

# INDEPENDENT BUSINESS

MEDIA MAGAZINE

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INDEPENDENT BUSINESS MEDIA  
PHOENIX



## PRO ASSET PROTECTION

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# HOW SAFE IS YOUR WEALTH?

## Asset Protection Law

### It's Not Just What you Make, It's Also What You Keep.

Many of Arizona's most successful business people were blindsided by the recession and the unimaginable loss of assets, litigation and financial hardship that came after it.

Most of those people were shocked to learn that majority of their hard earned wealth was completely exposed to any liability that emerged and that their traditional estate planning did not protect them their during their life. Don't repeat that cycle, you have the legal right to lock in your success in and manage your risks proactively. There is a better way to protect the fruits of your labors and that planning is the only thing we do.

### Four VITAL Questions to Ask Yourself

1. Have you proactively identified and managed the all the professional and personal risks you can with the help of experienced legal counsel?
2. If you lost what you have today, or some significant portion of it, are you at an age, earning level and financial condition that will allow you to maintain your family's goals and fixed expenses?
3. Do you have assets that would be difficult or impossible to replace given your current income, age, health and economic conditions?
4. Are you financially and legally prepared for a lawsuit that is either uncovered by any liability insurance or which often produces verdicts above the limits you are carrying? If you are not comfortable with your answers, it's time to take responsibility and action for your financial future TODAY. The only effective, legal and predictable way to help you is to act before a crisis occurs.

This planning goes far beyond what traditional estate and financial planning alone can achieve and helps proactively identify and manage risks and gives you the legal tools required to add predictability and peace of mind to your success.

**Call today to see how your wealth can be preserved; it's a simple process that will identify your exposures and provide the straightforward answers you and your family need.**

Attorney Ike Devji and his associates help protect over \$5 Billion dollars in personal assets for a national client base that includes thousands of successful Business Owners, Executives, Doctors, Real Estate Entrepreneurs and other successful individuals.



Ike Devji has over a decade of experience in this specific area of law and has been named among Worth Magazine's Leading Wealth and Legal Advisors, is Included in Arizona's Finest Lawyers, named Among North Valley Magazine's Top Lawyers and has been Avvo "10.0, Superb" Rated 2011, 2012, 2013, 2014 and 2015!



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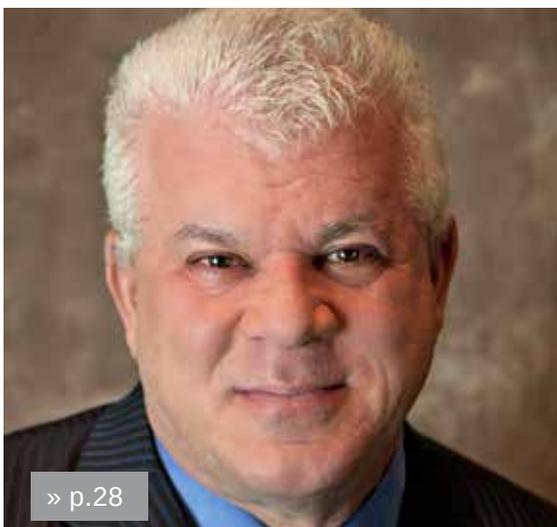
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# RISK MANAGEMENT: THE BEST DEFENSE OF YOUR WEALTH

By Ike Devji, J.D.

## BUSINESS ARTICLE



Your success requires proactive defensive planning to allow you to keep what you've worked so hard to make. This defense must include the informed use of insurance in all its many forms as a second layer of defense, after you've eliminated the most obvious and controllable risky behaviors and conditions from your life. This month we discuss what every successful business person must know about the insurance coverage they have, and how to fill the significant gaps that threaten your assets every day.

