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Informality Without Information: Evidentiary Asymmetry in California Small Claims and Third-Party Insurance Disputes

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Abstract. *Small claims procedure is built on a deliberate tradeoff: less formality in exchange for lower cost, greater speed, and broader access to adjudication. That tradeoff works best when the parties possess roughly comparable access to the facts. It becomes more difficult when the party carrying the burden of proof must establish a claim using evidence controlled by a repeat institutional participant—particularly a liability insurer that may not be a formal party to the underlying action. This Article develops the concept of evidentiary asymmetry in California small claims and third-party insurance disputes. It argues that procedural informality should not be treated as factual simplicity and that formal equality of procedural rules can coexist with substantial inequality in practical access to proof. Drawing on California small-claims procedure, the repeat-player literature, and third-party insurance doctrine, the Article proposes a proportional evidentiary-access framework focused on control, identifiability, materiality, burden, and alternatives. The objective is not to import ordinary civil discovery into small claims court. It is to preserve the virtues of informality while ensuring that outcomes turn on the merits rather than on one participant's superior control of information.*

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Introduction

Small claims courts rest on a compelling premise: relatively modest disputes should not require the cost, complexity, or formality of ordinary civil litigation. California makes that premise explicit. Its small claims statute directs that hearings and dispositions be informal and identifies the legislative objective as dispensing justice "promptly, fairly, and inexpensively."[1] Attorneys generally may not participate in the conduct or defense of the initial small claims hearing,[2] and the system relies on simplified forms, compressed hearings, direct presentation by litigants, and substantial judicial flexibility.

For many controversies, simplification expands access to justice. A dispute worth several thousand dollars can become economically irrational if it requires formal pleadings, depositions, written discovery, expert disclosures, motion practice, and attorney fees. Small claims procedure responds by reducing those costs. But lower procedural complexity does not necessarily reduce factual complexity. A controversy can be monetarily small and evidentially dense.

That distinction is particularly important in third-party insurance disputes. A claimant may possess photographs, repair invoices, rental receipts, and personal knowledge of the accident. The insurer operating behind the dispute may possess the insured's recorded statement, adjuster photographs, internal estimates, valuation reports, payment calculations, claim notes, coverage communications, and records explaining why a claim was reduced or denied. The legal amount in controversy may be modest, yet the information required to adjudicate it accurately may be distributed very unevenly.

This Article calls that condition evidentiary asymmetry: a procedural setting in which one participant bears the practical burden of proving a proposition while another participant controls material information needed to prove or contest it. The problem is not merely whether evidence exists. It is whether the litigant who needs the evidence can realistically know that it exists, identify who controls it, obtain it through proportionate means,

understand its significance, and present it within a forum intentionally designed to minimize discovery.

The central claim is narrow. Small claims court should not become ordinary civil litigation. Broad discovery would defeat the forum's purpose. But informality should not be confused with informational blindness. Where outcome-determinative evidence is disproportionately controlled by one participant, a streamlined adjudicative system should provide proportionate mechanisms that give the other litigant a meaningful opportunity to obtain and present that evidence.

I. Small Claims Procedure and the Cost of Formality

California's small claims regime is deliberately distinct from ordinary civil litigation. Code of Civil Procedure section 116.510 directs that hearings and dispositions be informal and identifies prompt, fair, and inexpensive justice as the governing objective.[3] In Houghtaling v. Superior Court, the Court of Appeal emphasized the distinctive statutory character of the forum and the importance of informality to its design.[4]

The economic logic is straightforward. Ordinary civil litigation can require pleadings, discovery, depositions, expert testimony, formal evidentiary disputes, motion practice, and attorney time that may exceed the value of the controversy. California therefore allows natural persons, subject to statutory limitations, to pursue claims up to the current small-claims jurisdictional ceiling without assuming the full procedural cost of conventional litigation.[5] The forum is consequently an important access-to-justice institution.

Yet procedure performs more than one function. It controls cost, but it also structures fact production. Ordinary civil discovery exists because a litigant cannot be expected to prove a case using only information already in that litigant's possession. When a procedural system intentionally removes most discovery mechanisms, it reduces cost in part by reducing information-forcing mechanisms. That tradeoff is sensible when the relevant facts are already available to both sides. It is more consequential when they are not.

II. From Procedural Equality to Evidentiary Asymmetry

Procedural asymmetry arises when formally identical rules operate differently in practice because the parties possess unequal information, resources, expertise, or institutional experience. Both sides may have the same abstract right to present evidence, yet one side may already possess the decisive records while the other must first discover that those records exist, identify the custodian, formulate a sufficiently precise request, obtain production, and determine how the records relate to the legal issue.

