

Why Asset Protection?

Regardless of your business, having a lot of cash on hand attracts plaintiffs like moths to a light.

Consider the cautionary tale of an ATM operator. Independent from any bank, he strove to comply with FDIC regulations on ATMs that require the posting of a sticker notifying users of a fee. This is a cash-heavy business—ATM owners own the money they load into machines as inventory, and take a portion of the transaction fee they charge on every withdrawal.

But, lo and behold, one machine on one day didn't have a sticker on it. And two plaintiffs withdrew money, took a picture, found an unscrupulous plaintiff's contingent lawyer (who nobly claimed to be a *consumer protection attorney*) slapped the operator with a "draft" Federal lawsuit demanding the maximum fines and attorney's fees—which by the end of the case would get close to \$20,000.

Isn't My Insurance Enough?

The answer depends on how much risk you are comfortable with. Consider these risks:

1. **The insurance company bankrupts.** (One hurricane, not named Katrina, bankrupted 12 insurance companies single-handedly.)
2. **You are sued for something and your insurer tells you it is not covered, or limited.** (More than half of claims wind up this way—uncovered or uninsured.)

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How could this happen? Plaintiff's contingent lawyers target cash-heavy businesses using any loop-hole they can find, because a business with cash on hand is a business that will pay. There's no consumer protection going on, just small business extortion. "Settle now for less or pay for your defense and risk the odds that we win and we pass an inflated fee on to you as punishment."

But, there are asset protection methods that can turn the tables on these contingent lawyers...

"Asset protection provides unlimited coverage for the rest of your life for a one-time fee."

3. **Your insurer defends you, but the settlement or verdict is more than your coverage limit.** (Remember, the contingent lawyer picks when and if to settle!)

Remember that insurance provides limited coverage for a set time in exchange for paying a deductible and the continued monthly/yearly payment of premiums. Asset protection provides **unlimited** coverage for the **rest of your life** for a **one-time fee**, with recommended check-ups at **your convenience**.

But before you cancel your policy outright...

Insurance and Asset Protection

The perfect amount of insurance once you have an asset protection plan in place is just enough to cover the defense of a lawsuit. The next section explains why.



How Contingent Lawyers View Asset-Protected Defendants

Contingent lawyers may be a lot of things, but at their core, they are business people. Their business operates on a “contingent basis,” meaning they get a certain amount (often one-third) of any recovery they manage to get for their clients. No recovery, no legal fee for the attorney. In fact, no recovery often means a **bill** for their clients for the court costs anyway. So they don’t invest their time in a case unless they reasonably expect to get a pay-out. It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?

Here is how a plan effects a contingent lawyer’s judgment in bringing suit:

1. Before filing suit, the contingent lawyer will do some investigation of you to see whether you have the capacity to pay a judgment. They can find out your assets within minutes, and can investigate to see what you have transferred and to whom.

“It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?”

2. Your asset protection plan may segregate out valuable assets to reduce your apparent capacity to pay a judgment, and may discourage the contingent lawyer sufficiently to kill the lawsuit outright.

However, a potential client can consult multiple contingent lawyers, and may eventually find one desperate enough to accept. Then...

3. Your defense attorney, as quickly as possible after identifying the contingent lawyer, contacts them to let them know that an asset protection plan is in place, and that any judgment will be discharged in bankruptcy or take forever to collect.
4. Even if the contingent lawyer continues, a solid asset protection plan complemented by just the right amount of insurance induces a contingent lawyer to settle within the amount and move on, instead of running up defense costs. They’re reducing their own pay-day.
5. Perhaps—through ignorance, foolishness, or sheer desperation—the contingent lawyer will push to verdict and get a jury award, even in an eye-popping dollar amount.

Then, the real fun for them begins...

Collecting From an Asset-Protected Defendant

Some contingent lawyers just won't see a good thing on the settlement table and take it. (Ask any defendant.) They might press on all the way through to a verdict, hoping for a massive McDonald's-coffee-lady style amount from the jury.

What doesn't make for such interesting newspapers as the verdict amount is the work that contingent lawyers need to do to collect on a judgment. And having an asset protection plan in place before the lawsuit will make that battle so uphill as to be not economically feasible for the contingent lawyer.

Furthermore, although contingent lawyers are good at identifying deep pockets, they aren't necessarily good at getting their hand into the pocket to plumb the depths. After waiting the years until verdict and award, and waiting for a check for the judgment that hasn't come yet, they may have to refer their clients to an attorney focusing on debtor-creditor law or collections law. The new attorney will be between flustered and frustrated at the amount of work that would be required to **even possibly** collect on any judgment.

