

# THE MONTHLY CEO ADVISORY™

revenue

A hand in a light blue shirt is drawing a red arrow on a whiteboard. The arrow starts from the left, curves upwards, and ends with a sharp upward-pointing arrowhead. The background is a blurred office setting.

OCTOBER 2021

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Dear Friends,

I am pleased to provide you the October 2021 issue of ***The Monthly CEO Advisory***™.

My article this month addresses the needs for a company to have one “public” goal that, if achieved, will make a meaningful difference in the year ahead. The goal defines what winning is for the entire organization. It does not necessarily have to be a financial goal. In fact, I’d recommend against that kind of goal. You do want every employee engaged and you need to show the results on a scoreboard to encourage engagement and effort.

Leading a business is the single most challenging task someone could ever take on, and as you know, it is all consuming. This means that you likely have little time to learn about all the subjects you should. To make it easier for you, each of our articles are short (only one page) and include the following categories:

- Growth & Profits
- Tax News
- Human Resources Compliance
- Commercial Insurance
- Manufacturing Excellence
- Information Technology
- Company Benefits
- CFO Insights
- We Can Do Better
- Alternative Financing
- Social Media
- Insolvency Advising
- Estate Planning
- Mergers & Acquisitions
- Business Law
- Intellectual Property

Please feel free to pass along the CEO Advisory to others in your network who might benefit from learning something that could positively impact their business.

Please enjoy all the articles in this issue and thank you for allowing us to be part of your continuing business education, growth and success. Stay safe.

Sincerely,



Ken Keller  
CEO

## STRATEGIC ADVISORY BOARDS

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# Business Growth Opportunities to Consider in 2021

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Business Growth & Profits   Ken Keller.....	Page 1
Tax News   David Stone .....	Page 2
Commercial Insurance   Paul Palkovic.....	Page 3
Human Resources Compliance   Barry Cohn .....	Page 4
Manufacturing Excellence   BJ Schramm.....	Page 5
Information Technology   Craig Pollack.....	Page 6
Company Benefits   Barry Cohn.....	Page 7
Alternative Financing   Kristy Melton .....	Page 8
We Can Do Better   Paul Mitchell .....	Page 9
CFO Insights   Donald Stevens .....	Page 10
Social Media   Jonathan E. Boring .....	Page 11
Insolvency Advising   Jonathan J. Wernick .....	Page 12
Estate Planning   Rebecca Goldfarb .....	Page 13
Business Mergers & Acquisitions   Kevin Berson .....	Page 14
Business Law   Galia Aharoni Schmidt, Esq. ....	Page 15
Intellectual Property   Michael Zarrabian.....	Page 16

The Monthly CEO Advisory is a publication for business leaders. Please enjoy the articles, send us any suggestions of topics you would like to see covered and pass this on to others so that they might benefit. Thank you. Ken Keller

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# BUSINESS GROWTH & PROFITS

## START 2022 BY DEFINING WINNING

Many companies have already started the planning cycle for the new year.

I'm recommending to my clients that they should include this statement in their business plans: "We define winning in 2022 as ... (fill in the blank)."

What does that mean? Winning means having a single objective to achieve. One that is specific, measurable, action oriented, realistic and time bound. This should be a very public, unifying objective for the entire organization.

For perspective, in every sport, all the stakeholders know what having a winning season is. It's winning the Super Bowl, or the World Series or the NBA Championship. Either you win or you lose; there is no in between.

In my experience, having more than one public goal, is self-defeating. It creates confusion, diffusion of focus, misalignment, internal disagreements about priorities and fruitless talks about limited resources.

I wonder just how much further ahead companies would be if they massed resources and focused on just

one single definition of winning each year?

The CEOs' I work with wonder why employees are not more engaged and why they don't act like owners. Even in companies that have stock purchase plans there are those who are disengaged, complacent, or they would simply rather be working somewhere else. Or maybe not working at all.

In my experience, these companies are either missing a definition of winning; lack internal understanding about the goal and individual contributions are not clear or are missing altogether.

If you don't already have people that are results driven and focused to achieve goals, you must hire them. Only when hiring managers are in place with a "results matter" mentality will there be significant change.

To win, every employee must know and understand, accept, and execute towards the expected results. It means knowing and doing what is needed to do every day to help the company achieve the objective.

There's an adage about "Being part of the problem or being part of the solution." There is no middle ground.

If you want to win, however you define it, three things need to take place.

First, quit valuing loyalty over results. Loyalty to a paycheck as opposed to enrolling and being counted on to help the organization win is very different. Having people on the payroll for 5, 10 or 20 years is great, but not if these folks are part of the problem and not the solution. Dead weight is heavy.

Second, embrace change. "That is the way we've always done it" or "That's always worked for us" are comments made by people afraid of change. As the CEO, you should know better than anyone that change is constant. Do you want people embracing change or fighting it?

Third, address complacency. A company that doesn't make forward progress, usually has a culture where managers fail to have candid discussions on performance with subordinates.

I get it, no one wants to be the "tough manager", and no one wants to be the bad guy. But failure to have those conversations can negatively impact the company for decades.

Don't you owe it to those that work for you to know exactly what is expected of them? Start by defining winning. You'll have a better 2022 if you do.

Visit [StrategicAdvisoryBoards.com](https://StrategicAdvisoryBoards.com) today to learn about nationwide peer groups on Zoom or call Ken Keller at 661.645.7085.



### Ken Keller

Ken Keller facilitates Strategic Advisory Boards, bringing small & midsize company CEOs together to improve planning, performance and growth to increase revenue, execute plans, and grow profits. SABs meet via Zoom and clients are worldwide, in just about any industry.

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# TAX NEWS

## WHEN IS ENOUGH ENOUGH?

To paraphrase Tolstoy, "All honest taxpayers are alike; every dishonest taxpayer is dishonest in his own way." But what happens when a dishonest taxpayer is dishonest in every way? Turn on your speakers and cue the [theme from Cops](#) while you enjoy this week's story.

