

Asset Protection for Physicians and High-Risk Business Owners

By Robert J. Mintz

© Copyright 1999, 2002, 2008 Robert J. Mintz

CHAPTER ONE

Searching for the Deep Pocket Defendant

The Litigation Explosion

It has been estimated that 50,000 lawsuits are filed in this country every day of the week. This has come to be known as the "litigation explosion." Whatever the causes—a breakdown of traditional values, the loss of a sense of community, too many hungry lawyers, wasteful insurance companies—the impact on each of us is significant.

When patients sue doctors, the cost of healthcare rises. To compensate for products liability claims, manufacturers add a premium to the price of their products. Litigation cripples business. It is time consuming, expensive, and emotionally charged. It detracts from our ability to focus on productive matters, as attention is directed away from matters of efficiency and innovation. Parties to a lawsuit spend so much time meeting with lawyers and fighting with the other side that nothing gets accomplished. As businesses are dragged under by the burdens of litigation, our whole society suffers.

If you are engaged in any business activity or if you have a professional practice, chances are that sooner or later you will be sued. And if you are sued, everything that you have worked hard to create will be placed in jeopardy. The costs of defending even a frivolous suit can easily reach \$50,000 to \$100,000. Once you get to court, you will find that the system is heavily weighted toward the sympathetic plaintiff, as judges and juries play Robin Hood with your money. These judges and juries are continually expanding theories of liability, and stratospheric damage and punitive damage awards are now routine. It is no longer uncommon for awards in negligence cases to exceed \$1 million.

Our legal system should hold people responsible for their acts. If someone causes injury, that person should be required to fairly compensate the victim for his loss. Not many people would seriously object to this principle. The problem is that this general principle bears no relationship to what is actually occurring in the legal system today.

The Ability to Pay

The reality of our legal system is that people are named as defendants in lawsuits not because of their degree of fault but because of their ability to pay. When an attorney is approached by a potential client who is claiming injury or economic loss, the attorney will consider whether a theory of liability can be developed against a party who can pay a judgment. This is called the search for the "Deep Pocket Defendant." The Deep Pocket Defendant will have substantial insurance coverage or significant personal assets. The measure of an attorney's skill is his ability to create a theory of liability which will connect a Deep Pocket Defendant to the facts of a particular case.

Here is an example of what might happen in a particular case. Mr. Woodrow is driving in his car. Mr. Fishbrain runs through a stop sign at an intersection, smashing into Woodrow's car and causing Woodrow severe injury.

From his hospital bed, Woodrow looks through the Yellow Pages and calls the first attorney he sees, the famous Alan Aardvark. He is what is known as a "contingent fee" lawyer. He works for a percentage of the ultimate recovery and determines whether to invest his time and money in a case based upon what his expected return will be. Since the time and expense of preparing for litigation can be considerable, an attorney cannot afford to take a case that is not likely to pay off. Remember—*no recovery, no fee*. Usually the attorney advances all costs and expenses, and in exchange, he recovers these costs plus 30 percent to 40 percent of any amounts which he can get from the defendant.

Before Aardvark decides to take Woodrow's case, he will want to do some serious research to determine the merits of the case. Not the legal merits—the financial ones. He will want to know whether Fishbrain has substantial assets in order to make the case worthwhile.

Aardvark runs a financial search and determines that Fishbrain has no insurance and no significant assets such as a home or a retirement nest egg. What happens? Is that the end of the case? As for Fishbrain, it probably is the end of the case. Aardvark is not going to waste his time suing someone who can't pay. But Aardvark is not going to give up so easily. He has a client with substantial injuries and that means a large damage award—big bucks. But first he has to find someone who can pay.

Here is how a good lawyer would analyze the case to try to draw in a Deep Pocket Defendant:

1. Was Fishbrain on an errand for his employer at the time of the crash? If so, the employer can be sued.
2. Did Fishbrain have any alcohol in his system? The restaurant that served him may have liability.
3. Was Fishbrain on any medication? The pharmacist, drug company, or physician may have potential liability for failure to provide proper warnings, or for writing or filling the prescription improperly.
4. The stop sign Fishbrain ran through was in a residential neighborhood in front of someone's house. Did the homeowner properly maintain his property and clear his foliage to provide an unobstructed view of the stop sign? If not, there is a case against the homeowner for negligence.
5. Did the municipality take due care in the placement of the stop sign? Should it have used a traffic light instead? There may be a case against the city or county.

