled.

#### A. *Litigants in the Small Claims Courts*

Small claims studies indicate that, while the simplified process may have been intended to benefit the "little man" and may have been lauded by consumer advocates, the most prevalent plaintiffs in such courts are business enterprises seeking to collect overdue accounts.<sup>45</sup> The data from the Oklahoma sample agree with these studies, as shown in Table I. The data in the table show a consistent pattern of predominance of business plaintiffs<sup>46</sup> in all three districts, although there was substantial variation within the percentage figures. Individual plain-

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44. See, e.g., Best & Anderson, *Consumer Response to Unsatisfactory Purchases: a Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress*, 11 LAW & SOC'Y REV. 701 (1977); Domanskis, *Small Claims Courts: An Overview and Recommendation*, 9 U. MICH. L.J. 590 (1976); Kosmin, *The Small Claims Dilemma*, 13 Hous. L. REV. 934 (1976).

45. See Domanskis, *supra* note 44.

46. For the purposes of this study, plaintiffs were divided into three categories: business, government, and individual. Business plaintiffs were defined as corporations, partnerships, and others who obviously were collecting a business debt such as physicians and individual business-

TABLE I  
SMALL CLAIMS PARTIES BY JURISDICTION

		TULSA COUNTY DEFENDANTS			OKLAHOMA COUNTY DEFENDANTS			PAYNE COUNTY DEFENDANTS						
		Business	Government	Individual				Business	Government	Individual				
PLAINTIFF	Business	26	3	386	PLAINTIFF	Business	29	2	326	PLAINTIFF	Business	24	0	277
	Government	1	0	12		Government	0	0	11		Government	0	0	70
	Individual	19	2	51		Individual	42	1	89		Individual	23	2	104

tiffs, on the other hand, made up a comparatively small portion of the litigants in the three districts. Government agencies were the least likely to make use of the small claims procedure.

From the data gathered from the court records, and from the comments of the judges interviewed, it appears that business plaintiffs had become aware of the Act's benefits to them in facilitating debt collection through the courts. Table I clearly demonstrates that, in the overwhelming majority of cases, business plaintiffs were suing individual defendants. Individual plaintiffs' suits against business defendants, on the other hand, were relatively rare. In addition, within the class of individual plaintiffs' cases, the defendants were more often other individuals than businesses. From this data it is apparent that the "little man" is indeed appearing in small claims courts in Oklahoma—but most frequently as the defendant in a suit brought by a business.

### B. *Disposition of Small Claims Cases*

The literature concerning small claims courts in the United States demonstrates that plaintiffs consistently win and that most cases are decided by default.<sup>47</sup> Oklahoma's pattern is consistent with the national findings, as shown in Table II.

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men. Government agencies were placed in a separate category in order to be compatible with other studies. The remaining plaintiffs were considered to be individuals.

While most of the cases were of a routine nature, at least two were worthy of note—one in Oklahoma County involving the return of a boa constrictor and the other in Tulsa County concerning unauthorized removal of clothing. The latter case involved a suit by a private party against a dry cleaning establishment which was said to have removed the plaintiff's clothes from storage and disposed of them.

47. See generally authorities cited in note 44 *supra*.



TABLE II  
DISPOSITION OF CASES BY PLAINTIFF TYPE AND JURISDICTION

		TULSA COUNTY					OKLAHOMA COUNTY					PAYNE COUNTY							
PLAINTIFF		Plaintiff by Default	Plaintiff after Contest	Defendant after Contest	Dismissed by Plaintiff	Dismissed by Court	Not Decided	Plaintiff by Default	Plaintiff after Contest	Defendant after Contest	Dismissed by Plaintiff	Dismissed by Court	Not Decided	Plaintiff by Default	Plaintiff after Contest	Defendant after Contest	Dismissed by Plaintiff	Dismissed by Court	Not Decided
		Business	161	61	2	46	5	140	153	15	2	49	31	107	98	23	2	63	12
	Government	9	1	0	0	0	3	4	1	0	1	0	5	32	3	0	10	2	23
	Individual	25	10	0	12	4	21	33	27	5	14	20	33	28	35	10	20	7	29

In the counties sampled, 69% of the cases were decided either by trying the case, by dismissing the case, or by awarding a default judgment. Of those cases contested by the defendant, plaintiffs won 176 times while defendants prevailed in only twenty-one cases. When plaintiff victory in contested cases is combined with plaintiff victory by default, the total percentage for plaintiff victory is 47.9% of the cases filed. The defendant victory percentage, even when computed liberally to include dismissals by the court, is only 6.9% of the cases filed.

In decided cases, default judgment was by far the most common result, comprising 36% of the dispositions. After considering the cases not decided (either stricken from the docket or pending), other dispositions were far below default (plaintiff victory in contested cases 11.7%, defendant victory 1.4%, dismissed by the court 5.4%). While Oklahoma's default rate did not approach the nearly 80% rate of some states,<sup>48</sup> default judgment was still the most common disposition of small claims in the districts sampled.

Prospects for victory in cases going to judgment appear to be greater for the business plaintiff than for the individual plaintiff.<sup>49</sup> The

48. See authorities cited in notes 9, 44 *supra*.

49. Business plaintiffs prevailed in 511 of 565 cases (90.4%), while individuals won 158 of 204 cases (77.5%).

difference might be explained by the fact that business claims are most frequently for debts evidenced by a contract or bill while individual claims often require a determination of fault involving greater difficulty of proof.<sup>50</sup> This same fact may explain the higher number of defaults in business claims (38.4%) than in private cases (25.8%).