Philip Pesin earned a degree in finance from the University of Arizona and law degrees from Georgetown and the University of San Diego. He worked as an attorney for the Food & Drug Administration, helped manage a private-equity firm, and founded a pharmaceutical company called Auriga Laboratories, all by the age of 30. But Auriga's products didn't deliver like they claimed (pag-ing Elizabeth Holmes), and in 2008 he was out, looking for his next act.

Eight years later, in 2016, Pesin was calling himself Philip Layfield (hmmm . . .) and working as a personal injury attorney and CPA in California. But it seemed he wanted more out of his career than his career was willing to deliver. And it was clear that the moral arc of his universe bends towards larceny.

That same year, he negotiated a \$3.9 million settlement for a client who was hit by a car while crossing the street. Instead of keeping 40%, as their engagement specified, he sent her \$25,000 and kept all the rest. To his credit, he used some

of what he stole to repay previous clients he had stolen from. (Strictly speaking, this form of embezzling from Peter to pay Paul isn't a Ponzi scheme, per se, because there's no "investment.") And he failed to file a tax return reporting his \$3 million of income for the year — ironic, since Uncle Sam's 37% cut was less than his own 40%.

Eventually the California Bar Association caught up with Layfield. They disbarred him in 2018 after he ghosted them for his disciplinary hearing. His CPA license expired a year later. By then he had moved to Costa Rica, which is totally something an honest lawyer with no "consciousness of guilt" would do. Along the way, he scammed \$700,000 from a business lender by providing false information. He used part of that money to buy horses and ship them to Costa Rica, too.

Oh, and he was a seriously lousy guy to work for. Several of his employees posted scathing reviews on Glassdoor.com, which is basically Yelp for bosses. ("Working here is psychological torture.") Layfield fired back with a defamation claim, stating, "Unfortunately, most of those people are unwilling to recognize their shortcomings, and they turn to anonymous blogs to spit their venom. The reality is that they should be upset with their parents



### David Stone

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for raising lazy and incompetent young adults, but they choose to spew false information on blogs such as Glassdoor."

Agents finally arrested Layfield on a trip home to New Jersey. (He might have even advised himself of his own rights.) Last month, after a 13-day trial, a jury found him "guilty as sin": 19 counts of wire fraud, one count of mail fraud, one count of tax evasion, one count of failure to collect and send payroll taxes, and one count of failing to file a tax return. He's in custody now, scheduled for sentencing on November 8, and facing over 200 years in a place with few if any equestrian opportunities.

This "moral" is so obvious we're not even going to say it. America is still a land of opportunity, and we're minting new millionaires every day. Do it right and you'll even get to keep your name and your freedom, too. We're here to help you make it and keep it!



# COMMERCIAL INSURANCE

## ARE YOU READY?

Wildfires, earthquakes, mudslides, and riots, California is ripe for disasters that can profoundly impact businesses. Unfortunately, many companies that are forced to close following a disaster will never open their doors again. While there's no way to reduce the risk of natural disasters, there are measures that can be taken to protect your company. A disaster plan and adequate insurance each play critical rolls in business survival and recovery.

- **Conduct a comprehensive Risk Review.** Inspect your business' facilities to identify and quantify your unique potential for loss from a lengthy shutdown.
- **Develop an emergency response plan (ERP) that is specific to your operations.** Stay away from boilerplate fill-in-the-blank ERPs. If you can't hire a professional risk manager, draw on all your available resources: your insurance broker, insurance carriers, local emergency responders, and government agencies. Consider approaches like duplication, segregation, redundancy and contractual transfer of key risks to address potential losses.
- **Implement your ERP and train employees how to carry it out.** Make sure employees know who to notify about the disaster, and what measures they should take to preserve life and limit property loss. Use clear and simple language to communicate the steps to your employees, then practice the procedures set out in the emergency response plan with regular, scheduled drills.



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- **Compile a list of important phone numbers and addresses.** Make sure you can get in touch with key people after the disaster.
- **Consider critical things you may need initially.** Do you need a back-up source of power, a back-up communications system, or food and water for employees if they shelter in place?
- **Human resources.** Consider the possible impact various disasters will have on your employees and develop steps to protect them. Also consider their ability to return to work or work remotely.
- **Business community.** Consider the financial impact of a shutdown of one month or longer and take steps to address that risk. Locate suitable alternative facilities, equipment, and supplies. Identify qualified contractors in advance of a disaster and develop an ongoing relationship with a general contractor who can meet your needs in a pinch. Consider using a data storage firm to provide offsite backups that can be updated regularly via high-speed modem or the Internet. Evaluate using multiple geographically dispersed suppliers of items critical to running your business to prevent disruption to your supply chain.
- **Keep duplicate records.** Back-up computerized data files regularly and test them regularly to make sure they work. Keep copies of important records and documents, make duplicates of key manufacturing equipment like dyes and molds and store them off site.
- **Identify activities and resources critical to running your business.** If you cannot possibly shut your operations down, even temporarily, determine what would be required to establish and run the key elements of your business at another location
- **Decide on a communications strategy to prevent loss of customers.** Develop a plan to effectively communicate with your key clients after a disaster.

# HUMAN RESOURCES COMPLIANCE

## HR COMPLIANCE IS AN ART

HR compliance is the work of ensuring that your employment practices conform to federal, state, and local laws. This work requires learning which laws apply to your organization and understanding what they require you to do. HR compliance is truly an art. You have to be able to decipher legalese, know where to go to ask the right questions, and create policies and procedures that minimize business risk.

The work of compliance is never finished. Not only do new legal requirements appear regularly, but, compliance obligations are often unclear. While some compliance obligations are definitive, others are unre-

solved, and a good number require you to make a judgment call.

