

SPECIAL REPORT

WHEN EVEN BANKRUPTCY WILL NOT GET YOU OUT OF IT

“I had to personally pay over \$500,000 toward an auto accident settlement. I thought they could only sue me for the insurance I purchased!”

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- We routinely are asked what limits of liability insurance our clients should purchase for various coverages such as general liability, automobile liability, umbrella liability, among other policies.
- We find that buyers of insurance sometimes are under the false assumption that they can be only sued for the amount of insurance that they have. As noted by the following case, this is not necessarily so.
- In a recent Michigan case, a family was required to pay out over \$500,000 from their personal accounts to satisfy a settlement because they only had \$100,000 in automobile liability insurance. After an automobile accident which resulted in a fatality, the estate of the deceased sued the negligent driver and the insurance company of the driver paid the \$100,000 limit of insurance. The estate then pursued the negligent driver and her husband, the owner of the vehicle, for additional funds over and above the insurance limit. In order to avoid bankruptcy reorganization and settle the lawsuit, the family had to liquidate some of its investments and write a personal check in excess of \$500,000 to the estate.
- The above is a sobering example of the need for high liability insurance limits. In this case bankruptcy would not have discharged the debt because the family had assets in excess of the insurance amounts.

- Further, under the bankruptcy laws which became effective in 2005, individuals cannot simply obtain a discharge in bankruptcy for all debts if they make more than the median income for a household of their size.
- In these cases, referred to as Chapter 13 cases, individuals are required to repay at least a portion of what they owe creditors over a period of time.
- Thus, you cannot always rely upon bankruptcy as an option to get you out of a judgment for an automobile or other accident which results in liability.
- It must be noted in Michigan, circuit court judges must approve any settlement involving a minor child or disabled individual. It has been this author's experience in court that often times a settlement for the amount of the insurance will not be approved if any other assets can be used to satisfy the judgment.
- What limits of liability insurance are appropriate for you? This answer to this question depends on a number of factors including the assets you have and your business and personal activities, among other things. For example, frequent or extended automobile use, or operating boats and recreational vehicles present significant exposures for individuals which would warrant higher limits.
- It is important to note that the cost to increase liability insurance may not be at all significant and sometimes can be less than \$100 per year to go from \$100,000 to \$500,000. Additionally, personal umbrella policies which provide limits over and over the basic policies are inexpensive. A \$1,000,000 personal umbrella may cost only \$150 per year.
- There are asset management techniques that warrant consideration, in addition to purchasing high limits of liability insurance.
 - Vehicles are often owned by individual persons and should, where possible, not be owned or leased by multiple parties. The reason for this is that the ownership statute in Michigan makes the owner or lessee liable for an auto accident just as if they were driving the vehicle. At the same time, if a husband owns a vehicle and a wife drives that vehicle, both parties are exposed to liability and this could

force the sale of property held by tenants by the entirety which is how houses are often owned by married persons.

- Other techniques include having younger drivers own vehicles in their own name as opposed to the parent's name, using limited liability companies to shelter assets from certain types of liabilities, among other strategies.
- Individuals should consult an asset protection attorney for more specific legal advice.

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