



# A GUIDE TO ASSET PROTECTION

HOW TO KEEP WHAT'S LEGALLY YOURS

- Protecting your assets through a family limited partnership
- How to form a limited liability company
- Using foreign asset protection trusts

ROBERT F. KLUEGER

*A GUIDE TO  
ASSET PROTECTION  
HOW TO KEEP WHAT'S  
LEGALLY YOURS*

*Robert F. Klueger*



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# *For Patricia, David, and Elizabeth*

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# *Introduction*

## *THE CASE OF DR. JOHN BROWN*

I'd like to tell you the story of Dr. John Brown. Actually, I'd like to tell it twice. First we'll see what happened to Dr. Brown, who was sued but who hadn't done anything to shield his assets from creditors. The second tale—which is considerably shorter—involves the same Dr. Brown, but this time he had the foresight to do something before the lawsuit hit.

Dr. John Brown is a heart surgeon in a large metropolitan hospital. He has been practicing for more than 30 years. He once was extremely successful. He was on the staff of three hospitals and taught at a prestigious medical college. His scholarly papers were published regularly and read with interest.

His success brought him great wealth, with an annual income in the high six figures. He owned a substantial home. He had a portfolio of stocks, commercial real estate, and other investments commensurate with his income. Two children had already graduated from college, and his other two children were about to enter college. He

was looking forward to the day when he could cut back on his practice, perhaps even retire and concentrate on teaching, writing, and golf. After all, he thought, he'd earned it.

One day in 1984 he operated on a young woman, Ms. Viola Smith. Although only in her thirties, Ms. Smith had heart disease, caused largely by having smoked three packs of cigarettes a day since she was 14 years old. The operation was not an emergency, but her condition would only have deteriorated had nothing been done. During the course of her operation, she suffered cardiac arrest and died. Nothing that Dr. Brown and the other attending physicians could do—and they worked feverishly—could revive her. It was not the first time that a patient died during the course of surgery, but that fact did not make it any easier to relay the news to Ms. Smith's brothers and sisters. The worst of it was that Ms. Smith, who herself was a young widow, left two young children who were now orphaned.

After the surgery, Dr. Brown reviewed all of Ms. Smith's medical records searching for any clue to the cause of her death. He found none.

Three weeks after Ms. Smith's death, Dr. Brown was walking into his office when he noticed a rather shabby-looking character seated in his waiting room.

"Are you Dr. John Brown?" he asked.

"Yes," said Dr. Brown, extending his hand.

"Process server. Have a nice day," he said, shoving a sheaf of papers in Dr. Brown's hand as he sped away.

Dr. Brown was stunned. When he recovered his composure, he entered his office, locked the door behind him, sat at his desk, and began reading what had been thrust at him.

It was a legal complaint. Dr. Brown had been sued. Roger Jones, Viola Smith's brother, in his capacity as the executor of the estate of his sister and acting on behalf of her children, was suing Dr. Brown. But not only Dr. Brown. Dr. Bob Abrams, the radiologist, also was sued. So was Dr. Ed Frank, the anesthesiologist. The hospital was also sued, as was Ms. Smith's personal physician. Even one of the nurses was sued, as was Dr. Brown's surgery corporation. (In other words, Dr. Brown's partners, who had nothing whatever to do with the operation, were also sued.) Seven defendants in all.

Then Dr. Brown read the complaint. And as he read he became even more angry. He was sued for negligence, "failure to warn," battery, gross negligence, and wrongful death! As far as he could determine, he was being accused of bungling the operation and failing to tell Ms. Smith that he might bungle it, in which case she wouldn't have consented to the surgery. Then Dr. Brown got to the end of the complaint. He was being sued for \$8.5 million in "actual damages" and an additional \$20 million for "punitive damages."

Attached to the complaint was a letter from the estate's lawyers, Messrs. Gunn and Nutcracker, Professional Corporation, informing Dr. Brown that he had 20 days to respond to the complaint or suffer a default judgment. It urged him to contact his malpractice insurance carrier immediately.

After a few minutes, Dr. Brown began to calm down. After all, he had reviewed the medical records. There had been no negligence on anyone's part. The whole thing would blow over in a few weeks.

Dr. Brown mailed the complaint to his medical malpractice insurer. He thought that because he paid \$75,000 a year in premiums, he might as well let the insurance company worry about it.