Some employment laws take the form of "Do this" or "Don't do that." The requirements may be simple, like minimum wage, or complex, like FMLA, but either way there's usually no real question about what you need to do or not do. As long as you're clear on the details, you're not likely to lose sleep wondering if you're compliant.

Sometimes, however, those details are unsettled. Lawmakers don't always specify everything a law requires before it takes effect. Even when laws seem clear, trying to put them into practice often raises many questions. The legislature isn't the only source of law: regulatory agencies demand their say, and courts get involved, too. To complicate matters, branches of government, federal, states, counties and cities don't always agree with each other. Keeping up with the latest official guidance takes time and persistence. Finally, many employment laws have standards you have to follow, but they don't tell you how.

Our current HR legal landscape is the result of three competing philosophies about how the workplace should be governed, who should govern it, and whose rights in the workplace should be prioritized. Should it be owners, employees or the government?

Government action, both state and federal, with respect to employment has tried to empower workers and afford them certain rights, protections, and freedoms in the workplace, all while preserving the employer's control over their business.

When you're assessing your compliance obligations, understand that not all compliance obligations are clearly delineated or settled law. In those cases, you'll have to weigh your options and the risks involved, and then make a decision. Sometimes you may need HR guidance or legal advice. You can't eliminate all risk, but by understanding the nuances and open questions, you can significantly minimize it.

Document your actions and decisions. It only takes an employee filing a complaint for enforcement agencies to get involved, but you are better protected if you can quickly and clearly explain to them the reason for your actions.

Evaluate whether your policies, procedures, and practices are satisfactory to employees. No employment law gets written in a vacuum, and no law is truly inevitable.

Lead by example. Make good employee relations a key part of your brand and competitive advantage. Employees have higher expectations today than they used to. Meet those expectations and motivate other employers to do the same, and you may find that the compliance landscape of the future is less winding and boggy than it could have been.

Finally, keep up to speed on the latest compliance obligations and contingencies you should consider. A good source of information is the JorgensenHR HR and legal updates that are emailed a few times a month. We also conduct over 20 HR compliance audits annually and uncover a myriad of issues. If you are not receiving them email [info@jorgensenhr.com](mailto:info@jorgensenhr.com).



**Barry Cohn, CEO**  
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I work with top executives of companies with 20-2,000 employees, providing HR solutions including outsourced HR, monthly HR consulting, workplace investigations, and almost everything HR.

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# MANUFACTURING EXCELLENCE

## LESSONS LEARNED: COMMUNICATION

The free flow of information is the lifeblood of any organization. When that flow is stifled, business performance is diminished as risks escalate.

It was in the news this past week that Boeing's chief technical pilot, Mark Forkner, was indicted for criminal charges relating to the 737 MAX failure which led to the crash of two aircraft and the deaths of 346 passengers and crew.

The story begins with the high expectations of senior Boeing management. It was critically important that their new 737 MAX be competitive with their primary competitor, the Airbus A320. To maintain this competitive position, Boeing management set the goal of having a minimal training requirement to transition current 737 pilots to the new 737 MAX. Boeing's chief technical pilot, Mark Forkner, took this direction to heart.

He convinced the Federal Aviation Administration (FAA) that the MCAS system, a new automatic control sys-

tem incorporated into the 737 MAX avionics suite, would not require extensive (and expensive) pilot training. To keep the new 737 competitive, he convinced the FAA that MCAS would only engage in extreme flying conditions. The FAA agreed and dropped these training requirements, making the transition to the new 737 relatively seamless for existing 737 pilots.

Mr. Forkner and his team were publicly recognized by Boeing for this accomplishment.

Three months later, a technical change to MCAS caused the system to engage during normal flight conditions, not only in extreme flying conditions as originally configured. This created a communication and serious ethics problem for Mark Forkner.

If this change was revealed to Senior Management and the FAA, Boeing's chief technical pilot would be put in an awkward place. Extensive training would consequently be required, undermining the competitive acquisition cost of the 737 MAX, and creating a "failure" for Mr. Forkner. The accolades recently received would fade as these new problems

came to the surface. Additionally, any false representations made in getting the FAA to buy-in to the reduced training requirements would come to the surface. Mr. Forkner now faced the risk of becoming a scape goat, with serious implications for his career at Boeing, and in the aerospace industry generally.

But let us back up a bit. It appears that the free flow of information with Senior Management had ended fairly early in the process. This isolated Senior Management from engaging in key decisions. It emboldened Mr. Forkner to do whatever necessary to achieve management goals, receiving their accolades and creating new career opportunities.

In the end, none of those were to happen. Instead, Boeing faces a disastrous launch of their most popular aircraft, and Mr. Forkner is facing serious criminal charges.

All of our businesses face risk. As in the Boeing case, these risks are seriously magnified when communication breaks down.

We need to set high expectations. But those expectations must to be combined with a continuous, open and honest flow of communication in a mutually supportive work environment.



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# INFORMATION TECHNOLOGY

## FINDING THE BALANCE BETWEEN CYBERSECURITY AND CONVENIENCE

With each passing year, cybersecurity threats are on the rise bringing a higher number of incidents threatening businesses of all sizes. Whether you're the smallest "mom and pop" business or not, no organization is 100% safe from cyber-attacks. And the "but nobody wants my data" mindset is no longer an acceptable excuse.

For most organizations, it's often a battle to find the right balance between security and convenience. After all, users want to maximize their ability to "just work", whereas IT staff want to maximize cybersecurity by locking down systems or restricting access as much as possible. These conflicting agendas mean that many organizations are trying to figure out how to balance opposing goals while also addressing both. However, if businesses make their security too lax in favor of convenience, it can lead to devastating results.

Security doesn't have to be an "all or nothing" proposition. It just needs to be taken seriously by the people throughout the organization.

