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Informational ideas important to large and complex cases

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Managing Attorney Relationships and Serving the Wealthy Small Business Client

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During the first week of October, AIG Life Brokerage was pleased to host a meeting in Milwaukee with selected IMOs. One of our featured speakers was H. Joseph Price, Jr., who leads the estate and business planning section of the law firm Spencer Fane Britt & Browne located in Kansas City. Joe has been practicing for over 25 years, is an adjunct professor at the University of Missouri-Kansas City School of Law, and a fellow of ACTEC (American College of Trust and Estate Counsel).

Managing the Attorney Relationship.

During Joe's presentation, we discussed a number of issues regarding the management of large insurance cases with the involvement of estate and business planning attorneys. Joe indicated that different approaches need to be taken by experienced producers with attorneys who are: (i) new to estate planning ("novices"); (ii) have relatively limited estate planning experience ("intermediates"); or (iii) are truly experts. In addition to a very wide disparity in experience and practice skills, Joe explained these attorneys also have significantly different mind sets when it comes to working with insurance producers.

According to Joe, novices usually realize early on that they may be in over their heads on a complicated estate/business planning matter. Consequently, they may be willing to accept help from the advanced markets division of a home office or from outside expert legal counsel, *as long as they are treated with respect*.

Experts have earned their stripes, generally understand the need for life insurance in most plans and can be trusted to give good counsel to their clients. However, if a producer brings the case to the expert, it is important to get an understanding and some assurances that counsel understands where the case came from and how the producer brings value. This is a key issue. A producer brings value and builds goodwill with the expert by squarely identifying the insurance need, illustrating the proper product to satisfy the need, and responding with timely, high quality service.

The intermediate is a bit of an enigma. This is often the attorney who knows enough to do basic estate planning and business planning, but may be unwilling to admit he/she is over his/her head when it comes to clients with complicated needs and corresponding solutions. Joe indicated this group is the most difficult to work with since their egos may be on the line.

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A knowledgeable producer needs to firmly establish the nature of the business relationship and what each party is expected to do. Intermediates may accept the help of experts, but this can often be a touchy subject. If an intermediate is unwilling to accept help, doesn't respect the value the knowledgeable producer brings to the table and is ambivalent about the role the producer plays, we suggest looking for another attorney.

In all cases, we recommend the producer try to implement a time table outlining each involved advisor's responsibilities and when work needs to be completed in order to best serve the client. This can be done in a conciliatory manner and should be recognized as value-added by attorneys and accountants.

The Void in Small Business Planning.

During our presentation, I posed several questions to Joe about business planning practice. Both Joe and I are convinced the small business market is vastly underserved. This is not just an insurance producer problem; it involves accountants, attorneys and bankers.

Again, the novice attorney probably isn't even aware of the major planning issues coming down the road for the small business person, and the intermediate probably doesn't have a practice management system in place to properly service the client with respect to anticipating future issues. The true expert should be on top of existing and anticipated matters since he/she has (hopefully) dedicated his/her practice to servicing the high net worth client on a comprehensive basis. Accountants probably fall into the same categories given the breadth and depth of their practice experience. Except for the best business bankers, long term planning for clients isn't even on the radar screen as long as loans are adequately secured.

Joe and I are also on the same page when it comes to what really destroys small businesses in transition. According to Joe, only a *very* small percentage of small businesses are "ruined" by the federal estate tax. Rather, our collective experience indicates most small businesses fall apart for the following reasons:

- Lack of a cohesive business succession/key person strategy
- Lack of working capital
- Lack of interim liquidity
- Bad estate planning
- Lack of intergenerational experience and leadership

How many times have you seen the following fact pattern: Owner has formed and operated the business on a day-to-day basis for 30 years. Children are brought in over the years to perform various tasks with varying degrees of responsibility. But it is the owner who created and developed the relationships with his vendors, lenders and customers. While the company's reputation and financial integrity supplement these relationships, the owner's reputation and relationships drive the business.

Upon transition (i.e., when the owner dies), the vendors are concerned about the company's ability to take delivery of inventory, supplies and services and pay on the same terms the deceased owner enjoyed. The company's older customers may be wary of the owner's children since they might not enjoy the same time-honored relationships. And the bank is concerned about the ability of the company to service debt given the likely problems with vendors and customers set forth above. If the owner's children haven't exhibited real leadership skills recognized by the vendors, customers and bank, the problems only multiply. If there is no estate plan, or if the plan is inadequate, the business is probably up for sale or quickly in litigation among family members.

An Action Plan

Get in front of small business owners and ask the tough questions. Do your successors know your vendors, customers and bankers? What is the real impression your successors have made on these

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people? Do you have guarantees in place that upon your death your successors will be able to do business on the same terms you enjoy? Are your successors ready to run the business or will they need to hire key people to fill your role(s) when you are out of the picture? Have you integrated your successors into the business in a meaningful manner (e.g., can they operate without supervision)? Will there be a leadership gap (either real or perceived)? Will the company's employees put forth the same effort for the successors? Does your estate plan reflect your wishes and intent regarding the future operation or disposition of the business? Will your estate plan be perceived as fair and equitable to your heirs? How much involvement do you want your spouse to have with respect to additional planning after your death?

Our guess is that at least 80 percent of the small business owners you contact will have never tackled all of these questions. Unfortunately, it is unlikely their attorneys, accountants and bankers have offered any suggestions or made similar inquiries.

The Life Insurance Response.

Chances are a business owner cannot get guarantees from his vendors, customers and bankers that business will continue as usual after the owner's death. But, cash talks and there may be no better vehicle to provide necessary cash upon the death of the owner than the guaranteed benefits of a life insurance policy.

Vendors find a lot of comfort knowing that cash is available to meet existing inventory costs and future obligations. They are much more likely to continue filling orders on favorable delivery and payment terms if payment is assured. Having planned for this contingency, vendors are also more willing to believe that comprehensive business planning was put into place and the new generation is secure and able going forward.

Bankers love cash in all events. But upon the death of an owner, cash and/or its equivalents are very reassuring when it comes to transitioning the banking relationship to the new generation. When it comes to making loans, banks are much more motivated to lend money or continue a line of credit when the loan is additionally secured by CDs or other such liquid collateral. This makes life a lot easier for all parties. Customers may or may not be directly affected by liquidity in the business. But the new generation of ownership should be a lot more confident and active when servicing existing relationships and pursuing new relationships knowing there is a substantial cushion during the transition/succession process.

If you would like more information about marketing to the small business market, please call the Advanced Markets group at AIG Life Brokerage. We have solutions to your marketing needs and wide variety of life insurance products that serve the business market.

Please be advised that any information provided in this article shall not be construed by any person as legal, tax or accounting advice.

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