Formal equality therefore does not necessarily create functional equality. Marc Galanter's classic distinction between repeat players and one-shotters supplies a useful theoretical foundation. Repeat players can accumulate expertise, develop standardized practices, anticipate recurring procedural problems, and spread the cost of legal knowledge across many disputes.[6] An individual claimant may experience one substantial automobile claim in a lifetime; an insurer may process thousands. That difference does not establish misconduct. It establishes a structural difference in institutional knowledge.

Insurance disputes make that difference unusually visible because the institutional actor may possess both accumulated expertise and the most organized version of the factual record. A claim file may contain the first notice of loss, insured and witness statements, liability assessments, estimates, photographs, valuations, payment history, correspondence, and documentation of claim decisions. The claimant may begin with fragments while the insurer begins with a curated chronology.

This is why the phrase "small claim" can mislead. It describes the monetary jurisdiction of the forum, not the sophistication of the underlying problem. A $6,000 dispute can involve causation, valuation methodology, loss-of-use calculations, allocation of payments, mitigation, policy language, authentication, subrogation, or statutory rules. The amount may be small. The evidentiary architecture may not be.

III. Why Third-Party Insurance Disputes Intensify the Problem

Liability insurance introduces a triangular structure that distinguishes many third-party disputes from ordinary bilateral litigation.

The injured claimant ordinarily sues the allegedly responsible defendant. The defendant's liability insurer may investigate the loss, evaluate damages, communicate with the insured, make payments, and finance a judgment, yet the insurer is not automatically a party to the underlying tort action. Information may therefore flow predominantly between insured and insurer even while the claimant litigates against the insured.

The practical result is a mismatch between the formal parties and the location of evidence. The insured may know how the accident occurred. The insurer may know how liability and damages were evaluated. The claimant may know the nature and extent of the loss. No single participant necessarily begins with the complete factual picture, but the claimant may bear the burden of proof while lacking access to records held by the entity that performed the most systematic investigation.

The problem can become even more pronounced at the judgment-creditor stage. California Insurance Code section 11580(b)(2) permits a qualifying judgment creditor, after obtaining judgment against an insured, to bring an action against the insurer on the policy, subject to applicable policy terms and defenses.[7] California decisions recognize the judgment creditor's statutorily created ability to enforce rights under the policy.[8] At that stage, questions concerning coverage, notice, cooperation, exclusions, limits, or payments may depend heavily on communications and records generated between insurer and insured—communications to which the claimant was never a party.

The consequence is doctrinally significant: substantive legal rights can become difficult to exercise when the facts necessary to invoke them are controlled by another actor. A right that exists formally but cannot be supported with realistically obtainable evidence has diminished practical value. Procedure therefore shapes substance indirectly by determining which facts can actually reach the decisionmaker.

IV. The Missing Discovery Function

Small claims procedure intentionally does not reproduce ordinary civil discovery, and that is generally a virtue. Depositions, interrogatories,

requests for admission, document productions, expert disclosures, and discovery motions could transform a modest controversy into litigation costing many times the amount at stake. But the absence of ordinary discovery matters disproportionately when one participant controls the evidence most likely to determine the outcome.

California provides an important but limited information-forcing mechanism: the Small Claims Subpoena, Judicial Council Form SC-107. The form can compel personal appearance, production of documents and things at the hearing, or both.[9] Its existence demonstrates that informality does not mean evidence must be limited to what litigants happen to possess voluntarily.

Still, a subpoena mechanism is not the same as meaningful evidentiary access. To issue a useful subpoena, the litigant usually must know that records exist, know who holds them, describe them with sufficient specificity, understand which records matter, respect privilege and other limitations, and know how to use the material if produced. A repeat institutional participant knows the architecture of its own records. A first-time claimant may not even know the relevant categories of documents.

This produces an "unknown unknown" problem. A claimant challenging a valuation may request "all documents related to the valuation" without knowing that the calculation was generated through a third-party database, that adjustment codes carry specialized meanings, that internal photographs were used, or that claim notes contain a factual conclusion relevant to the dispute. Ordinary discovery can reveal the structure of information iteratively. A compressed small-claims process allows far fewer opportunities to learn what to ask for next.