### CYBER PROTECTIONS TO PUT IN PLACE TO INCREASE IT SECURITY

Every organization should have a cybersecurity strategy in place. However, implementing one of these strategies doesn't mean you have to break the bank. Working with your in-house IT staff or an IT Service Provider, your organization can begin by implementing some common-sense practices that improve your cybersecurity stance while also being cost-effective.

#### 1. Secure Your Network

Securing your network doesn't have to be an exercise in futility. There are things you can do to harden your organization's cybersecurity defenses, including:

- Implementing Employee Use Policies and Settings
- Limiting Access to Authorized Users
- Implementing a Multi-Layer Security Approach
  - ✧ secure firewall(s)
  - ✧ internet threat protection
  - ✧ end point protection
  - ✧ intrusion protection services
- Securing Work From Home Environments
- Securing Cloud as well as On-Premise Technology
- Performing Recurring Penetration Testing
- Completing a Technology Audit or Assessment

#### 2. Build a Human Firewall Team

As someone with more than 30 years of experience, I've seen way too many instances of what amounts to cyber-ignorance exhibited by employees when it comes to cybersecurity awareness.

By dedicating the time and resources to teaching employees at all levels, you can increase your organization's cybersecurity posture by teaching your staff how to identify and respond to a variety of threats. It's up to you to build a "Cyber-Aware" Culture.

Keep in mind - external threats can manifest themselves in a number of ways, including:

- Hacking
- Malware
- Ransomware
- Phishing
- Business Email Compromise (BEC).

However, external threats are not the only concerns for organizations. According to an article by the Harvard Business Review, the role that insiders play in the vulnerability of all corporations is significant and growing: "IBM



## Craig Pollack

### FOUNDER & CEO

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found that 60% of all attacks were carried out by insiders. Of these attacks, three-quarters involved malicious intent, and one-quarter involved inadvertent actors."

Although cybersecurity training can't prevent people from intentionally doing bad things, other cyber protections can be put in place to help mitigate those insider threats. However, the unintentional threat that inside users pose can be addressed through cybersecurity awareness training.

Human error is one of the biggest entry points for hackers, and employees often compromise their organizations' computers (and their networks as a result) without even realizing it.

### SUMMARY

An effective and balanced approach to cybersecurity helps your company prevent security events and intrusions (as well as quickly recover from such events) while also giving your staff the ability to simply get their jobs done. While this is never easy, it's certainly doable.

# COMPANY BENEFITS

MEDICARE  
PART D NOTICES  
ARE DUE BEFORE  
OCTOBER 15, 2021

Each year, Medicare Part D requires group health plan sponsors to disclose to individuals who are eligible for Medicare Part D and to the Centers for Medicare and Medicaid Services (CMS), whether the health plan's prescription drug coverage is creditable.

A group health plan's prescription drug coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of standard Medicare Part D prescription drug coverage.

For plans that have multiple benefit options (for example, HMO, PPO, and HDHP), the creditable coverage test must be applied separately for each benefit option. Plan sponsors must provide the annual disclosure notice to Medicare-eligible individuals before October 15, 2021—the start date of the annual enrollment period for Medicare Part D. CMS has provided [model disclosure notices](#) for employers to use.

This notice is important because Medicare beneficiaries who are not covered by creditable prescription drug coverage and do not enroll in Medicare Part D when first eligible will pay higher premiums if they enroll later. Individuals who enroll past the permitted enrollment dates pay 1% more in premium for each month they did not enroll. For example if an individual was 24 months late their Part D monthly drug plan cost would be 24% more than if they enrolled when first eligible.

CMS has provided two model notices for employers to use:

- ✓ [A Model Creditable Coverage Disclosure Notice](#) for when the health plan's prescription drug coverage is creditable; and
- ✓ [A Model Non-creditable Coverage Disclosure Notice](#) for when the health plan's prescription drug coverage is not creditable.

These model notices are also available in Spanish on CMS' [website](#).

Employers are not required to use the model notices from CMS. If you are a client of Heffernan Insurance Brokers it is likely that your agent is providing these notices annually when you renew your employer sponsored group health plan.

## EMPLOYER ACTION STEPS

Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable.

They should also prepare to send their Medicare Part D disclosure notices before October 15, 2021.

If an employer offers more than one health plan option they

need to check each health plan offered to make sure it is equal to or better than the Medicare drug plans. Most of our clients offer 2 or 3 HMO plans and 2 or 3 PPO plans and sometimes the higher deductible; Health Savings Account (HSA) plans are not creditable with the Medicare requirements.

To make the process easier, employers often include Medicare Part D notices with open enrollment packages for every employee, even if they are not near Medicare eligible since the employer often does not know the age of a spouse or partner.

If you are not an Heffernan employee benefits client make sure you are providing this notice to your employees along with the following other 10 required notices:

1. Health Insurance Exchange Notice
2. Summary Plan Description (SPD)
3. Summaries of Benefits and Coverages (SBCs)
4. Notice of Special Enrollment Rights
5. Notice of Privacy Practices
6. General Notice of COBRA Rights (20 or more employees)
7. Employers Children Health Insurance Program Notice (CHIP)
8. Mental Health Parody & Addiction Equity Act (MHPAEA) Disclosure (50 or more)
9. Newborns & Mothers' Health Protection Notice, Genetic Information Non-Discrimination ACT (GINA) Disclosure
10. USERRA Notice

If your health insurance agent or broker is not providing these notices or mentioning it to you, give me a call!



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I help companies with 25 to 2000 employees become "Employers of Choice" providing employee benefits solutions and benefits compliance.

# ALTERNATIVE FINANCING



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## YOU CAN GET FUNDING FAST

There are lenders out there that can fund a business in as fast as 24-48 hours. A broker can connect you with the best one based on your situation.

