

Businesses Need Asset Protection, Too

Here are several ways for family-owned and privately owned companies to place assets out of reach.



By Jeffrey M. Verdon, Esq.

Affluent families and high-net-worth individuals have been using asset protection planning since the mid-1980s. Well, guess what? Businesses get sued, too. Yet, when you ask those in the C suite what they are doing to protect their company's assets from lawsuits, you mostly get a blank stare.

Small privately held businesses are often most at risk because litigation costs and expenses come out of the owner/executive pockets, not those of

many multiples of shareholders.

Sometimes lawyers look to pile on a community of individual plaintiffs to scare the company into a settlement or face years of costly litigation and a drag on company morale.

The latest twist: so-called "Wage and Hour" disputes. A group of employees bands together, typically through the instigation of a plaintiff lawyer, who then sues the company about some issue surrounding the hours they worked and the wages they were paid.

These cases often start out small. But the plaintiff attorneys then contact many more employees, even past employees, to see if they want to join the "class." Worse, many insurers are now excluding coverage for these sorts of claims.

What Can YOU Do to Protect Your Business?

If your company has substantial retained earnings and liquid assets, you might be able to create a foreign asset protection trust (FAPT) where the company is both the settlor and discretionary beneficiary

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of the trust. Absent a fraudulent transfer, once titled in the FAPT and subject to the more protective laws of the FAPT jurisdiction, a subsequent creditor won't be able to enforce a judgment against the FAPT. This will discourage most lawsuits and encourage the parties to reach a settlement, generally far more favorable for the company than would have been the case had the FAPT not been created.

Private Retirement Plan

In California, business owners can also create a Private Retirement Plan (PRP), a type of retirement savings plan that, by statutory law, is exempt from lawsuits, even if you have to file for bankruptcy. Qualified plans are generally exempt but require the business owner to comply with complex ERISA and tax laws.

The PRP may be set up as a non-ERISA

qualified plan taking it outside of the regulatory scheme and thus, not subject to the more complex rules.

There are few limitations on the amount that may be contributed to non-ERISA qualified plans, because contributions are not income-tax-deductible, yet the statutory exemptions from creditor claims applies. This makes the PRP a useful tool to insure there will be supplemental retirement income for the employer.

More Options Companies Can Consider to Protect Their Assets

1. Leasing equipment, rather than owning it, reduces a company's assets on its balance sheet.
2. Some corporations create separate companies for each brand that they own to reduce exposure.
3. Creating separate entities for the company's intellectual property

(IP) and then licensing them to the operating company so the IP is not owned by the target of a future lawsuit.

4. Distributing retained earnings to shareholders and stakeholders so the funds aren't exposed to business liability. There's also the option of having the company owned by a foreign asset protection trust so the distributions are not subject to personal liability.

One of the best ways to level the litigation playing field is to place the assets out of reach of future potential plaintiffs or convert non-exempt assets to exempt assets ahead of any future claim. Once this is done, your company won't be so attractive to litigious plaintiff attorneys who only get paid if they recover assets from the judgments they obtain. Asset protection planning neutralizes this.



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