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Ja Costa Richardson
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10/16/03
Date

2003 HOUSE JUDICIARY

HB 1472

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10/16/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1472

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
1		xx	30-end
2	xx		0-10
3	xx		35.1-36.9
Committee Clerk Signature <i>J. Penrose</i>			

Minutes: 13 members present.

Vice Chair Maragos: We will open the hearing on HB 1472.

Rep. Koppelman: Introduced the bill, support. (see attached testimony)

Rep. Delmore: You said the rules of evidence don't apply in small claims court. You also address the idea of referees which is something the committee has endorsed before. Can you explain a little bit more about both of those.

Rep. Koppelman: I am not criticizing the fact that referees hear small claims court cases, nor am I criticizing the fact that the rules of evidence in any small claims court are different. I am just pointing that out. I think it has bearing on this idea. I think it is appropriate that small claims are heard in a less formal atmosphere and in a more conversational style. The concern is that because they are lacking all the normal safeguards that we have in court proceedings, and because the finality of small claim court decision, they really have nowhere to go for a bad decision.

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1472
Hearing Date 2-11-03

Rep. Delmore: If get taken to district court - still paying the same \$80 fee as anybody else.

Rep. Koppelman: That is correct. The bill also indicates that the appealing party would have to pay the filing fees. That is to discourage frivolous appeals.

Rep. Klemin: Under our current procedures in small claims court, if the defendant doesn't want to be there, they have the right to remove the case to the district court.

Rep. Koppelman: Correct.

Rep. Klemin: Then in the district court, they would have all the rights as if it had been brought there originally, including the right to appeal to the ND Supreme Court and possibly even to the US Supreme Court in the appropriate case.

Rep. Koppelman: Right.

Rep. Klemin: As I read this bill, the defendant no longer has that alternative, he cannot elect to remove the case out of small claims court, he's stuck there, and the only remedy he has is to appeal it to the district court, beyond that it can't be appealed at all. Is that reading correct?

Rep. Koppelman: I think so. The right to removal right now, only allows the defendant to make a judgment in advance of the initiation of court proceedings, to say this is where I want the case tried.

Rep. Klemin: If it is in district court, if they appeal, they could have a jury trial, from which there is no appeal.

Rep. Koppelman: Technically you are correct. But again, the likelihood of a case under \$5,000 range, going beyond district court is probably pretty small.

Rep. Klemin: Why are we prohibiting a person from being able to appeal this to the supreme court.

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10/16/03
Date

Page 3
House Judiciary Committee
Bill/Resolution Number HB 1472
Hearing Date 2-11-03

Rep. Koppelman: Because the Chief Justice was concerned about that feasibility. I have no inherent reason to not want it to be appealed, I was just trying to make this a reasonable bill, and the fact that it can't be appealed right now from a low level, and this would allow that to happen, I think is a better scenario than allowing it to be appealed infinitely, but not start where it really ought to.

Rep. Klemin: I think some of the biggest cases that have hit the US Supreme Court have been debtor/creditor rights and been small cases.

Rep. Koppelman: I would not necessarily be opposed to further appeals, but if one of those cases goes to small claims court right now, where someone has a very valid claim, that could feasibly be appealed to the Supreme Court, they can't even get beyond small claims court.

Rep. Delmore: Can we amend out that section.

Rep. Koppelman: I would be amendable to that.

Chairman DeKrey: Thank you. Any further testimony in support.

John Risch, United Transportation Union: Support. We want equal justice under the law (see attached testimony).

Chairman DeKrey: Thank you. Any testimony opposed to HB 1472.

Judge Bennie Graff: Opposed (tape 1, side b, #47-end, tape 2, side a, #0-1.6) The people who use Small Claims Court are individuals or small business people trying to get relief. This is a final outcome court. The claim is decided in small claims court and that decision is final. That is how we want it. The defendant, when sued in small claims court, can decide to change it to district court.

