The EWP Da Vinci Code – 2

Expanded Worldwide Planning-EWP & Asset Protection

Private Placement Life Insurance (PPLI) in Action

The EWP Da Vinci Code--Part 2

The universality of Expanded Worldwide Planning (EWP) is not to be denied. This is objectified by *Wikipedia.* In the first sentence of their page on *International Tax Planning,* Expanded Worldwide Planning (EWP) is featured.

We are taking a cue from *Wikipedia.* Over the next few weeks, we will feature one of the six principles of Expanded Worldwide Planning (EWP). ***The six principles are:*** privacy, asset protection, tax shield, succession planning, compliance simplifier, and trust substitute.

Quiet Protection of PPLI

Today we feature asset protection. Life insurance's role as a protector of assets is quite different from our nature documentary example of a hunter and its prey. This role is more akin to the method used by dogs and cats in saving the lives of their families.

As you will read in the examples below, this protection was not brought about by physical strength. The type of strength we are speaking of is quietly hidden inside the frame of a small domesticated pet. This type of strength does not manifest until the proper circumstances arise. In this case, a threat to the master or family.

Life insurance in the form of ***PPLI*** can be seen to have this inherent quality of a quiet and inconspicuous protector of family assets.

Here are the examples:

From *The Associated Press,*

> "Baby, a gray, white, and brown tabby cat, alerted a sleeping couple to a house fire in a Chicago suburb. Josh Ornberg and Letitia Kovalovsky were sleeping on a couch in the living room when Baby woke them, alarmed that a fire had broken out in the bedroom. The couple said that both they and the cat got out of the house safely."

A *CNN* headline reads:

> "**A German shepherd shielded his family from gunfire in a road rage incident.** Michael Pearson's article continues, "Following an altercation on an Atlanta road, the driver followed the family to a nearby strip mall and opened fire. The dog jumped in front of one of the children and a woman in the car and died of gunshot wounds behind a nearby building. Atlanta police Sergeant Gregory Lyon said,"They survived that only to find that their pet is now gone. It's sad for the whole family, especially the day after Thanksgiving."
>
> "**Dog stays with owner for 20 hours after man breaks his neck in Michigan,"** is the headline from *Fox News.* The story reads, "A Michigan man, Bob, slipped in the snow and broke his neck. With the closest neighbors far away, his golden retriever stayed with him for 20 hours. "By morning, my voice was gone and I couldn't yell for help, but Kelsey didn't stop barking," Bob said. He lost consciousness, but Kelsey howled until a neighbor heard her and came to the rescue."

Creditors vs. Debtors

By implementing the six principles of Expanded Worldwide Planning (EWP) through a properly structured PPLI policy, ***wealthy families*** achieve substantial asset protection benefits.

Historically trusts were employed to shield assets from excessive taxation, unreasonable claims of creditors, and bankruptcy. Trusts were developed in England originally to minimize the impact of inheritance taxes arising from transfers at death. The essence of the trust was to separate "legal" title, which was given to someone to hold as "trustee", from "equitable title", which was to be retained by the trust beneficiaries.

In both Roman times and as early as the 14th century in England, the use of trusts to shield lawful claims of creditors was recognized as a practice not conducive to sound public practice. Today we called it *fraudulent conveyance.*

The Romans utilized a type of trust known as a ***fideicommissum,*** which facilitated the transfer of assets at death. The Romans were also aware of the abuses of trust that went against public policy. Their great legal scholars **Ulpian** and **Gaius** developed the basic framework for the fraudulent conveyance laws as we know them today.

In England in the late 14th century, two laws were enacted that aimed to end popular types of fraudulent conveyance that were then in practice. One law sought to prevent debtors from conveying their lands to their friends until their creditors had come and gone away. Another law sought to end the practice of temporarily conveying their lands to "Lords and other great Men of the Realm" so as to deter creditors.

Another key component to our own asset protection laws are spendthrift clauses. A spendthrift provision creates an irrevocable trust preventing creditors from attaching the interest of the beneficiary in the trust before that interest (cash or property) is actually distributed to him or her.

These **spendthrift provisions** first became popular in the U.S. in the 19th century, and were controversial. Not just a few commentators thought that spendthrift clauses were a very bad idea. John Chipman Gray, a Harvard Law Professor whose half-brother (Horace Gray) was a U.S. Supreme Court Justice, registered his objections this way:

> "The general introduction of spendthrift trusts would be to form a privileged class, who could indulge in every speculation, could practice every fraud, and, provided they kept on the safe side of the criminal law, could yet roll in wealth. They would be an aristocracy, though certainly the most contemptible aristocracy with which a country was ever cursed."

Notwithstanding such objections, the spendthrift trust, of course, survived and thrived U.S. law.

Yet, such trusts had their limitations; for example, some states carved out exceptions for creditors holding judgments for unpaid alimony and child support. By far the biggest restriction was against spendthrift trusts which were self-settled trusts. That great commentator on trust law, George T. Bogert, firmly believed that the spendthrift provisions of self-settled trusts were unenforceable against public policy, and wrote:

> "To hold otherwise would be to give unexampled opportunity to unscrupulous persons to shelter their property before engaging in speculative business enterprises, to mislead creditors into thinking that the settlor still owned the property since he appeared to be receiving its income, and thereby work a gross fraud on creditors who might place reliance on the former prosperity and financial stability of the debtor."

In the late 1980s in the U.S. most legal practitioners were in agreement that spendthrift clauses could protect the rights of beneficiaries of trust, but you could not create a trust that exempted your assets from creditors, a self-settled spendthrift trust.

This leads us to our last segment of our Expanded Worldwide Planning (EWP) drama or play of opposites.

We look forward to bringing you Part 3 in our series on Asset Protection soon. Please give us your thoughts on what we have brought you so far.

Learning from each other is one of the great pleasures in life.

by Michael Malloy, CLU TEP RFC, @ Advanced Financial Solutions, Inc