

Maryland State Bar Association
Estates and Trusts Section
Estate and Gift Tax Study Group
April 20, 2017

**Protecting Families:
Wrongful Death and Survival Actions**

**Paul J. Schwab, Esq.
Judson H. Lipowitz, Esq.**

Azrael, Franz, Schwab & Lipowitz, LLC
101 East Chesapeake Avenue, Towson, MD 21286

410-821-6800

www.azraelfranz.com

BACKGROUND

- Planning
- Claims
- Lawyers

Estate and Financial Planning
Address Risks

DEATH

- Life Insurance
- Ownership of Assets
- Beneficiary Designations

LONGTERM CARE

- Insurance
- Medicaid

LIABILITY RISK ASSOCIATED WITH REAL ESTATE

- Protect individuals through ownership by entity
- Purchase liability and other insurance

AUTO ACCIDENTS



BAD THINGS HAPPEN

- 2016: According to data released by the National Safety Council (NSC), in 2016 there were more than 40,000 traffic fatalities in the United States for the first time in 10 years. The NSC statistics show a 6 percent increase in auto crash deaths in 2016, and a 3 percent rise in the number of miles Americans drove, compared with 2015. NSC estimates that the cost of deaths, injuries and property damage attributed to crashes in 2016 totaled \$432.5 billion, up 12 percent from 2015. Nearly 4.6 million people required medical treatment after crashes, an increase of 7 percent over 2015.

<http://www.nsc.org/issue-update/auto-crashes>

Wrongful Death Act: CTS. & JUD. PROC. §§ 3-901 – 3-904

Wrongful Death Actions: An action may be maintained against a person whose wrongful act causes the death of another. CTS. & JUD. PROC. §3-902(a)

- **Primary Beneficiaries** – Wrongful death actions are for the benefit of the spouse, the parent, and the child of the deceased person. CTS. & JUD. PROC. § 3-904(a)(1)
- **One Action** – Only one action under this subtitle lies in respect to the death of a person. CTS. & JUD. PROC. §3-904(f)
- **Plaintiffs and Use-Plaintiffs** – All persons who are or may be entitled by law to damages by reason of the wrongful death shall be named as plaintiffs whether or not they join in the action. The words "to the use of" shall precede the name of any person named as a plaintiff who does not join in the action. Md. Rule 15-1001(b).
- **Statute of Limitations** - In most cases a wrongful death action must be commenced within three (3) years after the death of the injured person. CTS. & JUD. PROC. §3-904(g)(1)

Wrongful Death Damages

- **Noneconomic Damages** – In an action for wrongful death, noneconomic damages include damages for each beneficiary's mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education. CTS. & JUD. PROC. § 11-108(a)(2)(i)(2); CTS. & JUD. PROC. § 3-904(d)
- **Noneconomic Damages Cap**
 - **If One Beneficiary** – The limitation on noneconomic damages increases by \$15,000 on October 1 of each year. CTS. & JUD. PROC. § 11-108 (b)(2)(ii). The cap on noneconomic damages if there is only one claimant for actions arising between October 1, 2016 and September 30, 2017 is \$830,000.00.
 - **If Two or More Beneficiaries** – In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation for one beneficiary, regardless of the number of claimants or beneficiaries who share in the award. CTS. & JUD. PROC. § 11-108 (b)(3)(ii). Accordingly, the noneconomic damages cap in wrongful death actions arising between October 1, 2016 and September 30, 2017 with two or more claimants is \$1,245,000.00.
- **Economic Damages**
 - **Spouse of Deceased** – The economic losses to be considered include the financial support as well as the replacement value of the services that the deceased furnished or probably could have been expected to furnish. The jury may consider the deceased's earnings and future earning capacity for the probable time both had been expected to live to determine the amount that the surviving spouse could reasonably have expected to receive. Maryland Pattern Jury Instructions ("MPJI") 10:22
 - **Parent of Deceased Child** – The economic losses to be considered are any financial benefits a parent would have been expected to have received from the deceased child. MPJI 10:23
 - **Minor Child of Deceased Parent** – The economic losses to be considered include the financial support as well as the replacement value of the services that the deceased furnished or probably would have been expected to furnish. MPJI 10:24

Survival Actions: EST. & TRUSTS § 7-401(y)(2).

