

Top-Rated Trial Attorneys Reveal The Truth About Asset Protection

Article by: Mitch Jackson

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Introduction

Today's social and economic environment is more litigious than ever before. Theories of liability are expanding and across the U.S., jury awards are increasing. Not too long ago, million dollar verdicts were rare. Today, it's not uncommon to read about multi-million dollar verdicts (or more) on a weekly basis.

That's why it is so important that when doing business in today's ever changing business world, you must make sure that smart and intelligent decisions are made RIGHT NOW allowing you to avoid unnecessary claims and lawsuits tomorrow.

To take proper legal and ethical steps TODAY to protect your personal and business privacy and assets BEFORE a problem arises sometime in the future.

To setup a system that has YOUR BEST INTEREST IN MIND rather than the best interest of your insurance company or its defense attorneys.

As indicated at our web site, 9 out of 10 lawsuits in the world are filed in the United States. Statistics show that a new lawsuit is filed almost every 30 seconds.

Business owners and professionals have a 1 in 3 chance of being named as a defendant in a lawsuit over the next year. Individuals statistically will be sued 2 to 3 times over the course of their lifetime.

Other estimates show 50,000 new lawsuits are filed everyday with the costs of defense (regardless of merit) ranging from \$5,000 for an individual involved in a small case to well in excess of \$10,000,000 for larger companies named as defendants in product liability and national class action cases.

Several examples of both legitimate and frivolously lawsuits (obviously each case is unique in and of itself) might include...

Doctors- There are 13.9 malpractice claims for each 100 doctors. 4 out of 10 medical doctors have been sued. The average Obstetrician in New York has been sued eight times. Nationwide, the average jury verdict in medical malpractice cases is \$1,333,000 and in New York, it is three times larger than the national average.

Accountants- Accounting firms now face over 3,000 suits each year seeking more than 13 billion in damages. Huge judgments are being obtained like the recent \$338,000,000 judgment against Price Waterhouse. Several regional firms have gone bankrupt.

Investors- Every businessman, developer, business owner and board member is exposed. Liability is often based on emerging and unanticipated legal theories. For example, the partners in a major law firm were recently stunned when they were notified of their joint and several liability under CERCLA for the projected \$72 million toxic clean-up cost on a parcel of raw land they bought in the early 1970's.

Now add the dollar amount of the verdicts...

Keep in mind that the above figures do not take into consideration the billions of dollars in settlements and verdicts that are paid out each year by businesses in the U.S. The U.S. Chamber of Commerce estimates that last year, more than \$152 billion was paid to settle frivolous lawsuits. While we believe this figure is grossly overstated, and includes settlements of cases with merit, the point is that there really is no greater financial exposure which will result in permanent detrimental results than of being sued.

So, the real question is, "What type of events can lead to personal or business litigation?"

Events that could trigger liability exposure include...

Intentional acts which are not covered by liability insurance Negligent acts (automobile accidents, premises liability...)
Dog Bites (strict liability in many states) Breach of contract Employment related disputes Discrimination related claims Professional malpractice Business partner claims and lawsuits Alter ego and piercing the corporation Officer

and Director liability Promissory notes and personal guarantees Personal and business creditors State and Federal tax liability Environmental law liability Joint liability like owning a home in joint tenancy Divorce Unfortunately, we want our clients to understand that it's not a matter of if you get sued, it's WHEN. The question is, "what are YOU going to do about it?"

Now here's some information that you probably didn't know. Even if you do everything right but are at the receiving end of a large damages lawsuit, there are inherent conflicts in our insurance liability and defense system that place your best interest no higher than third on the priority list.

At the top is your insurance company. Next on the priority list are the insurance defense attorneys hired by your insurance company to protect your interest. And last on the list is you. Your "best interest" is superseded by your insurance company and defense attorney. Here's why.