6. The driver's side door of Woodward's car collapsed on impact. There is a possible case against the manufacturer for not making a more crash resistant frame.

Do you see how far we are moving away from Fishbrain—the person responsible for the accident—in an effort to tie in a remote Deep Pocket Defendant? In any rational legal system, Fishbrain would be regarded as the wrongdoer—he disobeyed the traffic law and he caused the injury. Instead, we have an attorney trying to force the blame onto someone else—who wasn't at the scene and doesn't even know the people involved.

The example that we just gave you is taken from a real case. Guess who ended up as the defendant.

In the actual case, the defendant was Fishbrain's ninety-two-year-old widowed great-aunt Ellen. As it turned out, she had purchased the car for Fishbrain as a gift to him. Aardvark's private investigator searched the assets of Fishbrain's relatives and found that Aunt Ellen had a house that she owned and some savings in the bank. She was named as the defendant in the case and was found liable on a theory called Negligent Entrustment. The jury found that she should not have bought the car for him. She should have known that he was a careless driver and might cause an accident. *She caused the accident by buying him the car.* The verdict was for \$932,000, and Aunt Ellen lost nearly everything she owned.

The point of all this is that the foundation of every lawsuit is a defendant who can pay. Once such a defendant is located, it is easy enough to construct a theory of why that defendant should be responsible. Judges and juries often act on their emotions—not on the law. And when the contest is between an injured or a sympathetic plaintiff and a wealthy or *comparatively* wealthy defendant, the plaintiff will win virtually every time, regardless of the defendant's actual degree of fault.

As a result, the plaintiff's attorney will search for a party who can pay a hefty judgment. In the old days, it was said that "*He who has the gold makes the rules.*" Now the saying goes: "*He who has the gold pays the plaintiff.*" The fact is that no matter how remote your connection to an injury, if you have even modest assets, an attorney for the injured party will attempt to show that you are somehow legally at fault and you will be named as a defendant in the case.

Not Enough Good Cases to Go Around

It used to be that people thought of Deep Pockets as a bank, insurance company, or other big company with billions of dollars to pay claims. Unfortunately, that's no longer the case. There are nearly 1 million lawyers now, and each year another 100,000 come out of law school and set up a practice. There are not enough good cases to go around.

A good case involves a serious injury with clear negligence by a company with significant assets or insurance. The problem for the lawyers is that most of the good cases go to a relatively small group of established trial lawyers with a history of multimillion dollar verdicts.

This makes sense. If you are seriously injured by an Exxon gasoline truck crashing into your house, you want the best trial lawyer you can find. You want a lawyer who has won large jury awards. The ability to argue successfully and convince a judge or jury of the merits of a claim is a unique and specialized talent. Few attorneys possess these skills, and those that do often earn millions of dollars each year. Since all contingency fee attorneys charge the same one third or 40 percent of the award, why not hire the best trial lawyer in the country? It doesn't cost you any more.

And if your case is a good one, any attorney would love to work for you. You can get the top trial lawyer in the country to handle your case, and he won't charge you a penny more than your niece's brother-in-law who has never been inside a courtroom. This is democracy in action. The poorest of the poor can hire the richest and smartest trial lawyer in the nation to fight for his rights. All it takes is serious injury or death and a defendant with deep pockets.

The Legal Extortion Racket

What are the rest of the lawyers going to do? What about the other 95 percent of trial lawyers who are not so great and not such good lawyers? How is a lawyer who is not at the top going to feed his family? His chances of getting your case against Exxon are about the same as hitting the lottery. Many of my close friends are personal injury attorneys. They think and dream about the one good case that will earn them enough to be on easy street. But the one good case never seems to come. Instead most lawyers make a living by looking for somebody to sue and filing bad cases with bad facts. As long as a lawyer can find a potential defendant with even modest assets, he will attempt to make his case. If he doesn't have a good case, he has to go with what he has. That's how he makes a living.

