

1st edition

THE SECRETS OF
Asset Protection:
Only the Wise Survive

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1 2 3 4 5 6 7 8 9 0 DOC / DOC 0 9 8 7 6 5 4 3 2 1

ISBN 978-0-615-19415-8

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This book was printed offshore.

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The Secrets of Asset Protection

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FOREWORD

The current litigation explosion is just one in a series of fiscal obstacles the American public must face on a daily basis. Everywhere you turn there are attorneys, lenders, bankers, creditors or bureaucrats trying to tell you how to run your life while they try to slip their hands into your pockets. They are like a swarm of locusts that will not stop until there is nothing left.

If you are financially solvent, an asset protection strategy should immediately become a part of your personal financial plan. This is because it is unlawful to attempt to hinder, delay or defraud a creditor. However, it is not unlawful to implement an asset protection plan as part of your routine financial planning. This should occur when you are financially solvent, not involved in litigation, and without notice or knowledge of any serious financial claims pending against you or your business. This is called “rainy day” planning, and there is case law going back to the 19th century supporting the lawfulness of rainy day planning.

If you are insolvent, engaged in litigation or have knowledge of a pending claim that could render you insolvent, then it may be too late for you implement a viable asset protection strategy due to the prohibition against fraudulent conveyances. You will need to weather your current financial turmoil and then start fresh with a new financial plan incorporating an asset protection strategy once you have recovered from your current financial setbacks.

This book is designed to help you understand the principles involved in asset protection without overwhelming you with so many details that you lose sight of the big picture. It will show you how to develop an asset protection plan and integrate it into your current financial plan.

-- Thomas Adams

Chapter 1: Why Asset Protection is Necessary

The Litigation Explosion

Due to the litigation explosion, asset protection planning has become a financial necessity in the United States. Our legal system is hostile to defendants due to outcome oriented judges, runaway juries and expanded theories of liability. Today's insurance policies contain more language defining exclusions than describing areas of coverage. The cost of insurance is unreasonable, the policy limits are too low and the extent of protection is inadequate. Meanwhile, shareholders, directors and officers are at risk because their liabilities have significantly expanded.

Although asset protection is not yet in law school curricula, it has become a necessity of everyday life. The American Bar Association has formed an Asset Protection Committee and some Continuing Legal Education programs around the country are sponsoring Asset Protection CLE seminars.

There are four times as many attorneys practicing law in the USA than there are in the rest of the world combined!

Attorneys in the U.S. account for 80% of the attorneys worldwide. There were 1,143,358 lawyers licensed and actively practicing law in the U.S. in the year 2007.¹ A recent newspaper article claimed that there are more attorneys in Seattle's Columbia Center Tower building than in all of Japan. Experts allege that the number of practicing attorneys will double in less than ten

¹ This figure is based upon a state by state survey of licensed attorneys compiled by the ABA Market Research Department, 321 N. Clark St., Chicago, IL 60610.

years. There are too many attorneys and too few good cases. The result is that some attorneys will accept frivolous civil cases they otherwise would not have considered.

One in every four small businesses has been sued or threatened with a lawsuit in the past five years. The average professional

A study by the Institute for Legal Reform indicates that a new lawsuit is filed every two (2) seconds in the United States!

or business owner in the U.S. will be sued five times during his or her lifetime. The most conservative estimates are that a new lawsuit is filed every two (2) seconds in the U.S. and nine out of ten lawsuits in the world are filed in the United States. A U.S. citizen has a one in three chance of being sued this year. Businesses are the number

one target of lawyers. In 2004 litigation awards and settlements reached \$260 billion dollars.² This represents over 2% of the gross national product.

The Contingency Fee System

The United States legal system is more favorable to persons filing a lawsuit (plaintiffs) than to the persons being sued (defendants). In most English common law jurisdictions, the loser must pay the prevailing party's attorney fees. This deters attorneys from filing claims without merit. In the U.S., we allow plaintiffs' attorneys to take cases on a "contingency fee basis" in which they receive a percentage of the proceeds. Many large plaintiffs' firms³ will spend thousands or even

² The estimate is part of an annual study by international consulting firm Tillinghast and Towers Perrin, which compiled 2004 tort statistics. The findings are supported by the U.S. Chamber of Commerce.

³ A plaintiff's firm is a law firm that only handles civil law suits on behalf of injured parties and employees. Plaintiff's firms typically handle auto accident, wrongful death, personal injury, worker's compensation and employment law (discrimination or wrongful discharge,

hundreds of thousands of dollars of their own money for litigation expenses such as depositions and expert witnesses. They advance these funds for the client and then reimburse themselves from the settlement proceeds or judgment.

On the other hand, the defendant must pay attorney fees in advance and the defendant must pay for all the litigation expenses as well. Even if the defendant wins, the defendant is usually not reimbursed for attorney fees, court costs and witness fees. Something is wrong when an innocent defendant can be financially ruined by a frivolous lawsuit, while the claimant suffers no financial distress.

Frivolous lawsuits continue because dismissals are expensive to obtain and because jury awards can be very unpredictable.

An attorney filing a frivolous lawsuit can often get an out of court settlement based on how much the defending law firm thinks it would cost to get the case dismissed. This encourages the filing of lawsuits that lack merit. On the other hand, some heavy hitting plaintiffs' attorneys are

highly skilled trial attorneys who are hard to beat at trial. They know that juries are often sympathetic and unpredictable. Consequently, the heavy hitters like to "roll the dice" because sometimes, even with cases of minimal value, they may obtain a million dollar payday if they can get their case before a jury.

Excessive Jury Verdicts

Runaway juries frequently grant awards far in excess of the injuries sustained by the plaintiff. In the famous McDonalds case Stella Liebeck spilled coffee on herself and obtained a \$2.1 million settlement because the coffee was "too hot."

etc) cases. These firms will often specialize in just one primary area of law such as personal injury cases.

Shortly after Stella's lawsuit, another customer filed a lawsuit against McDonalds claiming a "hot pickle" fell out of a burger and burned her chin. She asked for \$100,000 damages and her husband wanted \$25,000 for an alleged loss of marital services.

Runaway juries frequently grant awards far in excess of the injuries sustained by the plaintiff.

Nationally, 12 percent of all jury awards are \$1 million or more. Many plaintiffs' attorneys are consummate trial attorneys with such skill and expertise that they seem to be able to mesmerize juries. Through lawsuits, plaintiffs' attorneys have made more persons millionaires than all the lotteries and casinos in the United States.

The Liabilities of Everyday Life

Most defendants have valid claims and are entitled to compensation. These defendants may be entitled to substantial damages that are not unreasonable due to the circumstances of the case. We are all vulnerable to substantial liabilities no matter how careful we may be, because we all make mistakes. "To err is human."

For example, your pet may bite, scare or chase someone. Serious dog bite cases usually settle for 30 to 50 thousand dollars and are covered by insurance, but occasionally a child or elderly person running from a dog will fall or get hit by a vehicle, resulting in death or serious injuries. There have recently been jury awards for such cases ranging from \$500,000 to \$6,000,000.

We all drive cars and we all make mistakes. If you fall asleep at the wheel, sneeze while turning or your brakes fail, you could be economically ruined. The damages could cost you millions of dollars that will not be fully covered by your