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A FRESH BUSINESS PERSPECTIVE

*Renée White Fraser, Ph.D.**

Traditionally the business community has been represented by “big” business. But there is a growing and important sector of the business world that has not yet been heard: women business owners. Small and mid-sized businesses (those with under 500 employees) employ the vast majority of Americans, and they are the fastest-growing segment of the business economy.¹ Business ownership by women is also growing at a fast pace. In fact, women owned businesses are growing at twice the rate of *all* US firms.² Their are perspectives that need to be heard.

Women-owned businesses include a diverse group of companies expanding into all industries: construction, manufacturing, agriculture, and transportation. We are moving beyond the more traditional areas of communications, services, entertainment, and human resources.³

As of 2004, there were 10.6 million privately held businesses in the US in which women were at least 50 percent owners. *These represent one out of three businesses in the US.*⁴ Of these, 6.7 million were majority woman owned. The 10.6 million women owned firms employed 19.1 million people and generated \$2.46 trillion in sales.⁵ And this is only the beginning of a trend that will

* President and CEO, Fraser Communications

1. U.S. SMALL BUSINESS ADMINISTRATION, SBA NO. SF-0040 THE ECONOMIC IMPACT OF SMALL BUSINESSES 1 (2001), <http://www.sba.gov/opc/pubs/fs40.html>.

2. NAT’L WOMEN’S BUS. COUNCIL, KEY FACTS ABOUT WOMEN BUSINESS OWNERS AND THEIR ENTERPRISES 1 (Aug. 2004) (on file with *Loyola of Los Angeles Law Review*).

3. Press Release, Center for Women’s Business Research, Biennial Update on Women-Owned Businesses Documents Substantial Economic Impact (April 28, 2004), at <http://www.womensbusinessresearch.org/pressreleases4-28-04/4-28-04.htm>.

4. *Id.*

5. *Id.*

continue to grow. Between 1997 and 2004, women owned and equally owned businesses grew by 17 percent, compared to 9 percent growth among all privately held firms.⁶ The number of employees at these businesses rose twice as fast as did those in business generally (24 percent vs. 12 percent), and these businesses' revenues rose by 39 percent (compared to 34 percent among all privately held firms).⁷ The perspective of women business owners can no longer be ignored.

This is an area in which I have special expertise, as owner and CEO of Fraser Communications. Fraser Communications is a full-service advertising agency, the largest woman owned mainstream ad agency in California. The firm bills \$38 million annually. Clients of Fraser Communications include Toyota, Cedars-Sinai (a large medical center and physician network), the United Way, Metropolitan Water District (largest water supplier in the US), Frederick's of Hollywood (with 150 stores nationwide), East West Bank, Los Angeles World Airports, and HealthAsure (a natural vitamins and supplement company). In business since 1992, we have handled multiple lawsuits, and our clients have given us their perspective on litigation.

The perspectives of women business owners are very different from that of men.⁸ Here are five of the major gender-linked differences that impact the legal system and how women view business as well as torts:⁹

1. Women are holistic thinkers, while men are linear thinkers;
2. Women negotiate in a win/win manner, while men negotiate in a win/lose manner;
3. Women see relationships as ends in themselves, while men see relationships as a means to ends;
4. Women view power as a means to an end, while men view power as an end in itself;

6. *Id.*

7. *Id.*

8. The author is not taking a position on whether this is an essentialist quality or socially developed, just that these patterns of difference are commonly found in business.

9. See also Judith Rosener, *Ways Women Lead*, HARV. BUS. REV., Nov.-Dec. 1990, at 119-25.

5. Women are comfortable with ambiguity, while men are not.

I. HOW DO WOMEN RUN THEIR BUSINESSES DIFFERENTLY?

What do these differences mean for how businesses are run and for tort reform? As women business owners, we see our employees as an integral part of our success. We see employees as part of the organic nature of the company, important to its success—not just as tools to get ahead. So, we nurture and protect the employees as valuable resource, and we have a heightened concern for work conditions and productivity.

As business owners, women do not put their values aside. Thinking holistically, we see our businesses as a part of the social fabric. Thus, we create entities that contribute to the well being of our employees. Profit and growth are critical to success and we are driven to achieve those goals, but we also see the larger picture.

The litigious nature of our business culture has caused women owners to be more responsible and proactive. We realize that we need to be accountable. The large settlements covered by the media as well as many of the seminars we attend make us cognizant of the ramifications of lawsuits. Small businesses tend to be undercapitalized, and, by their very nature, based on small capital investments. In fact, many are started on family loans and credit card/home equity debt.¹⁰ As such, owners are cognizant of the potentially dire consequences of lawsuits: a serious lawsuit or a hefty settlement could put a small business under. Hence, owners act in their best interest by decreasing the likelihood of any type of liability.