The lawyer is willing to gamble that by filing a case he will be able to squeeze a settlement or play "lawsuit roulette" with the jury. Just like the population in general, from whom they are drawn, jurors can be confused and misled by emotional and irrational arguments. Experiments in human behavior show that most of the time individuals are unable to distinguish the truth from a lie. When asked to distinguish truthful from untruthful testimony based upon the demeanor and expression of the witness, in a majority of cases, the subjects in the experiment incorrectly identified the lie as the truth and the truth as the lie. The conclusion of the study has frightening implications. *Jurors are more likely to believe a witness who is lying than one who is telling the truth.*

This phenomenon has been understood and exploited for years by political leaders and others with a message to sell. A lie which is repeated forcefully and with conviction becomes accepted as truth. Think of the Nazi propagandists and the McCarthy type demagogues who convinced millions of people of the truth of their cause. *Advertising messages repeated often enough are believed, regardless of the merits of the product and despite overwhelming evidence to the contrary.* That's the foundation of the multibillion dollar advertising industry and is the basis on which political leaders present their programs.

In the same manner, a lawyer attempts to "sell" his case to the jury. Facts are distorted. Lies, half truths, and perjured testimony are zealously advanced on behalf of the "injured" plaintiff. If things go right and the lawyer gets lucky or knows what he is doing, the jury will reward these efforts with a judgment for several hundred thousand or maybe a few million dollars. *Every day in court a sympathetic plaintiff prevails against a wealthy or comparatively wealthy defendant— even in those cases which appear to be absurd, illogical, and utterly without merit.*

Any lawyer who is still in business after a few years of practice has learned that the unpredictability of human behavior can be used to his advantage. The uncertainty of the outcome creates a potential risk of loss for even the most "innocent" defendant. Lawyers know that for most people the risk of financial loss also creates a highly uncomfortable level of emotional strain. If you have ever been sued—no matter what the cause—you understand that the unpredictability of the result and the possibility of economic loss can generate a severe degree of stress and emotional charge.

The Appeal of Settling

When a lawyer threatens to sue you, he is exploiting all of these facts about human nature. He knows that the outcome of the case will be uncertain regardless of the merit of the case. He knows that if you have reachable and collectible assets, the risk of loss will cause you extreme worry and stress. Finally, he knows that if you choose to fight the case, your time and your privacy will be violated and your resources will be depleted or exhausted by tens or hundreds of thousands of dollars in needless legal fees and costs. Doesn't settling the case sound much more appealing and logical?

Settling *is* more appealing, and that is exactly what you should do. As unfair as it sounds, if you fight the case, you may well lose. You will certainly spend much more money and time, and you may never recover from the emotional toll, the damage to your personal relationships, and the impact on your business.

If you have available and reachable assets which can be uncovered in an investigation, then the lawyers hold the leverage. They know that you are vulnerable, and you are better off settling the case. They want some easy money from you, and then they will move on to the next case. That's how the legal extortion racket works.

The Easy Cases Are Gone

Over the last few years, as the number of lawyers and lawsuits have increased, the insurance companies have adopted a policy of not settling cases. In the past, insurance companies routinely settled virtually every claim for a multiple of the injured party's medical expenses. A slip and fall or auto accident case was worth approximately six times the amount of the medical expenses incurred by the client.

When an individual went to an attorney claiming injury from an accident, the attorney would send the client to a cooperative doctor for extensive medical care and therapy. The doctors (and chiropractors) billed wildly for every imaginable treatment and procedure—almost all of which was unnecessary and was performed solely to inflate the amount of the medical bill. The physician would get paid out of the proceeds of the eventual settlement. The lawyer had a nice fat medical bill—multiplied by six under the standard formula—which he could then present to the insurance company. The insurance company paid the inflated claim then raised the rates on all its policyholders to cover these costs.