- **Survival Actions** – Action instituted by the personal representative against a tortfeasor for a wrong which resulted in the death of the decedent. EST. & TRUSTS § 7-401(y)(2).
- **Damages** – The personal representative may recover the funeral expenses of the decedent up to the amount allowed under § 8-106(b) of the Estates and Trusts Article in addition to other damages recoverable in the action. EST. & TRUSTS § 7-401(y)(2).
 - **Noneconomic Damages**
 - Conscious pain and suffering (between the time of injury and the time of death).
 - Mental anguish, including pre-impact fright.
 - **Economic Damages**
 - Funeral Expenses. EST. & TRUSTS § 7-401(y)(2)
 - Expenses, including medical expenses (between the time of injury and the time of death)
 - Loss of wages (between the time of injury and the time of death)
- **Legatees** – Decedent died with a Will
- **Heirs** – Decedent died Intestate

Legatees/Heirs may be different than Wrongful Death Beneficiaries

AUTO INSURANCE COVERAGE

An educated consumer is an informed consumer

- Read and Review Declarations Page and Policy
- Ask Questions:
 1. What is the next level of Liability coverage? How much will it cost?
 2. What is Uninsured/Underinsured Motorist (UM) coverage? Is the limit of my UM coverage equal to the limit of my Liability coverage?
 3. Is there a "family member" exclusion in my policy? How much will it cost to negate it?
 4. Can I get an Umbrella policy? How much will it cost?
 5. Can I get UM in my Umbrella policy? How much will it cost?
 6. What is the next level of Personal Injury Protection (PIP)? How much will it cost?
 7. Can I get Medical Payments coverage? How much will it cost?
 8. Should I waive PIP? How much will I save?
 9. What is Enhanced Underinsured Motorist Coverage? How much will it cost?

LIABILITY COVERAGE LEVELS

"Casey-

Your current auto premium is \$1405.00 for \$250k/500k/100k if we raise it to \$500k/500k/100k your new premium would be \$1458.00.

The umbrella quote is attached. For \$1M just under \$170.00 a year.

Best Regards,

Agent"

Increased Liability Coverage from \$250k to \$500k per person for \$53.00

Purchased \$1 Million Liability Umbrella for under \$170.00

UNINSURED/UNDERINSURED MOTORIST COVERAGE

- What is Uninsured Motorist Coverage? \$30k – 0 = \$30k UM
- What is Underinsured Motorist Coverage? \$50k – \$30k = \$20k UIM
\$30k - \$30k = Zero UIM
- Shall Equal Liability Limit Requirement
- Option to Waive Down

GEICO 1-800-841-3000
GEICO.COM
 GEICO GENERAL INSURANCE COMPANY
 One GEICO Boulevard
 Fairfax, VA 22112-0003

Declarations Page
This is a description of your coverage. Please refer to your records.

Policy Number:
Coverage Period:
 04-29-12 through 10-29-12
17:01 A.M. local time at the address of the named insured.

Date Issued: March 7, 2012

Vehicles	VIN	Vehicle Location	Finance Company/ Lienholder
1 1997 Dodge Dakota	1B7GG26X2VS261482	Halethorpe MD 21227	Bay Country Consumer Fin
2 1999 Nissan Sentra XE/GXE	3N1AB41D6XL083504	Halethorpe MD 21227	