I get calls all of the time from business owners that need funding fast. Maybe they can qualify with their bank but something's come up and they don't have time to wait. Often times, they need to:

- Fund a payroll
- Pay insurance
- Pay taxes
- Cover other immediate working capital expenses

Ideally, you would want to:

FINANCE PROJECTS THAT WILL HAVE AN IMMEDIATE RETURN ON INVESTMENT

- Inventory deals with a quick turnaround
- Updating or refreshing locations
- Marketing campaigns
- Seasonal hiring or inventory

These loans are expensive and should be used as a bridge to other financing or to execute an order for which the return on investment exceeds the cost of funds.

### KEY FEATURES

- Typically 3 to 12-month terms
- Funding from \$10,000-\$500,000
- Automated daily or weekly payments
- Approval based on overall business performance, not just credit score
- Renewal opportunity when 50% paid down

### LET'S LOOK AT "XYZ" COURIER COMPANY

A banker called me on a Wednesday and gave me the owner's information for a courier company. He told me the owner was in a bind and needed a small bridge loan fast. The business does over 5 million a year in annual sales. At the end of the year, they got really busy, they had a lot of additional expenses due to the holidays and year end and they took on some new slower paying

accounts. The owner realized that he may not be able to cover his payroll on Friday and he had not gotten around to applying for a line of credit at the bank. So, now he was requesting a \$100k short term loan. I sent him a one-page application and asked him to send it back to me with his last 3 months business bank statements. Within a couple of hours, he had an offer.

105k loan  
12-month term  
135,450 payback  
2605 weekly ACH payment  
No origination fee  
No pre-pay penalty  
25% discount on remaining unpaid interest if early repayment

The employees got paid on time and the banker planned to get to work right away on a longer-term financing option for this company.

### BUT IT'S EXPENSIVE!

The cost of capital is primarily that way for 2 reasons:

#### 1. Convenience

You can have the money in your account in about 24 hours with minimal paperwork

#### 2. Risk

The lender underwrites the deal based off of a one-page application and 3 months business bank statements.

The lender is OK being in a junior UCC position-coming in behind a bank or another creditor.

### UNDERWRITING BASIC GUIDELINES

- Minimum Annual Revenue: \$250k
- Minimum FICO: 550
- Minimum Time in Business: 1 year
- Minimum Monthly Deposits: 5
- Negative Days/Overdrafts: 5 in one month

If a short-term business loan is right for your business, we will work to get you a competitive offer from a reputable lender that specializes in your industry.

# WE CAN DO BETTER

## WHAT IS THE RESPONSIBILITY OF WHITE PEOPLE WHEN IT COMES TO RACISM?

As I started doing my talks around the “Life on Black and White” platform, this question has been asked of me many times. Robyn Diangelo, a white woman who wrote a book called “White Fragility” has somewhat of a harsh response to those who ask this question. She says, “When white people ask me what to do about racism, the first thing I ask is, what has enabled you to be a full, educated, professional adult and not know what to do about racism? How have we managed not to know when the information is all around us? When people of color have been telling us for years? If we take the question seriously and map out all the ways we have come to not know what to do, we will have our guide before us. For example, if my answer is that I was not educated about racism, I know that I will have to get educated. If my answer is that I don’t know people of color, I will need to build relationships. If it because there are no people of color in my environment, I will need to get out of my comfort zone and change my environment; addressing racism is not without effort.”

I try to help people see that it does take understanding and education but also a level of compassion and empathy. I listened to a podcast that I once participated in, and the topic was “White Responsibility.” Every person on the show was white and their life experience had led them to understand the privilege they had because of that. One person spoke of the difference between being an ally versus an accomplice. He said an ally stood beside the person of color whereas the accomplice acted with them

and then suffered the consequences of those actions, with the people of color. He said we should start right where we are in situations, we see every day. Things

that we once thought were ok, telling jokes, workplace microaggressions, and the simple act of crossing the street when a person of color is walking towards you, needs to be called out. They struggled with maybe not being racist in their actions but being complicit by not acting or speaking up. “The only way for evil to persist is for good people to do nothing.” They talked about the overwhelming nature of all of this and how they can feel guilty even in the quiet times of their homes. In the end the goal is to be aware and be compassionate to people of color, but also be compassionate to ourselves. The fact that these four white people took their time to share these views in a unified way, showed they are taking action and building hope. I admire that and if we can multiply those actions, we all can start feeling as if we are making progress. So, my answer to the question? Love your neighbor, do good, and learn about others that are different than yourself. And if knowledge is power, knowing what we don’t know is wisdom.



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# CFO *Insights*

## SELLING YOUR BUSINESS – GETTING THE PROCESS STARTED – PART I

***Selling Your Business. A series of articles providing information to business owners who are starting to think about exiting their business.***

You have completed your research and have decided that you are ready to start down the path of selling your business. This will be a long and winding path that may seem that it is all up hill. If you are prepared and you execute well, arrival at your destination will result in achieving your objectives relative to selling your business.

In the April issue, my article “**Is Your Business Saleable**”, introduced **The Suc-**

**cess Team™**. **The Success Team™** are those advisors that will help you exit your business successfully. The first step in this process, is to assemble **The Success Team™**. The members of **The Success Team™** need to be chosen carefully and must have the following qualifications:

- Accomplished in their field of discipline
- Specific experience in assisting clients with selling their business
- Team players
- Firmly committed to achieving your objectives

The core members of **The Success Team™** should be a **B2B CFO® Partner** who will serve as the quarterback of the team, an investment banker or business broker, a financial planner, a CPA and a business transactions attorney. You may have established relationships with a financial planner, CPA and business transactions attorney. If you are confident that they have the qualifications required to be on **The Success Team™**, invite them on. If you are not, now is the time for a change. This may be the most important transaction that you will ever be a party to. Do not allow loyalty to cloud your judgement in this area.

