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Damaging A Business



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This article will be a little different from others I have written in that it will discuss two ways a business is damaged – although one is self-inflicted. The first addresses a fairly recent Florida case that could have a major impact on business damages payable in this state and the second discusses how business owner/managers unintentionally cause harm to their venture.

In Florida, as no doubt in other states, compensation for eminent domain damages has *not* included those due to changes in traffic flow off the property. Intellectually, entrepreneurs have felt justified in

claiming that when their patrons and others had to travel additional distances due to changes caused by construction. Over the years, even when new median strips, for example, would cause vehicles to travel several blocks to access a business rather than simply crossing over into it, the Florida Department of Transportation denied any damages.

The Florida courts have taken the same position, sustaining that interpretation (until the Tessler case below). For example, in the *D.O.T. versus Capital Plaza, Inc.*, heard in the Florida Supreme Court in 1981, the court clearly ruled that severance damages were not available to landowners for changes in traffic flow caused by construction of a median away from the property. It stated, more basically, that the landowner has no property right in the continuation or maintenance of traffic flow past his property.

The court said "that landowners have no compensable interest in traffic flow, and that, in order to receive severance damages, any complained-of impairment must result directly from a taking." Accordingly, until 1989, those of us calculating business damages in the eminent domain field (in Florida) have had to ignore any harm resulting from even the most extreme traffic damaged situation when dealing with construction separate from the parcel.

However, more recently, in early 1989, a decision evolved that changes the rules. In *Palm Beach County vs. Mildred Tessler et al.* the Florida Supreme Court allowed damages due to inverse condemnation when direct access to the property was blocked, leaving only a circuitous route through residential streets.

The business owners, who operated a beauty salon, and their customers were being forced to take an

indirect winding route of some 600 yards through that section due to the addition of a retaining wall in front of their location. The fact that they were being severely damaged was never under question. The case only took another look at the question of the right of access as a compensable factor.

It held that 1) there must be a taking involving the access to the property and 2) there must be that the right of access was substantially diminished – not just the loss of the most convenient access. Accordingly, the court did allow damages to the owners resulting from the external construction.

Another way a business is damaged is self-inflicted. In a previous issue of the *Right of Way* I mentioned the process where businesses fail to include *all* their cash receipts on their books and so understate their profits on tax returns. Many others are so intent on reducing income taxes by legitimate means that they unwittingly cause harm to the business' basic value.

The underlying value of a business naturally comes into play in many business damage situations. But it also is significant when the owner(s) or, sometimes, an estate decides to offer it for sale. This practice also can harm an enterprise when it is seeking financing from a bank or the similar.

There are a number of ways this can happen. One of the most common observed is when the officer-stockholders of a closely held business consistently adjust their salaries (generally upward) to increase total expenses, thus virtually eliminating any profit. While this may be a sound move tax wise, it results in the company's financial records depicting an unprofitable operation.

Again, whether this business is being evaluated in a business damage

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Consulting Corner

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believe good ethics is good business, and 71 percent said that sometimes being ethical in business will hurt you. However, an enthusiastic 96 percent did urge employers to provide some form of training in ethics. It could be that university professors are reading our newspapers and viewing the evening TV news which are filled with the stories of our ethical breakdown. Maybe they also have opened the door to peek in on Congress which exempts itself from ethical standards that apply to others. Certainly the impression persists in America today that almost everyone in Government has become adept at leaking or giving out confidential information, and this is a terrible blow to the ethical question in the United States. This statement is a scathing assessment and certainly we do have some "Tide-clean" people in our hamper of dirty linen, but the proof of our problem is evident.

About three hundred years ago the moral standards in this country were strong and the meaning of ethics was synonymous with religion. In those days the Puritans would always issue warnings about ethical decay and would call on the people to repent and amend their lives. Many years later, John Adams was of the opinion that an ethical crisis threatens the survival of our government and society and today things are different in America; we do have a major ethical crisis, and we in America must understand that today, it is not an opinion, it is a fact. We in America, when dealing with ethics, should understand that it is not a profound, abstruse or difficult subject matter.

matter, for acquisition, for credit purposes, the management may have hurt themselves. The observer may not be willing to "add back" the increased salaries in evaluating the operation.

In other situations, the entrepreneurs accomplish similar results by adding excessive fringe benefits or by putting inactive family members on their payroll. Still others will understate their ending inventories, seeking to build an inventory "cushion," while filing erroneous tax returns.

Any of these measures can return to haunt a business. We members of the accounting profession are on occasion asked by clients who may have minimized their profits by legitimate means, such as the addi-

tional compensation mentioned above, to assist them in obtaining financing by completing favorable financial statements. Once they have chosen to portray their history in a minimal light, there is very little we can do.

Accordingly, if you own part or all of an engineering or other company, I urge you to plan ahead and give substantial thought to the years ahead. *Very few* businesses can afford to ignore the appearance of their financial statements. Maybe more than 99% of them will be concerned with obtaining credit, selling a portion or all of it, or other occurrence where having adequate operating results in the firm's records are *vital*.

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