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Trends Impacting Liability Risk for the Affluent By Peter Piotrowski

The personal liability risks faced by high net worth individuals and families are growing more and more complex. Unfortunately, most wealthy U.S. consumers do not carry adequate coverage limits to protect their hard-earned assets. For starters, only a select group of providers sell personal excess liability policies with limits in excess of \$5 million. When you compound that with the fact that a large percentage of people buy insurance without the guidance of an independent agent or broker—the ones with access to more sophisticated insurance programs—the deficiency is not surprising.

Staying abreast of evolving exposures can enable you to raise issues proactively with your clients and strengthen your relationship as a trusted advisor. Following are some of the most prevalent areas of exposure. They undoubtedly impact the population as a whole, but the knowledge (and coverage) gap in the high net worth sector elevates the risk to another level.

Private Staff, Public Lawsuits

Many high net worth individuals employ domestic staff. Personal assistants, nannies, butlers, valets, chauffeurs, gardeners and housekeepers frequently assist in running the household or property. Just as we saw in the corporate sector, the recent economic downturn caused many to reduce their workforce. As a result, a number of lawsuits were filed by former domestic employees claiming wrongful termination and/or some form of discrimination.

In the business world, a human resources department can maintain records including job descriptions, performance reviews, etc. These same records are seldom maintained for domestic staff. Failing to manage these employees with the same structure and discipline as a commercial business can put your clients' personal wealth at risk. Defending a lawsuit without adequate documentation and support becomes extremely difficult and potentially costly. Workers' compensation insurance is another consideration. In fact, 23 states now require workers' compensation coverage for domestic staff, to protect against on-the-job injuries.

Domestic staff have access to properties, assets and families on a day-to-day basis, and it is critical to ensure that these individuals are reliable and trustworthy. Some risks can be avoided entirely if more up-front attention is paid. Advise your clients to consider candidate sourcing, writing formal job descriptions, augmenting the interview process, conducting background checks, verifying work authorization and seeking assistance with new hire forms.

Risk on the Road

First, the good news: auto accident death rates are down, according to the National Highway Traffic Safety Administration. In 2010 an estimated 32,788 people died in U.S. traffic accidents. This number is the lowest since 1949 and represents a 25 percent decrease from 2005. The decline is welcome news and may be caused by a number of factors:

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- Newer cars on the road have more sophisticated safety features ranging from anti-lock breaks, improved air bags, headliner air curtains, improved seat belts, and warning devices like back-up sensors and crash sensors.
- Seat belt usage is also up, likely due to stricter seat belt usage and child car-seat laws.
- More roads are now featuring rumble strips and cable median barriers.

However, while auto-related fatality rates are down, non-fatal automobile injury claims continue to rise.² The mean jury award for vehicular liability increased by 54 percent from 2002 to 2008. Medical costs and treatment continue to escalate as well. In 2010, juries across the country returned several multi-million dollar verdicts in automobile related lawsuits. Drunk drivers beware: jury verdicts against intoxicated drivers were particularly punishing and included \$16.6 million in Palm Beach County, FL; \$33.2 million in Lake County, IL; and an incredible verdict of \$330,516,486 in Hernando County, FL.

Your clients need to look beyond their own actions, too. Studies indicate that more and more uninsured drivers are on the road. The Insurance Research Council reports that as many as 13 percent of drivers (one in every seven) are uninsured. That number may have climbed to over 16 percent in 2010. An Ohio Insurance Institute study found a direct relationship between unemployment rates and uninsured drivers; for every one percent rise in unemployment, there was a three-quarter percent rise in uninsured drivers.

The Downside of Social Media

It started with blogging. Now, Facebook, Twitter, LinkedIn and other social media sites are used and viewed widely. The average number of "Tweets" sent per day is now over 200 million, up from 65 million one year prior.¹ One's opinions can be shared instantaneously with a worldwide audience, and this ease tends to belie the risk.

Social media content has been used as evidence in a number of widely publicized lawsuits, and bloggers have been sued for libel and defamation of character as a result of the content of their messages. In March 2011, *Billboard* reported that musician Courtney Love settled a lawsuit filed by her fashion designer who alleged that the singer defamed her in a series of Tweets. The reported settlement value? \$430,000.

Liability risk is not limited to the one who does the typing. Parents also can be sued for the actions of their minor children. Lawsuits are being filed with allegations against the parents for negligent supervision of their children. These lawsuits can be costly to defend and often include subpoenas of all personal e-mail and computer records.

Real-life Examples

The following scenarios demonstrate the importance of adequate liability limits:

- A recently promoted, young CEO was looking forward to many prosperous years with his family. While en route to his daughter's soccer game, he was rear-ended by another driver. He lost control of his vehicle and it rolled over. Tragically, he sustained fatal injuries. The driver who caused the accident had policy limits of only \$25,000—not nearly enough to properly compensate the estate and family for their loss.

- A housekeeper who worked for the same family for nearly 15 years filed a wrongful employment claim against her employer. The lawsuit consisted of more than 20 counts, including wrongful termination, sexual harassment, false imprisonment and invasion of privacy. The family members, including the children, were forced to testify during a lengthy trial, which ended with a hung jury. Although the case was ultimately settled, over \$1 million in legal fees had been incurred.

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Real-life Examples Cont.

- While reviewing her personal e-mail, a woman came across a message that recounted an embarrassing personal matter of an acquaintance. Finding it humorous, she forwarded the e-mail to a number of contacts and posted the entry on Facebook. No independent comments were added in either instance. However, the item turned out to be false and the acquaintance sued for libel and defamation of character. The lawsuit was eventually dismissed, but not before the woman's personal e-mail and computer files were subpoenaed, and over \$75,000 in legal expenses were incurred.

Final Thoughts

It is more important than ever for people with substantial wealth to fully understand their liability risk. In addition to the trends described above, their overall lifestyle can create unique exposures:

- Owning exotic cars, powerful boats, homes with pools, firearms or other items that pose inherent danger
- Sitting on not-for-profit boards, where underlying liability coverage may be minimal
- Entertaining at home, increasing the chance of injuries on the property

A broad array of coverage and services is designed specifically for this population. By introducing your clients with substantial wealth to more suitable insurance solutions, everyone wins.

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1. Information current as of August 1, 2011; <http://blog.twitter.com/2011/08/your-world-more-connected.html>
2. According to Verdict Research-Current Award Trends in Personal Injury, 49th Edition, 2010