V. Representation Restrictions and Finality Increase the Stakes

California generally restricts attorney participation at the initial small claims hearing, subject to statutory exceptions.[10] The rule protects the forum from becoming dominated by professional advocacy and preserves affordability. But eliminating courtroom counsel does not eliminate differences in legal sophistication. An insurer, corporation,

property manager, or other repeat participant can develop internal knowledge concerning what judges commonly request, how exhibits should be organized, which damages disputes recur, how valuations are presented, and which defenses are routinely successful. Two parties can therefore appear without counsel while entering the hearing with dramatically different levels of institutional preparation.

The plaintiff's limited appellate position makes front-end evidentiary access more important. A plaintiff generally may not appeal an adverse judgment on the plaintiff's own claim, whereas a defendant may appeal an adverse judgment through the statutory process.[11] The rule reflects the bargain associated with choosing a streamlined forum: speed and reduced expense in exchange for substantial finality. But when a plaintiff loses because material evidence was inaccessible or unidentified, the ordinary appellate safety valve is correspondingly limited. Getting the evidentiary record right at the first hearing therefore carries unusual significance.

VI. Efficiency, Accuracy, and Participation

Procedural design must balance multiple values. Lawrence Solum's account of procedural justice identifies, among other approaches, an accuracy model concerned with correct application of law to facts and a participation model concerned with meaningful involvement in the adjudicative process.[12] Small claims court adds an especially strong value of efficiency. The difficulty is that efficiency, accuracy, and participation do not always point in the same direction.

More discovery may improve information while increasing cost. Greater evidentiary formality may improve reliability while making the forum less accessible. More attorney participation may improve legal presentation while undermining the egalitarian character of the process. The correct response is therefore not "more procedure" in the abstract. It is selective procedure: high-value, low-cost mechanisms aimed at information that is genuinely material and disproportionately controlled.

This reframing also explains why evidentiary access can improve efficiency rather than merely compete with it. Better information can cause weak claims to be abandoned, valid claims to settle, disputed issues to narrow, hearings to become shorter, and judicial questioning to become more focused. The relevant tradeoff is not always speed versus fairness. Sometimes proportionate information disclosure produces both.

VII. A Five-Part Evidentiary-Access Framework

A small claims court confronting a materially information-asymmetric dispute could focus on five considerations without importing the machinery of ordinary civil discovery.

1. Control

Who controls the material evidence? If the information is already equally available to both sides, special procedural intervention is less justified. Concern increases when decisive records are exclusively or predominantly held by one party or a closely connected nonparty.

2. Identifiability

Could the requesting litigant reasonably know that the evidence exists? An ordinary invoice or photograph differs from internal claim notes, proprietary valuation outputs, coded adjustment records, or documents generated through systems unfamiliar to a one-time litigant. The less identifiable the evidence, the less meaningful a purely formal right to subpoena it becomes.

3. Materiality

Would the evidence likely affect a disputed issue? The objective is targeted access, not broad institutional discovery. Courts should focus on records bearing directly on liability, causation, valuation, payment, notice, cooperation, or another issue genuinely necessary to decide the claim.

4. Burden

How difficult or expensive would production be? A request for a valuation report, relevant photographs, and a payment ledger differs materially from a demand for an entire claims database. Proportionality is essential to preserving the small-claims model.

5. Alternatives

Can the same factual proposition be established through a simpler source? If photographs, invoices, testimony, publicly available records, or an already-produced estimate adequately answer the question, additional production may be unnecessary. The least burdensome reliable source should ordinarily be preferred.

These factors do not alter the substantive burden of proof. They ask a prior procedural question: whether the party carrying that burden has had a meaningful opportunity to obtain the information reasonably necessary to satisfy it.

VIII. Practical Mechanisms Short of Full Discovery

A. Focused Judicial Questioning

Small claims judges possess substantial flexibility in conducting informal hearings. That flexibility can operate as a partial substitute for formal discovery. When a party relies on an internal valuation, estimate, or institutional calculation, a few targeted questions can clarify the evidentiary record: What document contains the valuation? Who prepared it? What data were used? What adjustments were made? Is supporting documentation available? Was it provided to the claimant? Focused questioning can reveal whether a dispute reflects a genuine disagreement over facts or merely unequal access to the data underlying one side's position.

B. More Strategic Use of SC-107

The existing small claims subpoena mechanism can be used more effectively when requests are tied to defined issues. In an insurance-related dispute, appropriate categories might include a relevant estimate, valuation report, photographs, payment records, nonprivileged correspondence, a relevant recorded statement, or documents identifying the factual basis for a specific reduction or denial. Requests should remain narrow and should respect privilege, privacy, work-product protection, relevance, and other legal limitations.