Let's discuss more about the Business Broker and Investment Banker role. They both serve a critical role as the marketing function for **The Success Team™**. In general, both will market your business, identify potential buyers, assess offers, assist in negotiating the purchase agreement, assist in due diligence, and assist in the final closing. Business brokers and investment

bankers are differentiated by the market segments they serve.

Business brokers generally work with smaller businesses up to \$2 - \$5 million in enterprise value. Many of these businesses may also own commercial real estate that they operate from that may be a significant component of this enterprise value. As a result, business brokers are generally licensed as real estate agents. Business brokers only get paid if a transaction is successful.

Investment bankers work with businesses that have an enterprise value exceeding \$5 million. Most investment bankers will also specialize in segments of the market that may include both size and industry focus. Investment bankers are generally licensed by FINRA and their resident state securities licensing agency. Investment bankers frequently charge clients a monthly retainer along with a transaction fee upon successful completion of a transaction.

The **B2B CFO® Partner** and other members of **The Success Team™** will be able to assist you in identifying the business broker or investment banker that will be most appropriate to help sell your business.

Are you ready to sell your business? Would you like to learn more about selecting the **The Success Team™** that will get you started down this path? If you are ready to start planning your exit now or would just like to know more about what exit planning is all about, please call me.



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I provide strategic, financial, and operational advisory services to the owners of privately held businesses. My goal is to help business owners achieve their success, as they define it.

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# SOCIAL MEDIA

## 4 REASONS YOUR WEBSITE SHOULD BE ADA COMPLIANT IN 2021

Everyone deserves the opportunity to browse the Internet equally, so making your website [ADA Compliant](#) is an absolute must. Adding this component will improve your site's level of user-friendliness while increasing the potential of your company's Internet presence and audience reach.

### WHAT IS ADA COMPLIANCE?

In short, ADA Compliance means that your website is as accessible as possible to Americans with a range of disabilities. Examples could include, but are not limited to, people with the following: visual impairment, speech or hearing impairments, those who use screen readers or assistive technology, such as text to speech. If your website is not accessible, it makes it hard for people with disabilities to use your website. Additionally, you could be leaving yourself and your business vulnerable to a lawsuit.

In [2010](#), it was found that 11.9% of Americans had disabilities and that number has been increasing every year since. In [2017](#), 28.3% of these disabled citizens had a hearing impairment, 18.5% reported a vision disability, and 37.8% cited a cognitive disability. With statistics like these, the need to adhere to ADA guidelines to cater to individuals with disabilities is obviously becoming more and more important.

Becoming ADA compliant doesn't just protect you from potential lawsuits it also has several other

advantages. Let's take a look at the four reasons you should make this a priority for your business.

### 1) SEO IMPROVEMENT

Adding captions to photos or videos is an underrated component of ADA compliance, but it can do wonders for improving your SEO ranking. This gives web developers the opportunity to insert more targeted keywords to gain the benefits of a better SEO prospect.

The increased accessibility will make your site more likely to reach the top results on Google and will undoubtedly draw more visitors to your website.

### 2) EASY NAVIGATION AND INCREASED USER-FRIENDLINESS

Once your website is operating within ADA regulations, this will ensure more user-friendliness and a better experience when navigating webpages for everyone, not just visitors with disabilities. A clean design that makes it easy to find what people are looking for and is free of obvious flaws and glitches will make your users more likely to return in the future.

### 3) REPUTATION BOOST

Your customers will take notice of the fact that you value all people and believe that they should be treated equally. ADA compliance shows your commitment to the consumer and



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your strength of character. This extra effort to create a sense of inclusivity is invaluable to your company's overall reputation. For those with disabilities, they will be especially grateful for your efforts, and will be very likely to return to your website. They might even share your site with other people, telling them about their amazing experience. This will enhance your brand awareness, creating more traffic on your website.

### 4) DO WHAT'S RIGHT

It's worth it to go the extra mile for customers with disabilities because it's simply the right thing to do. All people deserve the same opportunity to access your website and all of its information. Disregarding these individuals deprives them of this opportunity and you will likely lose customers because of this neglect. Make your mark by addressing the issues of inclusivity and diversity.

# INSOLVENCY ADVISING

## ONE PATH TO CITIZENSHIP

Far,  
We've been traveling far  
Without a home  
But not without a star  
Free,  
Only want to be free  
We huddle close  
Hang on to a dream  
On the boats and on the planes  
They're coming to America

-Neil Diamond

The path to becoming a U.S. citizen can be a long and arduous process. One approach is the EB-5 program. Under this program, investors (and their spouses and unmarried children under 21) are eligible to apply for a Green Card (permanent residence) if they made the necessary investment in a commercial enterprise in the United States. Applications for the EB-5 program required a business plan.

An immigration attorney I work with was experiencing on several cases that the initial EB-5 application was rejected because the business plan failed to meet the requirements of Homeland Security. To remedy the rejections, I was engaged to review the initially submitted business plans and suggests changes that would conform to the requirements. Once the business plan was revised, I prepared expert advisor reports to accompany applications that provided affirmation of the business plans. The projects included truck stops, transportation companies, women's fashion, helicopter rental and tours, and hotels.

Many of the applications were approved and provided a path to citizenship for the entrepreneur and their family. When an application was approved it meant that the process of obtaining a Green Card had begun. Typically, email correspondence



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from the attorney would state "Congratulations. The I-526 petition was approved. Jonathan, thanks for all of your hard work on this. We will be sending you the information necessary for the whole family to apply for the Green Cards I-485. You will receive interim work and travel permission within about three months."

I was so happy for the family. It reminded me that my own grandparents were immigrants who came to America to fulfill their dreams. I was glad to be a part of jumpstarting this new immigrant story.

# ESTATE PLANNING

## KEY OCTOBER AWARENESS DAYS

In addition to Halloween, October celebrates World Mental Health, Estate Planning Awareness, Long Term Planning and Disability Awareness. Scary things can happen so plan for the worst and hope for the best and be compassionate and gracious in our life's journey.

