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Superstar Estates

Fleeting Fame, Enduring Security

By Robert L. Moshman, Esq.

Actors, musicians, athletes, and Kardashians can become famous overnight, but notoriety doesn't automatically mean financial security; sadly, it usually ends up meaning the opposite. Lottery winners and other windfall recipients often follow a similar path, even if their "stardom" is limited to local friends, neighbors, and family.

Celebrity wealth can evaporate along with fleeting fame. Celebrities also attract lawsuits, moochers, and scam artists. Professional athletes have all of these issues but in a condensed career that can be over with a single injury. Let's examine the special financial planning challenges of these estates.

Shooting Stars

Blazing a path across the sky, a star can be born suddenly and in brilliant fashion. This has been especially true in the age of the Internet and social media.

Presented With Our Compliments

Until recently, for example, few people outside of South Korea had heard of a chubby singer in sunglasses known as "Psy." Then his new song went viral. He sold only 100,000 physical copies of his new song—not enough to become wealthy.

However, with the new economics of music, "Gangnam Style" was viewed more than 900 million times on YouTube, netting Psy $1 million. The video was also downloaded more than 3 million times on iTunes, netting him $2.6 million. Fame led to product endorsements for $5 million. Stock in YG Entertainment, Inc., which manages Psy's career, rose dramatically, thereby increasing Psy's family's wealth by $30 million (on paper) and increasing the company's worth by $200 million.

All of this happened in the course of 6 months.

It is possible that Psy's artistry will endure with one masterpiece after another like Mozart or The Beatles. On the other hand, there are long lists of previous one-hit wonders. Remember the Baha Men? Perhaps not. But you might remember their one-and-only hit, "Who Let the Dogs Out," from 2000, which was ranked the third most annoying song of all time by *Rolling Stone* in 2011.

Actor Richard Harris, now remembered for playing the role of Albus Dumbledore, recorded "MacArthur Park," a seven-minute song that peaked at #2 on the Billboard Hot 100 in 1968. In 1992, humorist Dave Barry's readers selected it as the worst song ever recorded, but perhaps "Who Let the Dogs Out" could now compete for this distinction.

The career of Harris, in particular, should be illustrative to Psy. Folks may recall the verse: "Someone left the cake out in the rain; I don't think that I can take it, 'cause it took so long to bake it, and I'll never have that recipe again." But fads fade away, and interest decays into contempt. Harris relied on his acting career and other endeavors without ever finding musical success again. Psy's career may consist of cameos as "the guy who once did the horsey dance."

Planning With Stars

A celebrity with some sudden wealth may not be as easy to work with as a self-made entrepreneur who has learned to live without wealth and is instinctively conservative about planning for the future. Businesspeople may have a better grasp of financial and investment strategies and may be more disciplined about achieving goals.

"Stars and athletes are hard to represent," warns attorney Martin Shenkman, "because you have to convince them not to rely on their circle of followers and advisors." The fact that other teammates are working with a particular investment advisor doesn't ensure the capabilities of that advisor.

Shenkman also warns about celebrities who succumb to peer pressure and take unnecessary risks.

"You almost have to undo the mis-education these stars have received about what planning should be," says Shenkman. "They often hear wild stories about successes and they want to get in on the action. Some of these investments sound questionable, and some ventures smack of worse, including potential tax problems. So you have to guide the athlete past all of these preconceived notions and back to fundamental planning."

Several basic planning techniques come to mind for someone of wealth who requires basic tax planning and asset protection. There are retirement plans, irrevocable life insurance trusts, domestic asset protection trusts, setting up LLCs and FLPs, and almost always a combination of these techniques.

Is there a particular technique or game plan that would suit the typical celebrity? "There's no such thing as a 'standard trust' or an 'athlete plan.' Looking for a magic bullet is a mistake," says Shenkman.

Instead, he applies "the LEGO approach," i.e., using building blocks. "Evaluate what works for a particular client first," Shenkman advises, "and start with proven planning components to put together the framework of the plan. The creativity of planning is to then take the LEGO in the toolbox and customize it into the right building plan for the client."

Sport Careers

Well known estate planners Richard A. Oshins Martin J. Shenkman, Robert S. Keebler, and Eido M. Walny recently collaborated on a Webinar and PowerPoint presentation concerning estate and financial planning for athletes.

Oshins points out that typical athletes have a relatively short window for their entire career. For many, this is only the years spanning from about ages 20 to 35.

That career window may close suddenly. The average player in the National Football League is 27 years old and earns $1.9 million annually. But the average NFL career is only 3.5 years *(Bloomberg Business Week, January 27, 2011.)*

For Major League Baseball, career lengths vary a great deal. Nolan Ryan pitched for 27 years (1966 and 1968 through 1993). By comparison, Larry Yount was not as fortunate. In 1971, Yount was announced as a relief pitcher for the Houston Astros, but his elbow "popped" while he was warming up. His career was over. Ironically, his younger brother had a 20-year baseball career—Robin Yount was inducted into the Hall of Fame in 1999.