C. Pre-Litigation Transparency

The most efficient response may occur before litigation begins. When a claimant receives a reduction or denial without the estimate, methodology, photographs, payment breakdown, or specific factual explanation supporting the decision, litigation may be more—not less—likely. Targeted pre-litigation disclosure can expose whether the parties actually disagree about law, facts, methodology, or merely a missing document. Greater transparency can therefore narrow disputes before judicial resources are consumed.

D. Forum Suitability

Not every information-asymmetric controversy can be solved within small claims procedure. Some disputes involve evidence that is privileged, technically complex, deeply contested, or impossible to obtain proportionately within the streamlined forum. Courts and litigants should distinguish among cases with symmetrical evidence, cases in which modest targeted intervention can close the gap, and cases involving structural asymmetry so substantial that small claims may not be the appropriate forum.

IX. Broader Significance: Access to Court Versus Access to Proof

Small claims cases are individually modest but institutionally important. They are among the places where ordinary people most directly encounter the civil justice system. If procedural simplicity allows legitimate rights to be vindicated cheaply, the forum strengthens confidence in adjudication. If simplicity predictably advantages the participant that controls the evidence, independent of the merits, the same procedural economy can undermine that confidence.

The central systemic question is therefore not whether small claims courts should become more formal. It is whether a legal system can remain simple without becoming informationally blind. The achievable objective is evidentiary equality of opportunity: each litigant should have a reasonable opportunity to know what evidence matters, obtain material evidence not reasonably available elsewhere, understand the opposing factual position, and present the resulting record to the decisionmaker.

Equal opportunity does not guarantee equal outcomes, and it should not. Nor does evidentiary asymmetry imply insurer misconduct. Institutional actors are entitled to investigate claims, maintain internal records, develop expertise, and defend legitimate interests. The structural concern arises only when one participant must prove a proposition while lacking any realistic mechanism to reach material evidence controlled by another. Framed that way, the issue is procedural rather than accusatory, and the reform objective is accuracy rather than advantage.

Conclusion

Small claims procedure exists because justice can become meaningless when the cost of obtaining it exceeds the value of the claim. California's commitment to prompt, fair, and inexpensive adjudication is therefore essential. But the same simplification that expands access to court can restrict access to proof.

Third-party insurance disputes expose that tension with unusual clarity. The claimant, insured, and insurer may each possess different portions of the factual record, while the institutional participant may control the most organized evidence explaining how liability or damages were evaluated. When the claimant bears the burden of proof but lacks realistic access to that information, formal procedural equality can coexist with substantial practical inequality.

The answer is not unrestricted discovery. It is proportionate evidentiary access. Focused subpoenas, targeted judicial questioning, greater pre-litigation transparency, and attention to control, identifiability, materiality, burden, and alternatives can reduce outcome-distorting asymmetry without sacrificing the virtues of informality. Civil procedure succeeds not merely when litigants can enter a courthouse, but when they have a meaningful opportunity to place the facts necessary for a reasoned decision before the court. In small claims and third-party insurance disputes alike, access to justice sometimes begins with access to evidence.

Notes and Authorities

[1] Cal. Civ. Proc. Code § 116.510; Houghtaling v. Superior Court, 17 Cal. App. 4th 1128, 1135–36 (1993).

[2] Cal. Civ. Proc. Code § 116.530.

[3] Cal. Civ. Proc. Code § 116.510.

[4] Houghtaling, 17 Cal. App. 4th at 1135–36.

[5] See Cal. Civ. Proc. Code §§ 116.220–116.221; California Courts, Small Claims in California (current self-help guidance).

[6] Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc'y Rev. 95, 97–114 (1974).

[7] Cal. Ins. Code § 11580(b)(2).

[8] See San Diego Hous. Comm'n v. Indus. Indem. Co., 95 Cal. App. 4th 669, 685–86 (2002); Hand v. Farmers Ins. Exch., 23 Cal. App. 4th 1847, 1857–58 (1994); Billington v. Interinsurance Exch. of S. Cal., 71 Cal. 2d 728, 744 (1969).

[9] Judicial Council of California, Form SC-107, Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration; California Courts Self-Help Guide, Get Information to Help Your Case (Subpoenas).

[10] Cal. Civ. Proc. Code § 116.530.

[11] Cal. Civ. Proc. Code § 116.710; see also California Courts guidance concerning small claims appeals.

[12] Lawrence B. Solum, Procedural Justice, 78 S. Cal. L. Rev. 181, 238–73 (2004).

[13] See Issachar Rosen-Zvi & Talia Fisher, Overcoming Procedural Boundaries, 94 Va. L. Rev. 79, 89–91 (2008) (discussing procedural boundaries and their relationship to adjudication).