Yolanda Richardson
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10/16/03
Date

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1472
Hearing Date 2-11-03

Rep. Klemin: What would happen if the defendant had a counterclaim that exceeded the \$5,000 restriction.

Judge Graff: I know he can't bring it in small claims, he has to bring it on his own in district court, but he can't exceed the \$5,000 maximum.

Rep. Klemin: But under a compulsory claim under the rules, he would have to bring it or he would be barred.

Judge Graff: The statute speaks to it, I don't know exactly what it says.

Rep. Klemin: But under this bill...

Judge Graff: He couldn't.

Chairman DeKrey: Thank you. Any further testimony in opposition to HB 1472.

Ted Gladden, State Court Administrator: Opposed (see attached testimony).

Rep. Delmore: Do you really believe that referees and judges in small claims court are never wrong? That they may make a wrong decision?

Mr. Gladden: Yes, I'm sure some mistakes do occur.

Rep. Klemin: I don't recall exactly how it works, that even though you can't appeal a small claims court decision, is it hypothetically possible to do something like a writ of certario or writ of superintendent control, if some miscarriage of justice.

Mr. Gladden: I can't answer that.

Chairman DeKrey: Thank you. Any further testimony in opposition.

Rep. Koppelman: Since the plaintiff has made a conscious decision to proceed in small claims court vs. district court, they've forfeited their right to jury trial. Secondly, some say this will

Page 5
House Judiciary Committee
Bill/Resolution Number HB 1472
Hearing Date 2-11-03

increase the work load and some say this will decrease the work load and have less than the \$80 filing fees, and seems to be a disagreement of opinion on how this will impact case levels.

Rep. Klemin: There might be another view on this jury trial issue. I had a case where the plaintiff brought a case in small claims court and it says the decision is irrevocable to do that. However, the defendant didn't want to be in small claims court so he came to me to remove the case to the district court, and the plaintiff in the district court made the request for a jury trial, even though he had supposedly made an irrevocable election not to have one, and the district court in Burleigh County held on constitutional grounds that you could not deny the plaintiff the right to the jury trial.

Rep. Koppelman: I encourage you to explore that point. What I hear from both sides, is that it is very common that someone will come to their attorney and say "I am being sued in small claims court, it's a \$2,000 case, but I'm not sure I want to do it there, will you take it to district court for me", and most good attorneys will say certainly if you want me to do that I will, however the cost of proceeding in district court over a \$2,000 or \$5,000 claim, after you hire me, pay the fees, you are going to be losing money. You are better off taking your chances in small claims.

Chairman DeKrey: Thank you. We will close the hearing.

(Reopened later in the afternoon session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1472.

Rep. Grande: I move a Do Not Pass.

Rep. Kingsbury: Seconded.

13 YES 0 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Grande

Date: 2/11/02
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1472

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Grande Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Rep. Delmore	/	
Vice Chairman Maragos	/		Rep. Eckre	/	
Rep. Bernstein	/		Rep. Onstad	/	
Rep. Boehning	/				
Rep. Galvin	/				
Rep. Grande	/				
Rep. Kingsbury	/				
Rep. Klemin	/				
Rep. Kretschmar	/				
Rep. Wrangham	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Grande

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:18 p.m.

Module No: HR-27-2407
Carrier: Grande
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1472: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1472 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-27-2407

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2003 TESTIMONY

HB 1472

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La Costa Richard
Operator's Signature

10/6/03
Date



Representative Kim Koppelman
District 13
513 First Avenue NW
West Fargo, ND 58078-1101
kkoppelm@state.nd.us

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Appropriations

Testimony on House Bill 1472

Good Morning, Mr. Chairman and Members of the House Judiciary Committee. For your record, I am Representative Kim Koppelman and I represent District 13.

House Bill 1472 is about justice and about ensuring that the people of North Dakota have some option to redress their grievances, if there is a miscarriage of justice in our Small Claims Court system, as I'm hearing from constituents is occurring with unsettling frequency.