Conflicts Exist In Our Current System

Whether you know it or not, most insurance companies and defense law firms have huge conflicts of interest concerning issues involving protecting your interest from claims and lawsuits while at the same time, maximizing their bottom line profits.

Insurance companies are in the business to make a profit. The less money they pay out in claims each year, the greater their annual profits. Defense attorneys hired by insurance companies to defend you or your company generally bill by the hour. The longer they "work" your file, the more money their law firm gets paid. There is absolutely no incentive by either the insurance company or defense attorney to place your interest before their own. In most states today, there are little, if any, "checks and balances" in place to protect your interest.

Problems We've Personally Seen With Insurance Companies...

Failing to properly and timely open your file and investigate the claim. Failing to properly investigate the facts and analyze liability and damages issues. Improperly interpreting policy coverage, amounts and exclusions. Failing to simply and timely pay a claim. Forcing you to try and first get the other person's insurance company to cover the claim rather than allowing you to deal with your own insurance in company as you're entitled to do. Improperly raising your insurance premiums simply because you presented a claim under the terms of a policy that you have been paying premiums on for years "just in case" something like this ever happened to you... and the incident wasn't your fault. Fraud and deception. Failing to provide you with all the facts, options and proper counsel. Requiring you to "jump through hoops" or provide documentation not required under the terms of your policy. Denying your claim and arguing that it never received a premium payment from you after your submit a claim. Implementing improper or unlawful schemes to decrease or eliminate your rights to pursue a claim. Failing to keep you up-to-date on all important issues including settlement discussions Failing to settle a case within your policy limits thereby unnecessarily exposing your personal and business assets to an excess policy coverage verdict. Failing to resolve conflicts of interest- for example, the same claims person handling conflicting claims. Improperly demanding reimbursement from you for money they paid out on your claim. Problems We've Personally Seen With Defense Attorneys

Insurance companies may hire inexperienced or inadequate attorneys to try and protect your interest. Giving you the impression that experienced partners are handling your defense when in fact, inexperienced associates are doing much, if not all, of the work. Rather than quickly and timely resolving your case, the claim is dragged out over an extended period of time allowing the defense firm to heavily bill the file. "Rolling the dice" at your expense- settlement offers are not communicated to you or, unrealistic promises of getting you a complete defense verdict are made. When the verdict comes back from the jury for an amount in excess of your policy, you are the one writing a check for the difference. Overworked, understaffed and underpaid. Many associates are given caseloads which are simply too large to effectively handle. We constantly run into defense attorneys who are answering "ready" for trial on a Monday morning on three different cases in three different courtrooms. In all of these instances, you should ask yourself, "who's best interest is being served?"

Real Case Examples- Still skeptical. Read several "real case" examples from our personal files...

Insurance company intentionally misrepresented and interpreted important facts against its own insured

Our client was hit head on by a drunk driver who was drag racing another vehicle. The drunk driver was uninsured.

Our client sustained serious injuries including broken bones and serious head trauma. His medical bills were about \$100,000.00.

After we were retained, our client's own insurance company told us that he only had \$30,000.00 in insurance coverage. Furthermore, based upon their review of the file, that was more than enough to cover the value of the case.

Our independent review of our client's written insurance policy indicated to us that there was actually \$1,000,000.00 of available insurance. Furthermore, our client and his family had been paying large insurance premiums to this insurance company for more than a decade with the impression that they had the \$1,000,000.00 in coverage.

Our instincts told us that something was wrong with how this claim was being handled and we filed a first party bad

faith lawsuit against the insurance company to protect our client's legal rights. We asked for copies of our client's insurance claims file and the insurance company refused. Only after threatening to bring a motion to have a Superior Court Judge order the files be produced and for an award of monetary sanctions were the files finally disclosed.

What we learned blew us away.

In the files were letters and memorandums indicating that the insurance company's own lawyers valued this case at a figure substantially higher than the insurance companies earlier \$30,000.00 offer. The file also contained written documentation that the insurance company had earlier consulted with an accident reconstruction expert who confirmed that the cause of this accident was the negligent operation of an automobile by the other driver.

