

You've Learned How to Earn It, Now Learn How to Keep It

By Jay W. Mitton, MBA, JD

John opened his mail with anxious anticipation; just as he had every day for the last eight months. Since joining the cash flow industry earlier that year the postal service seemed to be delivering more checks than bills and more good news than bad. Little did John realize that today's mail would not only be different from the others but also devastating to the life he had come to enjoy.

Except for the car accident his wife was involved in four months ago, things were going very, very well. Even the car accident had turned out okay. His wife had not been hurt and the other driver had brushed off the accident saying that his car was so old it didn't really matter. Besides, both his wife and the other driver had admitted at the scene that neither was sure who was really at fault.

By the time he had read through the first paragraph of the letter he had stopped dead in his tracks. He was being sued for injuries, lost wages, pain and suffering caused by the accident!

As he walked through the living room flipping through the envelopes his eye caught an official-looking logo on one of the return addresses. His pace slowed as he pulled it out of the stack, turned it over, and opened it. By the time he had read through the first paragraph of the letter he had stopped dead in his tracks. It was a letter from an attorney representing the other driver. He was being sued for injuries, lost wages, pain and suffering caused by the accident!

Traditional Lawsuit Protection

As anxiety started to get the better of him, John took stock of his situation. Soon after he had started his cash flow business he and his wife decided they needed to protect their personal assets. Following the advice of both their legal and financial advisors they transferred all of their personal assets into his wife's name and kept the business assets in a privately held corporation. This, they were told, would be the best way to insulate their assets and minimize the risk of losing anything in a lawsuit.

As he walked over to the phone, picked up the receiver and called his own attorney, John became more and more angry. This wasn't supposed to be happening! Nobody even knew who was at fault in the accident. By the time his wife's uncle got on the phone, he was outraged. He was determined to fight this all the way.

As the trial began John was confident. As the proceedings wore on, John became worried. The plaintiff's attorney had uncovered all of their assets with incredible accuracy. The personal assets and the business assets were totally exposed. Their total net worth, including home, cars, bank accounts, stock accounts, and John's business were valued at \$500,000. That wasn't really a lot of money, but it was everything they had. Having all this exposed so easily made John nervous.

Holes in the Traditional Protection Plan

The sleepless nights started after the plaintiff's attorney revealed that John's wife had written checks and performed a number of other bookkeeping-type tasks for the business. When the judge declared she was an implied officer in the corporation John was absolutely sick to his stomach. The shield of protection he thought was providing a barrier around his assets had just been pierced. His asset protection plan was worthless.

The lawsuit dragged on for a few more weeks ending when the jury returned a \$1.5 million judgment against John's wife. The insurance policy only covered \$1,000,000. The rest was John's to pay. It was devastating financially, mentally, and especially emotionally.

None of it had to happen, though. Sure, the car accident may have still happened. But with proper asset protection planning, John probably never would have seen the lawsuit and definitely would never have had to sell his home and his business to pay the judgment.

Guaranteed Protection

A carefully constructed and properly drafted family limited partnership would have given John the only time-tested, court-proven method for protecting his personal and professional assets 100% of the time. With a meticulously worded partnership agreement containing specific clauses and carefully constructed phrases, John never would have lost a single night's sleep.

The family limited partnership is structured with one or more general partners who have the right to control all of the assets and income of the partnership as well as the right to receive income from the partnership. The limited partners only have the right to receive income from the partnership. Thus, the general partner (or partners) will usually be the husband and/or wife. They'll hold the smallest interest (e.g., 10%) in the partnership's assets and yet have complete control of them.

The limited partners, typically the children, will hold the greatest interest (e.g., 90%) in the partnership's assets. Once all of the family's assets are transferred into the family limited partnership, the husband and wife own nothing. If a lawsuit is filed against either of them for any reason, none of the assets are at risk.

The uniform limited partnership act, forms of which exist in all 50 states, prevents the creditor from obtaining any of the property or assets even if a judgment is awarded to the plaintiff. The judgment creditor cannot reach into the family limited partnership and seize the assets nor place a lien against them. Neither can the creditor become a voting member of the partnership and force a distribution of the assets or unwind the partnership and seize them. The only remedy available to the creditor is the charging order.

The charging order is essentially a court order providing the creditor with the right to recover the outstanding balance of the judgment due only when the partnership distributes assets to the partner against whom the judgment has been levied. However, the properly worded and carefully constructed family limited partnership agreement will contain a clause allowing the general partner(s) to elect not to distribute the income. When done properly, this will prevent the creditor from recovering any of the outstanding judgment.

Further, IRS Ruling 77-137 will require any party who is the rightful recipient of the partnership's distributed assets to pay the taxes due. In the well-written family limited partnership agreement, the intent of this ruling will be substantially strengthened and force the creditor to pay the taxes due even if the income is not distributed. The creditor who hopes to seize your assets or take your money will not only find them out of reach, but will also owe taxes on the money never collected. This fact alone deters most lawsuits from ever being filed.

The properly drafted and properly managed family limited partnership has been proven to effectively protect personal and professional assets 100% of the time in numerous court cases for the past three decades. Consider the case of another cash flow specialist who held 100% of her professional business and all of her personal assets in carefully structured, properly drafted family limited partnerships and was sued.

The plaintiff won the case on every single issue in contention and could only recover the multi-million dollar judgment via the charging order. The business owner, acting as the general partner, elected not to distribute the income and the plaintiff received nothing. Nevertheless, the IRS notified the plaintiff of the taxes now owed on the income never received. The plaintiff spent hundreds of hours and thousands of dollars to win the lawsuit, received nothing for it, and ended up paying taxes on money never received.

The carefully constructed family limited partnership has been proven in court case after court case. Thousands have structured their businesses and personal assets for lawsuit protection and, of course, many of them have been sued. However, never has a single individual with the properly drafted and properly managed family limited partnership ever lost one cent as a result of a lawsuit. Some of the top plaintiff attorneys in the country have said that if a family limited partnership is discovered during pretrial investigations, they will immediately drop the lawsuit.

Conclusion

Everyone in the country deserves to know how to protect their assets. Many are familiar with the basic structure of the family limited partnership and see it as a very attractive asset protection tool. However, not all partnership agreements are created equal. There are a number of generic, "plain vanilla" type agreements which will significantly weaken the effectiveness of the family limited partnership as an asset protection tool.

If you want to avoid the potentially devastating consequences of becoming the next victim in this nation's "lawsuit lottery," you absolutely must use a carefully crafted, well-written, properly structured and properly managed family limited partnership. **To discover how you can properly protect your assets, you will want to attend the FREE AOA SEMINARS on January 15th at the Crowne Plaza Hotel in Anaheim/Garden Grove and January 22nd at the Ontario Convention Center. See back cover of this issue for details.**