**World Mental Health Day** exists to raise awareness of mental health issues. We have all experienced it with family and friends. Depression impacts 300 million people. Whether it's depression, an eating disorder or schizophrenia, every mental health condition is serious. We have had three elderly clients commit suicide in the past few years and we have many clients who support mentally ill homeless relatives from afar. Pay attention to the people you love; if something doesn't seem right, take action to support them.

I could write about **Estate Planning Awareness** for hours. It suffices to say that every person over 18 needs some level of planning. In the past 2 weeks, I've heard about 5 deaths: 1 from Covid, 1 from cancer within 10 days of diagnosis, 2 elderly moms and 1 brother, suddenly. Don't wait until it's too late, [call us](#).

I discuss **Long Term Care Planning** with every client. It's prudent to start

planning in your 40s-50s but some planning is possible if you're 60-70, albeit more expensive. 50% of people who need care are 75+.

If you're counting on regular health insurance or Medicare to cover the costs of a caregiver, think again. The financial and emotional costs are astronomical. To get in-home 24-hour care costs \$130,000-\$240,000. Communities cost \$48,000-\$100,000 per year. If you can't afford a paid caregiver, you are burdening your family.

I talk to caregivers of aging parents who are exhausted, depressed, had to quit their jobs and are overwhelmed by guilt. Don't force your family to have to care for you because you didn't plan.

**Disability Awareness.** 26% of Americans are disabled. Deaths from Covid are 2 times higher for disabled people. If a loved one is disabled, be sure to consider a special needs trust. If needed but not created, the results are devastating. With 1 in 4 adults being disabled, we have a duty to learn, understand and act respectfully.

\*\*\*

Every **Halloween** at bedtime, my almost 7-year-old daughter tells me what she wants to be for the next



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Halloween. Last year she was a fairy and at bedtime, she said, "next year I want to be a dog!" She was consistent until recently. "I'm going to be Frozen" and without a pause, "you're going to be Anna, Sissy [who is 36] is going to be the witch and Dada will be the dog, Olaf." We don't have TV so the only time we have experienced Frozen was at the Pantages right before the Covid shutdown. I'm not a Disney aficionado but I don't recall a witch or that Olaf was a dog. Her imagination and how she puts things together fascinates me every day. Last year, while she was a fairy, I was a sorceress, Sissy was a witch and Dada was very creatively, Covid. Maybe she is starting a new tradition, in addition to all dressing up, our characters must now relate to one another, albeit with a bit of creativity. In her mind it all works because there's still a dog in the mix. Happy Halloween!

# BUSINESS MERGERS & ACQUISITIONS

## SHOULD I HIRE A MERGERS AND ACQUISITIONS ADVISOR? HOW DO THEY ADD VALUE?

As a business owner, you make decisions every day. However, one of the most complex decisions you will ever make is deciding when and how to exit your business. Often, business owners are approached directly with unsolicited offers and elect to negotiate themselves. Others engage a Mergers & Acquisitions Advisor to represent them. Ask yourself the following questions to determine which approach is right for you.

### CAN I OBJECTIVELY EVALUATE MY BUSINESS?

To achieve maximum value for your business, you'll need to appreciate a buyer's perspective. Can you "normalize" your financials to properly reflect your adjusted cash flow? Can you articulate why your business should sell at a premium relative to your peers?

Buyers value your business based on quantitative (financial) and qualitative (team, industry trends, etc.) factors in the context of dozens of other deals they are considering. An experienced M&A Advisor will evaluate your business through the buyer's lens, setting expectations on probable market value and deal terms.

### DO I HAVE THE EXPERTISE AND RESOURCES TO ENSURE AN OPTIMAL OUTCOME?

How many companies have you successfully sold in your career? Most business owners get one chance to sell their business. Yet most buyers are experienced professionals who acquire companies for a living. Who has the upper hand — you or the buyer with a career purchasing companies on the cheap?

Think about your professional network. It's likely your industry contacts will generate a few potential buyers. *However, the surefire way to maximize value is to have the largest possible pool of qualified buyers competing at the same time.* An Advisor brings together buyers and resources to confidentially market your business to a broad buyer pool. Experienced Advisors create

competition, keep the process moving, and save time. An Advisor will also

have trusted transaction attorneys and other vetted professionals on speed dial, who can quickly mobilize to support the deal.

Throughout the transaction, you will undoubtedly encounter sensitive discussions. Prior to closing, the Buyer may insist on speaking with key customers and employees. Do you know how to facilitate this while maintaining confidentiality and controlling the narrative? An Advisor can help overcome obstacles like this, increasing the probability of deal closing and serving as an emotional buffer for you.

### HOW MUCH TIME DOES IT TAKE TO COMPLETE A DEAL?

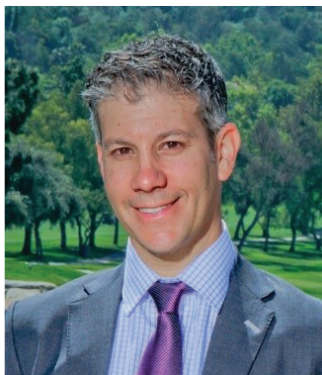
It generally takes 1,000+ hours over a 6–12 month period to complete a transaction. This means 1,000+ fewer hours to run your company and certainly increased stress attempting to keep both on track. Buyers expect the business to be run optimally and expedited turnaround time on diligence requests. Should the business experience an unforeseen hiccup while on market (e.g. lost customer/employee), the buyer may leverage this to renegotiate or even walk away. The owner creates the greatest value by doing what they do best — growing the business and outsourcing deal leadership to an Advisor.

