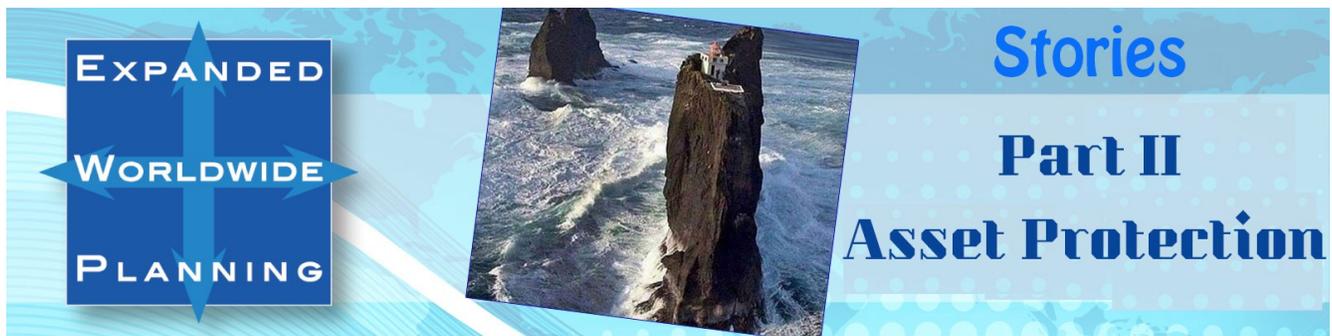


## EWP Stories-2



### **Expanded Worldwide Planning International Tax Planning**

#### **Stories Part 2: Asset Protection**

Our asset protection model is called [\*The EWP Da Vinci Code\*](#). Our model is highly effective, yet conservative, and offers more asset protection than the recently invented options available to wealthy families. In today's world of financial transparency, there is no hiding of financial assets. **The EWP Da Vinci Code** brings you peace of mind through a long-established and secure financial structure—life insurance, in the form of PPLI. We will share more with you on **The EWP Da Vinci Code** later in this Chapter.

[\*Asset Protection\*](#) is a prudent subset of financial planning. As we will read later in this article, some consider asset protection a deceptive, sleight-of-hand trick that deprives creditors from receiving what is lawfully due to them. The law is a double-edged sword that cuts both ways. Our article deals with both sides of this sharp blade.

We take an expansive approach to asset protection, which produces a simple and straightforward solution to this drama? What is the drama you correctly ask?

We will call our drama the **EWP Drama** since this is, in a sense, our main character. Our sub-plots in this drama are:

- One Side of the Sharp Blade vs. the Other Side of the Sharp Blade
- Hunters vs. Prey
- Creditors vs. Debtors
- Domestic Asset Protection Trust vs. Offshore Asset Protection Trust

Our theme of opposites is aptly expressed by the opening lines of [\*A Tale of Two Cities\*](#) by [\*Charles Dickens\*](#). These profoundly simple lines express the hopes and fears of all ages:

*“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair; we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way....”*

Why call it a drama? Our clients come to us to implement the [six principles of EWP](#) by incorporating [PPLI](#) into their asset structures. Our wealthy clients have achieved this great wealth for the most part through hard work, intelligence, and some element of being in the right place at the right time. They wish to be good stewards of this wealth, and pass it onto future generations, but encounter various antagonists. Hence, a drama unfolds.

## **Part 1**

Steve waited impatiently in the long line at Starbucks. He still needed groceries to cook dinner for his girlfriend, but needed a coffee. Steve was in his last year of residency at Mt. Sinai Hospital in New York City. The long hours at the hospital under the close scrutiny of his attending physician were wearing him down. Steve was equally impatient to finish his residency, and begin his practice.

With his straight A's through medical school, and a remarkably deft hand with medical instruments, his new career as a heart surgeon looked more than promising. Steve was a man poised for success.

Steve made quick work of shopping at Whole Foods, then, proceeded to a wine shop. It was a chain that sold well-selected bottles from around the world at a fair price. He entered by a side door.

A clerk at the wine shop, had just finished cleaning up a large pile of dog poop on the street outside the door. He had entered just before Steve with his mop trailing behind him, not realizing that it was leaving a stream of water in his wake.

Steve entered the wine shop. “My God,” he gasped loudly.