I should note that I am a proponent of Small Claims Court. I believe that it is an effective system for addressing, as the name implies, "small claims." In fact, a few years ago, I was the sponsor of the bill which raised the dollar limit in Small Claims Court to \$5,000. I introduced that bill to ease the overcrowding of District Courts with claims in the \$3,000-\$5,000 and to encourage people to use Small Claims Court as a venue to address these types of grievances.

A significant problem has emerged, particularly where referees--and not judges--hear Small Claims Court cases. Frequently, one could question the quality, logic, and basis in law of decisions made there. This is partially because the same rules of evidence, which are required in other courts, do not apply in Small Claims Court. These are also informal proceedings, with no attorneys present and no record kept. All of that would be fine, except for one salient fact: Small Claims Court decisions are *final*.

That means someone could unjustly lose \$5,000, by order of a North Dakota court, with no opportunity to redress that grievance.

This is in striking contrast to other judicial processes in our state. Even a \$30 traffic ticket, for example, can be appealed to District Court, ensuring every North Dakotan his or her "day in court" and the right to appeal what they believe to be a poor decision.

House Bill 1472 would allow appeal of Small Claims Court decisions. This will allow anyone who feels wronged there to appeal the outcome to District Court. This is allowed in other states, such as Minnesota, for example.

Perhaps an objection you'll hear to this bill is that it would clog District Court dockets. I don't believe this would be the case, for two reasons:

1.) Because Small Claims Court cases are small, by definition, the cost of appeal to District Court (usually including the cost of hiring an attorney) and the requirement in the bill that the appealing party pay the court costs for both parties, would discourage most small or frivolous cases from appealing, so people would no doubt think twice before doing so and only the most serious miscarriages of justice would reach that level.

Richard Costa
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2.) As the bill would change the provision in current law, which allows the removal of Small Claims cases to District Court, "small claims" would have to be heard first in Small Claims Court, as the concept implies. They could then be appealed, if either party wished. This would significantly reduce the number of cases filed in District Court, in the first place.

Removal to District Court is happening more often now, as people lose faith in the Small Claims Court system, and bypass it because proceeding there robs them of their right to appeal.

The fact that few traffic tickets are appealed to District Court, even though defendants have a right to do so, demonstrates that this is a logical progression which has inherent safeguards to prevent abuse.

Something is wrong with a system that allows the appeal of a \$30 fine, but not a \$5,000 judgment.

This legislation would make Small Claims Court a more legitimate venue for minor grievances and would, I believe, be where most of them would be resolved. This would be good for the people of North Dakota and for the judicial process in our state. It would also ensure a non threatening venue for your constituents to air their minor grievances and also ensure them an opportunity, if wronged there, to appeal a faulty decision and seek the justice they deserve.

Mr. Chairman and members of the committee, I respectfully urge your favorable consideration of House Bill 1472. I'll certainly attempt to answer any questions you may have.

La Costa Richard
Operator's Signature

10/16/03
Date

Kuppelman

Small Claims Cases By County
Calendar Year 2002

22-Jan-02

County	Cases	Counts
Adams	28	28
Barnes	126	126
Benson	43	43
Billings	2	2
Bottineau	174	174
Bowman	28	28
Burke	19	19
Burleigh	588	588
Cass	1,835	1,835
Cavaller	51	51
Dickey	76	76
Divide	7	7
Dunn	6	6
Eddy	21	21
Emmons	54	54
Foster	32	32
Golden Valley	9	9
Grand Forks	717	717
Grant	8	8
Griggs	37	37
Hettinger	11	11
Kidder	37	37
Lamoure	37	37
Logan	22	22
McHenry	23	23
McIntosh	31	31
McKenzie	23	23
McLean	43	43
Mercer	55	55
Montrail	52	52
Morton	343	343
Nelson	32	32
Oliver	9	9
Pembina	122	122
Pierce	135	135
Ramsey	211	211
Ransom	61	61
Renville	51	51
Richland	207	207
Rollette	222	222
Sargent	56	56
Sheridan	5	5
Sioux	2	2
Slope	0	0
Stark	154	154
Steele	4	4
Stutsman	257	257
Towner	46	46
Trall	54	54
Walsh	122	122
Ward	582	582
Wells	52	52
Williams	155	155
Total	7073	7073

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Testimony Regarding HB 1472

Chairman DeKrey and members of the House Judiciary Committee, I am appearing today in opposition to HB 1472.

