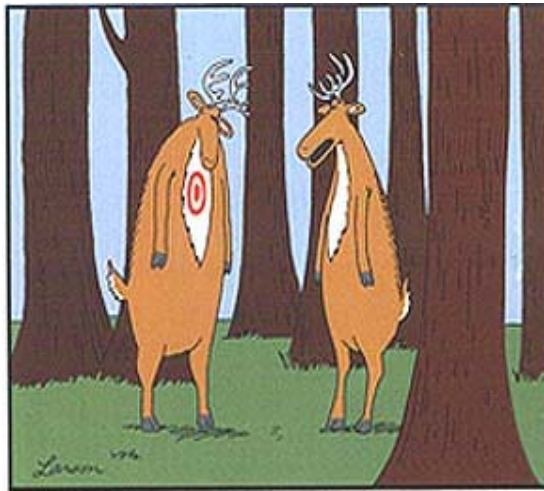


“Bummer of a Birthmark, Hal!”

By R. J. Kelly, Founder and President of the Wealth Legacy Group and Co-Founder and Chair, The Center for Wealth & Legacy Studies™



“Bummer of a birthmark, Hal.”

Several years ago, Gary Larson in his cartoon, *The Farside*, had two elk facing each other in the forest. One of the elk had a distinctive birthmark on his chest – concentric circles that resembled a bull’s eye! The second elk is talking to him with a concerned look on his face, and the caption reads, “Bummer of a birthmark, Hal!” Are you a business owner today that feels like Hal? Do you worry that your businesses success has put a bull’s eye on your chest – and that you may not be adequately protected? Is it only a matter of time before you get “hunted down” by those wanting a share of your success without doing anything for it except hiring an unscrupulous attorney?

Just how bad is it out there? The California Chamber of Commerce reports that literally thousands of frivolous and abusive lawsuits have been filed in our state targeting business owners. Hunting season is open year round to attorney’s extorting cash settlements from owners, who decide it is less expensive to settle than fight to prove their innocence in court.

For example, a recent headline read, *Jury Awards \$1.2 Million to Man Hit in Groin by Baseball, November 13th, 2008 — A jury in Miami-Dade county has awarded a 21-year-old man hit in the groin by a baseball at Sluggers batting cage nearly \$1.2 million.* Lhyvann Felipe, who was 19 at the time of the accident, was struck by a 60 mph batting cage pitch at Tamiami Park in West Miami-Dade, Florida, according to his attorney. The judgment ordered \$160,000 for Felipe’s medical expenses and \$1 million for pain and suffering. The jury decided the batting cage operation was negligent in supervising its employees.

And, who can forget the woman who spilled her coffee and then sued McDonalds Corporation because it was too hot – and won? Or, the man who sued four fast food restaurant chains for making him too fat and leading to his heart attack? And the list goes on and on

These “pot shots”- the scare tactics of receiving threatening letters and phone calls over trumped up charges or exaggerated claims – is very real ... and getting worse. But it doesn’t end there ...

Owners of businesses with employees face additional risks. As owners, they are accountable for their employee’s actions. When an employee is careless in their driving while on company business, or fails to keep business equipment safe, or they compromise in their integrity while making a sale, the owner is squarely in the gun sights. Sure - there is liability coverage for acts of negligence by employees, but juries have been known to award damages far in excess of those limits. And, even if the company is not “killed” by the lawsuit, it can be significantly “wounded”, or at the very least – distracted.

The first and most common step business owners take to protect themselves against these concerns is insurance. Adequate life, property & casualty, liability, disability and malpractice insurances is prudent and offers protection. Today, however, many lawsuits are “unconventional” and certain aspects are not covered by insurance, or have limits to coverage. Suits for gross negligence, punitive damages, intentional

wrongdoing, discrimination, wrongful termination, or sexual harassment (to name just a few), are being settled for amounts in excess of coverage limits. Who pays when insurance fails to cover? The business owner

There is a story of a town which faced a dilemma. They had a cliff which provided views of the horizon that were breath taking and attracted many sightseers. Unfortunately, from time to time, sightseers would get too close to the cliff and fall over the edge. Lawsuits were mounting, and the leadership of the town met to decide what course of action they should take.

One council member suggested that the town invest in the best technology for life saving equipment and trained medical personnel. That way, when someone fell over the cliff, they could rush over and attempt to resuscitate the victim. Several on the town council nodded their heads in agreement.

Another councilman, however, suggested that they invest in a fence at the top of the cliff. Not only would it be less expensive in the long run, it would keep errant sightseers away from the cliff's edge and greatly lessen the risk of someone falling over. And thus it was decided.

Nancy Henderson, estate planning attorney in Rancho Santa Fe, CA and founding partner of, Henderson, Caverly, Pum & Charney LLP, observes that many business owners think they are adequately covered through insurance, until they lose the lawsuit or pay a settlement. This is the ambulance in the valley approach. It may resuscitate the injured party, but it won't stop the lawsuit. They don't take sufficient legal steps to fully protect themselves by building a fence at the top of the cliff.

Asset protection planning has largely been ignored, or been minimized as a product, or just for the "super rich" or just for the irresponsible. This couldn't be farther from the truth. It should be, instead, an important part of every business owner's wealth planning process. You have not completed your objective of wealth planning without having fully considered and implemented structures and strategies for asset protection. After all, it protects more than just yourself - it protects your family, your company, your partners and co-owners, your employees and even your customers and vendors.

It is imperative to use a team of advisors to help in this process. Usually, the team consists of an attorney (or two), CPA, financial planner or consultant, insurance advisor, investment counselor, and others competent in the area of asset protection. Certain strategies are commonplace enough that the majority of advisors have some degree of familiarity with them. More advanced concepts, however, require advisors that have specialization.

How to specifically build a fence of asset protection is a subject beyond the scope of today's article. Books are written on the subject. It is a topic that will be addressed in detail in a future article, but the first step is recognizing and accepting that your wealth *has* put a target on your chest – and that insurance is just the beginning of the journey. The structure of your company, the state or country in which it is established for jurisdictional reasons, the procedures with which it is run, among many decisions, will be parts of the fence building process.

You can't get the target off your chest, but you can wear "body armor" that will not restrict, and is a whole lot more comfortable than riding in the ambulance at the bottom of the cliff!

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