

Asset Protection for Physicians and High-Risk Business Owners

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CHAPTER THREE

What Happens in a Lawsuit

In this chapter we will discuss what happens in a typical lawsuit. We will go through the various stages of a lawsuit using a hypothetical case involving a fictitious Mr. John Williams.

Williams is an author who recently completed a detailed investigative study of a particular religious sect. After the book was published, the leader of the sect filed a lawsuit against Williams for defamation. The sect has a reputation for attempting to intimidate and coerce anyone who might reveal damaging information about the group, and the major weapon in this intimidation process is the use of lawsuits. (That is why we are not mentioning the group's name.)

A lawsuit has five separate stages:

1. Economic analysis of the case.
2. The pleadings.
3. Discovery.
4. Trial.
5. Collection.

Economic Analysis: Are You Worth Suing?

Before any lawsuit is commenced, the claimant (or plaintiff) and his attorney will review the economics of the case. The plaintiff will weigh the costs of prosecuting the case against the likelihood of victory and the amount of the probable recovery.

In our example, the financial investigation of John Williams revealed that he owned a home with about \$100,000 of equity, a savings account at a bank with \$65,000, and a brokerage account with \$135,000 of securities. The decision was made to file the lawsuit. Here's how the plaintiff arrived at that decision.

Plaintiff's Cost to Sue You

Hourly Attorney

The costs involved in suing someone depend primarily on whether the attorney is working on an hourly rate or a contingency fee. Most, but not all, cases concerning business disputes are handled on an hourly basis. Typically, these hourly fees range from \$100 to \$375 per hour. Pursuing a garden variety case to trial can cost \$50,000 to \$100,000. In a case of some complexity, the legal fees can easily reach \$1 million.

An hourly fee attorney has an economic stake in encouraging the litigation. Since the attorney gets paid his hourly rate, regardless of the outcome, there is a huge incentive for the attorney to "sell" the case to his client. The lawyer will encourage the client to sue in order to generate substantial fees for himself. (The next time you are encouraged by an hourly fee attorney to file a lawsuit, try asking him if he will take the case on a contingency.)

The attorney's inherent incentive to litigate discourages early reasonable settlements between the parties. We have seen again and again in our practice that it is nearly impossible to get an hourly attorney to devote his attention to an early and reasonable settlement. Instead, the lawyers generally adopt severe and inflexible negotiating positions while attempting to persuade the client that the *other* side is unreasonable. Cases are usually not settled early in the process unless the client is particularly sophisticated and understands his attorney's financial interest in pursuing the litigation.

If the case is not settled early, it is almost always settled late—when the client's resources or patience (or both) are nearly exhausted. Usually this occurs just prior to trial—*after* the client has already spent substantial sums and he finds out what the additional fees will be if a trial is necessary. At this point, the attorneys for both sides become reasonable in their demands. Whatever it takes, a settlement is reached at this point. That is why only about 1 percent of all the lawsuits that are filed ever get to trial.

Several years ago we represented a well-known professional athlete in a case against his former financial advisor. The financial advisor "sold" our client on a real estate investment by seriously misrepresenting the important facts about the deal. Our client had lost \$100,000 and wanted his money back.

The other side (let's call him Mr. Jones) was represented by a large prestigious West Coast law firm. The firm was being paid on an hourly basis, \$200 per hour, and we were working on contingency. We made a demand for \$100,000, and the attorney for Mr. Jones offered zero. Despite the fact that we had all of the evidence on our side and we stood an excellent chance of winning, the other attorney would not budge.

Prior to filing the lawsuit and over a period of several months, we kept talking but no progress was made. We were puzzled. Mr. Jones had a large and supposedly reputable company which handled investments for many entertainers and athletes. If we filed our suit, the negative publicity would certainly injure Mr. Jones' business and reputation. Once we filed our suit, surely all the other investors would also sue. It did not make any business sense for Mr. Jones to attempt to defend his unwinnable position.

