BIG CASES DON'T JUST HAPPEN TO BIG, BAD CLIENTS

I. Size Does Not matter.

An understandable, but false, assumption of some potential law firm clients is that a small case will cost less than a big one. After all, if I buy a small coffee I expect to pay less than I would pay for a larger size, so why do legal fees not adjust to the size of the case?

Well, first of all, they *do* in some cases. Legal fees can track the size of the deal in transactional matters; that is, where the parties are negotiating a deal and entering into contracts re same. For example, if the transaction involved the sale of a radio or TV station then the complexity of the work and the downside risk compel the parties to retain experts and do work in a number of areas, e.g. federal and state licenses, legislative and government agency support, appraisal, etc. So, if you are buying or selling a coffee house then you can expect the legal fees to be much less than if you are buying or selling a semi-conductor company. But, the cases discussed in this article are not the transactional ones, but dispute and litigation matters.

Litigation cases can be incredibly and aggravating *"inelastic,"* as to the size of the case, i.e. what is at stake. ("inelastic" is a term from economics price theory which means, *ceteris paribas,*[1] that a change in price will not cause a significant impact on sales. For example, automobile sales may be highly *elastic* to price changes while changes in the price of sale may not be. If your local car dealer lowered car price by 20% you might be motivated to buy – or try to – but 20% off the cost of salt, say, from $1.00 to 80 cents may not motivate the typical consumer.

Phoenix and Maricopa County Arizona – in fact the entire State of Arizona have a large number of small businesses with all types of cases, almost beyond imagination – especially the client's imagination because the client does not deal with these problems all day-every day. The cases may vary from trying to get paid on an account, say, in the amount of $5,000.00 to comparatively esoteric and complex claims for breach of trade secrets statutes and, perhaps, even a Confidentiality and Non-Competition Agreement with key employees, which where enforceable (as they are in Arizona) are extremely

[1] "Ceteris Paribas" is econo-speak for "all other things being equal. You get a lot of ceteris paribas in economic studies. Of course the fact that all other things never are equal is a problem for the real world, not the professors.

valuable to the company and every small business with key employees should have one.[2]

Take a $5,000 collection case. In Arizona cases above $2,500 are too large for the "Small Claims" division where you have the "parties only" with no lawyers allowed (the "small claims court like the People's Court). While, in Arizona, cases under $10,000 are still in Justice Court, therefore heard by a Justice of the Peace (which in Arizona may not have attended law school) upon the request of either party the Rules of Civil procedure and the Rules of Evidence may apply. We could write a whole article, if not a book, on the impact of these Rules on the dispute resolution process, but the short version is that applying the Rules of Civil Procedure means that a certain course of conduct must be followed work must be done in preparation of trial. This can include "disclosure statements' deposition, etc., pre-trial memoranda, etc. etc.. and, applying the Rules of evidence means that a non-represented part can be "lawyered to death" due to the rules against hearsay, authentication of documents, etc. Generally, evidentiary rules require that the person who saw or has first-hand knowledge about the event or document must be in court and subject to cross-examination. This means witnesses may be called, subpoenas issued and discovery requests may be made resulting in more depositions, etc.

The point of the above hypothetical is to show that the cost of the case to the litigants is *not* a function of the case, but its forum and the Rules that apply. One can only imagine what happens to the cost of civil action where the case is more complex with many legal claims, parties, witnesses, and documents.

Conversely, a large case in terms of "dollar denomination" may be relatively inexpensive compared to a smaller but more complex action. For example, while as discussed, above a small case can get complex and expensive, the cost of a "million dollar" collection case to recover monies due on a promissory note (which can be difficult to defend) can be "inconsequential" (i.e. much, much less) compared to the fees necessary to enforce claims for "tortious interference with contract or businesses

[2] I have written about the value of non-competition agreements in other articles, which are available upon request.

expectancy," breach of fiduciary duty, or misrepresentation claims, etc. ("Claims")[3] , which many business owners have not even heard of prior to the action.

II. Conclusion.

As shown, the cost of litigation is not a factor of the size of the case but of the type of case, including the kind of Claims and the Rules that apply. So, somewhat counter-intuitively, a $100,000 breach of fiduciary duty case may cost less than a $1,000,000 collection case.

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[3] Roughly, tortious interference with contract or expectancy is the act of attempting to terminate an existing contract and make your own sale to the customer. Many sales persons do not even know this can be seriously unlawfully, with punitive damages awarded, especially where inside knowledge or special, targeted incentives are offered, e.g. special offer of 20% to existing customers of XYZ company only using as mailing list a confidential customer list of the target company. Breach of fiduciary duty I the highest duty imposed at law, for example, the duty employees and partners owe the company and their partners to act with the highest standard of loyalty, honesty, trustworthiness and integrity. Employees have this duty? Yep. Who knew?