The reason is layering, and the concept is familiar to anyone who's been in a Buffalo winter. Even if the snow or gusts can get through the coat, it then has to penetrate the sweater, the shirt underneath and the undershirt. Each layer provides more armor, and an effective asset protection plan is built like a tank.

"Each layer provides more armor, and an effective asset protection plan is built like a tank."

The contingent lawyer will need a whole lot of this damn fine coffee to collect from an asset-protected defendant.



They are limited to a few options to recover from an asset-protected defendant:

1. They can attempt to prove a transfer was fraudulent—if within their jurisdictions' statute of limitation. Generally this is four years from transfer, but in New York it is six.
2. They can attempt to "pierce the corporate veil" if the assets are owned by a company—by doing a lot of work, they may be able to show this if you are misusing your separate and legally distinct corporate entity.
3. If assets or cash is being held overseas and they can demonstrate that you still have personal control over it, they can petition a court to imprison you until you bring back the assets (called "repatriating.")

A famous case involved a person who refused to repatriate, and was imprisoned for several years as a consequence. He could have sprung himself at any time by bringing the money back, but refused to. Effective asset protection planners are aware of this and the first large case about this, and ensure that you cannot be confined to a debtor's prison.

Note that there's one creditor we can't protect you from—the Internal Revenue Service. No asset protection planner can do that by "hiding assets" or "moving them out of the country" without exposing both you and the planner to criminal liability.

Locking Down your Cash-Based Business—by Expanding

So, you've gotten into a cash-based business. You don't have to be a walking target for contingent lawyers. Simply open a new business.

You may have funded your business using 'capital contributions,' basically meaning gifting money or assets to your company. How very nice of you! But consider the following tactics:

1. Create a second company that contracts with your business needing the cash to provide it, but with an escape clause for the contract that turns off the flow of money like a faucet—for example, the filing of a bankruptcy petition by the first company. Your money is safe in Company #2, while the contingent lawyers try to get blood from a stone out of Company #1, which is prepared to go bankrupt to discharge their judgment.

2. Consider partitioning your company into separate operations to make sure the liability from one part of the business doesn't consume other parts. If one part of the business is targeted, the contingent lawyer will be limited to the assets in just that part of the business, not everything else. This works in combination with tactic #1 as well.

Developing strategies to lock down your business and batten the hatches against creditor cannon fire is an integral part of asset protection planning, and our business experience helps us select the best strategies from an array of possibilities. Contact us today to start reinforcing your business's financial future!

Why use an Asset Protection Attorney, not a Financial Planner?

Attorneys are the only ones with whom you will receive attorney-client privilege. And in this area, it is important. Compare the following:

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "(My accountant/my financial advisor/my uncle)."

Creditor Counsel now puts your accountant/your financial advisor/your uncle through a deposition, or calls them to the stand.

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

Accountant/Financial Advisor/Uncle: "Debtor asked me to help protect assets from your client."

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "My attorney."

Creditor Counsel now puts your attorney through a deposition, or calls them to the stand.

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

Your counsel either objects to this and is sustained, or...

Attorney: "I refuse. All of the above is covered by attorney-client privilege."

Although asset protection planning is entirely legal, if it becomes manifestly clear (as it will when your advisor is forced to disclose all conversations between you and them) that your intent is to defraud creditors, all of the protection planning in the country will be unable to save you. You'll have to either pack your bags permanently or expect a trip to the cleaners or federal prison, depending on the creditor.

The Gilbert Law Office
5500 Main Street Suite 100
Williamsville, NY 14221

Phone:
(716) 222-0062

Fax:
(716) 898-0960

E-Mail:
brendan@thegilbertlawoffice.com

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assetprotecting.com

Can I Afford Asset Protection?

Wealth is very relative. The right questions to ask yourself are these: "How long did it take me to earn what I have?" and "How would I feel if it were taken from me?"

Hard economic times are hard all over, and can pressure people who wouldn't sue otherwise to sue. If you own assets that could be taken by a lawsuit, you can't afford not to protect them.

Being cautious and kind will not save you. You can do everything right and still be sued, because a potential plaintiff doesn't have to foot the bill for the lawsuit. And everyone runs out of luck, eventually.

An American has a one-in-five chance of being sued this year. An American business owner has a one-in-three chance of being sued this year.

Can you afford to become a lawsuit's victim?



Asset Protection Attorneys
assetprotecting.com
5500 Main Street Suite 100
Williamsville, NY 14221