At last, we concluded that Mr. Jones simply did not grasp his legal position. We were sure that his attorneys were telling him that he had a great case and he should not settle. We figured that he had probably spent close to \$35,000 in legal fees at this point. His attorneys were milking him, and we were forbidden by the legal rules of ethics from speaking directly to Mr. Jones to let him know what was going on.

We finally decided that the only way to reach Mr. Jones was to have an independent third party to talk some sense into him. We suggested to Mr. Jones' lawyer that we mediate the case with a well respected former judge. Each side would tell its story, and the mediator would evaluate our claims. To our surprise, Mr. Jones' lawyer agreed.

Several weeks later, we had our mediation. Attorneys for both sides were present along with our clients. We each informally presented our case and, when we were both finished, the judge turned to Mr. Jones and said: "I have been a judge for many years, and based on my experience I will tell you that, if you go to trial, you will lose. I don't know what your attorneys have been telling you, but I suggest you settle this case right now."

Apparently this little speech did the trick. Within a week we had our client's \$100,000 back plus interest of \$30,000. That was more than we had asked for originally. Mr. Jones also paid about \$65,000 in legal fees in addition to the settlement amount, so it ended up costing him \$195,000 instead of the \$100,000 we had been willing to take on day one.

This story is not uncommon. It is the rule. Every plaintiff's personal injury attorney who deals with insurance companies knows that once the case is in the hands of an outside insurance defense legal firm, no settlement will be possible until right before trial. Attorneys on an hourly fee basis will prolong the case for as long as possible.

Expenses of Litigation

It is not just the attorney's fees that have to be calculated in determining whether to sue. The expenses of litigation must also be considered.

Everything connected with litigation seems to cost much more than it should. Fees to stenographers for a six-hour deposition are usually \$1,000–\$1,500. Nobody can figure out why it costs that much. When all of the costs of discovery, travel, expert witnesses, filing fees, research, private investigators, and jury fees are added up, the amount will be mind boggling. A normal range for expenses will be \$15,000 to \$75,000 in the simplest case.

Contingency Fees

Contingency fee attorneys do not charge by the hour. Instead, their fee is a specified percentage of any recovery. This amount is usually 33 1/3 percent if the case is settled before trial and 40 percent if a trial is necessary. Since it is only large companies and very wealthy individuals who can afford to pay trial attorneys on an hourly basis, most lawsuits are handled on a contingency fee basis.

Usually the attorney agrees to advance all of the expenses and is repaid out of the recovery, if there is one. Although in most states the client is technically responsible for repaying expenses advanced by the attorney, it is rare that the attorney actually seeks to collect these amounts from his client. If there is no recovery, advances for costs are written off.

As opposed to hourly fee attorneys, who make money regardless of the outcome, the contingency fee attorney essentially bears all of the economic risk of the litigation. As we have seen, this risk and the potential reward can be quite substantial.

In this sense, the contingency fee attorney is an entrepreneur. The attorney, rather than the client, must carefully evaluate the merits of a particular claim. The potential recovery is balanced against the amount of work which will be required. A fast settlement of marginal claims is essential to the plaintiff's lawyer. He simply cannot stay in business advancing costs and spending time on small cases.

On cases with potentially large damage awards, the plaintiff's attorney is willing to carry the case to trial. Usually, he would prefer a fast settlement, but if he does not receive a satisfactory settlement offer, he will go to trial. Many of these attorneys are really gamblers at heart, and they are willing to invest a lot of time and money for a sizable payoff. And to get this payoff, *the most important element of the case is finding a defendant who can pay.*

The Search for the Big Bucks

Contingency fee attorneys love to have insurance companies, financial institutions, or large businesses as the defendant. If he wins, the attorney knows that he will collect, unless the amount of the judgment or the number of the claims causes the defendant to file for bankruptcy. That is what happened to A. H. Robbins (IUD) and the Manville Corp. (asbestos). They each filed for bankruptcy to halt the flood of litigation over their products. But ordinarily, these type of companies make good defendants.

If a potential defendant is an individual or a small company, the plaintiff's attorney is going to do substantial investigation before he commits his time and his resources to the case. There is nothing that attorneys like less than working on a case without getting paid.