As his right foot touched the slippery surface of the watery stone flooring, it slid. He tried to steady himself, flailing his arms and attempting to stop his forward momentum with his left foot. There was now no way to regain control. Both legs shot out from under him, and he landed hard, directly on his lower spine, and

then hit his head on the hard floor.

“Crack,” it sounded.

The customers nearby winced in an automatic sympathetic response, even before they turned their heads to see what had happened.

Steve lay sprawled on the hard, cold stone floor with blood flowing from his skull. The store manager jostled several customers in his attempt to reach Steve.

As he saw his customer unconscious, he immediately took out his cell phone and called 911.

### **Both Sides of the Sharp Blade**

What we term the Sharp Blade is our legal system, particularly in the U.S. According to *One Legal*, it is estimated that there are more than 40 million lawsuits filed in the U.S. every year.

For better or worse, the legal system is adversarial. If you are sued you must defend yourself or risk losing the lawsuit by inaction. Both sides present their best case and a judge or jury decides what shall be done with the issue, or the parties negotiate a settlement between themselves before the case goes to trial.

If you are a professional person or own a business, you are at risk of being sued, and it behooves you to protect yourself. Different types of insurance can mitigate the risk for you, but not for all situations. If insurance does not come to your rescue, then, your assets are exposed to being seized and sold to pay a judgement against you.

[\*Wealthy families\*](#), who may be immigrating from a country like China that is not nearly so litigious, may not even consider this possible threat to their assets. EWP, through the proper implementation of a PPLI policy, offers asset protection by its very nature. Not as a separate complicated trust structure, but because life insurance has a very favored position in the eyes of the law in respect to asset protection. This will be explained in more detail in other sections of our drama.

### **Hunters vs. Prey**

Watch a nature documentary and you will see this sub-plot of the **EWP Drama** unfold. Frequently, the strong and fast feast on the weak and slow, but not always. Nature has a stealthy way of protecting the weak and slow. You might call this method camouflage or *hiding in plain sight*. Instead of trying to run away from predators, or overpower them, they quietly remain in the same place. This method of *hiding in plain sight* is how life insurance achieves its excellent asset protection.

Some asset classes are favored by law. These asset classes provide the debtor with a greater level of protection from the claims of creditors than would other asset classes. This is so for [\*life insurance\*](#), because it is considered essential for the debtor's family to maintain at least a minimum level of well-being, and not become a burden to the state.

The federal bankruptcy exemption for life insurance policy unmatured death benefit is quite small, currently only \$12,500. Many states provide a more extensive exemption for life insurance than federal law. The states vary widely in whether they exempt only the beneficiaries of the life insurance contract, family members of the insured, or the owner of the contract. There is also a wide disparity on the protection of the cash value, if any, inside the contract of life insurance. This protection also differs as to whether the exemption is applied in a bankruptcy context or a non-bankruptcy context.

As we have read life insurance's role as a protector of assets is quite different from our nature documentary example of a hunter and its prey. Life insurance performs so well in this role because society at large, in the form of governments throughout the world, have cast it in this starring role.

## **Part 2**

Janice felt on top of the world in more ways than one. She was now looking at the Swiss Alps on her balcony in Spiez on the southern shore of Lake Thun. Janice was also completing the sale of her wine store chain. She would be receiving \$100M for her twenty years work. She began the chain with a keen enthusiasm for wine, a small inheritance from her uncle, and a rat infested storefront on the Bowery in New York City.

Through careful sourcing of wines throughout the world, her excellent palate, and buyers hungry for good quality wine at a reasonable price, she had grown her one store into a multi-city chain. She was relaxing, as though for the first time in twenty years. Her taunt athletic frame was not built for relaxation. When she would allow herself time away from her business, relaxation took for the form of Triathlons. She did allow herself the time to stay in top physical condition.

The jet streaking above the Alps reminded her of her jet fighter flight several days ago. The ad read: "Fly a Real Fighter Jet. Be a fighter pilot for a day." When she saw the ad, she couldn't resist. To pay \$5,000 for 30 minutes with an experienced ex-military, fighter pilot, she had to do it, and she did, exhilarated to the core every minute of the flight. She was transported to a new world, as the pilot navigated the high and jagged peaks of the Alps with its narrow valleys and tightly constricted airspace. She did not want the flight to end.

