

QUEST CLUB

FORT WAYNE, INDIANA

Leadership in a Litigious Society

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**Are we a litigious society? Well let's look at some statistics. In the twelve months following March 2013, 303,802 civil cases were filed in Federal Courts in the United States. In calendar year 2013, 261,363 civil cases were filed in all Indiana Courts and in Allen County Superior and Circuit Courts, 32,360 new civil cases were filed. These statistics do not take into consideration the criminal cases filed. This information was gathered from Courts.IN.gov and the uscourts.gov websites. Although civil litigation can address significant matters, one young man filed a civil suit after he fell asleep at a ball game and was singled out by the stadium cameras. He says he was embarrassed and humiliated. He sued for \$10 million dollars. The lawsuit has recently been dismissed.**

**While looking at the wide range of legal issues, I decided to choose an area I am familiar with, that being Employment Law. All of us in this room have probably been an employee, manager, business owner or business executive during their life time. So I think you also can relate to this field rather than the complexities of say accident victims or device failure issues.**

**If we study why employees sue companies and learn the types of cases that are being filed in the employment law arena, we can learn from employees and companies' experience. So I decided to consult an expert in this area here in Fort Wayne. Tony Stites is the Managing Partner at BarrettMcNagny Law Firm and an employment law attorney I have worked with**

many times during my years as a Human Resource Executive. Tony indicated that employees on the East and West Coasts were primarily filing lawsuits over wage and hour complaints. The concern is not what you might think. The issue in question is not about equal pay issues, rather it is about whether a contract worker has become an employee over a period of time working for the company. If the Court's decision is yes, this contract worker has become an employee which means benefits, back pay, overtime and attorney's fees are to be paid by the employer from the time it is determined that a contract worker became an employee. In the middle of the country, the law suits tend to be about hostile work environment as it relates to employees entering into personal relationships with co-workers. When that relationship ends, one employee cannot accept the relationship has ended and begins to exhibit behavior that could be considered harassment. Companies are required by law to provide a harassment free workplace. Boss subordinate sexual harassment lawsuits still exist but are not as frequent as they were in the 1980's.

So, how does leadership affect the filing of lawsuits? I believe the importance of leadership in the work place cannot be over emphasized. Every organization, large or small, has a leader be it Presidents, Majority Leaders, governors, mayors, ministers, rabbis, board presidents, COOs, CFOs PTA's and school principals just to name a few. The organizations' success they lead, largely depends on their leadership skills. When I think of leadership, I often think of that wonderful painting of George Washington crossing the Delaware. He is standing in the front of the small boat while his soldiers row across the turbulent waters. It is clear to his soldiers where General Washington wants to go and he is leading the way to get there.

Is leadership ever easy? It can be, but seldom is. Why, because personalities and politics intervene. How does leadership or the lack thereof play a part in adding to the lawsuit numbers or preventing lawsuits? I decided to first take a look at a few of the leadership gurus and see what they recommend.

The first guru I consulted is Stephen R. Covey. Stephen has been working with businesses and individuals all over the world for the last 30 + years. His book “7 Habits of Highly Effective People” have been adopted by many very successful businesses like Microsoft Corporation, Hershey Chocolates Corporation, Zappos.com Inc. and HP Corporation. Individuals also find the 7 Habits beneficial as they pursue their dreams - Michael Phelps, 22 time Olympic champion, Marie Osmond, Senator Orin Hatch, Arianna Huffington, Maya Angelou and Steve Forbes to name a few.

Covey advises first: Be proactive. Our behavior is the function of our decisions not our conditions. We can subordinate feelings to values. Leaders have the initiative and responsibility to make things happen. Highly proactive leaders recognize that responsibility. They do not blame circumstances, conditions or conditioning for their behavior. Their behavior is a product of their own conscious choice, based on values, rather than the product of their condition based on feelings.

The second habit: Begin with the end in mind. To begin with the end in mind means to start with a clear understanding of your destination. It means to know where you are going to better understand where you are now and so that the steps you take are always in the right direction.