You must assume then, that the attorney interested in suing you will perform a thorough financial investigation of your background, assets, and income. This work will usually be done by one of the many private investigation firms that operate in each city. The investigator usually subscribes to one or more of the database services offered by the individual reference services. A personal information report is compiled based upon the database search and the proprietary sources used by the investigator. The report may contain basic asset information including real estate ownership and financial accounts.

If you are one of many potential defendants in a case, the lawyer may not want to spend a lot of money on your investigation until he knows whether or not you are a worthwhile target. The first round of searches may be intended to narrow the list of potential defendants. Those who don't have a satisfactory amount of assets don't make the cut. They don't qualify for the all important second round—which usually involves getting sued.

If assets are located in the initial search, then a more detailed investigation is commenced with a view towards the litigation. As we saw in chapter 2, the search is accomplished quickly and for a modest fee. Financial assets are scrutinized to verify ownership, equity, and value. The investigator checks into outstanding liens and judgments to make sure that nobody else has a prior claim. Information from civil and criminal court cases, employment information, and income data may be gathered and presented to the attorney at this point to be analyzed in order to assess your merits as a defendant in the case.

The lawyer's favorite dilemma is when there is a large group of potential defendants—all with significant assets. Then the response is to name everybody. This often happens in medical malpractice cases. The hospital—together with every physician at the hospital who has any money—will be named in the lawsuit. Actual responsibility can be sorted out later—during discovery or at trial.

The financial investigation will produce one of three results:

Substantial, relatively reachable assets are located. The decision will be made to file the lawsuit.

Insufficient assets are located to provide a worthwhile recovery. The lawsuit will not be filed.

No asset information is discovered one way or another. This is a rare occurrence, but it happens. Since the attorney cannot develop a level of confidence that sufficient assets exist to pay a judgment, in all likelihood the case will not be commenced.

If the attorney is acting on an hourly basis rather than a contingency, the issue of collectability is a problem for the client but not the lawyer, since the lawyer expects to get paid regardless of the outcome. In most cases, any mentally sound, well-advised plaintiff will have his attorney perform a financial investigation of the defendant, prior to incurring substantial expenses in the case. If insufficient assets are discovered, only the most self-destructive client would elect to proceed with the case.

Defendant's Costs

If you are in the unfortunate position of being a defendant in a lawsuit, your lawyer will charge you on an hourly basis. No lawyers *defend* cases on a contingency arrangement. Like the lawyer representing the plaintiff on a time spent basis, you will be obligated to pay him whether you win or lose. What's more, your lawyer will undoubtedly require that you deposit a retainer to cover his anticipated expenses and costs as well. If you are a wealthy or seemingly wealthy person, your lawyer may tend to view you as a "meal ticket." And, come to think of it, *that is exactly what you are.*

The Pleadings Stage

The Nightmare Begins

The initial pleading in a case is the "Complaint" which is prepared on behalf of the plaintiff and sets forth the allegations of the defendant's wrongdoing. The Complaint is filed in the appropriate local court, and this filing commences the lawsuit.

In the usual case, the Complaint is produced by the plaintiff's attorney from one of a number of standard forms relating to the particular subject matter of the lawsuit. It is not necessary that the Complaint set forth anything other than the vaguest allegations of wrongdoing. The material facts are left to be uncovered during the discovery process.

In our case, John Williams first learned that he was being sued when the Complaint and a Summons were served on him by a process server. In reading it, Williams saw that he was being sued for defamation by the religious sect. It alleged that Williams willfully and maliciously printed false statements about the group and asked for actual damages of \$100,000 and punitive damages of \$5 million.

Of course, Williams was distraught. He had known that the leaders of the sect would be angry about the publication of his book, but because he had been truthful and accurate in his reporting, he had not believed that there would be any grounds for a lawsuit. Now he knew that, groundless or not, he would have to incur substantial expenses in defending the lawsuit and that a considerable amount of his resources and time would be consumed in the process.