The nature of business debt cases, and the evidence normally presented, also explains the finding that business plaintiffs more frequently received the full amounts of their claims in comparison with individual plaintiffs. In the cases sampled, 83.5% of the cases with plaintiff victories resulted in a full award, while 16.5% involved a partial award. Business plaintiffs, however, had a total award rate of 88.4%, while the successful private plaintiffs recovered their total claims in only 63.7% of the cases.

From the comments made by judges and court clerks in the three counties surveyed, it is plausible to assume that the victory rate for the plaintiff might realistically be higher than the data show. The dismissal by plaintiff figure (14.3% of the sample) is often explained by the fact that the defendant has satisfied the plaintiff by paying his debt before the trial date.<sup>51</sup> Although the records of the courts do not show the reason for plaintiff dismissal, the consistent statements of court personnel in all three jurisdictions indicate that payment of the claim is the most common cause of dismissal by the plaintiff. In this sense, the small claims court may act as a collection agency even when the plaintiff eventually dismisses the case. The threat of a judgment may be enough to cause the defendant to pay without ever going to trial.

### C. *Size of Claim*

One point at which the Oklahoma data diverge from the literature is on the size of claims. It has been suggested that in many jurisdictions plaintiffs reduce their claims to make them fit the small claims jurisdictional limits.<sup>52</sup> If this were the case in Oklahoma, one would expect to find a large number of claims at the \$600 level. The data, as presented in Table III, indicate that the Oklahoma claims are indeed small on most occasions, with the most common claim ranging between one hundred and two hundred dollars.

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50. See generally Klein, *Buyer vs. Seller in Small Claims Court*, 36 CONSUMER REP. 624 (1971); Kosmin, *The Small Claims Court Dilemma*, 9 U. MICH. L.J. 590 (1976); authorities cited in note 9 *supra*.

51. See authorities cited in note 9 *supra*.

52. *Id.*

TABLE III  
AMOUNT CLAIMED BY JURISDICTION

	TULSA COUNTY	OKLAHOMA COUNTY	PAYNE COUNTY
\$0 - \$50	69	55	127
\$51 - \$100	83	77	104
\$101 - \$200	133	112	112
\$201 - \$300	72	90	50
\$301 - \$400	60	57	32
\$401 - \$500	35	38	22
\$501 - \$600	48	71	53

#### D. Use of Attorneys

The literature indicates that small claims courts are designed to eliminate the need for attorneys.<sup>53</sup> Some states have barred lawyers from small claims proceedings.<sup>54</sup> Oklahoma permits attorneys, but the Act limits fee awards to 10% of the judgment in default cases.<sup>55</sup> However, there is no statutory limit on attorney's fees in contested cases.<sup>56</sup> On the basis of practice in other jurisdictions,<sup>57</sup> one would expect to find attorneys used infrequently in small claims cases, but the data indicate that this is not the case. In 30% of the cases filed, the plaintiff was represented by counsel. Court records were incomplete on the presence of defense counsel, so no conclusions can be drawn on this point. Table IV demonstrates that the Oklahoma small claims court has not achieved its early promise as a lawyerless court. This is particularly true in Tulsa County where 49.6% of the cases involved plaintiff's counsel. In Payne County, 17% of plaintiffs were represented by counsel, and in Oklahoma County, 23.4%.

TABLE IV  
ATTORNEY FOR PLAINTIFF BY JURISDICTION

	TULSA COUNTY	OKLAHOMA COUNTY	PAYNE COUNTY
Yes	248	117	85
No	252	383	415

53. See authorities cited in notes 9, 44 *supra*.

54. See note 40 *supra* and accompanying text.

55. OKLA. STAT. tit. 12, § 1751 (Supp. 1978).

56. *Id.*

57. See authorities cited in notes 9, 44 *supra*.

The court records do not provide a reason for this disparity among the counties, but interviews with the judges shed some light on the issue. The special district judge in Tulsa County was very generous in awarding attorney's fees in contested cases—in which there is no statutory limit. He expressed the opinion that this might help discourage "spite cases," and he also believed that counsel were entitled to be compensated fully for their time—even in small claims cases. The judge interviewed in Oklahoma County was inclined to stay within the 10% limit even in contested cases, particularly when the defendant admitted liability. The Payne County judge seldom awarded attorney's fees in any cases. Obviously, the prospect of fees makes Tulsa County more attractive to attorneys than the other jurisdictions, and this is no doubt partially the reason for more lawyers undertaking small claims cases in that county. It may also explain why Tulsa County has significantly more cases than Oklahoma county, 17,827 to 12,000 in 1977, even though Oklahoma County has a greater population.

#### IV. CONCLUSION

As a result of the statutory analysis and empirical data gathered for this study, several conclusions may be drawn concerning small claims in Oklahoma. First, the volume of cases indicates that the legislature met a significant need when it passed the Small Claims Procedure Act in 1968. An analysis of the statutory language indicates that the goals of informality and low cost have essentially been met. Observation of courts in three jurisdictions showed that the practice followed the statutory scheme, with trials which are informal and understandable to the participants. Second, while small claims courts may be seen as an ideal solution by some consumer advocates, the Oklahoma procedure (like those in other jurisdictions) has been used most frequently and most successfully by business plaintiffs seeking to collect debts owed by individuals. Most frequently, the business plaintiff wins by default (as do other plaintiffs). Third, the Oklahoma small claims procedure really does handle small claims. It has not become a procedure dominated by purposely reduced claims which otherwise would go to the district court. Finally, lawyers have continued to be an important factor in small claims litigation, even though the obvious intent of the Act was to make their presence unnecessary. On the whole, the conclusion to be reached about the Oklahoma Small Claims Procedure Act is that it is a big business in Oklahoma—and used mainly by businesses.