**The third habit: Put first things first. This habit entails prioritizing the action items to be implemented and then following through to the completion of the project.**

**The fourth habit: Think win/win. This habit means agreements and solutions accepted by all are mutually beneficial and mutually satisfying.**

**The fifth habit: Seek first to understand and then to be understood. This habit focuses on listening. Covey says everyone wants to be heard. The skill of listening has to be learned. Seek to understand before you prescribe.**

**The sixth habit: Synergize. Synergy is the essence of principled centered leadership. Simply defined, it means that the whole is greater than the sum of its parts. It means that the relationship which the parts have to each other is a part in and of itself. It is not only a part, but the most catalytic. The most empowering, most unifying and the most exciting part.**

**The seventh habit: Sharpen the saw. This basically means expressing the physical, mental, spiritual and social/emotional traits regularly and consistently in wise and balanced ways.**

**Peter Drucker is another leadership guru who says “effective leaders are not problem-minded; they are opportunity-minded. They feed opportunities and starve problems. They think preventively.”**

**Another leadership guru I consulted may surprise you. He is new to the leadership advice field. “Mark Cuban graduated from Indiana University in 1981. He got his start founding a software company named MicroSolutions and later Broadcast.com, a leading multimedia and streaming website which was acquired by Yahoo for \$5.7 billion dollars. In the year 2000, Cuban went on to purchase the Dallas Mavericks having since turned the team into one of the NBA’s most successful franchises, winning their first championship in 2011. With**

**a knack for the inventive, as well as the spotlight, Cuban stands as one of the most innovative, successful and talked about business minds of our generation.” He has authored a leadership advice book called “How to Win at the Sport of Business.” Mark says leaders have to have a dream whether it is a new business or it is about the business the leader is leading. Don’t be afraid to fail and if you do, learn from it. Know how you are getting to your goals plus treating employees and people right along the way. Don’t lie to yourself about how hard you are working. Make sure you are working smarter and not just harder.**

**As I mentioned earlier, in the business world a great many lawsuits are from employees. So it is key to know how to lead employees.**

**Taking ideas from the leadership gurus above and my own experience, the following points are important:**

- 1 Have a vision and mission. Be able to not only articulate them but live them. The business leader must set the example as George Washington did when crossing the Delaware. Lais’sez-faire’ managers soon have the inmates running the asylum.**
- 2 Employees must know what their job is and how it contributes to the success of the vision/mission. This is where training and job descriptions become very important.**
- 3 Employees must know what the score is for each of them. Feedback is a must. Just as the basketball player needs to know the score in order to play and win the game, employees need to know their scores on a regular basis not just at annual review time.**
- 4 The Company’s expectation for a fair and safe workplace should be demonstrated in an Employee Handbook with clear and concise rules and disciplinary steps if**

- needed. The rules should be followed by everyone from the executives to the janitor. Great distractions to performance occur when the executives deviate from the rules or when enforcement lets one employee slide and not others. Employees know and become resentful. Resentful employees can be very destructive and litigious. One international software security expert told me that a great many companies who are hacked have a disgruntled employee assisting or enabling the hackers. Mr. Snowden is a good example.
- 5 Communication is vitally important with employees about the company, its performance and their part in that performance through emails, newsletters, videos and employees meetings.
- 6 When complaints arise, they should be taken very seriously. Thorough investigations should be completed by independent supervisors before judgement is made. A rush to judgement can cause distrust of the company in the workforce. Furthermore, it is difficult to admit when a rush to judgement is made and it turns out to be wrong. Once the investigation is completed, take the appropriate action as described in the handbook. Sometimes no action can be taken because there is no proof of the allegation. An explanation of the action or inaction to the complainant is imperative. If investigations are done thoroughly and as soon as possible, employee concerns can be handled at the lowest level which can prevent a lawsuit. Document, document, document – if the complaint does advance, no documentation can mean a company’s defense is fatally jeopardized.

- 7 Before you settle the complaint consult your employment law lawyer to make sure you have covered all the bases and the settlement you intend to offer falls within company guidelines, labor laws or union contracts.

At this point I decided to interview several Fort Wayne executives of successful companies to determine if they are using some of the above principles as they lead their companies.

My first interview was with David Meyer, founding Partner of Monarch Capital Management Inc. and husband of Susie Meyer member of Quest. David and three partners started the Company in 1994. The bank they worked for was purchased. After experiencing the new bank owners' investment strategy, they thought they could do a better job. It appears they were and are right as Monarch is a very successful investment management company. There are now seven people on the team. A compliance officer, an administrative and client interface employee and 5 investment managers. So what strategies do David and his partner's use to ensure success? Well, the founders had and continue to have a vision/dream on how to treat and advise clients. The vision includes Monarch Advisors becoming the CFO for clients personal investments as clients are the CEO of their own lives. This strategy encompasses a variety of services from which a client can chose. There is an open door policy where coworkers can consult with each other for advice and support plus visit the boss. Their compensation plan includes salary plus incentive when new clients are brought on board. The company has a succession plan as David eases himself out of the day-to-day responsibilities and his son and daughter work there as financial advisors. There have been no lawsuits of any kind. Although David mentioned there could have been when one of the original partners decided to leave the company. Negotiations took place and a win/win solution was reached avoiding a lawsuit.