A friend of Williams referred him to a local lawyer who agreed to represent him in the defense. The attorney informed Williams that he would have to file a response (or "Answer") to the Complaint within thirty days and after that, the discovery phase of the lawsuit would begin. He advised Williams that the costs of the defense could not accurately be estimated but a good guess was somewhere between \$25,000 and \$75,000. Williams paid his attorney a \$15,000 retainer fee. Within the proper time period, the Answer was filed denying each and every allegation.

Pre-Judgment Attachments

A powerful weapon in the hands of the plaintiff's attorney is the Pre-Judgment Writ of Attachment. This remedy is used to freeze the assets of the defendant and place them under court protection prior to a judgment. This procedure is used to prevent the defendant from transferring, hiding, or wasting his assets before the plaintiff has a chance to collect. Cash held in a savings or checking account cannot be reached by the defendant once a Pre-Judgment Writ of Attachment has been issued. Similarly, real estate cannot be sold or refinanced.

A Pre-Judgment Writ can only be issued in certain types of cases. In California, it is available only in contract cases arising from a commercial transaction. It is not available against a defendant in a negligence suit. The plaintiff's claim must be for a specific dollar amount, and he must demonstrate a substantial likelihood that he will win at trial.

If a Pre-Judgment Writ is granted by the court, enumerated assets which are owned by the defendant are effectively frozen. As a result, the defendant may be unable to obtain working capital to carry on his business. And unless he has a source of funds unknown to the plaintiff, the issuance of the Writ can force the defendant to accept a fast and unfavorable settlement.

In our example, the plaintiff's claim against Williams did not arise out of a contract or a commercial transaction. The Writ was, therefore, not available to the plaintiff.

Discovery

Burying the Opposition

The discovery phase of a lawsuit allows each side to probe the other side for facts as well as legal theories that might be helpful to build one's case and further elucidate the other side's trial strategy. Information is obtained from the opposing party by means of written questions (or "interrogatories"), face-to-face interrogation (called "oral depositions" or "examinations before trial"), and requests for the production of documents.

This is the stage of a lawsuit where one party may attempt to "bury" the opponent in paperwork. Typically, the side with the greatest financial resources now attempts to burden the other side to the greatest extent possible, in order to exhaust the opponents' financial resources. This can be accomplished by lengthy and numerous interrogatories, depositions, and subpoenas of documents, all of which are designed to cause the opponent to incur needless legal fees, embarrassment, expenses, and the greatest amount of overall aggravation.

It is a customary tactic in discovery to attempt to uncover those intimate and personal details about the defendant's life and habits that he would not wish to have revealed in a public trial. The objective of the opposing attorney is to gather as much "dirt" as possible, with the hope of increasing his bargaining position in the settlement negotiations prior to trial.

Often, medical and psychiatric evaluations are permitted, including blood and urine testing to search for evidence of drug use or illness. Lawyers are permitted extraordinary leeway in the ostensible search for items that may have even the most remote relevance to the underlying case.

Searching Your Computer

A powerful discovery strategy is to subpoena the computer records of the other side. These records often provide the most direct and convenient path to all of the defendant's personal matters.

Lawyers now routinely demand to search computer and e-mail files in every case—often finding the "smoking gun" document that wins the case. Federal and state government agencies typically begin their investigations with a raid and seizure of written files and all computers. In the pending Justice Department antitrust litigation against Microsoft, internal e-mail messages to subordinates from Bill Gates about tactics for dealing with competitors is crucial evidence in the government's case.

Many people mistakenly believe that "deleting" a sensitive file will remove it from the computer. In fact, deleting sensitive files doesn't work. *When you attempt to delete a file or an e-mail message, the contents remain on the computer's hard drive, stored in its memory.* You can't see the file so you may think it's gone—but it's not. The "delete" function on your computer removes only the *name* of the file from the file listings in the computer directory—but the contents of the file itself are not altered or destroyed. The information is right there for anyone to look at—if they know some of the basic techniques.

