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Should you file a biz lawsuit? 5 key things to consider

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Determining whether to file a lawsuit can be simple or complicated, depending on the situation. And often, it's done after attempts to resolve disputes have gone nowhere.

Here are five of the most common factors you should consider first:

- What is the dollar amount in controversy? Obviously lawsuits are expensive. If your damages are six figures or more, you often can recover substantially more money than you spend in legal fees. If your damages are less than \$5,000, you should file in small claims court without legal counsel. However, the difficult range is a controversy worth more than \$5,000 but less than \$100,000. In that situation, you should look carefully at the other four factors below to decide whether to sue.
- How complex is the case? Generally, the longer it takes you to explain the facts of the case and the more documents you rely upon, the more time-consuming it will be. For example, a patent infringement case in federal court might go on for many years and cost several hundred thousand dollars, whereas a suit to recover on a promissory note might last a few months and cost less than \$10,000. But, there are no guarantees, which leads directly to the next factor.
- How might the potential defendant respond? Consider the relationship of the parties and the emotions involved. Some defendants pay what they owe as soon as you file suit. Other defendants are exactly the opposite: They become provoked and file defenses and counterclaims to try to win money from you. Usually what happens is somewhere in between, whereby the lawsuit provides the necessary leverage to obtain a recovery, but the defendant has reasons for paying less than the full amount. If you send a pre-suit demand letter and get a response, you will know better how to weigh this factor.
- Can you recover your legal fees and costs? This can be a major factor, but with fewer cases going to trial these days, it might not. A plaintiff can recover his attorneys' fees and costs from a defendant only if a contract or statute allows it under the particular facts. Of course this works both ways, and if the plaintiff loses at trial, he may have to pay his adversary for the defense. However, with most cases settling out of court where parties almost never agree to pay their opponent's legal fees, usually there is no fee recovery. The real importance of this factor is in the threat of a massive trial loss and the negotiating leverage that provides you.
- Can the potential defendant satisfy a judgment? Some cases do not settle, and when the plaintiff wins a judgment with no insurance involved, this is really a two-pronged question: Can he pay, and *will* he pay? If the defendant has limited assets, the value of your judgment is in the prospect that he inherits or borrows money to pay you and to clear his financial record. Other defendants have plenty of assets but refuse to pay anything unless you take collection efforts, which itself can be expensive. The good news is that plaintiffs in bigger cases usually take home settlement checks instead of having to sit on

judgments.

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