When the small claims court was established over 30 years ago, it was created as a low cost alternative for parties to bring actions for judicial relief in low level disputes. Many referred to small claims court as "the people's court." The small claims court was established with a filing fee of \$10. The maximum authority of the court was \$2,000. That limit has been increased over time to the current limit of \$5,000. Small claims court is not a court of record, which means there is no verbatim record of the proceeding. Further, the decisions of the small claims court are final. There is no present right of appeal. The point is that the court was established to allow people to move cases with smaller monetary claims through the court process quickly and with finality. House Bill 1472 clearly changes the operation of small claims court in a way that will affect the district court's caseload and the cost of litigation.

It is not possible to usefully project the fiscal impact of HB 1472 because the percentage of cases that would be appealed from small claims court to district court, as provided in section 4, is unknown. However, there are a number of administrative issues that require attention.

This bill eliminates the right of the defendant to remove the case to the district court. A provision that currently is available for defendants.

Section 4 would allow the defendant to appeal the decision of the small claims court to district court for a jury trial. However, the plaintiff may appeal but is only allowed a bench trial. A different standard is applied depending on which party brings the appeal. If an appeal is requested, a complete new trial would be scheduled, and if the defendant has requested the appeal, a jury must be summoned. This will represent significant costs. The cost for a civil jury trial of one day duration is nearly \$800 for jurors alone. This does not factor in judge time or court staff time for the management and supervision of these cases. Depending on the volume of cases resulting from this new process, it may be necessary to review the adequacy of our judicial and staff resources.

In 2002, there were over 7,111 small claims actions filed. If only 10% of those were appealed under this bill, that would represent over 700 new civil proceedings in district court.

This bill clearly expands and changes the focus and scope of small claims court and will make the resolution of these cases more time consuming and costly.

On behalf of the judiciary, I am requesting that the committee vote "do not pass" on this bill. Thank you.

Ted Gladden
State Court Administrator

Yolanda Richardson
Operator's Signature

10/16/03
Date

united transportation union



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JOHN RISCH
Legislative Director
NORTH DAKOTA LEGISLATIVE BOARD

Testimony of John Risch Before the House Judiciary Committee In support of HB 1472 February 11, 2003

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota Legislative Director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

We support HB 1472 because we believe in the basic principle of equal justice under law. HB 1472 would help more people receive equal justice under the law.

Current state law allows anyone having an action brought against them in small claims court to immediately move that action to district court. If you are of moderate or low income or if your claim is small, that can immediately price you out of our system of justice and your ability to seek redress.

A couple years back I was honored to serve on the North Dakota Supreme Court's Public Trust and Confidence Committee. Many of our discussions revolved around the basic premise that we should all receive equal justice under the law as well as the sad reality that if you don't have the resources to pay for an attorney and associated court costs and your opposition does, our current justice system fails miserably.

A fellow committee member, who runs one of the state's largest companies, openly admitted during our talks that, whenever taken to small claims court, his company automatically moves the issue to district court. Personally, he didn't believe it was right that a large company such as his could deter people who had a small claims issue with his company by simply moving all small claims to district court.

This is a tremendously positive piece of legislation. I've been a lobbyist since 1983, and I would rank this as one of the most beneficial bills that would help people in our state that I have seen. I'd be happy to answer any questions.

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John Risch
Operator's Signature

10/16/03
Date

Did Not
Appear

Testimony of Monty G. Mertz, Attorney at law

In support of the passage of House Bill 1472

1. I urge the passage of House Bill which will allow a review of decisions in small claims court.

2. I wish I could be there in person to testify in support of this bill. Given my schedule in Court during the week of the hearing, there are simply too many court hearings that I would have to re-schedule to be able to travel to Bismarck.