A few days later Dr. Brown met with the lawyer for his insurance company, Ray Goode. Goode was an expert in medical malpractice.

The first thing Goode did was ask whether there was any possibility that the operation had been conducted negligently. Dr. Brown assured him there was not. They reviewed the complaint paragraph by paragraph, with Goode explaining the meaning of every allegation.

Finally, Dr. Brown asked Goode what they should do.

"We should settle," said Goode.

"What?" said the astounded Dr. Brown. "Why should I give them any money if I didn't do anything wrong?"

"Because whether you did anything wrong has very little to do with it. At your trial it's going to be a wealthy doctor against two little orphaned children. It's going to be a matter of give the kids a couple of million bucks of our money so they can go to college or let them suffer for the rest of their lives.

"And that's not the worst of it," Goode continued. "A trial like this makes news. The allegation of malpractice could kill your practice. People don't want to go to a doctor thinking they'll never get off the operating table. You'll spend a lot of time away from your practice defending the suit, and after it's over, you may still lose."

"But how could they prove negligence if there wasn't any?" he asked.

"You see that Consent to Surgery form in the file? Did you review it with her before the surgery?" asked Goode.

"Well, no," said Dr. Brown.

"That's their hook," said Goode. "They'll convince the jury that had Ms. Smith known of the risks, she wouldn't have consented to the surgery. She might be a sick woman today, but she'd be

alive and her children would have a mother. I'm not saying they'd win, but they could. Don't be a sap. Settle."

"How much do you think it will cost to get this suit to go away?" he asked.

"As your part of the settlement, anywhere from \$100,000 to \$200,000. The others would have to kick in, but yours will be the lion's share. You were the surgeon."

"Well," said Dr. Brown, "it's your money. That's what I pay malpractice insurance for."

"Not exactly," said Goode. "Your policy has a \$50,000 deductible. The first \$50,000 comes out of your pocket. But that's still better than risking a trial. Your policy is only for \$2 million per occurrence. You're being sued for \$8.5 million. The rest is yours. You have \$6.5 million to spare?"

"And I suppose that after this is all over my malpractice premiums will increase?" asked Dr. Brown, knowing the answer.

"You can count on it," said Goode. "By at least 50 percent."

"So I spend \$50,000 to buy off a ridiculous lawsuit and pay increased insurance coverage for the rest of my life just to keep out of court?" said Dr. Brown.

"You can't afford the alternative," said Goode.

I wish I could report that Dr. Brown took Lawyer Goode's advice. But Dr. Brown was a proud man, whose principles refused to allow him to pay for something he hadn't done. He knew he hadn't been negligent, and he had been taught to believe that, one way or another, justice ultimately would triumph. He refused to settle.



His insurance company handled his defense. Dr. Brown had to pay the first \$10,000 in legal costs, which was not covered by insurance. He spent countless hours conferring with lawyers—time he should have spent conferring with doctors. As Goode had predicted, the lawsuit made the newspapers, and his practice suffered. Dr. Brown noticed that certain “friends” he had known for years weren’t quite so friendly anymore.

But he hadn’t been prepared for the worst. Because he was being sued for “punitive damages,” the plaintiff’s lawyer, Mal Gunn, had the right to request, and to receive, copies of tax returns and statements showing all of Dr. Brown’s assets. These documents revealed to Lawyer Gunn that Dr. Brown was worth \$3.4 million.

A full 18 months after the suit was filed (and before a trial date was even set) the time came to take Dr. Brown’s deposition. As his lawyer explained, a deposition is an interview under oath. The plaintiff uses it to help prove his case. The deposition lasted four days. It was the worst week of Dr. Brown’s life. The plaintiff’s lawyers probed everything. They asked what training Dr. Brown had in advising patients about the risks of surgery. As Dr. Brown had graduated from medical school in 1951, he couldn’t recall any. They asked what written procedures his medical corporation had established regarding Consent to Surgery forms. There were none. It went on like that for four days. Dr. Brown felt somewhat soiled by the time it was over.

During the course of the litigation, one thing happened that really shocked Dr. Brown: Three of his fellow defendants sued him! They alleged that if they should be found guilty, Dr. Brown should have to reimburse them for what they owed.

After numerous delays (the lawyers said this was common), the case came to trial a full four years after that day when the process server met Dr. Brown. The jury consisted of a postal worker, a bartender, a retired fireman, and three housewives. The trial lasted