Her cell phone rang. She glanced at her phone. It was her attorney.

“Janice, I have unwelcome news for you.”

“Yes, Brian, what is it?”

“There has been a serious accident at a store in New York City.”

“Well, don’t we have insurance for this.”

Brian said weakly, “Maybe.”

“Why maybe? Don’t we now have our captive insurance?”

Brian said in a dull tone, “We need to talk.”

## **Creditors vs. Debtors**

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 in 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 **EWP Drama** or play of opposites.

### **Part 3**

The gleaming, antiseptic surfaces in combination with the glare of the fluorescent lights gave Brian a sharp inner chill. Not the chill of cold on his body, but an aching chill in the pit of his stomach. He was about to face the unintended victim who might be the cause of his client’s demise, and his own firing from a lucrative client of his firm.

Several years ago under Brian’s direction, he had helped establish a captive insurance company for Janice. This self-insurance vehicle both saved premium dollars on their current policies, and reduced the company’s taxes. It was a smart

decision at the time.

He now realized he had poorly monitored the captive insurer, giving responsibility over to the captive manager. Under the manager's advice they had established the captive in a state that had minimum capital requirements, and funded the company with minimum surplus requirements. The company's ability to pay a liability claim for Steve's fall was wholly inadequate.

Because the captive had been established, Brian advised that they cancel their General Liability and Excess Liability insurance policies. To make matters worse, there was also scant legal defense to mount for the negligent behavior of the store clerk.

Where were the funds to pay for this horrific accident? How would Janice react when he told her that the \$100M buyout money would have to be used? He did not want to be anywhere near her when she found out.

Brian's leather-soled shoes slide at each step along the highly polished floor. He had been directed to a special unit of the hospital, a section that housed patients who needed extreme monitoring after leaving the ICU. Steve was diagnosed with severe traumatic brain injury (TBI), and was in a coma.

On both sides of the hospital bed were the machines that told doctors and nurses that Steve was alive. Digital displays and electronic beeps that would erupt into loud piercing alarms, if his vital signs went wrong. What was now Steve seemed like a frail, foreign object amidst this array of electronic equipment. A very slight rise and fall of the bed cover gave evidence of life.

TBI victims go through definite stages: coma, vegetative stage, minimally conscious state, and post-traumatic confusional state. They might not progress at all from one stage to the next. Each patient was different. Steve might never emerge from the coma, be impaired, or be severely impaired.

Brian had seen enough. It was now time to prepare himself to be fired, and be further away from becoming a partner at his firm. He had hoped to achieve this in the next year, now that was definitely out of the question.

As he turned out of the hallway to the main entrance of the hospital, he thought he saw an older couple and a tearful younger one entering Steve's room. Most probably they were his parents and his girlfriend. Meeting them would have been beyond his current emotional state. He had royally messed up. At least he accepted responsibility, and did not try to blame others. There was no one else to

blame.

## **Domestic Asset Protection Trust vs. Offshore Asset Protection Trust**

Advisors debate which is better: a [Domestic Asset Protection Trust](#) (DAPT) or an [Offshore Asset Protection Trust](#) (OAPT). We say that they do serve a purpose for some clients, but why not adopt **The EWP Da Vinci Code**, and receive not only outstanding asset protection benefits, but all the six principles of EWP in one complete package?

Why bring Leonardo da Vinci into this discussion? Because Leonardo said, “Simplicity is ultimate sophistication.” We have taken this as our model in implementing EWP in our PPLI asset structures. We invite you to do the same.

When you purchase an automobile, you do not ask if it has turn signals. Of course, this is a standard part of the vehicle. Today you may pay extra for an advanced guidance system (GPS), but you might be able to do without it. Asset protection does not come as an extra feature with EWP, it is part of the package, just like turn signals on a new vehicle.

As we will read, the controversial aspects of DAPTs and OAPTs arise out of public policy issues: is the use of this particular trust the best for the common good.

It is not our place to take a position on public policy issues. Our role is to assist wealthy families in their quest to implement the six principles of EWP. Asset Protection is one of these six principles, and it is achieved through the financial planning tool of life insurance.

Life insurance is considered a societal benefit. Life insurance relieves governments from providing families with the needed cash at the death of the family’s income earner. Life insurance encourages savings for retirement through the accumulation of the cash value in the policy. PPLI is a form of life insurance, and thus bypasses much of the attention that is focused on trust structures.

