Offshore 'all perils' insurance?

You may need to fill some gaps in your liability coverage

BY STEVE TELFORD

Chances are you and everyone else reading this article face the possibility of being sued at some point in the future.

Hopefully, you are covered by some type of liability insurance to protect against just such a contingency. For you, perhaps the liability coverage is part of your automobile insurance. Maybe, it is included in your homeowner's policy. It might even be found in a commercial liability policy for your business. Its source depends on many factors.

How good are your insurance policies? What do they really cover? How many loopholes are there in them? These are all good questions you should be asking your insurance agent on a regular basis. Upon reviewing your policies, whether the coverage is part of your homeowner's policy, automobile policy, or business insurance policy, you will discover that a myriad of activities, items, and events potentially creating liability for you are not covered under any of them. You will undoubtedly find that these gaps in coverage have been intentionally drafted into your policies by your insurance company through various exemptions and exclusions, and through outright omissions in coverage.

When you find these gaps, what are your options? In some instances, you can expand coverage to fill in some of the gaps like newly discovered potholes, assuming your insurance company is willing to do so. If you take this approach, you will want to know the impact any additional insurance will have on your annual premium bill. This expansion in coverage is often called a "rider".

Another alternative may be to segregate your assets and your potential liabilities from each other through the creation of various legal entities, such as a corporation, a limited liability company, a limited partnership, or a combination of some or all of them. If you take this approach, you will need to involve a qualified attorney to properly establish each of these entities. Before undertaking such planning, you will also want to discuss the impact such planning will have on the annual tax preparation fees charged by your CPA. There is no question that when properly done, such planning can enhance your asset protection and reduce your liability exposure. However, you will have to relinquish a certain degree of control and some financial benefits in exchange for such protection.

An integrated estate planning trust established in an offshore jurisdiction with favorable asset protection laws is yet another alternative. In many ways, this approach is superior to asset and liability segregation through entity creation. This type of planning has been used for years by individuals concerned with managing risk in Europe and in the Far East. Recently, this approach has received a great deal of attention here in the United States. In fact, several states have actually adopted new trust legislation attempting to imitate such offshore planning opportunities. Such states include Alaska, Delaware, Nevada and Rhode Island. One of the major problem with these new domestic trust solutions is that under the United States Constitution, each state must give "full faith and credit" to the judgments of the other 49 states belonging to the union.

Consequently, a judgment against you for an automobile accident in Idaho in excess of your liability policy limits will expose all of your personal assets to confiscation, including any such assets you might have transferred into an Alaskan trust or Nevada trust prior to the incident where you retained a too much control over the trust or where you are entitled to receive financial benefits from the trust.

Contrast this result with the protection provided by a trust created in the Cook Islands or some other favorable foreign jurisdiction. When your estate is hit by an unexpected lawsuit, an integrated estate planning trust created in the right jurisdiction will raise the following additional barriers for any aggressive lawyer handling the matter:

1. Many foreign countries with favorable asset protection laws refuse to recognize a judgment entered in the United States, making any adverse ruling against you here in Idaho ineffective in relation to the trust assets. Instead, the person suing you will have to initiate a new lawsuit against the trust in the country where the trust was established.

2. Often, the laws in these countries will shift the burden of proof to the challenger attacking any trust assets. In some jurisdictions, this standard has been greatly increased from a mere "preponderance of evidence", the standard commonly used in civil proceedings, to the "beyond reasonable doubt" standard applied in criminal cases.

3. The time limits for launching an attack on any assets placed in trust has also been significantly reduced by such laws. In some instances, the deadline for challenging an asset transfer into a trust may expire within one year from the date such a transfer is made.

4. The person suing you will also be surprised to learn that in most of these countries, contingency fees are not allowed. In other words, the person suing you will be forced to retain legal counsel in the country where the trust was established and to pay such counsel throughout the course of the proceedings in that country.

5. The person suing you will be forced to incur other prohibitory expenses, such as the cost of transporting witnesses across oceans to appear in the courts of the foreign county where the trust was established.

These are just a few of the significant obstacles your opponent will have to overcome. If the planning is properly done, your opponent will ultimately run into a brick wall and recognize the futility of attacking the trust, encouraging your opponent to settle within your liability insurance policy limits. As a result, the litigation playing field has been leveled for you and maybe even slanted in your favor. Once again, the key to implementing this type of planning is to do it before a claim is made against you. If you are seriously interested in protecting your assets from unexpected liabilities, you need to act now by contacting a qualified professional and creating an integrated estate planning trust before disaster strikes.

Steve Telford is an attorney who practices in the area of estate planning and asset protection in the Treasure Valley with the law firm Telford Law & AP Consultants. He is also a Member of the Offshore Institute.