

Cover Your Assets!!!

Article by: David Jacquot

You've worked hard to develop your career. You did it for yourself. You did it for your family. You did it for your retirement. You did it for your family's future.

You didn't do it to become a target of some lawsuit designed to take it all away. But unless you protect your assets, you are just such a target.

THE PROBLEM: Litigation Epidemic & Lack of Financial Privacy

LITIGATION EPIDEMIC. There is a litigation epidemic in this country. Predatory contingent fee lawyers file thousands of lawsuits each day, many of them with little or no merit. However, juries are awarding unrealistically high verdicts in many of these cases.

Ever expanding theories of liability continuously fuel this litigation frenzy. Each successful case is a stepping stone for expansion of liability theory. A decade ago people would have laughed at smokers suing tobacco companies, but today it is a reality. The recent recall of the diet drugs Redux, Fen-phen and the pain drug Vioxx has resulted in an explosion of suits suing doctors for prescribing what was a government approved drug.

Also fueling this litigation fever is the modern day version of the "Robin Hood" attitude of "take from the rich and give to the poor." Suits are rarely brought against someone with no assets or no large insurance policy. In determining whether to sue someone, attorneys will often try and determine whether or not the target of the suit has enough assets to make the suit worthwhile. As discussed in the section below on financial privacy, inexpensive computerized searches can show virtually every asset you own. If the potential pay-off is large enough, a suit will be filed.

Insurance is a two-edged sword. It is a necessary component of all financial planning, but large policies can actually attract litigation. Not only do large liability policies attract litigation, but they can provide a false sense of security. In a substantial number of cases, insurance coverage is NOT available to pay the claim due to policy exclusions for items such as punitive damages, intentional acts, discrimination or sexual harassment. Verdicts have also exceeded the coverage limits of policies that are available, and insurance companies even have gone broke.

Don't fool yourself by thinking that you will be OK, because you won't do anything wrong. You don't need to personally do anything wrong to be held liable for damages. In many cases the person held liable had nothing to do with causing the alleged harm. For example, business owners can be liable for employee sexual harassment and auto owners can be liable for a teenage driver's accident.

Lastly, rarely does anyone with wealth have a trial by a jury of their peers. Successful businessmen and professionals are often able to be excused or find a way to be excused from jury duty. Additionally, they are excluded from juries by attorneys that are trying to "stack the deck" in their favor. Take a look at the twelve people surrounding you next time you are at fast food restaurant and decide whether you want them to decide your financial future.

LACK OF FINANCIAL PRIVACY. Virtually every financial aspect of your life is currently being tracked, categorized, filed, numbered, referenced, documented, qualified, registered, indexed, recorded, listed and archived by private and government sources. This information can be retrieved almost instantaneously through computer searches by government officials, attorneys that want to sue you, and many other persons. If this is not enough, the federal government spends millions of dollars each year on informants. These informants provide information to the IRS, FBI, and other government agencies. Often these informants are disgruntled ex-employees, spouses, neighbors, or other persons that are close enough to you to be able to obtain vital information.

THE SOLUTION: Asset Protection Planning

VACCINE AND NOT A CURE. Unless you take proactive steps to protect your wealth, you stand a substantial risk of losing it. For asset protection to work, the planning must be done in advance of the occurrence of the event that is alleged to have caused the liability. Planning and transactions that occur after an event of liability can be considered fraudulent conveyances, and such planning will only compound your liability. In short, asset protection planning is an effective vaccine, but is not a cure to liability.

ASSET PROTECTION METHODS. In ALL business and estate planning arrangements care should be taken to create effective asset protection. You need to develop an asset protection mindset. Asset protection is a process, not a solitary act. Every good asset protection structure requires diligent maintenance to ensure its function.

Asset protection is accomplished by segregating personal assets from business assets and then segregating assets from liabilities. This compartmentalizing of assets and liabilities is done with corporations, limited liability companies, domestic trusts, offshore trusts and combinations of the same. It also usually includes proper insurance coverage.

Explaining all the tools available to protect your assets is well beyond the scope of this short article. Rather, the

purpose of this article is to get you thinking about the need for asset protection and to reach a decision to take active steps to protect your wealth. Asset protection planning needs to be an important portion of your financial plan.

TAX COMPLIANCE. In addition to the pure financial aspect of protecting your assets, there is also a significant mental and emotional component. This component is the “peace of mind” that you get from knowing that you are financially secure. One very easy way to destroy this peace of mind is to get sideways with the IRS. If you intend to adequately protect your assets and your peace of mind, you need to be tax compliant.

Often effective asset protection plans create a perception of hidden assets. This “camouflaging of assets” should not lead you to think that “out of sight” means you do not need to pay all applicable taxes. Taking such a position is tax evasion, and can lead to financial disaster and even criminal prosecution. A properly functioning asset protection structure will be tax compliant and all applicable taxes will be reported and paid.

The power of the IRS is vast and they have the ability to break many asset protection devices. Even if they cannot reach all your assets, the process of an IRS dispute can be mentally and emotionally draining. If you find your asset protection structure under audit or attack by the IRS, you need to immediately retain a qualified tax attorney to represent you.

CONCLUSION. The wealth predators are prowling. They know who you are and they know what you own. One slip can lead to a litigation feeding frenzy. You must protect your wealth or lose it. Develop a defensive mindset in all your financial affairs. Also, protect your peace of mind. Do not slip into the trap of being non-tax compliant. If your wealth is attacked, defend with the best litigation attorney you can find. Likewise, if your affairs are challenged by the IRS, hire the best tax attorney you can find. Cover your assets!!!

Copyright 2005 David Jacquot Tax Attorney David Jacquot, JD, LL.M. provides aggressive representation NATIONWIDE to businesses and individuals with tax problems or facing criminal tax investigations and trials. A description of his education and experience can be found at <http://www.4taxhero.com> . He can be reached toll-free at 866-4-TAXHERO (866-482-9437), locally at 208-691-2479 or via email at dave@4taxhero.com.