In terms of the actual PPLI contract, all investments are held in separate accounts in the policy, thus, they are not in the insurance company’s general account. For this reason they are not subject to the creditors of the insurance company, if the company were to become bankrupt.

When government regulators look to curb what they would term abuses of public policy: in other words, wealthy families who have gone too far in stretching tax and trust law, aggressive trust structures are a frequent target.

We now give you a brief history of DAPTs and OAPTs, and the public policy issues that raise concerns with government regulators.

According to Wikipedia: “An asset-protection trust is any form of trust which provides

for funds to be held on a discretionary basis. Such trusts are set up in an attempt to avoid or mitigate the effects of taxation, divorce and bankruptcy on the beneficiary. Such trusts are therefore frequently proscribed or limited in their effects by governments and the courts.”

What we might call the modern asset protection trust was formulated in the late 1980s, and the first jurisdiction to adopt it was in the Cook Islands. These trusts had spendthrift provisions and could be self-settled. These OAPTs had a one year fraudulent conveyance statute.

The Cook Islands legislation was soon followed by similar laws in the Cayman Islands, Belize, Nevis, the Channel Islands, the Isle of Man, and numerous other international financial centers.

In 1997, Alaska passed legislation allowing for irrevocable, discretionary, self-settled trusts. Ninety days later, Delaware followed suit, and as of this date some 16 states have passed DAPT legislation.

The controversy surrounding DAPTs and OAPTs arises from the degree to which OAPTs, in practice, often defeat deep-seated precepts of U.S. trust law. A key precept is that one ought not control and benefit from property and at the same time shield it from one's creditors.

The underlying policy rationale for the non-enforcement of self-settled spendthrift trusts is clearly stated in A. Scott's *The Law of Trusts*: “It is immaterial that in creating the trust, the settlor did not intend to defraud his creditors. It is immaterial that he was solvent at the time of the creation of the trust. It is against public policy to permit a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it.”

For a U.S. wealthy family to form a DAPT, it is not necessary to form a trust in a jurisdiction outside the U.S., so this can make the process less expensive and time consuming. This takes us back to the old adage: “you get what you pay for.”

The greatest deficiency of DAPTs is that they are necessarily governed by U.S. law. The DAPT fails to achieve the jurisdictional separation required to fully protect the asset.

Since only a quarter of states currently have DAPT statutes, it is probable that states where litigation is taking place are those in which DAPTs are expressly prohibited as being against public policy. In a conflict-of-law analysis, it is difficult to envision any judge in a non-DAPT state agreeing to apply the laws of the DAPT state.

OAPTs are more secure for several reasons:

- A foreign trust is not subject to the jurisdiction of the U.S. courts, so a U.S. attachment order will have no effect within that foreign jurisdiction;
- Furthermore, creditors seeking to reach the assets embark on independent legal

proceedings in the foreign jurisdiction in which the trust is located;

- Even a favorable foreign judgment may be a hollow victory. The creditor still may not be able to satisfy that judgment from the assets held in the trust unless she proves that the transfer to the trust constituted a fraudulent conveyance.

#### **Part 4**

Janice saw the huge, fluttering flags outside the Four Seasons Hotel a block away as she walked west down 57th Street in New York City. She was going to meet Brian. It would be his last billable time meeting with her. Janice did not like letting advisors go, but in their last phone call Brian had almost fired himself. He did not condone his shotty legal work or excuse himself in any way. In a sense, this made it more difficult to let him go. She thought him a rare gentleman.

The bar nearest to the lobby was being remodeled, so they had to meet in the one to the rear of the check-in counter. She did not like the dark lighting, but thought the high mirror that reflected the myriad bottles of liquor a good design. It multiplied the bottles, which is just what she needed. An unknown factor to multiply her funds to pay for the future legal settlement resulting from the accident at her store.

To prepare for this meeting with Brian, she had researched the likely worst case settlement for the accident. Her online research revealed she could be responsible for Steve's future earnings as a heart surgeon, medical expenses, plus a pain and suffering award. She quickly learned her \$100M was at all at risk.