At least several generations of personal injury attorneys have made handsome livings by playing this game. But unfortunately for them, in most states, this game is over. Starting in the early 1990s, many insurance companies adopted a policy of no settlement. When the attorneys offered up the medical expenses, the claims adjusters were required by their companies to reject the claim. The policy was to litigate every claim all the way to trial.

It was understood that this strategy would be more expensive in the short run as the companies incurred huge legal bills fighting even the smallest claim. The upside was that the personal injury lawyers, deprived of their bread and butter fast settlements, would be driven out of business as their cash flow disappeared. Most attorneys can't wait two, three, or five years to get paid. And they certainly don't want to shell out all of the costs of bringing a case to trial, including depositions, expert witnesses, and discovery. Even worse is that after putting up all the money and going to trial, the case could be lost. Years of hard work and lots of money down the drain. That result means financial disaster and one more overeducated short order cook.

The insurance companies were like a pack of big goofy elephants. They had no idea that they had the power to step on and crush their lawyer adversaries. Once they decided to use their great strength—virtually unlimited capital—they were successful beyond their expectations. Lawyers stopped taking the "slip and falls," the bogus auto accidents, or any other insurance case without a big potential payoff. The insurance companies were the big winners. The lawyers, their incomes and lifestyles seriously impaired, looked around for new groups to target—an easier and softer prey not so willing and able to fight back.

The New Deep Pockets

The new targets or the new Deep Pockets are those who have saved up some money for retirement, those who operate a successful business, and those who own a home or have some rental property with any equity. That describes a lot of people in our country. They are vulnerable because their savings are valuable to them. There are 100 million adults in the population, and 30 million have mutual funds, savings, or equity in their home. That's 30 million people with something valuable to lose, and 1 million lawyers who are aggressive and motivated. They want to move some of that money to their side of the table. One million lawyers file 19 million lawsuits each year, picking out the easy targets and causing great personal suffering and hardship.

The Fishbrains of the world don't get sued, and they don't have to spend their time, energy, and money defending a case. They don't get sued, because they don't have any money or anything worth taking. Aunt Ellen who bought him the car as a gift got sued because she had some money. *She* was the one who lost her home and all of her savings because *she* was the Deep Pocket. A lawyer's job is to tie a party who has some money into a case so that he will get paid. A good lawyer is one who can create a clever new theory of liability so that someone with money or insurance will be found legally responsible. Even if our common sense tells us that this Deep Pocket had nothing whatsoever to do with the injury, a judge or jury or court of appeals will decide a case based upon their own view of what is fair and rational.

A doctor prescribed antihistamines for a patient with an allergy. The patient ignored the warning label about driving while taking the medication and caused a serious auto accident. The patient had little insurance and few assets, so the doctor was sued. The plaintiff's lawyer successfully argued that the doctor *should have known* that the patient might drive his car while on the medication. The jury found the doctor liable for \$6.2 million in compensatory damages. The doctor's malpractice insurance didn't pay a nickel of the claim since the policy only covered claims by a *patient*—not those injured by a patient.

Was the doctor really at fault here? He lost everything he owned, and he didn't do anything wrong. The mistake he made was not realizing that as a physician, and as someone who had a home and some savings, he was an inviting and vulnerable target for a lawsuit.

Popular Deep Pocket Defendants

The Property Owner

Anyone who owns rental property is an excellent candidate for a lawsuit. In any measurement of potential liability, we would rank the property owner at the top of the list.

Let's assume you own a small apartment building. One evening a female tenant returns home from work and parks her car in the enclosed parking garage. As she gets out of her car, she is robbed by an assailant. Under these circumstances, you can expect a lawsuit against you as the owner of the property, for negligently failing to provide the proper level of security.

Regardless of the actual safety measures which you employ, the plaintiff's attorney will allege that you should have taken additional steps, such as installing video cameras, floodlights, or hiring security guards to protect the safety of the tenants. In essence, as a property owner and a Deep Pocket Defendant, you become a guarantor of the safety of your tenants, to the full extent of your available net worth.

