



Why Liability Insurance Alone Is Inadequate Asset Protection for Doctors

By Ike Devji | January 25, 2011

“Why can’t I simply insure my way to safety?” is a common question from both clients and advisors. In the worst cases we actually see uninformed advisors telling their clients that the only asset protection they need is a good umbrella policy! *This is flat out wrong* for successful medical professionals. Why? Because they are successful, visible, and typically have assets above and beyond just the insurance policy itself, they are good targets from a net-worth perspective.

Our position on liability insurance (as distinct from life insurance) is pretty simple: Buy as much liability insurance as you can afford, assume it won’t be adequate, and have a plan B.

What about my “umbrella” policy? Great idea, but you and your insurer have different ideas about what umbrella means. To you it means everything; to your carrier it means specific events in the base policy, covered to specific increased limits, and governed by a specific set of exclusions detailed in the fine print of your policy; clearly two very different definitions.

The lesson here is that there is no real way to insure yourself against a universe of possible exposures and have every single one covered to an unlimited dollar amount, nor is this reasonable to expect of your liability coverage. As an example, the top 10 civil verdicts in Arizona for 2007 ranged in value from \$6 million against a pharmacy that dispensed prescriptions that combined to cause a patient’s death to \$360 million on a dispute over a real estate deal. Do you think every defendant’s E&O coverage applied and was adequate?

Some real examples of the “impossible” that actually happened and resulted in large claims:

- Parents away for the weekend return to find that a teenager died at their home during a party their child had from the drugs he brought with him;
- Chiropractor adjusts a patient’s hip and the woman dies on table from cardiac arrest — he is sued for wrongful death;
- Long-time, most trusted employee of medical practice molests a minor female patient during treatment;
- LLC for real estate development is pierced and a passive, minority member is held jointly and severally liable for the actions of the other members; and
- Dentist works on elderly patient who goes home and dies of unrelated heart attack hours later, dentist sued for wrongful death.

The liability insurance business model is a pretty simple one. Take in lots of premium payments, pay as few claims as possible, and the difference equals shareholder profit. That's right: They make money in part by reducing and limiting the number of claims against the premiums that you and the other insured pay. This is not a value judgment, simply a statement of a business equation.

Does this mean we should give up and not carry insurance or only carry minimal coverage? Of course not, it just means that the insurance system, like most things, is imperfect and that we need to be aware of this. Also, if for no other reason, we like seeing the insurance policy in place to cover the costs of defense which can easily be six figures before the fight even really starts.

Here's a solution: Buy all the insurance you can afford, make sure you have the appropriate riders and umbrellas in place, and present a hard, uncollectible target beyond the limits of the policy by having the right asset protection legal structures in place.

Most lawsuits are motivated by potential financial gain to plaintiffs and their attorneys. As just one example, examine the gap between the average national medical malpractice verdict of around \$3.9 million and the average national liability policy in this area of \$1 million; this means a physician defendant is left holding the bag for \$2.9 million. You must make it clear to the plaintiff that you have a policy in place that covers this event and that there is nothing beyond that policy of any real value that they will be able to take from you by force. They may sue, they may even win, but they will never collect.

If there is an instance of liability that prompts you to offer some settlement amount above the policy, great, but then you — the defendant — decide to do so and the terms you are willing to make the offer under as opposed to being held up at the point of a gun by a verdict and an unsympathetic jury.