To our surprise, a follow-up reference was found in the file stating that if the insurance company discounted their own expert's earlier opinion and instead retained a new expert who (for a price) would point the finger at their own insured (our client) for causing this accident, it could save the insurance company a ton of money.

We put our team to work and eventually obtain a binding uninsured motorist arbitration award for our client in the amount of \$865,000.00 and a subsequent insurance bad faith settlement for another \$2,500,000.00. The total claim was resolved for \$3,365,000.00. Remember, this is after our client was originally offered only \$30,000.00 by his own insurance company.

And here are two more real cases.

Policy Limits Misrepresented by \$1,800,000.00!

In two separate cases involving tragic wrongful death traffic accident claims, we were told by the insurance claims adjuster over the telephone that the only insurance coverage available for our clients' families was \$100,000.00 for each accident.

After litigating each case and conducting discovery (forcing the insurance companies to turn over all documents and their insured to answer questions under oath), we discovered that in fact, there was \$1,000,000.00 in liability coverage resulting in an additional \$900,000.00 of coverage per claim. Both of these claims were then subsequently resolved for the full policies.

New Privacy Concerns...

The USA Patriot Act was signed into law on October 26, 2001. As a result, new agreements, laws and treaties with foreign governments have opened up the doors to the free exchange of information that was once difficult to obtain and extremely confidential in nature. Without discussing personal views on whether or not this Act was the right thing to do, as we understand the Act, several important facts are as follows:

It grants the FBI broad access to individual and business records without evidence of a crime. Surveillance laws have been broadly expanded (wiretaps, search warrants, pen/trap orders and subpoenas). "Secret searches" are authorized. "Roving" wiretaps are authorized. Telephone and internet communication surveillance rights of police departments are broadened. Right now, attorneys and investigators can access databases giving them information about you:

Voter registration records Medical records Telephone records Business and personal checking account information Property tax records Driving records Social Security number Workers' compensation information Police records Court records Real estate records Fictitious business name and licensing records Corporate records Marriage records Utility records Credit card records Family history records Probate records The average consumer is simply not aware of the financial exposure lawsuits can bring and, the lack of privacy that exists in this country today. People's best interest are placed after the defense attorneys and insurance companies and personal and business assets are unnecessarily exposed.

And that's where we come in.

Jackson & Wilson Consulting and Manages Services, LLC was founded to help individuals, entrepreneurs, small business owners, large companies (including officers and directors), services organizations and professionals (doctors, lawyers, accountants...) minimize exposure to lawsuits and maximize privacy and asset protection.

To offer products and services designed to protect you and your business with a strong emphasis on specific, constructive and objective solutions, by seasoned and experienced trial attorneys, showing you how to MINIMIZE your liability exposure and MAXIMIZE your personal and professional privacy and, the protection of your personal and business assets.

So, what can you do next to protect your family and business?

Proper Steps Taken Today Can Maximize The Protection Available To You, Your Family and Business From Future Claims and Litigation

Developing new business revenues, prospects and clients should be at the top of every businesspersons list. At the

same time, legitimately protecting your privacy, personal and professional assets must also be a main priority.

How do you go about this?

First, you need to know that most of what you know or have been told about “asset protection” is probably wrong. Although we hate to be the bearer of bad news, the reality of the situation is that now is the time to find this out, not later after you or your business is being sued by a talented trial attorney who you watch walk through your layers of asset protection as easily as one would peel back the layers of an onion. An experience that is not necessarily limited to bringing tears to your eyes.

Fact No. One: There are no “asset protection” specific laws or statutes under State or Federal law. For example, in California, we have a Vehicle Code which controls the operation of vehicles. We have a Business and Professions Code which controls how you do business. There are no “Asset Protection” Codes or Statutes which describe or control how you can avoid having your assets taken by a creditor.