- A tenant was shot and killed in the alley behind the apartment building. It was found that the owner of the property should have provided better lighting for security in the alley. The jury awarded \$27 million to the relatives of the tenant.
- A fire in an apartment building killed one tenant and injured nine others. The owner had complied with all building code and safety requirements. He was sued for \$5 million.

In these and similar cases, the owner of the property paid the claim or the judgment even though he had done nothing wrong. And that's where the problem lies. Under our current legal system, it doesn't matter whether you are really negligent or whether you do anything that is wrong. You can maintain your property in perfect physical condition, taking every imaginable safety precaution, and yet something can still go wrong. If a tenant is injured on the property—no matter the cause—it will still be your fault.

Having insurance on the property does not provide a guarantee that you will be free from personal exposure. Insurance is written with a long list of exclusions and exceptions and generally won't cover a lawsuit for undisclosed defects. Furthermore, it will be difficult to obtain an *amount* of insurance which is adequate to cover the full amount of the potential liability associated with injuries to multiple tenants. Even \$1 million in coverage will not be sufficient if someone is seriously injured on your property. If several people are hurt in a fire or earthquake or other disaster, there may be \$5 million–\$25 million or more in potential damages.

Whatever amount is not covered by insurance will be your personal obligation. A judgment against you will be satisfied from your *personal assets* including your home, savings, and retirement funds. If something goes wrong at the property, everything you own can be lost. Any real estate—whether or not you have any equity in the property—represents an enormous source of liability to you and poses a danger to all other assets that you have accumulated.

Officers and Directors

Officers and directors of publicly traded companies are also popular Deep Pocket Defendants. All companies whose shares are publicly traded must file quarterly and annual reports with the Securities and Exchange Commission. These reports are known respectively as the 10-Q and 10-K filings. The purpose of these filings is to make information concerning the business and finances of the company publicly available. The law requires that public companies provide full disclosure of all material information which may influence the price of its stock.

A number of law firms employ young MBAs and attorneys to scrutinize each of the required filings made by these companies. If the stock of a company rises or falls sharply in response to some news item affecting the company, a law firm may attempt to show that the company's filings failed to adequately disclose certain material information. If any possible claim can be made, a class action lawsuit will be filed on behalf of current or former shareholders. The company, its officers, and its directors will be named in the suit. The defendants will fight the lawsuit or settle it, but in either event, the cost will be substantial and the only likely winners will be the lawyers who filed the action.

Physicians

All physicians are acutely sensitive to the risk of lawsuits. A recent study found that between 70 and 80 percent of all obstetricians had been sued, and the percentage of neurosurgeons and other medical specialists is equally as high. It seems that the public now perceives doctors, like auto mechanics, as capable of fixing any problem with the right tools and a good supply of parts. When these unreasonable expectations are not met—when a surgery or procedure is not successful—the patient and his family conclude that the only explanation is that the doctor must have been at fault. It is not fate, nature, or an act of God that is blamed for the misfortune. (It is much too difficult to collect a judgment from these parties.) As a result, many doctors have been forced to significantly narrow the scope of their practice to eliminate even modestly risky procedures. This type of defensive medicine inevitably drives up healthcare costs for everyone.

Real Estate Developers

Real estate developers and construction companies are another group with potentially significant personal liability. When a project is developed and sold, there may be liability to purchasers and subsequent purchasers for many years to come. Damages caused by latent (unseen) construction defects may be either uninsurable or may surface only after a policy has expired. As an example, California law states that a builder remains legally responsible for latent defects for up to ten years after the completion of the building. With potential liability having a "tail" of up to ten years, no builder is immune from a crippling lawsuit which may have been caused by the faulty workmanship of a subcontractor who has long since disappeared.

During periods when real estate prices are declining, lawsuits against developers and general contractors will be inevitable. Homeowners who lose a significant amount of equity due to depressed market conditions often attempt to recover their investment by filing lawsuits, alleging construction defects against everyone involved in the project. That includes the geologists, engineers, architects, and the building tradespeople as well as the developer. These types of cases are enormously costly and time consuming to defend, and unless there is an insurance company involved to pay the costs, it is difficult for all but the largest companies to survive such lawsuits.

