



JOHNSTON BUSINESS LAW GROUP

www.matthelawyer.com

Legal Risk Management

Johnston Business Law Group
122 E. Patrick Street, #103
Frederick, MD 21701
(240) 415-8425
matt@Johnston-legal.com

Because Lawyers Love Disclaimers

- ▶ I am A lawyer, but I am not YOUR lawyer (unless you hire me)
- ▶ We are talking “legal stuff” but this is general information for educational purposes
- ▶ The facts of your situation may call for different legal advice
- ▶ If you need confidential legal advice you should consult an attorney.

Like this Guy



BTW, That's me.

The gag works better in person.

Topics in This Session

- ▶ Risk Assessment
- ▶ Categories of Risk
- ▶ Legal Risk Management
Techniques
- ▶ When Risk Becomes Reality

How to Assess Risk

Six Step Process

1. Imagine
2. Define
3. Likelihood
4. Cost Assessment
5. Game Planning
6. Repeat regularly

Legal Risk Assessment Matrix

Costly

The diagram is a 2x2 matrix with a vertical arrow on the left labeled 'Costly' and a horizontal arrow at the bottom labeled 'Likely'. The matrix is divided into four quadrants by a horizontal and a vertical line. The top-left quadrant is labeled 'Costly & Not Likely' and 'Insure It'. The top-right quadrant is labeled 'Costly & Likely' and 'Proactive Policy, Active Mgmt. & Insurance'. The bottom-left quadrant is labeled 'Not Costly & Not Likely' and 'General Policy'. The bottom-right quadrant is labeled 'Likely & Not Costly' and 'Proactive Policy & Active Mgmt'.

Costly & Not Likely Insure It	Costly & Likely Proactive Policy, Active Mgmt. & Insurance
Not Costly & Not Likely General Policy	Likely & Not Costly Proactive Policy & Active Mgmt

Likely

Six Basic Categories of Risk

Regulatory/
Statutory

Facility

Employees

Customers

Financial

Unimaginable

Regulatory/Statutory

Interstate Commerce—you probably are an interstate business

Intrastate Commerce—you are certainly this

Useful Tools-trade associations, advisors, legislative tracking tools

You have little control but (usually) lots and lots of notice so you have some time to plan.

Facility/Equipment

Most small businesses rent operating space so this aspect is vital

Shop around and use a broker

The Lease

- Length
- Additional rent
- Insurances
- Read the Personal Guaranty!!!!
- Options if business fails?
- Sublease or Assignment?

Employees

Many risks with humans

Independent contractors vs. employee

Exempt vs. non-exempt (for overtime purposes)

Wage and Hour Matters

Employee Handbooks

Customers

Contracts and Policies

Contracts

- Make sure the contract is clear and understandable to the customer
- Protect yourself, but be flexible
- Follow the Contract

Policies

- Make them clear and noticeable
- Website terms of use, privacy policy
- Social Media

Financial

PLEASE PAY YOUR TAXES!!!

- Sales taxes
- Income taxes
- Withholding taxes
- Unemployment taxes
- Annual taxes like the personal property tax on businesses

Insurances

- Workers Comp—even on yourself
- General Liability/Premises Liability
- Other specialized insurance
- Disability and Keyman insurance policies on yourself and partners

The Unimaginable

Apollo 1

What is the worst-case scenario?

Plan for the Recovery not the Disaster

What risks are you missing? Get input

Leaders cannot work in a vacuum. They may take on larger, seemingly more important roles in an organization, but this does not exclude them from asking for and using feedback. In fact, a leader arguably needs feedback more so than anyone else. It's what helps a leader respond appropriately to events in pursuit of successful outcomes.