Washington Mutual, the giant financial services firm, learned this lesson the hard way. According to a story in the *Seattle Times*, the company is attempting to recover a dozen computers it previously sold as surplus after learning that "deleted" Social Security numbers, loan applications, and job histories for an unknown number of customers—remain stored on the computer hard drives. The employee responsible for discarding the computers thought that the "delete" function would remove the information from the computers. The result of this mishap is an embarrassing public security lapse for the bank and a dangerous privacy breach for the customers.

If your computer is seized during litigation, the stored files and e-mail messages will be examined and searched to uncover incriminating evidence. Experts known as computer forensic technicians specialize in locating and recovering information from files which have been altered, deleted, or even partially destroyed. The information discovered in your computer's memory may provide a deadly accurate road map through your private financial and business matters.

A computer forensic firm gives this example in their brochure: "It was a messy divorce. The husband claimed he didn't have any savings or investments other than the ones he had disclosed... After processing his computer at our lab, we found the evidence we needed in cyberspace. The husband had been tracking his stocks via an online service and downloading the information into his financial program. Need we say more?"

The information stored in computer memory presents a unique challenge in litigation. Written documents, subpoenaed in a case, can be carefully reviewed before being delivered to the other side. The party producing the documents knows what's there and can prepare accordingly. It is also a fact that, although it is illegal to do so, incriminating documents are often removed or altered by the attorneys or the clients—before they are turned over to the other side. As a consequence, it is rare when damaging written information is voluntarily produced.

In contrast to written documents, you generally don't know and can't find all of the items stored in the memory of your computer. You may have letters, e-mail messages, financial records, personal notes, telephone numbers, and calendars—forgotten and invisible to you—but easily recovered by the forensics experts. If you are sued, the plaintiff will immediately attempt to get a court order prohibiting you from altering or removing any computer records. He will then copy the contents of the hard drive and search for incriminating—or at least embarrassing—material. You may have no idea what he will find on your computer, and so you can't control the information which is produced.

Of course, you will use the same tactics on the plaintiff. Your experts will look through all of his e-mail and note the Web sites he visited and the information that he tried unsuccessfully to "delete." The outcome of the dispute will often be decided based on which side *inadvertently* produces the most damaging evidence.

Shortly after filing the Answer, Williams was served with more than 100 pages of interrogatories with questions concerning nearly every detail of his life. He was also required to submit to five days of depositions during which time he was questioned by the attorneys for the religious sect. He was ordered to produce all personal computers from his home and office. All of the written notes which Williams had made in preparation for writing the book, including notes from his conversations with various confidential sources were subpoenaed and ordered to be turned over by the court. Many of Williams' family and friends were also subjected to extensive interrogation on the dubious grounds that they possessed some information which might possibly be relevant to the case.

Trial

By the time the case was ready to go to trial, four years after the original Complaint was filed, Williams had paid his attorney \$85,000 and his attorney estimated that the cost of the trial might exceed an additional \$50,000. Williams' attorney was approached by the plaintiff's counsel, who offered to settle the case, if Williams would pay the religious sect \$35,000. Since this amount was less than the cost of the trial and less than the amount that he stood to lose if there had been a judgment against him, he accepted the offer and settled the case for the amount proposed. By accepting this proposal, he managed to save his house and still had nearly \$85,000 in his savings account. The religious sect had proposed the settlement, because it really did not wish to go to trial and possibly lose the case with the resulting negative publicity. Instead, the sect believed that it had accomplished its dual objective of punishing Williams and discouraging future journalistic attempts to reveal information about the sect. In reality, it was an abuse of the legal process that was both the means and the end.

Had Williams gone to trial and won, he would not have been entitled to recover his legal fees and costs. In the United States, each party to a lawsuit is required to pay his own costs and expenses. This is known as the "American Rule." In some other countries, such as England and Japan, the prevailing party is entitled to recover its attorney's fees. The exception to the American Rule is that parties to a contract may specify in the agreement that in the event of a dispute, the prevailing party is entitled to recover any costs incurred in a lawsuit, including legal fees. But unless that "attorney's fees" provision is included in a contract, each side bears its own expenses.