After small talk about her trip to Switzerland, Brian mentioned that she could have done some planning specifically for asset protection that might have protected her \$100M settlement. She remembers Brian mentioning this in the past, but was so focused on growing her business, she always told him to bring it up some time later.

Since returning from Switzerland, she had alternated between anger at her plight and admonishing herself for engaging in 'what ifs.' Had the final papers for the sale of her business been concluded, her store accident would have been the new owners problem. Accidents rarely occur at the right time. The final signing occurred two weeks after the accident.

She purposely wore low heels today, so she could walk in Central Park after her

meeting. She knew Central Park well and headed to North Wood, one of the most wild and untamed parts of this magnificent tribute to landscape architecture. Walking in the North Wood, Janice recalled her favorite hero in literature, Frodo Baggins of J. R. R. Tolkien's *Lord of the Rings*.

Physically Frodo presented quite a contrast to this tall, slender athletic lady in her early 50s, but she reflected on the spirit of this short, squat, hairy footed creature—one of fierce determination to see a job through to the end, no matter what the cost to himself.

So what was Janice's plan for the future?

With the uncertainty of the looming lawsuit over the accident, and at least a large portion of her \$100M at risk to pay for it, she formulated the beginning of a plan.

From her triathlon experiences, she was acquainted with the world of cycling, and the small bike shops where riders purchased their bikes and accessories. She knew that these bike shops were mostly small mom and pop type operations, and they missed out on the buying power of a large organization. With her wine shops she had built a large, well-run enterprise. Why not for bike shops? A nationwide chain?

It was a beginning. But she vowed to protect her newly hatched idea with an asset protection plan that would fully protect her. This definitely had to be part of her grand plan.

She emerged from the west side of Central Park and headed to 109th Street near Riverside Drive where her apartment lay. She would go for one of her favorite runs down the Hudson River toward Battery Park. A long run. If Frodo can deliver, so can I. Why not face the uncertain future in the same spirit that brought her to the top of the world. Stay on top, she told herself. Stay on top.

### **[The EWP Da Vinci Code Realized](#)**

Most asset protection trusts established by U.S. settlors are considered grantor trusts under U.S. income tax law, meaning that all income of the trust is reportable on the grantor's (the settlor's) individual income tax return. Asset-protection trusts do not, in and of themselves, offer any tax advantages under U.S. income tax law.

So why not create a trust that not only gives you asset protection, but the whole formidable array of benefits that EWP provides? To achieve this outstanding result, we suggest using an International Irrevocable Life Insurance Trust (ILIT) which owns a

properly structured PPLI policy--**The EWP Da Vinci Code.**

The ILIT has been in use for decades; it has withstood numerous court challenges, and avoids the taint of opposing public policy that you acquire with DAPTs and OAPTs.

Regarding U.S. tax laws, a properly designed International ILIT, governed by the law of a foreign jurisdiction, is treated virtually the same as a domestic ILIT. For wealthy U.S. families, or those families with a connection to the U.S., an International ILIT in combination with a properly structured PPLI policy, is arguably the most efficient structure for the integration of tax-free investment growth, wealth transfer and asset protection.

### **If an EWP Structure Had Been Used....**

If an EWP Structure had been used these salient features would have been of great benefit to Janice.

- Secure, rock-solid asset protection that is not an add-on benefit layered onto an existing structure, but asset protection that is an integral part of the plan, and available from the first day the EWP Structure was put in place.
- The asset protection provided by the EWP Structure would also shield Janice from capital gain taxation. In our story, we speak of her buyout as \$100M. We did not calculate for capital gain tax. In 2020 for Janice at her income level, capital gain tax would be 20%, plus the Medicare Tax of 3.8%. After paying these taxes, Janice would be left with \$76,200,000. If she had had an EWP Structure in place, she would have the full \$100M tax-free, and in the event of her death, her heirs would receive the full amount or whatever was left at her death tax-free.
- If she so chose, Janice could begin her multi-city chain of bike shops within the existing structure with all the exceptional benefits that they already provide. Even though it would be a new business, the existing EWP Structure would support it, thus saving her valuable dollars that could be invested in the new bike shop business.
- In creating the EWP Structure, Janice would have received the proper advice that would either have funded her captive insurance company adequately, so it could support a serious claim like Steve's accident; or, she would have had third party liability insurance in place to handle the claim, and not jeopardize the company's assets to pay the claim.

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