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Complex court cases need more than legal expertise

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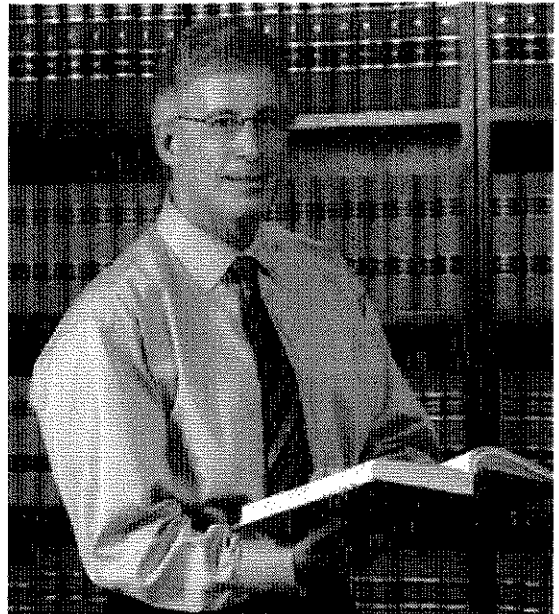
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When the prince of Saudi Arabia came to Arizona in 1988 for his annual visit, he brought along four exotic cars.

But in order for him to use the cars here, he had to have them federalized to conform to environmental standards, so he shipped them to a man in Connecticut who could do the work.

The prince never saw those cars again.

He hired Scottsdale attorney Ken Chase of Kenneth E. Chase PC to track them down. Chase, in turn, hired a retired FBI agent. After traveling to several states to obtain information, the agent put the pieces together.



Ken Chase, of Kenneth E. Chase PC in Scottsdale, specializes in legal malpractice and commercial litigation and often tackles cases involving fraud.

The story goes like this, according to Chase:

When the man in Connecticut did not receive prompt payment for his work, he sold the cars to an auto dealership in Massachusetts. The dealership bought fake certificates of origin from a company in New Jersey and then sold all four cars.

Chase said the dealership's owners claimed they had done nothing wrong, so the case went to court.

The jury took only 40 minutes to decide in the prince's favor. The judge doubled the jury's award. With interest and attorney fees, the total judgment was around

\$3 million.

Chase said he worked eight more years -- from 1993 to 2001 -- to collect the money. He ended up having to liquidate the assets of the car dealership.

The case is an example of the kind of dispute that, more often than not, is going to find a resolution only by finding its way into the courts.

Fighting fraud

Chase, who specializes in legal malpractice and commercial litigation, said about 10 percent of cases or less go to trial in the entire legal community.

"Most cases are fairly clear-cut," he said. "Cases that do go to trial, however, may have nothing to do with facts. It could be about principle; or one side not being realistic, as in the Saudi case; or because the parties disagree on the value of loss, or who is responsible."

Chase said personal injury cases make it to court most often, and the most complicated cases to litigate involve medical malpractice and financial fraud.

Proving how one person fraudulently induced another to give them money is not the hard part, he said. It's finding out what happened to the money afterward.

For financial fraud cases, attorneys often look to an expert witness such as a forensic accountant.

Unlike a traditional accountant, who generally verifies numbers and practices and does not assume anything might be wrong, a forensic accountant covers two broad and critical areas: investigative accounting and litigation support.

"Forensic accountants have the ability to think like someone with an evil mind," said Andy Pappas, a forensic accountant and founder of Scottsdale-based Pappas & Co. Ltd.

"Instead of accepting financial records at face value, we approach every engagement with cynicism," he said. "We search for evidence of the actual underlying transactions rather than believe the financial records accurately portray what happened."

Pappas said more judges require the use of forensic accountants today because it's a specialized field that approaches the examination from a position of advocacy rather than neutrality.

Areas where forensic accounting is helpful include damage calculations, due diligence, divorce cases where assets could be hidden, partner disputes and absentee ownership cases.

Forensic accounting experts are expensive, Pappas said, because the cases take time and are complex.

"When a business is willing to pay both an attorney and a forensic accountant, it is generally a sure bet something considerable is at risk," he said.

Eliminating guesswork

Tom Chenal, a commercial litigator with Mohr, Hackett, Pederson, Blakley and Randolph PC, said he uses experts for almost all of his cases and considers it a normal part of the cost of litigation.

Some of Chenal's most complex work involves construction defect cases against large home builders in Arizona.

Because a number of parties are involved in each of these cases -- the general contractor, subcontractors, architects and engineers, for example -- there always is a question of who is responsible for damages.

"We have to go through a discovery process. So during the course of these cases, we have experts retained to investigate and give opinions on who is at fault or responsible," Chenal said. "These cases are challenging and can take a long time -- more than a year for the discovery stage."

For some cases, Chenal hires Scott Stern, private detective and chief executive of Continental Investigations/Security Agency Inc. in Phoenix.

Stern, a former police officer and private investigator with 14 years of experience, gathers information and evidence.

Depending on the nature of the case, he interviews witnesses, takes photos, tracks documents, obtains information from police and conducts background checks on key people involved in the case.

Sometimes, what Stern finds out will determine the angle of the case. He also testifies in court.

"If it's a criminal investigation, we get the police involved and arrests are made from what we uncover," Stern said.

Continental Investigations is one of only a few agencies in Arizona that own and operate a specialized 3-D animation program that can

reconstruct car accidents, personal injury accidents and crime scenes, including the path of a bullet.

"The court takes the information created by the program as legitimate because you can see the accident take place as it occurred," Stern said. "It's a tool like no other in accident reconstruction because it takes out the guesswork."

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Kenneth E. Chase PC: www.kennethchaselaw.com

Pappas & Co. Ltd.: www.pappascoltd.com

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www.mohrhackett.com

FAST FACTS

From 2004 to 2006 in Arizona, 988 civil cases reached the verdict stage. During that period, personal injury cases -- medical malpractice, for example -- accounted for 62 to 76 percent of the cases that went to verdict.

Commercial cases -- breach of contract, for example -- accounted for 24 to 38 percent of those verdicts.

Source: Kelly Wilkins MacHenry, Snell & Wilmer LLP

Kerry Duff

Contributing Writer