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### May, 2012

Supercommittee Failure Sets Stage for Election Year Debate

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What is personal liability insurance and do I have it?



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## Supercommittee Failure Sets Stage for Election Year Debate



As part of a last-minute agreement ending August's debt ceiling standoff, legislation was signed into law calling for the creation of a deficit reduction

"supercommittee." The Joint Select Committee on Deficit Reduction, comprised of 12 members (6 Democrats and 6 Republicans) from both the House and Senate, was charged with finding ways to reduce the federal deficit by at least \$1.2 trillion, and directed to report its findings by November 23, 2011. Of course, the outcome was well publicized--the committee announced that it was unable to reach a deal, and subsequently disbanded. Seen by many as the last best hope to reach a compromise, the committee's failure casts the debt ceiling as one of several major issues that will ultimately be addressed by the coming election.

### Automatic cuts

Built into the legislation that gave birth to the supercommittee was a default provision--with the committee's failure to reach agreement, \$1.2 trillion in broad-based spending cuts are automatically triggered over a nine-year period beginning in January 2013 (the term for this is "automatic sequestration"). The automatic cuts are split evenly between defense spending and non-defense spending. Although Social Security, Medicaid, and Medicare benefits are exempt, and cuts to Medicare provider payments cannot be more than 2%, most discretionary programs including education, transportation, and energy programs would be subject to the automatic cuts.

The threat of the automatic cuts was conceived as a way to encourage the supercommittee to reach a compromise. With the failure of the supercommittee to reach agreement, however, these imminent cuts are now the source of concern. Parties on both sides find the cuts too broad, and efforts to short-circuit the automatic cuts, at least those affecting defense spending, have already begun--though the President has suggested that he would veto any such legislation.

### New debt ceiling crisis possible in 2013

The legislation that established the supercommittee also put in place what amounted to a piece of political theater that allowed for temporary, short-term incremental increases to the debt ceiling limit. Effectively, the President was able to get additional borrowing authority, while allowing Congress to go on record opposing it by voting for disapproval--but without really being able to prevent the debt ceiling increase from taking effect. The last debt-ceiling increase made under this legislation was calculated to carry us through the current election cycle. It might not be long after the election is decided, however, that the debt ceiling limit will again need to be addressed.

### Same basic divide remains

The supercommittee failed in its mission because the parties involved have fundamentally different visions of how to address our country's debt problem. It's a gross oversimplification, but the debate largely boils down to what degree deficit reduction efforts should focus on increasing revenue (and how to accomplish that), or on reducing government spending, including addressing the long-term costs associated with entitlement programs such as Social Security, Medicare, and Medicaid.

Of course, these approaches aren't mutually exclusive; for example, the bipartisan Bowles-Simpson commission (the National Commission on Fiscal Responsibility and Reform) issued a December 2010 report that recommended a combination of both approaches. The fact that we're in an election year complicates matters, however, and may make compromise less likely, if not impossible. That's because each element of a potential compromise will have significant political ramifications. In the end, the course taken may depend entirely on the post-election political landscape.

## Non-Equity Alternatives to Rock-Bottom Yields



### Foreign bonds

*Yields overseas can be attractive, and they don't necessarily involve investing in countries whose economies or governments are in flux. For example, as of late December, AAA-rated Australian sovereign bonds were paying 3.7%. However, remember that in addition to the risks involved with all bonds, such as interest rate risk, inflation risk, and credit risk, investing overseas involves currency risk; a change in the value of the U.S. dollar relative to its Australian counterpart could eliminate any yield advantage. Also, just as government-sponsored enterprise bonds are not necessarily backed by the full faith and credit of the U.S. Treasury, all foreign bonds are not necessarily backed by their sovereign governments.*

**Before investing in an MLP or mutual fund, make sure to carefully consider the objectives, risks, charges, and expenses contained in its prospectus, which is available from the fund or partnership. Read it carefully before investing.**

As interest rates have fallen to record lows and stayed there in recent years, the yield on your savings may be stuck in neutral. If you've focused on capital preservation and kept your assets in U.S. Treasuries, a money market account, or certificates of deposit, you may have minimized the chance of the financial equivalent of a car crash. However, you also may not be happy letting your portfolio's engine idle forever.

Dividend-paying stocks are one solution, but last year's volatility has made many investors wary of committing more money to equities. Though past performance is no guarantee of future results, for those who need something more than 2% 10-year Treasury yields and who can handle the additional risks involved, there are other alternatives that could potentially boost overall yield.

### Corporate bonds

Many corporations have taken the opportunity presented by low rates to refinance their corporate debt and lower borrowing costs. Though any company could still default on its obligations, of course, and all bonds face market risk, stronger balance sheets have helped lower the overall risk of corporates as a whole. The spread between the yield on Moody's Aaa-rated industrial bonds and 10-year Treasuries at the end of 2011 was roughly 2 percentage points. For a Baa bond (one notch above noninvestment-grade), the difference was over 3 percentage points. Yields on noninvestment-grade bonds (so-called high-yield or "junk" bonds) were higher still, roughly 5% above 10-year Treasuries.

