To: P&G Employees
From: John B. Cornetet, CPA, J.D., CFP 513-771-2444

Re: IRA and PST protection under the new Bankruptcy Law

Clients will frequently ask me: How much insurance do I need? Is my PST better protected than an IRA? What happens in a law suit? This article will answer these questions.

Exposure
Most P&G people have liability exposure from only two sources, home ownership and driving an auto. If someone is hurt on your property, you are liable. If you are driving a car and cause an accident, you are liable. In addition a few of you have additional exposure from owning rental properties, consulting, or other business ventures that you operate. The main two risk are easily covered by normal home and auto insurance. The other risk are covered by setting up a corporation or Limited Liability Company.

Damages
Under the our judicial system, damages are assessed based on the loss suffered by the injured person, not the net worth of the wrong doer. Therefore, if your IRA is valued at $1,500,000, that doesn't mean that a two million dollar insurance policy will cover you. Damages arise from medical cost (present and future), lost wages (present and future), and pain and suffering. Thus, if you run over a 65 year old person who has no job, there is no economic damage for lost wages. If you ran over a 30 year old high priced "financial advisors" who makes $250,000 per year, the lost wages would be over $8,000,000. Thus, the level of insurance has nothing to do with the value of your assets. Rather, it is based on the loss suffered by the individual.

Insurance
Most home and auto policies cover $150,000 to $500,000 worth of damages for bodily injury. In addition, you can add a liability umbrella policy that increases the coverage by incremental one million dollar amounts. My personal two million umbrella policy cost an additional $170 per year.

Collection of Damages
If you cause an accident and the jury awards the plaintiff $500,000 and you have $300,000 of liability insurance, then you owe the extra $200,000 not covered by insurance. The plaintiff would have to use state law to garnish, levy or execute upon your income or assets to collect the difference. If you own a home, then a lien can be filed against your home and the damages will be collected when you sell. If you are still employed, the plaintiff can garnish your wages to collect the money. Your bank account and non-IRA brokerage account can also be attached under state law. How does the plaintiff know what you have? You are required to submit to a judgement debtor exam. The plaintiff's attorney is allowed to ask you questions, under oath, about the existence and location of your assets.

State Law
Historically, IRAs were controlled by state law. Your PST and P&G Plus were controlled by federal law. The new bankruptcy law now extends the federal law protection afforded your PST to IRAs.

State law exempts certain assets from the collection process described above. If IRAs are exempt under state law, the plaintiff can not collect against that asset. If you only have an IRA in your name, the $200,000 deficiency can not be collected by the plaintiff. However, when you turn 70 1/2 and are required to take out minimum distributions, those payments can be attached. Below is the law for Ohio, Indiana and Kentucky:

Ohio - Ohio Revised Code section 2329.66 provides an exemption for IRAs, individual retirement annuities, and Roth IRAs.
Indiana - Indiana Code section 34-55-10-2(b) provides that retirement plans, including IRAs, are exempt from execution by a judgement creditor.
Kentucky - Kentucky Revised Statutes section 427.150 - exempts retirement plans, IRAs and the like from execution.

New Bankruptcy Law & Federal law
Historically, state law covered IRAs and federal law covered corporate plans. Thus, a different level of protection could have been afforded the PST over the IRA depending on the state in question. There were also conflicts between federal courts and state courts. The new bankruptcy Act recently signed into law by President Bush, now extends the federal bankruptcy law protection to 529 Plans, Coverdell accounts, and IRAs. Under the law, an unlimited amount of funds rolled over into an IRA from an employer-sponsored retirement plan are protected from bankruptcy proceedings. Also, $1,000,000 in IRAs and Roth IRAs that you contributed to are also protected. Because the new law provides two different levels of exemption, one for rollover IRAs (unlimited) and one for contributory IRAs (one million dollars) NEVER rollover the PST into an existing IRA. Keep your contributory IRA separate from your rollover IRA.

Conclusion
Retirees should now be confident that their IRA is protected in the event of a law suit. However, as a general recommendation, I believe that an umbrella policy provides an important level of protection at a very small cost. Why subject yourself to a suit and bankruptcy? The plaintiff's attorney will seek recovery from the insurance company, settle out of court, and will move on.

John B. Cornetet, CPA, J.D., CFP 513-771-2444