In this sense, the system is not broken. The current system of liability acts as a natural and needed deterrent, with appropriate checks and balances. In business we are *constantly pressured for bottom-line results*. Shortcuts and minimal short-term investments are often suggested, and as business owners we need to be reminded

10. NAT'L WOMEN'S BUS. COUNCIL, *supra* note 2, at 2; NAT'L ASSOC. OF WOMEN'S BUS. OWNERS, SUMMARY AND HIGHLIGHTS: 2002 MEMBERSHIP SURVEY OF THE NAT'L ASSOC. OF WOMEN BUSINESS OWNERS 2 (on file with the *Loyola of Los Angeles Law Review*), available at <http://www.principal.com/womeninbiz/2002membersurvey1.pdf>.

that some shortcuts may increase liability. We are sensitive to this. The legal system and the media have made us more cognizant of the need to be proactive and prepared. Without the media exposure of these settlements and suits, many small businesses might not be aware of the potential hazards and liabilities. Thus, the “pop torts” that Haltom and McCann malign¹¹ make us more sensitive.

Most people think of businesses as big ogres: large, “faceless” organizations fighting against the interests of employees, concerned only with making the greatest profits possible. Small and mid-sized businesses, which are the fastest growing sector of the business community, do not fit this stereotype. In fact, among women business owners one sees a very different dynamic. Women operate from a win-win perspective. This approach causes us to over-compensate in a pro-social way, by protecting the health and welfare of the company.

Women tend to be more concerned about relationships than men, and consequently view relationships with their employees and customers differently. They value these relationships and recognize that their companies’ success is contingent upon them. This causes women to place a different value on the well being of employees and customers. Women business owners see investment in their employees as part of building their businesses. This investment includes creating safe working conditions, educational opportunities, and health care options. As owners, women believe investments in relationships will result in greater profits in the long term.

In the rest of this paper I address three issues related to tort reform, and provide the perspectives of women owned small and mid-sized businesses with respect to these issues. These issues are the litigation “explosion”; malpractice suits as a cause for increased health care costs; and Proposition 64, which was passed by California voters in November 2004 to limit unfair competition lawsuits.

A. Litigation Explosion or False Crisis?

One of the arguments for tort reform is that there is an “explosion” in litigation. This needs to be clarified. Women may

11. See generally WILLIAM HALTOM & MICHAEL MCCANN, *DISTORTING THE LAW: POLITICS, MEDIA AND THE LITIGATION CRISIS* (2004).

tolerate ambiguity in many situations, but not here. When it comes to litigation, we are known to “do our homework” and seek out details. And the information on this issue is clear: there has not been an explosion in this area.

In a detailed study of litigation trends, researchers found that most civil litigation in the United States involves non-tort subjects: disputes over property, contracts, or domestic affairs. According to a study conducted by the National Center for State Courts in 1992, tort cases represented only 10 percent of civil litigation.¹²

Has the increase in lawsuits gotten out of hand? No. The increase in population from 1990 to 2000 was 13 percent while the increase in civil lawsuits between 1993 and 2003 was 12 percent.¹³ This increase was to be expected; given the increased use of technology and the increased importance of intellectual property, is it a surprise that business-to-business lawsuits have increased? Not at all.

Our own experience as women business owners supports the conclusion that a large part of the increase in lawsuits is due to business-to-business lawsuits, and not an increase in customer or employee lawsuits. Fraser Communications conducted an online survey of women business owners who are members of NAWBO-LA (the National Association of Women Business Owners, Los Angeles chapter). After polling over eighty small and mid-sized businesses in Southern California, we found the same thing—an increase in *business-to-business* lawsuits.¹⁴ In fact, we found that business owners are most concerned about lawsuits by clients and vendors, given the expectation that these individuals were more litigious and savvy about using the legal system.

12. John T. Nockleby, *Access to Justice: Can Business Co-Exist With the Civil Justice System?* Symposium Briefing 7 (2004) (on file with the *Loyola of Los Angeles Law Review*).

13. *Id.* at 19.

14. Online Survey conducted by Renée White Fraser, CEO of Fraser Communications, (Sept. 22, 2004) (results on file with the author).