The Sports Cliché

Walny describes a classic example of an athlete's attempt to get his financial planning in place.

A huge, corn-fed young man from the Midwest came out of a "Big Ten" school and made it to the NFL as an offensive

lineman. “I don’t want to fall into the same old traps,” he told his financial advisors. “I want to save my money.” He voluntarily agreed to live on a budget and work with a professional advisory team. He was heading in the right direction.

Then the vices of the League caught up with him. Spending began to exceed the budget, first slowly, then more rapidly. After a while, the financial advisor reminded him of his goals. “Don’t worry,” said the sincere young man, “we’ll pick this all up on the next contract.”

“But ‘NFL’ stands for ‘Not For Long,’ especially for offensive linemen,” points out Walny. “Flash-forward, the young man blew all his money, no ‘next contract’ ever came, and he ended up living in a stereotypical it’s-not-going-to-happen-to-me story.”

Insurance = Good

Where might one begin with an athlete’s plan?

“Contrary to the general perception,” says Walny, “a good place for athletes to start is permanent life insurance. I’m a big believer in insurance and the value that can be derived. Athletes get homeowners and car insurance, so expanding into life insurance is easy for them to understand.”

“You do have to combat the perception that purchasing insurance means you are going to die,” notes Walny. So the emphasis should be on the asset protection and investment benefits as opposed to the death benefits.

“Remember,” says Walny, “life insurance is a unique asset class that has tax-free accumulation and proceeds that avoid income taxation. With the higher rates that became effective in 2013, this is even more of an advantage. Insurance can be structured as a class of assets that creditors cannot attack, e.g., when it is held by a properly formed and funded irrevocable life insurance trust (ILIT).”

Walny also likes having the insurance as a starting point for more sophisticated planning that may include a beneficiary defective inheritor’s trust (BDIT), which can be ideal with athletes. If insurance is held in the BDIT instead of a separate ILIT, the athlete can access the buildup in value of the insurance if there are hard times.

“With a life insurance policy asset to work with,” he explains, “we can design an ILIT to provide added strategic function. However, the ILIT involves ongoing gifts to pay premiums. Without an ILIT, insurance is still valuable and can be put into a BDIT. The BDIT needs to be in the conversation because it has a self-sustaining method of paying for premiums inside the trust without ongoing gifts and *Crummey* powers. A BDIT also provides more control than an ILIT. For many athletes and stars, having multiple trusts can provide incremental protection, even from the athlete or star’s own fiscal irresponsibility.”

Career Earnings and Endorsements

“The threshold discussion is where athletes are in their career because that dictates what they can and can’t do,” notes Shenkman.

“If they are getting on in their career, have they amassed assets? A young athlete just turning pro may have low endorsement value, so he can set up an LLC and sell endorsement interests to the LLC in trust and get it out of his estate in a prospective way before there is value. This might be wishful thinking, but it may work well. A more established athlete might benefit from the same planning, but the value of the endorsement contracts may be significant, and that will affect what planning can be done.”

Consider the value of endorsements for Michael Jordan. Although Jordan was earning $30 million per year in NBA salary at the end of his Bulls contract, his overall career earnings of $90 million only placed him 87th on the all-time earnings list compiled by *HoopsDoctor* in 2012. The top earner of all time on that list was Kevin Garnett with $328,562,000, based on a longer career and more recent earnings.

Yet Michael Jordan currently has a net worth estimated at $650 million (despite a $138 million divorce settlement). The majority of his wealth came from Nike and other endorsements, plus good long-term investments. Today, Jordan continues to earn $80 million annually in endorsements—10 years after the end of his basketball career.

Not every player gets the same endorsement opportunities or investment advice. Teammate Scottie Pippen earned $108 million in NBA salary but had fewer endorsements. He also made some mistakes, such as buying a jet and calling it “Air Pip,” two bad ideas in one. Some have suggested that Pippen has struggled financially of late.

Antoine Walker, who had NBA career earnings of $110 million, ended up in even worse financial shape and had to declare bankruptcy. His was a stereotypical example of lavish spending on too many cars, gambling sprees, and supporting a posse and family of 70 people.

BDITs for Athletes

A beneficiary defective inheritor’s trust (BDIT) is a good technique for an athlete for several reasons.

A BDIT involves having a family member, such as a parent, set up a trust and gifting $5,000 to start it. An athlete can then sell assets to the trust (but never gift to it). Because the athlete is not the settlor of the trust, the athlete can be one of the trustees, but it is generally advisable to utilize an institutional co-trustee in one of the domestic asset protection jurisdictions such as Alaska, Delaware, South Dakota, or Nevada.