Coverages*	Limits and/or Deductibles	Vehicle 1	Vehicle 2
Bodily Injury Liability			
Each Person/Each Occurrence	\$300,000/\$300,000	\$77.90	\$92.10
Property Damage Liability	\$100,000	\$58.80	\$69.40
Personal Injury Protection	\$2,500	\$18.70	\$22.10
Uninsured Motorists Bodily Injury			
Each Person/Each Occurrence	\$100,000/\$300,000	\$26.10	\$28.10
Property Damage - Less \$250 Ded	\$50,000	\$3.80	\$3.80
Comprehensive	\$100 Ded	\$13.20	\$26.60
Collision	\$500 Ded	\$41.60	\$72.60
Emergency Road Service	Full	\$10.90	-
Rental Reimbursement	\$30 Per Day \$900 Max	\$20.40	-
Six Month Premium Per Vehicle		\$271.40	\$312.70
Total Six Month Premium			\$584.10

*Coverage applies where a premium or \$0.00 is shown for a vehicle.
 If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

Affirmative Waiver signed by named insured reduced UM Coverage from \$300k to \$100k per person
 Is it prudent to reduce UM Coverage? Lower premium = \$200k reduction in coverage for the victim . NEVER sign down UM Coverage!

Selection Form

If you do not wish to make any changes to your current policy, no action is required. TO MAKE CHANGES TO YOUR POLICY, PLEASE COMPLETE THIS FORM, SIGN, AND RETURN IT TO US. The premiums below reflect the total premium for the coverage for all vehicles insured on your Policy. The coverage-limit combinations displayed in this form are examples. You can create other combinations of the coverage limits displayed in this example.

UNINSURED MOTORISTS (UM) COVERAGE		
Semi-annual premium per policy		
To make a change to your current policy, you must check one of the following boxes or enter your desired UM limits:		
Limits		Premium
Bodily Injury (per person/per accident)	Property Damage	
<input type="checkbox"/> \$ 25,000/\$ 50,000	\$20,000	\$ 35.81
<input type="checkbox"/> \$ 50,000/\$ 100,000	\$25,000	\$ 45.24
<input type="checkbox"/> \$ 100,000/\$ 200,000	\$50,000	\$ 54.07
<input type="checkbox"/> \$ 100,000/\$ 300,000	\$100,000	\$ 56.64
<input type="checkbox"/> \$ 300,000/\$ 500,000	\$100,000	\$ 68.19
<input type="checkbox"/> \$ 500,000/\$ 500,000	\$300,000	\$ 78.96
<input type="checkbox"/> \$ 500,000/\$1,000,000	\$500,000	\$ 81.69
<input type="checkbox"/> \$1,000,000/\$1,000,000	\$500,000	\$ 88.04
If you prefer a combination of UM limits other than those shown above, please enter those desired here:		
Bodily Injury (per person/per accident)	Property Damage	
\$ _____ / \$ _____	\$ _____	

Coverage \$100,000/300,000 Total Premium \$56.64

Coverage \$300,000/500,000 Total Premium \$68.19

"SAVINGS" = \$11.55*

*Semi-Annual

The limit of UM Coverage shall equal the Liability insurance policy limit

Amica Mutual Insurance Company
Lincoln, Rhode Island

CONTINUATION OF DECLARATIONS FOR PERSONAL AUTO POLICY NO.

COVERAGES	LIMITS/COVERAGE	PREMIUM	
		AUTO 1 2001 HRRR	AUTO 2 2009 IEXU
A. LIABILITY	\$2,000,000 each accident	\$ 391.00	\$ 391.00
B. MEDICAL PAYMENTS	\$ 25,000 each person	\$ 35.00	\$ 34.00
C. UNINSURED MOTORIST	\$ 500,000 each accident	\$ 104.00	\$ 104.00
D. DAMAGE TO YOUR AUTO (ACV means Actual Cash Value)			
1. Collision Loss	AUTO 1 AUTO 2		
ACV minus deductible of	\$1000 \$1000	\$ 195.00	\$ 296.00
2. Other Than Collision Loss	AUTO 1 AUTO 2		
ACV minus deductible of	\$ 250 \$ 250	\$ 107.00	\$ 129.00
TOWING AND LABOR COSTS	\$ 250 100 each disbursement	\$ 8.00	\$ 8.00
OPTIONAL TRANSPORTATION EXPENSES	AUTO 1 AUTO 2		
MD PERSONAL INJURY PROTECTION		\$ 45.00	\$ 44.00
AUTO LOAN/LEASE COVERAGE		NOT COVERED	\$ 30.00
PARKING ARRANGEMENTS			
AUTO 1	OFF STREET		
AUTO 2	IN GARAGE		
TOTAL PREMIUM FOR EACH AUTO		\$ 879.00	\$ 1,028.00
TOTAL PREMIUM		\$ 1,907.00	