Fact No. Two: Most of the tools and concepts offered in the “Asset Protection” seminars you read about in various advertisements found in the Sports or Business sections of your local newspaper are worth no more than the piece of paper the ad was printed on.

Most of these seminars are given by people with little, if any, legal background. The alleged benefits and protection which are inaccurately, but effectively hyped with all the bells and whistles, are for the most part, completely ineffective for purposes of asset and privacy protection.

State and Federal Judges will normally use concepts of equity and fairness when determining whether or not a good faith creditor should be paid for provided products or services and will not simply disregard money you have stashed in a Family Limited Partnership, Nevada Corporation, or Off-Shore Trust to avoid creditors.

And while you may argue to a Federal Judge that all of your assets are in an Off-Shore Trust beyond her control, he will remind you while you are standing in front of her that your failure to turn over your assets would result in you being in-contempt of court and that you can continue to assert your argument from inside a federal jail cell.

Furthermore, remember the USA Patriot Act which expanded the amount of information now available to the government.

What You Can Do...

To effectively, legally and ethically survive in today's litigious environment, you must be smart about

1. How you make decisions;
2. How you setup and manage your personal and professional life;
3. How you hold and manage your personal and business assets.

An overall plan must be designed and put into place which incorporates a combination of proper estate and succession, financial, business, risk management, liability insurance, asset preservation/ protection and tax planning. By necessity, it must involve a comprehensive approach to establish and then manage your personal and professional life in such a way as to maximize the ultimate transfer of your estate to your heirs while at the same time, minimizing liability risk thereby preserving and protecting your assets.

Here's One Proven Approach You May Want To Take A Close Look At...

Step No. One- Use a “Private Consulting Attorney.”

Set up a system to allow you to make smart and informed decisions. You establish a win-win professional relationship with a “private consulting attorney” who has no financial connection to your partners, board of directors, liability insurance company, any of the defense law firms “on retainer” with the insurance company.

All important business decisions, documents and contracts are reviewed with your “private consulting attorney” before decisions are made and documents signed. We can't begin to tell you how many major lawsuits could have easily been avoided had this initial step been routinely followed.

An additional benefit of private counsel is that decisions are made in your best interest as opposed to the best interest of insurance companies and defense firms.

Important Attorney/Client Privilege- Another important reason to use a “private consulting attorney” is the strict confidential privilege with any communications between you and your attorney. This relationship is a “must have” in order to maximize all legal and ethical confidential attorney-client communications. The only way to invoke the well established attorney-client privilege is to properly retain an experienced and qualified attorney to assist you with the concepts discussed herein. Your professional relationship with an accountant or any other non-lawyer, although

critically valuable and important, WILL NOT invoke the important "attorney-client" privilege.

Why is this important? Because absent the "attorney-client" privilege, a court or creditor can force your non-legal adviser to disclose all information, notes and documents associated with the establishment and existence of your plan. Your discussions, ideas and concerns all become a matter of public record. Not a good idea.

Subject to all "attorney-client" privileges, your private attorney will review your personal and business situation and determine your unique potential creditor exposure. Past, present and future challenges and issues are review and analyzed. Special forms can be used to streamline this initial process.

If you find yourself in the middle of unavoidable litigation, your "private consulting attorney" can be the educated professional holding your hand and looking over everyone's shoulders to make sure ALL insurance decisions are made with your best interest in mind. He or she will also be able to "review" the efforts of defense counsel resulting in you getting top-notch legal representation as opposed to the services of a first year inexperienced defense attorney.

Believe it or not, other steps can be taken by private counsel to maximize the chances of any excess verdict (a trial verdict for more than your policy limits) actually being paid by your insurance company. About 12 years ago, we had such a case resulting in an insurance company being obligated to pay more than \$950,000.00 more than the written policy limits. In another case, more than \$200,000.00 was paid out above the policy limits.

Step No. Two- Set and manage your business using the correct business entity.