*B. The Increasing Cost of Health Care is Not a
Result of Malpractice Suits*

Some contend that reform is needed to curb the increased costs of health care. The cost of health care is a major concern to business owners; most of us have seen an increase of 15-25 percent each year for the last five years. Health care costs are an especially significant concern for women business owners because women are more likely to provide health care than are men business owners.¹⁵ Women owners perceive health insurance as a means of protecting their employees and a way of ensuring longer-term productivity and loyalty.¹⁶ Thus, women business owners take the threat of higher health care costs very seriously.

But these increased costs are *not* due to lawsuits. Very few of those injured actually file lawsuits. In a Harvard-based study of medical injury and malpractice litigation, only two percent of injured people sued for compensation.¹⁷ A recent RAND study confirms that only a small percentage of injured Americans litigate.¹⁸ And the total number of malpractice filings has steadily decreased when controlling for population growth.¹⁹ This is another example of where they light our fuse on an issue but the cause-effect connection is not there.

15. A study commissioned by the National Association of Business Owners in Los Angeles found that 75 percent of California-based women business owners considered health insurance to be the most important benefit to offer their employees. Press Release, NAWBO-LA, California Women Business Owners Rank Health Benefits as Number One Employee Incentive (Mar. 9, 2001) (on file with the *Loyola of Los Angeles Law Review*).

16. See *Survey Reveals Trends Regarding Health Insurance Among Women Business Owners*, WOMEN BUSINESS OWNERS IN THE NEWS (NAWBO Cal.), Winter 2004–2005, at 3.

17. A. Russell Localio et al., *Relationship Between Malpractice Claims and Adverse Events Due to Negligence: Results of the Harvard Medical Malpractice Study III*, 325 NEW ENG. J. MED. 245, 249 (1991)

18. See DEBORAH R. HENSLER ET AL., RAND CORP., COMPENSATION FOR ACCIDENTAL INJURIES IN THE UNITED STATES 116 (1991) (finding malpractice liability claiming rates of approximately 10 percent).

19. NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 2002, at 26, http://www.ncsconline.org/D_Research/csp/2002_Files/2002_Tort_Contract.pdf (last visited Aug. 1, 2005).

C. *Proposition 64—Limiting Unfair Competition Lawsuits*

In November 2004, California voters passed Proposition 64, a proposition that, among other things, limits the ability of anyone except the state attorney general and local prosecutors to bring suit on behalf of the public under the state's unfair competition law.²⁰ Proponents of this ballot initiative told the public that the business community wanted this. But not all business owners agreed.

These laws have benefited all of us. Laurie Beacham, Communications Director at the Center for Justice and Democracy in New York, reports that cases brought under private attorney general statutes stopped supermarkets from altering the expiration dates on old meat and reselling it,²¹ and bottled water companies from selling water that had not been tested for harmful chemicals and bacteria.²² No one wants our children, our parents, or we ourselves to give up the opportunity to fight for our rights. We fear that this will be the effect of Prop 64.

As business owners, we wish to live in a healthy and safe way. The right to sue for unfair competition creates a balance in the system. Liability for unfair business practices is a risk we business owners should be willing to take in order to allow for the greater good of society.

II. SUMMARY

In closing, as we examine tort reform, I encourage you to look at the perspectives of all businesses. Do not focus only on big business; recognize the importance of mid-sized and small businesses as well. And when you look for that viewpoint, you will most likely be talking to a woman business owner. We think differently and approach business differently than men do.

In this paper I have covered how we operate proactively with concern for employees and customers. We see them as integral to our growth—to be cared for, not as enemies or as just a necessary means to an end. We see the types of settlements reported by the media as a reasonable deterrent. Realizing that we function within

20. Laurie Beacham, *Damage Caps Benefit Big Business, Not the Little People*, L.A. DAILY J., Oct. 1, 2004, at 6.

21. *Id.*

22. *Id.*

society, we are willing to take the risk of torts in order to allow for the greater good of society.

These differences affect how we view the legal system and torts. We recognize that there is no explosion in torts. There has been an increase in business-to-business lawsuits, and I predict those will continue to increase. We recognize that malpractice lawsuits and awards are not out of control, and they are not the cause of the runaway increases in health care. Lastly, we do not all agree that eliminating the ability to sue for unfair competition as was put forth in Proposition 64 is a good thing.

As business owners, we believe in preserving the rights we hold dear in this nation: the right to grow our businesses with limited regulation, the right to pursue remedies in court, and the right to a system of checks and balances. In contrast to heavily regulated economies, the American system is unique in that it is based on a significant belief in and respect for individuals, and their abilities to make choices and judgments that will ensure a better future for all of us. That is what we wish to preserve.