So what specific leadership skills are employed at Monarch that keeps the company lawsuit free? Well, the partners started with a vision they could provide investment advice and services to clients better than their former employer was doing. David provides the management leadership that is in line with the company vision. The Company has a compliance officer on the team who keeps them on the straight and narrow legally. The Company has an open door policy which allows team members to discuss issues, gain investment advice and voice concerns when they are small. Those concerns are listened to and when necessary acted upon. Their computer programs allow the investment managers to see how they are doing minute by minute. Monarch Capital Management Inc. plans to be around for a long time to come.

The next company executive I interviewed is Chuck Chaffee, President and “people person” of BRC Rubber and Plastics Inc. BRC is a local company with manufacturing plants in Ft. Wayne, Hartford City, Bluffton, Churubusco, Ligonier, and Montpelier, IN plus a plant in Auburn Hills, MI. The company manufactures steering columns, suspensions, engine air management systems and rubber products.

When Chuck was a boy, he and his brother Cliff would help out at their parent’s small rubber company. His father passed away. His mother tried to keep the Company going, but was unable to and it closed. Chuck and his brother went on to college. His brother graduated as an engineer and Chuck graduated with a business degree. After working at several small businesses and owning a Culligan Water Softener franchise which Chuck said he found wasn’t for him and his brother was not happy in his job, the brothers decided they knew the rubber business and liked it so they started BRC in 1973 with 6 employees. They were both

around 30 years of age at the time. The Company has grown to 6 plants and 733 employees in the 42 years it has been in business.

Currently turnover in the management and salaried part of the business is virtually nonexistent. If someone leaves they are usually retiring. The hourly employees have higher turnover primarily because of the way rubber is processed. Rubber is heated and then formed into the parts. This process is hot and has a particular odor that is not pleasant but necessary to the production of the products.

BRC had a union in one of its plants in the 80's. BRC hired a number of employees from an Owens Corning unionized plant that closed. The union began to attempt to organize the BRC plant of 101 employees. A vote was taken. The results were 51 employees for the union and 50 employees against having a union. Because of turnover of union employees and more and more of the new employees did not want to join, the union went out of business at BRC in just a few years. The Company is currently nonunion.

Since I have worked with unions such as the UAW, Teamsters, Machinist and Aerospace Workers and Graphic Communication Workers Unions in my professional life, my observations are that unions speak for a company's employees with the company. I believe companies run best when the company can communicate directly with its employees and vice versa.

The senior management team at BRC keeps in touch with its employees by visiting each plant regularly and holding all employee meetings once a year. This also includes fun events like picnics and holiday parties. Their newsletter is published regularly and recognizes employees for their productivity, attendance and other accomplishments. The senior

management team keeps in touch with each other through monthly meetings where they discuss customer orders, plan which plant will produce products, finances, employee issues and performance to goals.

The Company is privately held. Chuck's four sons work there now as does his brother. BRC will be around for the next generation to manage.

BRC is successful because it practices the tenets listed above. The company vision is well known, published and reinforced. Employees are valued, appreciated and listened to. Their ideas are considered. Feedback is important. They have an employee handbook that defines the rules and all employees have access to it. Their compensation plan includes an opportunity for annual bonuses.

The next executive I interviewed is Deb Sturgis, President and CEO of Hallmark Home Mortgage and a Quest Club member. Deb was an owner with Waterfield Mortgage Company. When it was sold, she had to move on. One door closes as another door opens. She and two other people started Hallmark Home Mortgage business in 2007.

In the eight years since the company was founded, it has grown from 3 employees to 300 employees. The company has added two divisions – Hallmark Insurance and USA Appraisal Solutions. The Company has locations in Fort Wayne, NE Indiana, NW Indiana, Indianapolis, Evansville, Bloomington, Lafayette, Denver, CO., Cincinnati and Columbus, Ohio.

The Company started its life at the beginning of the housing meltdown in 2007 and struggled for the first couple of years. Because the company was small and it had no legacy mortgages,

the company was able to withstand the housing downturn. It began to grow as the housing market began to rebound.