### **The Umbrella Policy: A Vital Part of Every Asset Protection Plan**

The personal liability umbrella policy or "umbrella" is vital first line of defense that gives many successful businesses a fatal false sense of security. A \$1MM umbrella is a good idea for nearly everyone and I routinely make my own asset protection clients buy that much or several times more. I'm also quick to caution them that this is only one line of defense among many and is never a license for carelessness. That said, many very significant risks do occur at your home or with your automobile, two primary areas that consumers' policies actually excel at protecting you against. Relatively commonplace issues like car accidents (11 million car accidents a year produce roughly 40,000 fatalities) and injuries to guests and business invitees at your home can easily create seven figure liabilities. Add to that the liability your children and their friends can create with everything from parties they throw to cyber-bullying and access to firearms, prescription drugs, vehicles and even matches (all of which have created million dollar plus liabilities that I'm personally aware of), and the value of an umbrella policy as some of the best dollar for dollar security you can buy becomes clear.

Not having one in place immediately if you don't already have one may be the most expensive and foolish \$400 a year you ever save\*.

### **The Dangerous Umbrella Myth, It's Not Supposed to Protect You From "Everything"**

The primary mistake I've seen dozens of smart, successful people make with umbrellas is not understanding exactly where the shelter of an umbrella ends and exactly what is and is not covered. In most cases, the umbrella in place covers only liability related to your home and automobile and won't protect the successful business owner, professional or physician from any of their unrelated professional risks. In other cases, even if the policy applies, there may be limitations, exclusions and other terms in the policy that may result in you getting less than what you expect, the full policy limits, and that allow a serious gap you will be financially responsible for. In some cases contributory negligence or an intentional act by yourself or another covered insured may negate or reduce your coverage. In other cases, surprises like the exclusion of water damage claims in your homeowner's policy, the reduction of your medical coverage in a car accident by 50% if you weren't wearing your seatbelt or the inclusion of a "defense inside the limits" clause (which deducts the cost of legal defense from the limits of your policy and thus, lowers the amount available for an actual award) in your policy may be a catastrophic weak link. It's unrealistic to think that the insurance company's business model is to cover you no matter what happens and what it costs, so you as the consumer must take some simple steps like actually reading your policy, asking questions and paying attention to the "optional coverage" sections that show what you do and do not have covered and what it is likely worth paying for.

### **The Tactical Use of Specialty Liability Insurance**

Two serious ongoing failures of both consumers and under-educated advisors, including lawyers dabbling in asset protection, is to rely on the wrong tools or to fail to have all the right layers of risk management in place. Any competent plan to preserve your assets should include the three layer "asset protection pyramid" I've referred to in previous articles.

**Layer One:** Good behavior, compliance and best practices geared to control risky behaviors and avoid liability and harm

**Layer Two:** A liability insurance "program" that has multiple layers and addresses a variety of your specific risks

**Layer Three:** Specific legal structures that provide segregation of assets and risks in case the first two layers fail

Instead, what we typically see is successful people taking huge and unnecessary risks with every dollar they have ever earned. As an attorney I often have clients and their advisors ask, "I've got a corporation and an umbrella policy, what the worst that could happen?" -- a shockingly uninformed statement. As we've discussed above, a personal umbrella won't protect you from most professional exposures and that includes the cases where you may actually have a "commercial umbrella" in place.

Most business owners have and are familiar with a two primary kinds of liability insurance. The first is their general liability policy which you might think of as your “slip and fall” policy that covers injuries and property damage that occurs on your business premises or as a result of the conduct of yourself and your employees. It’s vital to have a very high limit of this coverage in place as you as an employer or business owner have vicarious liability for everything your employees and partners do including how they interact with customers, each other and members of the public at large. Some common examples of employee liabilities you are responsible for include car accidents with company vehicles or while on company business, including even picking up a lunch order, how they interact with the public and each other, promises they make with actual or apparent authority and how they handle and protect client financial data and identifying information.

The second kind of insurance many business owners and professionals are familiar with is known as “professional liability” or “malpractice: insurance in many forms. This insurance covers you for issues related to the performance of a specific duty in a professional context and most often applies to licensed professionals like contractors, doctors, CPA, financial advisors and others who are required to deliver services with a requisite level of skill and care. Again this is a vital layer of defense that should be carried at a very high limit if available to you but which cannot be relied on by itself, only as one additional layer.