Before taking personal or business actions, make sure you are doing so under the protection of the correct business entity. For example, when setup and used correctly, Corporations and LLC's can offer you certain tax and liability advantages that simply are not available when acting in your individual capacity.

Your best choice for the specific type of entity may directly depend on the type of activity or business you are planning to conduct. Also related to choice may be short and long-term tax, retirement and estate planning considerations. It may be best to use a combination of different entities for different assets and projects, depending on your unique circumstances.

Depending on your individual needs, various tools and approaches can be put into action to maximize such a plan. These include but are not limited to Insurance (liability, disability, life, D&O, business loss), Corporations (Nevada, Delaware, domestic and foreign), International Business Companies or Corporations (IBC), Collateralization, Trusts (revocable, irrevocable, domestic, international, spendthrift, domestic asset protection trust, foreign asset protection trust), LLC (charging order protection LLC, Delaware Series LLC, Offshore LLC's), ERISA Plans (anti-alienation provisions), Employee Stock Ownership Plan (ESOP), IRAs SEP IRAs, Keogh's, Private and Public Pension Plans, Annuities, Extreme LLC, Xesop (complex arrangement for holding an operating business which combines an ESOP with an Xtreme LLC), Homestead and Creditor Exemptions, Family Limited Partnerships (charging order protection) and Management/ Leasing Companies.

Different entities may be used to segregate different assets. And when it comes to allocating liability risk, different business entities can be used to separate companies and liability arguments.

Step No. Three- Setup and manage an estate plan.

Now that you have a good start on the proper way to run your business, generate wealth and legitimately minimize tax liability, you need to make sure that you have an effective plan to pass on your estate to your heirs. Not only will proper estate planning guarantee that your heirs, and not the state or federal government will receive the bulk of your estate, but in many cases, you can avoid probate and minimize taxes. Concepts and options to review would include one or more of the different entities described in step two above.

An indirect result of proper estate planning techniques is that in your planning, you may also create certain privacy and asset protection devices. Benefits which on their own, might be subject to being tossed aside by a Federal Judge. But if part of a legitimate estate plan, these same benefits may very well be preserved and interpreted as simply a secondary benefit to a valid primary estate plan.

Step No. Four- Obtain proper insurance.

The basic, but important issue as to whether or not you have proper and adequate insurance coverage is reviewed. Remember, when used with the additional services of your "private counsel," liability insurance benefits can be maximized.

Depending on your personal and professional needs, entities and estate plan, insurance coverage to review might include homeowners, auto, umbrella, commercial, directors and officers, disability and life. Each entity may require different insurance choices and amounts.

Step No. Five- Maximize creditor exemptions.

Creditor exemptions should be maximized. What we mean by this is that certain state and federal statutes actually

provide an almost “bulletproof” shield allowing you to protect various significant assets.

For example, in different states, certain retirement plans (for example, ERISA anti-alienation provisions) and accounts (IRA, Keoghs, public pension plans, county employee pension plans...) may be protected from creditors. Life insurance and annuities (for example, may require a clause which prohibits proceeds from being used to pay the beneficiary's creditors) may also afford a level of protection. Homestead exemptions also may provide exemptions depending on your state and circumstances. In California and as of 2004, several homestead exemptions are \$50,000 for a single person, \$75,000 for a couple and \$125,000 if 65 or older.

Depending on your particular situation, the type of entity you are doing business under may provide you with the ability to annually contribute to an exempted retirement account certain funds that a creditor may not be able to touch in the future. Combining this protection with legitimate estate planning tools and these funds may be able to pass to your heirs free and clear from attachment by creditors. Furthermore, certain exemptions built into estate planning tools (like a QTIP trust) also play a factor in passing wealth along to your heirs without creditor intervention.

Step No. Six- Utilize advanced products and services.

