



The Off-Shore Asset Protection Trust Industry - An Expensive and Wasteful Exercise in Wishful Thinking

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1 INTRODUCTION - THE DEMISE OF AN INDUSTRY

With one quick strike, the Off-Shore Asset Protection Industry has been all but wiped-out. In a recent court decision, The Ninth Circuit Court of Appeals ridiculed the central premise of off-shore asset protection planning: that a U.S. court could be stripped of jurisdiction by the creation of meaningless and self-serving documents (i.e. the offshore trust agreement) which supposedly transferred a defendant's assets to a so-called "asset protection" jurisdiction.

The Ninth Circuit Court of Appeal's decision (the Ninth Circuit, governing California and several other western states, is considered the most powerful court in the U.S. other than the Supreme Court) left no doubt that U.S. courts will continue to have personal jurisdiction over U.S. defendants and their assets, despite the best laid plans of the Off-Shore Asset Protection Industry.

1.1 Background - the Underlying Premise of Off-Shore Asset Protection

Asset protection exists, in theory, to protect those subject to the jurisdiction of U.S. courts against lawsuits. Attorneys began exploring ways to hide or shield a person's assets against potential creditors. The idea was to convince very small countries with marginal

8 ANALYZING THE FTC V ANDERSON CASE

It is noteworthy that the court quoted several of the "gurus" of the asset protection industry extolling the virtues of these trusts, then used their language against them by holding that the asset protection trust was essentially worthless. It is also ironic that one of the cries of the asset protection adherents is the claim that it could be malpractice for attorneys not to advise their clients about asset protection. [Of course an attorney was never under any obligation to advise a client about theories for which there was never any controlling legal precedent and which defied common sense]. Now the shoe is surely on the other foot: It is clearly malpractice for the asset protection attorneys not to fully disclose the legal precedent against asset protection trusts and the very real possibility that their clients could be held in contempt of court if they form such a trust and are later sued in the U.S.

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Diehard asset protection advocates will probably seize on the court's refusal to outlaw asset protection trusts outright as evidence that if the perfect asset protection trust is drafted, the courts can be ousted of jurisdiction. Nonsense! The court made it clear that it was not precluding a ruling that the defense of impossibility could never be used, but simply under the facts of this case, it did not have to reach the issue. In other words, the court was ruling on the facts and evidence before it which made it unnecessary to