CLIENT ALERTS & INSIGHTS

Equipment Holding Companies: Asset Protection Value and Other Benefits for Transportation and Logistics Providers

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Asset-based transportation is a high-risk high-capital business. Every operator is well aware of the potential nuclear verdict risk for casualty incidents. Every operator is also well aware of every penny invested in growing successful companies. Many of those revenue-generating investments are visible every day, from warehouses and facilities to the real estate on which they sit to, of course, the essential truck tractor power units, trailers, tanks, containers and chassis. Risk tolerances and company maturity change over time, which leaves many executives thinking about how to best protect assets from liabilities.

Every business is unique. Some take the “everything rolls up to the top” perspective on risk. Still others seek strategic organizational development guided by the principle that value is created when we separate distinct risk classes from asset classes. This article explains how asset holding companies can be part of the puzzle for building stronger, better-protected, higher-value companies.

Risk and Asset Separation - Different business activities have different risk profiles. A dry van carrier’s risk is different from tank truck operators, and each is different from brokers. The assets used in those operations hold value that will be collectable by adverse judgments. A strategy that manages these risks and assets is to separate each by creating new leasing companies that are functionally no different than third-party equipment lessors or real estate lessors. Following a thorough risk assessment, operations and assets are separated in unique companies, and then the use of assets by the operation is established through written leases. This helps to protect the entire enterprise from risk while offering avenues to grow enterprise value.

Strategic Benefits - The top benefit from creating asset leasing companies is to help protect assets from liability caused by their operations. Other benefits, especially for ambitious operators, include the potential to lease unused equipment or property to third parties. Doing so could even rely on the Graves Amendment, which protects pure-play equipment lessors from liability for accidents caused by lessees using their equipment. The strategy also creates “portable” companies that could be later sold or financed. Finally, some clients report tax advantages presented by their accountants when implementing these restructurings with lawyers.

Potential Downsides - Nothing is as easy as it seems. Fragmenting business operations and asset pools is most effective when true corporate distinctions are be maintained to help avoid “veil piercing” arguments by plaintiff attorneys. This means that there will be higher bookkeeping burdens, more time-consuming administrative burdens, complexities in naming and branding, and

possibly the need to diversify boards or leadership. The approach can also raise questions from customers or others that must be answered truthfully while avoiding confusing the market. All of this is manageable when recognizing that business still needs to get done. No solution is perfect or zero-risk, but if more can be done to maintain distinctions between lessors and lessees, then the protective benefit increases.

Changing business structures can be done at any point in a company's life cycle, but it is not for everyone. Driving factors can include recent litigation events, relative value and scope of asset investments, diversity of business lines in a company's service portfolio, desire to create portability for potential sale or financing of the assets, or strategic plans to enter asset leasing as a business. Smaller companies and newer market entrants may see the added complexity of this model as too great. Larger mature companies may already have well-developed and well-worn structures in place.

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