

My entity structure is corporate – My personal assets are shielded from liability so why do I need Liability insurance?

One way many legal experts will advise to lessen your personal exposure to financial loss is to form a “corporate” entity. While this can help, it is not a fool proof method and it may not be the best option for you tax wise (Double taxation – check with your accountant or tax advisor).

“Piercing the Corporate Veil”- this is not just theory, it does happen. It can happen when:

- corporate debt is knowingly incurred when the company is already insolvent;
- required annual shareholders or board of directors meetings are not held, or other Corporate-Formalities are not observed;
- corporate records, especially minutes of directors meetings, are not properly or adequately maintained;
- shareholders remove unreasonable amounts of funds from the corporation, endangering its financial stability;
- there is a pattern of consistent non-payment of dividends, or payment of excessive dividends;
- there is a general commingling of corporate activity and/or funds and those of the person or persons who control the corporation;
- or, there is a failure to maintain separate offices, the company has little or no other business and is only a facade for the activities of the dominant shareholder who is in fact, the corporate "alter ego."

The overwhelming reason business liability insurance is still an essential risk management tool lies in the cost of defending litigation. Even if you’re not at fault, and even if you do business as a corporate entity, any attorney worth their law degree will not only sue the business entity, but will also sue the professional individually. So if financial asset are not available from the corporate entity, the attorney and plaintiff still have the individual’s assets to go after. This means there can be a complex, time consuming and very costly legal entanglement that can occur, leading to personal economic ruin if a client or third party feels they have been harmed. The “corporate veil” cannot stop a plaintiff and their attorney from trying to recover either from your corporation or you personally. They will “follow the money.”

Finally –if the mere formation of a corporate entity, LLP, LLC or S corporation was so fool proof a method of shielding your personal assets from liability, then why do most law firms – sole practitioners and partnership - purchase professional liability insurance at as high a rate as doctors, architects and engineers? Maybe they know something about the most litigated legal concept today – “piercing the corporate veil”.