



RISK VS. REWARD:

A Cautionary Tale About (Not Just) ChapStick®

I recently spent \$36.74 on a tube of ChapStick®. I know it seems like a lot of money, but my lips get chapped in the cold and I need the stuff. Okay, I don't really need it, but I like it. Two of my daughters (the 10- and 7-year olds, not my 8-month old) find it amusing for a dude to use ChapStick®. Thus, I have to balance the reward of lips that feel silky smooth, even during a polar vortex, versus the possibility of my girls serenading me in an impromptu performance of Aerosmith's "Dude Looks Like A Lady." (They much prefer "Sweet

Emotion," so it usually isn't a problem).

Shoveling out the walk, I must have dropped my blue ChapStick® in front of the house. My eldest daughter gleefully found it the next morning and brought it to my attention. I made a quick analysis of risk versus reward: Should I keep the ChapStick® or toss it in the garbage? In about two milliseconds, I tossed it in the trash, not willing to bet that Lily, the next-door neighbor's dog, had not touched it.

A few days went by, and I

chapily (why yes, that is most certainly a real word) noticed the absence of my ChapStick®, a tried and true winter companion. Risk versus reward: should I go straight home after work, or head over to the local store to pick up a replacement lip balm? ("Balm." That's a funny word. Are you really supposed to pronounce the "l"? Is it "bomb" or "balm"? Or "Ballllm"? It was dark and cold, but I figured a quick trip to the local ChapStick® Emporium (why yes, that is most certainly a real store) wouldn't be too terrible. Of course,

I could've walked (which is another funny word, if you think about it. No, not "walked." That's not a funny word at all) since my office is 150 feet from ChapStick® Emporium, but then I would never have spent \$36.74 for a \$1.99 tube of ChapStick®.

I pulled into a spot in the ChapStick® Emporium parking lot, spitting distance from the store, and fished around for a quarter for the meter. Risk versus reward: do I really need to feed that hungry meter? (Spoiler alert: I DO). An internal debate raged inside my head. ("Raged" is probably too strong a verb; please replace it with "ensued" and continue reading.) It was cold and dark, and I calculated that I would be in the store for about 60 seconds. After a quick mental calculation, I determined that my quarter was the equivalent of a \$15.00 per hour parking space. What were the odds I was going to get a ticket? I looked around for a meter maid but saw no one. I concluded there was NO WAY she was within ticketing distance. The ChapStick® Emporium parking lot is after all, huge, and I figured that I would be back comfortably behind the wheel before anyone noticed. I also figured that I could be in and out of the store by the time I fished the quarter out of the seat cushion.

In life, we are constantly evaluating various conflicting choices, and determining paths to pursue based on complicated cost/benefit analyses. Many of these internal debates occur in the blink of an eye, barely forming a blip on the radar of our subconscious; others can amount to virtual conversations with ourselves. Paper or plastic? Do I really need that last donut? Is the ice in the pond in the local park thick enough to skate on? (Free safety tip: IT ISN'T.)

In life, we are constantly evaluating various conflicting choices, and determining paths to pursue based on complicated cost/benefit analyses.

So too with the law. I help my clients navigate and balance the risks versus rewards of taking certain business and litigation positions on a daily basis. Arbitrate or litigate? Settle or stay the course? Fire the employee or give him another chance? Rarely are the answers clear and simple. It almost always boils down to a risk/benefit analysis. We evaluate the pros and cons, and make the best educated decision with the information available. Of course, the decisions we make in life and law are varied and fact-intensive, and depend on a million details, like according to the circumstance. But we often weigh issues, such as: cost (in time, dollars, opportunity cost etc.) risk tolerance, exigency, information available, (to us, and to any adversary) alternatives, out-of-the box solutions not yet considered – and the list goes on!

Too frequently, in analyzing the risks versus rewards in litigation, clients begin by speaking in absolutes and certainties, asserting contentions or predictions that they fully believe will occur. My job is often to show them that the crystal ball is cloudy. Even the novice chess player knows there are very few times when your opponent has only one available move. I've learned and relearned the hard way that there are no guarantees. Those twin recognitions, that: (1) the world is rarely black and white, but exists in a million shades of grey; and (2) we are far less prescient than we

believe ourselves to be, are crucial. They permit us to step back, weigh potential outcomes rationally, and, just sometimes, deal with those outcomes that we still never saw coming.

I spent a tad more than 240 seconds in ChapStick® Emporium. Sure enough, in the 4 minutes I was in the store, the meter maid had come upon my car, written a ticket, placed it on the windshield, and hightailed it out of there with nary the sight of her. On the bright side, I saved the quarter, so in truest economic terms, my \$35 parking ticket really only cost me \$34.75.

I really can't be angry with the meter maid or the local Village. I took a calculated risk and lost. It was only because I was prepared for the potential consequence that I could accept the agony of defeat with a modicum of humor. Had I not appreciated the cost of my risky conduct beforehand, I would surely not have chuckled aloud as I pulled the ticket off of the windshield and stuffed it into my coat, where I promptly forgot about it until right now. **fyi**

Scott J. Farrell, Esq. is Of Counsel with Miller Law Offices, PLLC, located in Lawrence, New York, where he handles both civil litigation and corporate law in New York, as well as corporate and securities class action litigation, shareholder derivative matters, and counsels the firm's clients on complex electronic discovery matters. Scott can be reached at scott@millerlawofficespllc.com.