A professional athlete is often the right age and has parents or other benefactors who can set up the BDIT. Athletes may also have significant assets of endorsement contracts that can

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be sold to a BDIT. Oshins suggests setting up a separate entity for non-salary income, such as endorsements, funds from autograph shows, or appearance fees, and that entity can be sold to the BDIT.

Instead of giving money out to family and friends and having them run off, funds can be earned inside the BDIT (e.g., by the business owning endorsement contracts that the athlete sells to the BDIT). The trustee can then hold the authority to take care of everyone.

"This locks in loyalty," notes Oshins. If hangers-on turn on the athlete or girlfriends break up with the athlete, the trustee is informed and makes sure the trust funds are protected.

Some estate planning professionals have clung to older planning techniques and have been slower to take advantage of the BDIT. Oshins notes that part of the problem is that advisors need to learn how to explain the concept to clients.

Shenkman confirms this observation. "Planners fall back into a pattern of not using new techniques," he said. "The comfort of an old shoe is common, even when better styles are available. Be mindful of differentiating a great technique from a clever technique that is mainly for getting the thought process going. On the other hand, practitioners can become too comfortable with their well-worn drafting tools. If you draft the way you did 10 years ago, then you are doing a disservice to your clients."

Shenkman also provides an example concerning the use of favorable trust jurisdictions. "Most practitioners use the client's home jurisdiction for every trust. But that is not always the right answer, especially for clients with the wealth and challenges of a professional athlete. I would not ask if a trust should be in one of the key DAPT jurisdictions; rather, I would ask if there is any reason NOT to do it in one of the four best jurisdictions."

Meanwhile, Oshins has noted a growing appreciation for the effectiveness of the BDIT. "People who do the BDIT love it," he says. "Many life insurance companies employ it and have set up training sessions for their staff."

The proof is in the results. "I did a BDIT for a client and sold 30% of the business to a BDIT," says Oshins. "The family could end up paying no estate tax and still control 70% of the business. It is working very well. I did another one for a wealthy family with many kids and moved hundreds of millions of dollars out of the estate very successfully."

For the athlete, a BDIT with an outside manager may be better than a domestic asset protection trust, which is self settled (i.e., the athlete gifts assets to the trust). In contrast, the athlete gifts nothing to a BDIT, so it may be more impenetrable to creditors and others.

"Once you see all the legs of the octopus," says Oshins, "the BDIT makes sense."

Twin BDITs

Even though the BDIT works for transfer tax purposes (with assets growing outside of the athlete's estate) and creditor protection, the athlete, with a track record as his own worst enemy, serving as a trustee, could be the Achilles' heel of the arrangement.

"Most of the athletes form an FLP or LLC for the ancillary assets instead of having the trust hold these assets directly. Some have family members employed. And they buy a house for their mom. But the athlete may not be disciplined enough to control these entities."

The solution, says Oshins, is to set up two separate BDITs, one with the athlete and his associates as trustees, and another with only a professional trustee who buys a house for the athlete, invests in life insurance, and establishes a portfolio of conservative investments. If the athlete commits a crime or is exposed to liability, the conservative portfolio will provide future security. If the structure is raided, even by the athlete on a spending binge, the independent trustee can hold the fort.

"The conservative BDIT is your atom bomb money," explains Oshins. "If everything goes bad, then there is at least a house, life insurance, and funds. And if you have professional advisors for the investment portfolio and something is done improperly, they can be held accountable."

Walny concurred with this approach. "Athletes do get into trouble with their own control. It is difficult in professional sports because athletes keep up with the wealth displays of others. At the end of the day, it is useful if the athlete is not in a position to have to say no to family and friends but can instead direct them to the trustee. This takes a lot of stress off the athlete. This is true of a BDIT or any other trust—empowering athletes to concentrate on what they are good at."

Shenkman notes that the BDIT addresses a fundamental element, i.e., the psychology of the athlete. He compares it to what happens to lottery winners.

"It is very hard for people to realize that you can blow through a big pot of money at a shocking pace. Everyone understands the rainy day concept. This is the piggy bank that even the client can't break into. Everyone wants to be in control, but you need some funds that are immune from coercion and even mistakes you might make yourself."

Many thanks to our guests: Robert S. Keebler, CPA, MST, AEP (Distinguished) is a Partner with Keebler & Associates, LLP, Green Bay, Wisconsin; Richard A. Oshins, JD, LLM, AEP (Distinguished) is a Partner with Oshins & Associates, LLC, in Las Vegas, Nevada; Martin M. Shenkman, CPA, MBA, JD, PFS, AEP (Distinguished) is a Principal at Shenkman Law, PC, in Paramus, New Jersey; and Eido M. Walny, JD, EPLS, AEP, is with Walny Legal Group, LLC, in Fox Point, Wisconsin.