Another problem faced by developers is that each project requires a significant amount of cash, most of which is borrowed from a lending institution. The developer puts up the land as security and must also sign a personal guarantee for the entire amount. If the project is not successful, the developer must repay the loan out of his own pocket. As a result, one bad deal can wipe out many years of hard work.

Because of the high degree of lawsuit risk from these activities, the owners of these businesses are placing their entire net worth in jeopardy every single day. Each time a doctor performs surgery, he is literally betting the house on a successful outcome. Anytime something goes wrong, someone will sue. Every patient, client, or customer is a potential legal adversary.

In addition to risks faced by professionals and business owners, it is important to understand the particular types of liabilities that arise out of various commercial and personal relationships.

Dangerous Contracts

Oral Contracts

A contract is formed any time two people make an agreement to do, or not to do something. Certain types of contracts, involving commercial transactions, must be in writing in order to be valid. But most contracts do not have to be written.

A promise that you make is considered to be a contract if the other party relies on your promise. Recently, we have seen girlfriends and boyfriends claim that they were promised certain things by their former mates. These alleged promises called for lifetime care and support or a specific dollar amount to be paid at the end of the relationship. Since, by its nature, an oral agreement has no visible trail, these cases come down to one person's word against the other.

One interesting case involved the ownership of a California lottery ticket. George and Sarah lived together but weren't married. He was eighty-five years old and she took care of him. They kept some spare change and a few dollars in a coffee can in the kitchen. Sarah would take out a dollar every few days to buy a lottery ticket. Over the years, there were a few winning tickets worth \$20 or \$100 and she would put those winnings back into the coffee can to finance future tickets.

One day they hit the grand prize of \$12 million—twenty annual payments of \$600,000, less taxes. Soon after the celebration was over, human nature being what it is, George claimed that the money in the coffee can was really his money and he was the sole owner of the ticket. Sarah, shocked and hurt, claimed they had always treated the coffee can money as joint property and that she was justifiably entitled to half of the winnings. Both sides hired lawyers, and George refused to settle the case.

The case went to trial in San Diego, and the jury found for George. They believed his story that the money to buy the ticket belonged to him and that there was no legal agreement between them to share the winnings. George got to keep it all.

We certainly do not know who was telling the truth, and that's exactly the point. Nobody ever knows for sure who is telling the truth in these situations. That's why anyone with whom you are involved, in any kind of business or personal relationship, can claim that you broke a promise and that they are entitled to some amount of compensation.

An employee can claim that you promised him a job for life. Let's say that you own a medical practice and you decide that the work of Dr. Jones, a physician who works for you, is no longer satisfactory. If you fire Jones, there is an excellent chance that he will sue you. In the lawsuit he will claim that he is entitled to a percentage of ownership in your practice based upon an oral agreement which you made. That is all he needs to do. He doesn't need any other evidence. He simply claims that you made certain promises about sharing the practice with him. Now you have to defend yourself and risk losing a portion of your business. It is now your word against his, and the jury can decide who they believe. These types of claims are made every day in our courts, and many employers end up making huge settlements with the fired employee in order to avoid the expense of litigation and the risk of loss.

A Japanese chip manufacturer in the Silicon Valley closed down its plant and laid off all the workers. The company was sued by all 868 workers for more than \$1 billion on the grounds that they were promised lifetime employment. The case was ultimately settled for more than \$20 million after millions of dollars in legal fees and thousands of hours of wasted time and energy.

Claims of a contract based upon an oral agreement are difficult to defend against. It is simply not practical to write out a contract, specifying the terms of the relationship with each person you meet. Everyone faces enormous potential liability for these kinds of claims.

Negligence

Looking for Someone to Blame

In addition to liability for contracts, individuals and businesses face potential lawsuits for negligence. You will be considered to be negligent if a party is injured or his property is damaged because of your failure to exercise reasonable care. This is known as direct negligence. You may also be sued when you are legally responsible for the wrongful acts of others, such as a child or an employee. This type of liability is known as imputed negligence.