Concern about legal fees and costs are usually only one component in the defendant's willingness to settle a case before trial. A second and perhaps more compelling influence is that the outcome of a trial can never be predicted. No one knows which facts will be important and whose testimony will be believed. A sympathetic or attractive plaintiff or a skillful attorney will often sway the emotions of the jury despite a complete lack of merit to the case.

The ultimate amount of the damage award also cannot be predicted with any level of confidence. One of our clients, a successful business owner, told us that he had previously been sued by a former employee on a completely outrageous and frivolous claim. Prior to trial, he turned down an offer to settle the case for \$25,000, refusing to pay what he felt was pure "extortion" money. You can imagine his surprise when the jury awarded the plaintiff \$750,000—based entirely on manufactured and perjured testimony.

Collecting Your Assets

The Wolf at Your Door

If Williams had lost the trial, the case would have then moved on to the collection stage of the lawsuit. Let's assume that there had been a judgment against Williams in the amount of \$300,000. He could appeal the judgment to a higher court, but he would be required to post a security bond equal to the amount of the judgment.

This is an important concept to grasp. We have all been taught that in our system of justice, erroneous rulings by trial court judges, often political insiders with little trial experience themselves, will be scrutinized and reversed, if necessary, by more highly qualified appellate court jurists. But, in reality, the right to appeal seldom works well. To appeal, Williams would have to obtain the appeal bond through a licensed bonding company that would require him to post security equal to the \$300,000 bond. That usually means posting property with a far greater value than that so that a sale of the property, if required, would net the bondsman \$300,000.

Then there is the matter of the bondsman's fee—usually 10 percent of the bond, or \$30,000 cash to Williams. This is all just for the privilege of filing an appeal. To have the appeal heard, Williams will have to pay for trial transcripts and retain an appellate lawyer who will charge him another \$25,000 to \$50,000 in most cases. During the time that the case is on appeal, the judgment creditor would not be permitted to take any steps to collect on the judgment. After the appeals were exhausted, the judgment creditor would then begin the collection process.

What all of this means for Williams, or any other litigant, is that taking one's right to appeal into consideration when evaluating a case is a bad strategic move. Appeals are fine for large corporations that have the financial ability to pay for them, or for criminal defendants, for whom they are free. For individuals entangled in the lawsuit process, the right to appeal is an illusory consolation.

Locating the Debtor's Assets

The collections process itself often begins with a procedure known as the debtor's examination. As stated, during the discovery phase of the lawsuit, the plaintiff is generally prohibited from obtaining information concerning the defendant's assets. Typically, this information is not considered to be relevant to the underlying case and no discovery with regard to the defendant's assets is permitted.

After judgment, however, location of the debtor's assets becomes the focus of the investigation. The debtor's exam may be presented by written questions or by oral examination. In either case, the debtor will be asked to list and describe all of his assets and to provide all banking records. He will also be asked whether he has made any transfers of any property by gift prior to or during the lawsuit. All of these questions are asked under oath, and the failure to provide true and complete answers is a felony.

The procedure for enforcing judgments and collection by a judgment creditor is established by the laws of each state. For our example, we will assume that our debtor, John Williams, is a resident of California. Although each state has a different procedure, there is enough similarity in concept to provide you with a general understanding of the collection process.

Personal Property

When a judgment has been entered, the court issues a Writ of Execution, which is essentially an authorization for the collection action. The judgment creditor gives the Writ of Execution to the marshal (or sheriff) with written instructions describing the property to be seized. The marshal is authorized to take

possession of your property by removing it to a place of safe keeping or otherwise taking control over it. Property seized in this manner may then be sold at a public sale.

If your property is in the hands of a third party, the marshal directs that party to turn over the property. Your bank accounts and brokerage accounts can be seized in this manner. If a third party owes you money, that person is notified that he must make payment directly to the marshal's office.