### Bank loans

Floating-rate bank loans (also known as senior loans, leveraged loans, or senior secured loans) are a form of short-term financing for companies that usually do not rate an investment-grade credit rating. The rate is typically tied to the London Interbank Offered Rate (LIBOR) and adjusts with it, generally quarterly. As with high-yield bonds, the lack of an investment-grade credit rating means bank loans must offer a higher yield.

As with all debt, investors still run the risk of default. However, bank loans also have benefitted from the favorable corporate finance picture noted above. And because bank loans typically are a company's most senior debt obligation and are secured by some form of collateral, investors have typically recovered a higher percentage of their investment in the event of default than with high-yield bonds secured only by a company's promise to pay.

Finally, as with all bonds, as bond yields rise, the price falls, which could cut overall return enough to offset any yield advantage. For the majority of investors, the most accessible way to invest in floating-rate bank loans is through a mutual fund or exchange-traded fund.

### Master limited partnerships

Master limited partnerships (MLPs) can not only offer an income stream in the form of quarterly cash distributions; they also may offer tax benefits. An MLP that receives 90% of its income from qualified passive sources such as oil, natural gas, real estate, or commodities may qualify for tax treatment as a partnership rather than a corporation. If it does so, the MLP is not taxed at the partnership level, and may pass on a greater share of its earnings to the limited partners (i.e., individual investors), who also receive a proportionate share of any depreciation, depletion allowances, tax credits, and other tax deductions.

Many MLPs are managed so as to ensure that those tax benefits offset or eliminate any current tax liability on the cash distributions, which are considered a return of capital and used to adjust the individual partner's cost basis upon sale of the MLP units. An MLP that pursues this strategy successfully can in effect provide a tax-deferred ongoing income stream, which can be particularly appealing to investors in a high income tax bracket. Yields on MLPs vary greatly, depending on the particular MLP's assets and the way in which the general partner manages the business.

MLPs have risks. Because they can be relatively illiquid, an investor should plan to stay invested for a number of years, and individual investors' collective share of cash distributions may decrease over time. Also, the tax issues involved can be complex; for example, MLPs can create problems if held in a tax-deferred retirement account. Finally, commissions and other front-end costs can reduce the amount available for investment.

**Data sources:** *Corporate bond spreads: Federal Reserve System report on selected interest rates (H.15) as of December 29, 2011. Rates quoted are for Moody's Aaa- and Baa-rated bonds. High-yield bond spread: calculated based on Merrill Lynch High-Yield 100 as quoted on Wall Street Journal Market Data Center as of December 29, 2011.*



## Asset Protection Strategies Beyond Insurance



*These asset protection strategies generally involve transferring legal ownership of assets to other persons or entities, such as corporations, limited partnerships, and trusts. The logic behind shifting ownership of assets is fairly straightforward: your creditors can't reach assets you don't own.*

You've worked hard to accumulate your assets and property; that's why it's so important to take measures to protect your wealth. Often, the simplest way to protect assets is by shifting the risk to an insurance company. But insurance may not provide all the protection you need or it might not be available, so you may need to consider other strategies.

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### Shifting assets to a C corporation

The law views a C corporation as a separate legal entity. As such, business assets owned by a C corporation are considered separate from your personal assets, which will generally not be at risk for the liabilities of the business.

However, protection from liability may be lost if the business does not act like a business, such as when the business acts in bad faith, fails to observe corporate formalities (e.g., organizational meetings), has its assets drained (e.g., unreasonably high salaries paid to shareholder-employees), is inadequately funded, or has its funds commingled with shareholders' funds.

### Shifting assets to other entities

A limited liability company (LLC), limited liability partnership (LLP), or family limited partnership (FLP) is a legal entity that can be used to separate business assets from personal assets.

An LLC is generally taxed like a partnership with income and tax liabilities passing through to its members (and not double-taxed as a C corporation), but it is viewed as a separate legal entity and can be used to own business assets, protecting your personal assets from business claims against the LLC.

If you have business partners, an LLP may protect you from the professional mistakes of your partners. That is, if one of your partners is sued for negligence, and the LLP is also named in the lawsuit, the partner sued may be liable personally for any judgment, but the LLP should protect your personal assets from the reach of any judgment creditor of the LLP.

An FLP is a limited liability partnership formed by family members only. Generally, a creditor can only obtain a charging order against the FLP, which allows the creditor to receive any income distributed by the general partner (who is usually a family member). It does not allow

the creditor access to the assets of the FLP. Although each of the entities discussed above are alike in that they can protect your personal assets, they are very different in other ways. Make sure the entity you choose satisfies all of your needs.