In most cases, consumers that are serious about their wealth need to work with a top-notch insurance agent that can help inform them about the various coverage areas that apply to them and what they should reasonably expect the coverage to do in the following core areas. Remember, even the costs of your legal defense can easily six figures, regardless of any actual fault or liability, so we recommend that \$1MM is the minimum each of these exposures should be covered for, the scope of your business may require higher limits. In many cases people who initially tell me that they already have this issue covered in a rider to another existing policy are shocked when I insist that they check on the coverage limits in place and they get the carrier’s response in writing. As just one example, many policies that cover data breach this way have as little as \$50K of coverage in place for what can easily be a \$1MM exposure.

1. Having adequate limits liability and loss coverage: buy until it hurts. It’s vital that you not only

insure your physical facility for liability but also for loss and in an amount that adequately covers the structure, its replacement, the improvements you’ve made, and the fixtures and equipment at actual replacement value. Work with a reputable company that has national claims service offices, which can be held accountable for “bad faith” if they don’t pay and that is experienced in insuring businesses like yours.

2. Data breach insurance. Make sure you are protected against the loss, theft, or intentional misuse of your clients’ (or patients’) financial and HIPAA-protected medical information. Be sure you’ve thought about and covered the use of mobile devices, laptops, and tablets as well. Your business must have demonstrable security policies in place and enforce them; in some cases liability is determined on your proactive efforts, or a lack of them.
3. If you have employees you need Employment Practices liability Insurance (EPLI). This covers you for issues that may arise out of your employment policies or lack thereof, lawsuits against you by an employee and in some cases for the acts of your employees that may not be covered. This is one of the most significant risks every American business faces and you are statistically up to five times to be sued by an employee than for any other reason. As one specific example, the average sexual harassment award can be over \$500K and you are responsible for the actions of your partners and even how other employees treat each other.
4. Directors and officers insurance, (D&O). Regardless of your actual title business owners and executives face significant liability for every executive decision; management decision, act, omission, employment and accounting policy as just a few of the more obvious areas that create personal liabilities for business decisions. This coverage can be wide enough in scope to cover issues like intra company disputes as well as not all threats come from outside and we saw many partners and investors sue each other during the recession. I don’t let my clients serve on a board of any kind of hold a title without this coverage.
5. Workers’ compensation insur-

ance. This provides coverage for an employee who has suffered an injury or illness resulting from job-related duties. Coverage includes medical and rehabilitation costs and lost wages for employees injured on the job. The law in most states requires some form of workers’ compensation insurance and this protects the employer by limiting an employees right to sue for further damages. Having the right amounts with the right carrier is a key detail.

6. RAC audit insurance. Any business that bills Medicare, Medicaid, or a private healthcare provider should be prepared to be audited and have payments denied or classified as overpayments at some point. Defending against such an audit and the ensuing manpower demands the massive record production can create is stressful and expensive. There is coverage available to handle the various costs and exposures involved.

This general list isn’t complete and there are many other areas of complex specialty coverage that may apply to your business and lifestyle. The key to using insurance as a proactive defensive tool is however fortunately simple and boils down to four primary rules:

Act today - you can’t insure or implement any asset protection strategy against things that have already happened

Understand that insurance is just one of many layers of defense your success requires

Get all the right kinds of insurance in the right amounts by working with an experienced multi-line insurance broker that help find the best deals from the best carriers

Have a “plan B” for any gaps in coverage or over limit claims by being a hard target beyond policy limits

Contributing Author Ike Devji is an attorney that has devoted the last 13 years of his legal practice to asset protection and wealth preservation and who has written over 200 articles on these issues. Ike helps protect over \$5 billion dollars in personal assets for a national client base comprised of thousands of business owners, executives and physicians and can be reached with additional questions at id@thewealthy100.com or at (602) 808-5540. Learn more at [www.ProAssetProtection.com](http://www.ProAssetProtection.com)

\*this is an estimated average cost per million in excess coverage, talk to an experienced liability insurance agent about your umbrella costs