Direct Negligence

Direct negligence is exemplified by hitting someone while driving your car in an unsafe manner. The death of a patient due to a physician's diagnosis which falls short of the advice of the hypothetical "common physician" is another example of direct negligence. An attorney's advice to his client which is based upon a faulty understanding of the law or which falls short of the legal standard of proper investigation and diligence is also a matter of direct negligence. In other words, if, in the conduct of your business, you act in a way that is less than the minimum standard of performance the law requires for your job, then you are guilty of negligence and you will be liable for all foreseeable consequences of your careless acts.

Negligence can occur because of your *failure to act* as well as your improper acts. Failing to move to the side of the road when you hear an ambulance coming up behind you is negligent. A physician's failure to prescribe a recognized treatment is negligent, as is the attorney's failure to advise a client of the law relevant to a particular situation.

Imputed Negligence

In certain situations, you may be held liable for an injury even if you are not directly at fault. Imputed negligence means that the law will hold you responsible for the negligence of someone else. A negligent act by an employee, conducted in the scope of his employment, will be imputed to the employer. If you ask your secretary to pick up some sandwiches for lunch, she is acting within the scope of her employment when she drives to the deli. If she is at fault in an automobile accident, her negligence is imputed to you. You are responsible for the damages caused by her acts.

Expanded Theories

In recent years, courts, state legislators, and clever trial attorneys have dramatically expanded traditional theories of negligence. As stated, negligence means a failure to exercise the proper degree of care. The question is *what is the proper degree of care?* How careful must we be?

Several years ago a famous rock group was sued by the parents of a teenage boy who was terribly injured when his suicide attempt failed. The parents claimed that the boy had been encouraged to commit the act by listening to certain lyrics on a record album. Although it was ultimately determined that the group was not liable for the boy's death, the case did make it all the way through trial. The members of the group sat through countless hours of depositions and testimony and surely spent several hundred thousand dollars in legal fees. All of this time and money were wasted, because an attorney for the boy's parents attempted to connect a remote Deep Pocket Defendant to the case in order to obtain compensation for this unfortunate, but blameless event.

Take this example. Meticulous Max noticed that the brakes on his car were not working properly. Feeling the car was unsafe to drive, on Monday, Max made an appointment for his mechanic to pick up the vehicle in a tow truck on Wednesday. Late Monday night the car was stolen. As the thief was driving away in the car, the brakes failed and he crashed into another vehicle. The person driving the other car, Bob Brown, was injured in the accident. Bob sued Max alleging that Max was negligent in failing to properly maintain his automobile. Because of the high incidence of stolen cars, Max "should have" reasonably foreseen that his car might be stolen and, if stolen, the faulty brakes would likely cause injury to someone. On this theory, Bob was successful and was awarded \$325,000 by the jury. Clearly, Max thought he was exercising due care by not driving his car and by arranging for an appointment to have the brakes fixed. However, the jury expanded the concept of "due care" ruling that Max acted improperly by agreeing to wait two days to have his car repaired.

This leaves us with a legally required standard of behavior that cannot be ascertained in advance. (And with which most people in Max's town would disagree.) We know we have to be careful, but we do not know what that means. It is impossible to anticipate what standard a jury will impose with the advantage of hindsight. That is the problem.

Removing the Incentive to Sue You

The first goal of a sound financial plan is to protect your personal and business assets from potential lawsuits and claims. We will discuss this in great detail in later chapters. For now, keep in mind that assets such as your home, your bank accounts, and your brokerage accounts can be moved into a properly designed plan. Someone wanting to see what you have will not find assets reachable and available.

Since the lawyer for a potential plaintiff will usually only sue you if he knows there are assets and he knows he will get paid, it is extremely unlikely that any lawyer would be willing to file a case against you. You can successfully discourage lawsuits by holding your property in a protected manner, without revealing to the world what you own and how much you have. That's the first important objective that you can accomplish. The importance of these asset protection strategies will be emphasized as we present this material.
