Summer 2018 Bulletin

SIX STRATEGIES TO AVOID FRIVOLOUS LAWSUITS

Throughout my years of practicing law, I have heard some pretty bizarre stories of frivolous lawsuits. Some lawsuits definitely deserve that label, although they'll feel anything, but frivolous, if you're the one being sued:

- In New Jersey, Kyu Taik Chung sued the owners of an apartment complex after he stumbled over a Christmas tree left for trash pickup. His lawsuit claims the owner "recklessly, carelessly and/or negligently" allowed an unsafe hazard.
- In Florida, George H. Vallario, Jr., a lawyer, sued another lawyer over a violent handshake. It might sound like a joke, but Vallario seeks $100,000 in damages for his "pain and suffering."
- At a Georgia shopping center, DeToya Moody walked under an orange bucket ladder surrounded by safety cones three times. But the fourth time she approached, the bucket had been lowered and she walked into it, suffering a minor concussion. Despite video footage clearly showing the woman staring into her cell phone when she injured herself, a jury awarded her $161,000 in damages.

More than a decade ago, legal scholars at the Pacific Research Institute calculated the socio-economic costs of America's lawsuit obsession. The results were stunning. In a report published in 2006, the researchers concluded that the total cost of the tort system was $865 billion annually – at that time, more than 6% of the total value of the US economy. According to the report, the annual price tag, or "tort tax," for a family of four in terms of costs and foregone benefits was nearly $10,000.

America has the world's costliest legal system. In comparison to total GDP, the cost of lawsuits in the US is twice as high as in the UK. It's three times as high as France and five times higher than Japan. In any lawsuit, the person or company being sued must spend thousands of dollars in legal fees to defend themselves.

One reason that lawsuits are so prevalent in the US is that there are more lawyers per capita than in any other country: one lawyer for every 300 people or about one million in all. So if you're an aspiring lawyer looking for a quick payoff, finding someone with unprotected assets to sue can be a great wealth-building strategy.

We've all seen billboards where lawyers invite anyone with a real or imagined injury or grievance to contact them to sue the offending party. But that's just the tip of the iceberg. Lawyers routinely use census data and other sources, along with marketing tools from Facebook and other social media to identify potential clients and generate lawsuits. Some law firms even use telemarketing to contact prospects by phone to try to induce them to sue.

Another factor leading to lawsuits is the nearly unique accessibility to the courts that America gives its residents. All 50 states allow lawyers to take cases on contingency. The lawyer handling the case receives no fees, unless money is recovered from the defendant. Anyone can sue, risking nothing more than time and energy.

In addition, a growing number of state and federal laws allow people to sue employers, landlords, and other businesses. Examples include the Americans with Disabilities Act, the Fair Credit Reporting Act, and the

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Racketeer Influenced and Corrupt Organizations Act. In California, a single person, Jose Escobedo, filed more than 40 lawsuits against businesses in and around the small town of Hansford under the state's expansive disability rights law.

The concept of "strict liability" means that even if you are not negligent, you can still be liable for damages in a lawsuit. And "joint and several liability" laws may hold you fully financially responsible for a judgment regardless of your individual share of the liability. If you're 1% responsible for a $10 million loss, and you are the "deep pocket," you might be required to pay the entire amount.

In bankruptcy proceedings, accountants are a popular deep-pocket target. An accounting firm that renders a positive financial opinion about a client company could be sued if the company files bankruptcy. In many cases, the business has few if any recoverable assets. Under the joint-and-several liability doctrine, the accounting firm could be forced to pay the full amount due to a bankrupt company's creditors.

Six Ways to Protect Your Wealth and Privacy from Stupid Lawsuits

If you're wealthy, you're a prime target, especially if you openly display your wealth. In addition, professionals – doctors, lawyers, or engineers – are frequent targets. Disputes among relatives often lead to unwanted litigation, particularly after the death of a wealthy family member.

Here are some suggestions to protect yourself:

1. **Purchase liability insurance for your home, your business, and your vehicles.** Don't stop at the minimum limits. If you can purchase an "umbrella" policy with limits of $1 million or more, do it. Liability insurance won't, however, cover intentional "torts," such as libel, slander, or harassment. Nor will it protect against punitive damages or damages or injuries resulting from your violation of any law or regulation. Liability insurance policies are a contract and, therefore, are riddled with exclusions. Work with an experienced agent to ensure you're covered for all of the risks you realistically face and review your insurance policies on an annual basis.

2. **Avoid personal guarantees.** These may be unavoidable if you borrow money; but try to avoid guaranteeing someone's debt. A practical example is if a friend or family member asks you to co-sign for a loan. The question you need to ask isn't, "Can I trust this person?" but, "Do I have the financial means to make good on this obligation?" It's unlikely you can force your friend or family member to pay off the loan, especially not without losing the friendship or straining family ties. Remember that you have no control over extraneous events that might prevent that person from paying off the obligation.

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3. **Maximize pension and retirement plan contributions.** Federal bankruptcy law prevents creditors from seizing most employer-sponsored pensions, Social Security, and other benefits tied to age, illness, or disability. Federal law protects IRAs and other retirement arrangements that aren't employer-sponsored up to a value of $1,283,025 (2016 limit, adjusted every three years for inflation); however, you must declare bankruptcy to gain this protection.
4. **Keep a low profile.** Keep your wealth hidden. Don't own real property or other investments in your name. Use trusts and other vehicles to protect your assets and keeping them out of your name.
5. **Use business entities – especially limited liability companies – to hold title to your business and investments.** LLCs are another form of liability protection against lawsuits than holding property in your own name. Simply getting assets out of your name reduces your chances of being sued, because they'll be less likely to show up in an asset search. In many cases, "no recoverable assets" means "no lawsuit."
6. **Move "nest egg" assets outside the US into jurisdictions that are serious about asset protection.**

   The frivolous lawsuits we take for granted in the US simply aren't tolerated in asset havens like Switzerland, Nevis, or the Cook Islands.

With these simple precautions, you'll be less likely to become a target.

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