## 6 Benefits of Hiring a Mergers & Acquisitions Advisor

- Provides an objective assessment of market value and probable terms
- Creates a market for the business by attracting qualified buyers to compete at the same time
- Reduces time and stress on the seller, providing an emotional buffer
- Increases the probability of closing
- Ensures confidentiality throughout the process
- Brings a network of experienced deal professionals

**SEAPOINT**  
BUSINESS ADVISORS

Despite these considerations, hundreds of businesses are sold every year without M&A Advisors. However, [statistics show that if you want to maximize the outcome](#), hiring an experienced M&A Advisory firm is beneficial. Of the approximately 100 deals that our firm has closed over the past decade, we have never had an owner tell us that they could have sold the business themselves or that we didn't earn our fee!



## Kevin Berson

Vice-President, Seapoint Business Advisors

We help business owners sell their businesses for maximum value. We specialize in selling businesses with sales between \$2M-\$100M and work on a success-fee basis with no up-front costs.

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## CALIFORNIA'S INDEPENDENT CONTRACTOR LAW EXPLAINED

You might have heard the whispers and nervous rumors about California's recent change to the law that governs whether a worker is an independent contractor or an employee. But do you know if you're actually complying?

The law is complex, but failure to meet this difficult standard can get you audited, penalized, or sued. Here's our quick summary of the "ABC Test" from the recent law, AB5 (and its update, AB 2257), so you can make sure to avoid the worst.

### FACTOR A:

The worker is free from the company's control and direction in connection with the performance of the work, both under the contract and in fact.

This factor looks at whether the hiring company has control over the work the worker is doing. "Under the contract and in fact" points to whether the hiring company actually has the right to control the worker, even if they're not taking advantage of that right. If there's control, this rule says that the worker is legally an employee and not a contractor.

### FACTOR B:

The worker performs work that is outside the usual course of the company's business.

Factor B explains that if the work done by the worker is routine and necessary to the usual course of a company's business, the worker is considered an employee. An example: a worker doing administrative work like answering phones and opening mail would be considered an employee because the tasks are necessary and a part of the normal course of business. However, if a plumber comes to

a marketing office to fix the sink, the work the plumber is doing is not within the normal tasks that company performs (marketing), and they are clearly not an employee of that office.

### FACTOR C:

The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

This factor basically means that a contractor should have their own business in which they regularly do the work they're doing for the company that hired them. Having other clients, independent marketing materials for their business, business insurance, and their own employees help demonstrate that the contractor has their own business and therefore works for themselves. If they don't have their own business setup, they will appear to be an employee.

This test is even more strict than the already-strict law that came before it. And to make matters even more complex, the law came with a list of over 100 exceptions to this rule! The most common exceptions include the Business to Business exception which applies when both parties are legitimate businesses, and Professional Services exception which includes a list of certain professions like marketing or HR professionals and provides an additional test. In addition, some specific professions are automatically exempted, such as doctors, lawyers, and architects.

Are you looking for a deeper dive on AB5 and the many exemptions involved? We have a whole video series on our YouTube available for viewing now! Watch the series [here](#).



# INTELLECTUAL PROPERTY

## INTELLECTUAL PROPERTY AUDITS

The word “audit” instills fear in entrepreneurs and organizations alike. In financial lingo, an audit is an official inspection of an individual’s or organization’s accounts, typically by an independent body. It conjures up images of an IRS audit, particularly painful for those who’ve been through one: “What might an auditor find?”

But an intellectual property audit has a different purpose. It’s akin to engaging in a treasure hunt and due diligence. It is a methodical discovery and review of the intellectual property assets (items) owned and/or used by an organization. The audit should uncover unused or under-utilized intellectual property assets, determine ownership of these assets, and identify any related threats such as infringement issues.

The intellectual property assets can include inventions, brands, logos, trademarks, service marks, designs, works of authorship, trade secrets, domain names, confidential information, databases, software, etc.

Once the intellectual property assets are identified, they are evaluated for their importance to the organization, including how they are being used by the organization in products and/or services and in what form.

Are the important intellectual property assets properly protected? There is often confusion on how to properly protect various intellectual property assets.

Generally, inventions and developments are subjects of patents issued by the patent office (utility patents for functional

features of an invention, and design patents for ornamental features of an invention). An important note: To preserve the right to apply for and obtain a patent for an invention, a patent application must be filed for an invention before the invention is publicly disclosed, offered for sale or sold. In other words, an invention must be kept confidential until a patent application for it is filed, otherwise the right to apply for and be granted a patent maybe forfeited.

Brands, logos, service marks and the like are subject of trademark registrations at the trademark office. It is prudent to screen a mark by conducting a trademark availability search before the mark is adopted for use in commerce. It is far cheaper to clear a mark before adopting it and registering it, than to simply adopt a mark without due diligence and later be confronted with a cease and desist letter from a third party for trademark infringement and asking for damages and re-branding.

Works of authorship are subject of copyright registrations at the copyright office. Though generally a work of authorship is subject to copyright upon creation, registration at the copyright office provides many benefits such as for copyright enforcement.

Confidential information and trade secrets require rigorous procedures to protect them within the organization. For example, all such items must be marked as confidential and staff must be trained to treat confidential information according to written trade secret protection & confi-



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dentiality procedures. If an organization is lax about implementing and enforcing such procedures, a court may frown upon a trade secret violation, or confidentiality breach, claim by the organization.

Another important aspect of the audit and due diligence involves monetizing the intellectual property items discovered as a result of the IP audit. Are the intellectual property items used in an efficient and cost-effective manner? Can they be licensed to a third party for additional revenue? Are any of the intellectual property items used by the organization subject to license from third parties? Are the licensed items worth the licensing fees?

And, is there a need for a freedom to operate analysis to determine if use of an intellectual property asset by the organization might infringe on others’ patents, trademarks, copyrights, etc.?

For many organizations, it may well be time to contact an experienced IP professional for an IP audit. There’s much to be gained by what such an audit uncovers.

# EXPLORING THE PROFIT ZONE



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