Deb wanted to build the same family environment she had experienced when she worked at Waterfield. The Company's mission statement reflects that goal.

“Hallmark's mission statement is: Hallmark Home Mortgage is passionate about enriching the lives of our employees and creating successful homeowners while providing mortgage lending solutions in a responsible, ethical and profitable manner within the communities we serve.” The Employee Handbook includes the rules and regulations to which all employees are to comply.

Hallmark senior management has weekly 2 hour meetings where employee and client issues are discussed. Performance and follow up to goals are also discussed. Decisions are made regarding these issues and then distributed to middle managers and their staffs where they are implemented. Each year in the 4<sup>th</sup> quarter senior management sets the next year's goals. Deb and the appropriate senior managers regularly travel to locations to meet with employees. Employees are regularly informed of the Company's performance through this process as well as the Company newsletter which also includes employee recognition and other relevant information. They have fun as well at Company parties and events. Deb hosts a holiday party at her home.

Hallmark has had one employment lawsuit which is still pending. The issue is wrongful termination.

Hallmark is strong and successful.

The final executive I interviewed is Fritz Aichele, President of EPCO Products, Inc. Fritz, his father and brother started on a journey to buy and sell businesses. His father had purchased a Ft. Wayne beer and liquor distributorship in 1965. When Fritz and his brother graduated college they joined their father in business. They doubled the size of the business in a couple of years and sold it. They went on to buy and sell several business in Indiana and Michigan until they purchased EPCO Products located in Marshall, MI in 1969. The company manufactured mobile home and recreational accessories. In 1980 EPCO bought a screw machine shop located in New Haven and moved their business there. In 1982 the Machinist and Aerospace Workers Union attempted to organize the company. A vote was taken and the company won the election. The company was approached in 1987 by the Teamsters Union. Again a vote was taken and the company won the election largely because of the quality and gainsharing plans the company had implemented. In 1992 the company took a new direction into the fluid power industry. By 1995 the Zero-Leak Gold Plugs were a part of the company's product line and are still in use today as companies like Navistar and Eaton rely on this product to keep their diesel engines from leaking.

Fritz's father and brother passed away in 2003. Fritz was the sole family member involved in the business until his son Jon joined the business in 2012 as Vice President of Sales and Marketing.

Gainsharing is a managing tool that gets workers involved in the scheduling of all work, setting rates and routing all jobs through the shop. EPCO contributes to a 401k plan. Contributions are tied to the direct results of the gainsharing program. The company's results are shared with employees each week. Bonuses are calculated monthly. Some have been as high at 50% of an employee's income.

Currently the business seeks out inventors who have developed products for different industries as a way to add product lines. They produce the product, market it, sell it and ship it to customers. They produce these products with 15 employees and 4 part-time workers.

Gainsharing as a way to manage companies was developed by William M. Jackson. His company W. M. Jackson Company, Inc. is located in Marion, Indiana.

I think we can see why EPCO is so successful by the way they value, include, inform and compensate their employees.

EPCO has had one wrongful termination lawsuit that was won by the company because the termination was legal and the company had the documentation to prove it.

These four companies are a small example that the pioneer spirit of our ancestors is still within us. They may not have crossed the Delaware or this country in a Conestoga wagon but they have that same entrepreneurial spirit and leadership to succeed. They risked their livelihood, money and reputations to build their dream. They provided the leadership and the endurance to keep that dream alive. Those of you in this room who have started a law firm, opened a medical or dental office, architectural firm, construction company, real estate office or anyone of many businesses have that same spirit. You are the pioneers of our time.

I think the importance of leadership is demonstrated in the fact that these four companies using many of the leadership skills outlined in this paper have only experienced 2 lawsuits in the history of their businesses. One was settled in the company's favor. The other remains to be seen.

**Sadly, with all the current regulations, benefits costs, etc., these four business leaders were not sure if they would take the chance today.**

**While the 2013/2014 civil lawsuit numbers I quoted seem staggering but when compared to the U.S population in the 2007 census of 301.3 million, the civil lawsuits numbers seem inconsequential. No matter how large the new case numbers grow, are they really a bad thing or is the rule of law providing a safe haven for employees and corporations to settle their differences peacefully? Certainly we define ourselves as civilized. It seems one of the reasons we can take pride in that description is the rule of law. We settle our differences in the court room rather than the OK Corral.**

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