

# CHAPTER 4

## OTHER CAUSES OF LIABILITY AND POTENTIAL FINANCIAL DEVASTATION

There are many items besides malpractice and automobile liability that can and do cause catastrophic liability to physicians and investors. A partial list of other liability attractants appears below. Most of the following exposures can be reduced significantly by proper structuring and having appropriate insurances.

### CATASTROPHES IN THE MAKING

1. Debt: General creditors, medical creditors, guarantees, provider agreements, etc.
2. Tort Liability (civil breaches of contract, rather than criminal):
  - (a) Auto owners and drivers (boats and other vehicles).
  - (b) Errors and omissions - professional malpractice.
  - (c) Aiding and abetting others who commit wrongdoings.
  - (d) Premises liability- building owners. Think of that child on the tricycle going up the wheelchair ramp and flipping down the stairs. Also consider the following:
    - (i) Hazardous waste.
    - (ii) Asbestos and other harmful building materials.
    - (iii) People hurt by construction defects.
    - (iv) People tripping and hurting themselves in the parking lot.
    - (v) Tenants with rowdy customers who shoot people.
    - (vi) Inappropriate acts by lease management.
    - (vii) Children eating lead paint.

### 3. Relationship Liability:

- (a) Joint and several liability.
- (b) Partnerships.
- (c) Co-signors or co-guarantors on notes.
- (d) Joint tort feasons (those who commit civil faults) can be jointly and severally liable for economic damages.
- (e) Co-conspirators.
- (f) Vicarious liability: An employer is generally liable for the activities of employees in the scope of the business. What if the receptionist runs over a child while running an errand?
- (g) Spoiled romances and accusations by a forlorn ex-girlfriend or boyfriend, especially if you employed him or her.

### 4. Tax Liabilities:

- (a) Income taxes.
- (b) Trust fund - employee withholding – money stolen that should have gone to the government - paying employees as independent contractors.
- (c) Penalties, interest, and criminal implications.

### 5. Others:

- (a) Divorce: Alimony and property settlement.
- (b) Child support.
- (c) Hazardous waste liability and related issues.
- (d) Student loans.
- (e) Business participation: Sexual discrimination, etc.
- (f) ) Involvement as trustee with relationship to pension plans.
- (g) Medicare and other payors.

- (h) Real estate liability:
  - (i) Hazardous waste.
  - (ii) Lead paint.
  - (iii) Asbestos.
  - (iv) Tort liability.
  - (v) Vicarious liability for building activities.
  - (vi) Civil rights or other violations.

6. Medicare, Medicaid, and private pay refund liabilities: Carriers have been suing doctors not following referral laws for significant refunds.

Liabilities generally not cancelable in bankruptcy include the following:

- (i) Government student loans.
- (ii) Trust fund tax liability.
- (iii) Hazardous waste liability.
- (iv) Breach of fiduciary duty liabilities.
- (v) Child support and alimony.

Liabilities generally not covered by insurance include the following:

- (i) Civil rights violations committed by employees or others.
- (ii) Environmental liabilities, including sick building syndrome and lead paint issues.
- (iii) Criminal acts.
- (iv) Charitable and religious board activities.
- (v) Jet skis normally cannot be insured for over \$250,000 per occurrence.
- (vi) Acts of terrorism: Most casualty insurance clauses exempt acts of terrorism. The industry has been paying claims on goodwill up until now.