If necessary and appropriate, use more sophisticated privacy and asset protection products and services. Other alternatives to further legitimate business and estate planning goals, while as a bi-product, providing privacy and asset protection, may include the use of various out-of-state corporations, off-shore business corporations and off-shore trust. At this level, a combination of one or more of the above tools are normally utilized to best serve the client's interest.

Under the right circumstances, many of these entities can offer excellent benefits associated with legitimate business and estate planning needs. Additionally, they may offer outstanding privacy and asset protection levels offering various forms of legal and geographical privacy barriers.

Summary

In summary, and looking at the above six steps from a slightly different perspective, a properly established plan is a combination of proper estate and succession, financial, business, risk management, liability insurance, asset preservation/protection and tax planning.

It is a comprehensive approach to establish and then manage your personal and professional life in such a way as to maximize the ultimate transfer of your estate to your heirs while at the same time, minimizing liability risk, thereby preserving and protecting your assets.

A properly established and managed plan requires constant review and modification depending upon your personal and professional needs and, changing state, federal and international laws.

A properly established and managed plan is designed using established laws, to make it extremely difficult, inconvenient and in some instances, impossible, for someone to know what business and assets you have... or don't have.

A properly established and managed plan must not be established to hide income or avoid paying legitimate income taxes. However, it may be created and implemented to take advantage of legitimate and established tax laws to minimize or eliminate certain tax consequences.

A properly established and managed plan helps you avoid personal and professional litigation or if the initiation of litigation is beyond your control, promotes an early amicable and fair settlement within your insurance liability policy limits.

A properly established and managed plan will, from the very beginning, have a proper, legitimate, legal, ethical and moral purpose. Otherwise, most judges will allow a creditor access to your assets.

Despite what slick, uninformed non-lawyer seminar presenters are advertising and promoting across the country, judges will not normally tolerate an “asset protection plan” that doesn't look, taste or smell right. A plan that is setup for all the wrong reasons like tax evasion and fraudulent asset conveyance. “Real world” judges will rarely issue a ruling or order resulting in a debtor being allowed to defraud creditors.

A properly established and managed plan absolutely requires an attorney-client relationship in order to invoke the confidential “attorney-client” privilege. Only after the important attorney-client relationship is established will other experts and consultants such as other attorneys, accountants, retirement plan experts and tax specialist be utilized, in proper format, to plan, establish and manage your plan.

The most important aspect of a correctly implemented plan is to make smart and informed personal and professional decisions which will help minimize or completely avoid legal and ethical mistakes and litigation in the first place. The best plan possible is one that is never put into use because the need never arises.

With the above in mind, smart people will take action right now to begin an overall analysis of their personal and

professional "situation" in order to determine what steps they need to take to minimize their exposure to lawsuits and to maximize their estate planning, privacy and asset protection.

We've provided you with a great deal of information and want you to know that we are available to answer any questions you may have with respect to the information in this article.

P.S.- Important Tip: If a claim or lawsuit is filed before you have taken steps to properly setup and manage your plan, your options, if any, will be extremely limited because of a set of laws commonly referred to as the Uniform Fraudulent Transfers Act (UFTA). This act allows a creditor to challenge a transfer of assets to pay an obligation owed to the creditor.

To be protected, you must properly setup and manage your plan well before any "hint" of a problem. Give us a call if you would like more information or to get started today!

Jackson & Wilson Consulting and Manages Services, LLC was founded to help individuals, entrepreneurs, small business owners, large companies (including officers and directors), services organizations and professionals (doctors, lawyers, accountants...) minimize exposure to lawsuits and maximize privacy and asset protection. Southern California Office (Main Office) 23161 Mill Creek Drive, Suite 150 Laguna Hills, California 92653 Tel No. 949.855.8751 Fax No. 949.855.8752 Toll Free 800-661-7044 Email: admin@jwcms.com Web: <http://www.jwcms.com>

Northern California Office 2489 Lake Tahoe Boulevard, Suite 25 Lake Tahoe, CA 96150