Real Estate

The collection procedure for your real estate begins with the filing of a summary of the judgment ("Abstract of Judgment") with the county recorder in each county where you own property. The Abstract of Judgment creates a lien on the property, similar to a mortgage or deed of trust. The creditor does not have to designate the address of the property or, for that matter, must he even know in advance that you own any real estate in that location. The lien applies to any real estate which you own in that county and also applies to any real estate which you purchase in the future.

Once this Abstract has been filed, your property cannot be sold or refinanced without satisfying the judgment. You cannot avoid this lien by transferring the property to a third party. The lien remains attached to the property until the judgment is satisfied or expires. In California, judgment liens are in effect for ten years and can then be renewed for another ten years.

If the creditor does not want to wait for a voluntary sale or refinancing, he may file a Writ of Execution with the county recorder. After giving proper notice to you, the property is then sold to the highest bidder at a public sale. Cash from the sale is applied to the amount of the judgment, including interest and expenses of collection. Any surplus is returned to you.

Real estate which is sold at this type of public auction rarely brings in an amount greater than 50–60 percent of the actual value of the property. As a result, if there is a \$100,000 judgment against you, a creditor may seize and liquidate \$200,000 of your property before the debt and the costs are satisfied. The judgment of \$100,000 just cost you \$200,000, not including your legal fees and costs.

What You Can Save

With an aim toward avoiding the complete impoverishment of a debtor, the law provides certain partial or complete exemptions from the sale of certain property by a creditor for the collection of his judgment. For purposes of illustration, the following is an incomplete list of exempt property under California law:

Government Benefits : Unemployment benefits, disability and health payments, and benefits under the Workers' Compensation law are exempt from collection.

Life Insurance : State laws vary considerably on whether any or all of the cash value of insurance policies is subject to collection by a creditor. California exempts up to \$4,000 in cash value as well as life insurance proceeds, which are reasonably necessary for the support of the debtor's family. In Texas and Pennsylvania, insurance annuities are entirely exempt.

Wages: Each state provides for a different degree of exemption of wages from garnishment. Garnishment is the procedure whereby a debtor's employer is directed to withhold some portion of the debtor's salary. The amount withheld is then turned over directly to the creditor. In California, up to 75 percent of the debtor's disposable earnings are exempt from garnishment.

Household Furnishings and Automobiles: Ordinary and necessary household furnishings, apparel, appliances, and other personal effects at the debtor's residence are exempt. Items having extraordinary value, such as antiques, musical instruments, or art work, are subject to execution. The debtor is entitled to proceeds from the sale of these items in an amount necessary to purchase a replacement of ordinary value. Automobiles for personal use are exempt up to \$1,200.

Personal Residences: The personal residence of a debtor may be partially protected by the filing of a homestead exemption for a dwelling in which the debtor resides. In California, the amount of the exemption ranges from \$50,000 to \$100,000 depending upon whether family members are living at the residence and whether the debtor is over sixty-five years of age.

Some states have particularly liberal homestead exemptions. Florida allows a homestead of ½ acre for urban property and 160 acres for property in rural areas. Texas provides protection for one acre of urban land and up to 200 acres for rural property. In Massachusetts, the exemption is \$100,000 for a family residence and \$150,000 for a disabled individual over age of sixty-five.

Retirement Plans: IRA and Keogh plans are granted an exemption to the extent of reasonable support needs. Corporate pension and profit sharing plans, formed under ERISA, are fully exempt from judgment creditors.

Business Property: Property used in the business or profession in which the debtor earns his living is exempt to the extent of \$2,500 of equity. The exemption applies to tools, books, equipment, one commercial vehicle, and other personal property.

Interests in Trusts: In most states, if a trust provides that a beneficiary's interest cannot be transferred, the interest is exempt from execution, until the amount is actually paid to the beneficiary. Also, if a trust requires the trustee to pay income or principal for the support or education of a beneficiary, these amounts are not reachable, until paid.

You can see from this discussion that unless you live in a state, such as Florida or Texas, which provides a significant homestead exemption, a lawsuit has the potential to obliterate virtually everything that you own. With this sobering thought in mind, let's look at the asset protection strategies which are designed to discourage these lawsuits and protect against future claims.