3. I have talked to numerous people over the years who have been extremely upset about the result of a small claims case. These have included businessmen and individuals who have stated that they will *never* proceed in Small Claims Court again.

4. I have been in private practice in Fargo for over seventeen years. My practice consists of mainly trial work. I routinely handle what I call "business" or "contract" litigation. These are cases which involve disputes over a wide variety of subject matter. Many of these cases are the sort that would be appropriate for small claims court, if the sum in dispute is small enough.

5. I am actually a big fan of Small Claims Court. I have advised people to use Small Claims Court many, many, times. I admit that I have been frustrated because a person comes into my office for a consultation, and after talking about their problem, and feeling that they have a meritorious claim, I tell them that it would not be economically feasible to hire me to handle the matter. I have tried so many cases, that I have learned that for an attorney to handle any case all the way through a contested trial, would cost \$1,000 minimum and way up, at my hourly rate of \$120 per hour, for even a "simple" bench trial. Many attorneys in Fargo have a significantly higher hourly rate.

6. For a modest consultation fee, I have often "coached" people on how to present their case to the Small Claims Referee. I tell them to have pictures and diagrams, exhibits, such as receipts, cancelled checks, invoices, and a brief summary of their claims, which they can simply hand to the hearing officer. It is a summary version of how you try any case to the Court.

7. Herein lies the problem. I have gotten pretty angry phone calls from these people several times after their Small Claims Hearing. I have been told the Hearing Officer "didn't even look at my papers" and/or "didn't listen to me," and the like. Several have said, that they would *never* have a case in small claims court.

8. A good friend, and client, named Jerome Hehn, has been in the car repair business for over thirty years. He has been my mechanic for the last seventeen years. I have advised him on a few disputes he has had with customers. Last year, he had the exact experience I described. He came in with a Small Claims case, and we talked about removing the case to District Court, but I felt that the claim against him was so frivolous, and given the documentation and testimony Jerome would present, that I told him he should have nothing to fear by presenting the case to the Small Claims Court. Well, he did, and called me afterward, and the outcome was ludicrous. He told me he did not care what it would cost him, he would never subject himself to that procedure again, where the facts are ignored. He wanted to appeal, and, of course, I told him he could not.

9. Shortly thereafter, Mr. Hehn was served with another Small Claims case. True to form, he hired me to remove the case to District Court. The claim against him was equally frivolous. I did some basic discovery, and got additional information from the claimant. The trial was very short, and her case was thrown out by the Judge. The Claimant was an attractive, articulate, self-assured young woman. However, her claim was baseless. But, if Jerome had

gone to Small Claims against her, I can easily imagine that she could have finessed her way to a money award.

10. One reality is that, when our Small Claims jurisdiction was only about \$1,200, these bad decisions did not ruin anyone's life. But now the jurisdiction is \$5,000, and some want to increase that. \$5,000 is enough to really hurt a lot of people.

11. The crux of the matter is that there just has to be a review of Small Claims Court decisions. North Dakota law has long provided for a de novo review of even the most minor traffic ticket. If you have a hearing on a speeding ticket in Municipal Court, you can appeal for another hearing in District Court. If you can do that for a \$50.00 traffic ticket, does it make sense that you can't for a \$5,000 claim?

12. The main argument against this change may be that, "you can always remove the case or start the case in District Court if you want to." That isn't a fair argument. To start a case in District Court, you almost have to have a lawyer. North Dakota Courts are notoriously unhelpful to pro se litigants. To remove a case to District Court, you really need to have an attorney. It is not fair to force people to hire an attorney for these small disputes, but have to accept an arbitrary decision of a hearing officer.

13. I would be happy to provide any other information or answer any questions the committee may have about this subject.

I swear that the above testimony is true to the best of my knowledge, information and belief.

Dated this 8th day of February, 2003.

Monty G. Mertz
Attorney at law

Richard Costa
Operator's Signature

10/16/03
Date

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