Jack Canfield

Your “Management Team”

Mentor(s)

Attorney

Accountant

Banker

Insurance Broker

Significant Other

Marketing

Like AMEX—Don’t Leave Home Without Them

Management Team Meetings

Meet Regularly-especially in good times

Marketing, Accountant, and Lawyer maybe monthly to quarterly

Insurance and Banker hopefully quarterly but at least twice a year

Mentors—what ever works, but regularly

Significant other—Daily

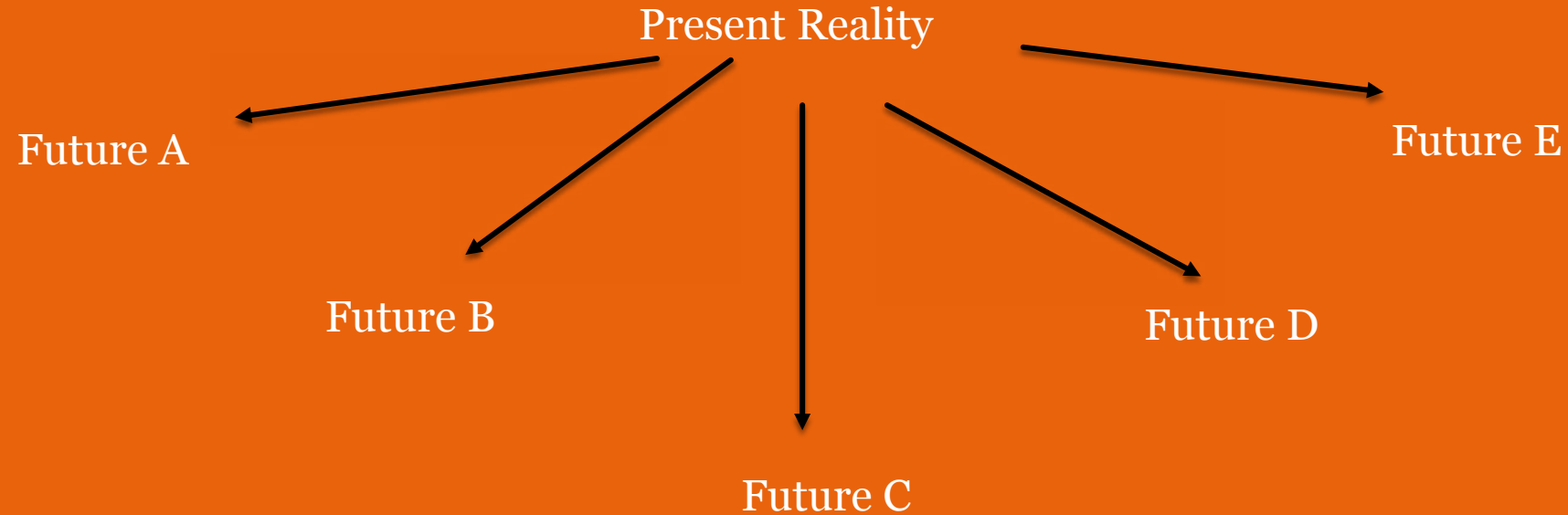
Management Team Role- Scenario Planning

Lessons of D-Day and COVID

Risk management is all about scenario planning

Grow decision-trees based on multiple possible futures

Management Team Role- Scenario Planning



Plan and document your responses to scenarios

Management Team Role- Scenario Planning

Red Teams

Pre-Mortems

Ulysses Contracts

Hindsight Bias

When Risk Becomes Reality

Five Step Process

1. Breathe—very few things are as bad as you think when it happens
2. Assemble your management team and gather information
3. Work the problem—don't guess and don't decide until you must
4. Make a decision and move on without doubts
5. Return to step 1 and repeat

When Risk Becomes Reality

Do what you can, with what you have, where you are.

In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing.

-Theodore Roosevelt

Remember

Do or do not. There is no try.

- Yoda

There is no such thing as a failure
who keeps trying.

-Blues Traveler

“Just Wait”

Got Questions, Comments, or Want to Chat

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(240) 351-9944

matt@johnston-legal.com

<http://www.matthelawyer.com>

www.linkedin.com/matthewsjohnston

www.facebook.com/LawOfficesMatthewJohnston

[Twitter: @JohnstonBLG](https://twitter.com/JohnstonBLG)

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