### Shifting assets to a trust

There are many different types of trusts that can be used to protect assets. A protective trust may protect assets intended to eventually pass to another person. For example, you transfer assets to a protective trust naming yourself and another as beneficiaries. The trust allows you to receive only income from the trust, with no access to the trust principal. At your death, the assets are to pass to the other beneficiary. If you're sued, the creditor can only receive your right to trust income, but not the assets of the trust. These trusts usually contain a spendthrift provision that makes it difficult for creditors to reach trust assets to satisfy claims against trust beneficiaries.

The laws in a few states, such as Nevada, Alaska, and Delaware, enable you to set up a domestic self-settled trust. You can create this type of trust, transfer assets to the trust, and name yourself as beneficiary. The trust gives the trustee discretion over whether or when to distribute trust property or income to beneficiaries. Creditors can only reach property that the beneficiary has a legal right to receive. Therefore, the trust property will not be considered the beneficiary's property, and any creditors of the beneficiary, including yourself, will be unable to reach it.

Many foreign countries have laws that make it difficult for creditors to reach trust assets held in that foreign country. In order for a creditor to reach assets held in a foreign or offshore trust, a court must have jurisdiction over the trustee or the trust assets. Because the trust is properly established in a foreign country, obtaining jurisdiction over the trustee in a U.S. court action will not be possible. Thus, a U.S. court will be unable to exert any of its powers over the offshore trustee.

### Protecting assets doesn't include fraud

Protecting your assets by legally repositioning them does not extend to actions intended to hide assets or defraud creditors. So, make sure you implement any asset protection strategy before there is any hint of trouble, and be sure to carefully document that you are doing so for sound business or other reasons.



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## What is personal liability insurance and do I have it?

Personal liability insurance protects your assets if you injure another person or damage someone else's property. It's also known as

third-party insurance because it protects you if a third party files a claim against you. Personal liability insurance can be purchased as part of a package policy (such as a homeowners or automobile insurance policy) or as a separate policy (such as a personal umbrella liability policy).

Today, lawsuits are everywhere. What if your dog bites a neighbor? What would happen if someone slips and falls on your front walk? While you may not be able to avoid all accidents, you can transfer some of the financial risk of the resulting loss to an insurance company by buying personal liability insurance.

How much liability coverage do you need? Probably more than you think you do. Because there's no optimum amount that applies to everyone, how much personal liability coverage you need depends partly on your tolerance for risk. Can you afford to pay the cost of a claim out of pocket or would even a small claim

threaten your finances? If you already have liability coverage, take a look at your current policy. Determine whether your liability limits are high enough, or if there are any coverage gaps you'd like to fill.

If you own a homeowners or automobile insurance policy or another type of property insurance (e.g., mobile home insurance or renters insurance), you have basic personal liability coverage. These policies will protect you against many liability claims. Your insurance company will defend or settle claims and lawsuits brought against you and pay the sum owed for covered damages (bodily injury or property damage), up to the liability limits of the policy. If you want greater liability coverage limits or if you want broader coverage that includes more types of claims, consider buying a personal umbrella liability policy.

No personal liability insurance policy will protect you against every loss you might face. Generally, personal liability policies don't cover claims stemming from your business or profession, claims resulting from an act intended to cause injury or damage, and damage to property owned by you.



## What is umbrella insurance and why do I need it?

Umbrella liability insurance (ULI) provides additional liability coverage in excess of the liability coverage provided by other insurance policies, such as homeowners, renters, and auto insurance. By providing liability protection above and beyond these basic coverages, ULI can protect you against the catastrophic losses that can occur if you are sued. Although ULI can be purchased as a separate policy, your insurer will require that you have basic liability coverage (i.e., homeowners/renters insurance, auto insurance, or both) before you can purchase an umbrella liability policy.

A typical umbrella liability policy provides protection, up to the coverage limits specified in the policy, for vehicle-related liabilities above your basic auto policy; for claims of bodily injuries or property damage caused by you or members of your household; for incidents that occur on or off your property; for non-business-related personal injury claims, such as slander, libel, wrongful eviction, and false arrest; and for legal defense costs for a covered loss, including lawyers' fees and associated court costs.

Policy exclusions vary from one insurer to another, but typically, basic umbrella liability insurance doesn't cover intentional damage caused by you or a member of your family or household; damages arising out of business or professional pursuits; liability that you accept under the terms of a contract or agreement; liability related to the ownership, maintenance, and use of aircraft, nontraditional watercraft (e.g., jet skis), and most recreational vehicles; damage to property owned, used, or maintained by you; damage covered under a workers' compensation policy; and liability arising as a result of war or insurrection.

How much liability insurance do you need? A large judgment against you could easily wipe out your assets and put your future earnings in jeopardy. That's why you should also consider factors such as how often you have guests in your home, whether you operate a home-based business, how much you drive, whether you have teenage drivers in your home, and whether your lifestyle gives the impression that you have "deep pockets." Your insurance professional can help you determine how much coverage you need.



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