UM INCLUDED IN UMBRELLA POLICY

- Limited Availability – The following insurance companies offer UM in their Umbrella Policies:

- ACE
- Chubb
- Encompass
- PURE
- Selective

*4/20/17 – List not exhaustive

COVERAGE DESCRIPTION		COVERAGE LIMIT		
PERSONAL UMBRELLA LIABILITY LIMIT PER OCCURRENCE		2,000,000		
UNINSURED/UNDERINSURED COVERAGE LIMIT PER OCCURRENCE		2,000,000		

SCHEDULE OF UNDERLYING INSURANCE				
EXPOSURE	CARRIER	POLICY NUMBER	LIABILITY LIMIT	UM/UM COVERAGE
HOME LOCATION 1	BANKERS STANDARD	268-02-88-41H	500,000	
AUTO VEH 1	BANKERS STANDARD	268-02-88-41A	500,000	YES
AUTO VEH 2	BANKERS STANDARD	268-02-88-41A	500,000	YES
AUTO VEH 3	BANKERS STANDARD	268-02-88-41A	500,000	YES
AUTO VEH 4	BANKERS STANDARD	268-02-88-41A	500,000	YES
AUTO VEH 5	BANKERS STANDARD	268-02-88-41A	500,000	YES

COVERED HOME LOCATIONS	
LOCATION 1	
1 FAMILY DWELLING	

TOTAL ANNUAL UMBRELLA PREMIUM	\$706.00
-------------------------------	----------

PERSONAL INJURY PROTECTION (PIP) BENEFITS AND MEDICAL PAYMENTS COVERAGE

- PIP \$2,500.00 required – Covers lost wages and medical bills;
Named insured can purchase additional \$2,500.00 increments
- Medical Payments Coverage Levels/Cost
 - e.g. \$5,000 Coverage - Premium \$2.00
 - e.g. \$25,000 Coverage - Premium \$37.00
- If I waive PIP, how much will I save? Is it prudent to waive PIP?



Mutual Benefit Insurance Company
A member of Mutual Benefit Group
409 Penn Street, PO Box 577
Huntingdon, Pennsylvania 16852-0577

Renewal PRO
Co. Use Only: #1 02/20/2015
Direct Billed

COVERAGES AND LIMITS OF LIABILITY				Premium Auto/Terr	Premium Auto/Terr	Premium Auto/Terr	Premium Auto/Terr
				001/313	002/313		
A. LIABILITY							
BODILY INJURY	\$100,000	EA PERSON		\$209	\$209		
PROPERTY DAMAGE	\$300,000	EA ACCIDENT		\$80	\$80		
	\$100,000	EA ACCIDENT					
B. MEDICAL PAYMENTS							
PERSONAL INJURY PROTECTION	\$5,000			\$2	\$2		
	\$2,500			\$26	\$26		
C. UNINSURED MOTORIST							
BODILY INJURY	\$100,000	EA PERSON		\$31	\$31		
	\$300,000	EA ACCIDENT					
PROPERTY DAMAGE	\$100,000	EA ACCIDENT		\$11	\$11		
DAMAGE TO YOUR AUTO (Actual Cash Value/Max. Deductible)							
	AUTO	AUTO	AUTO				
	001	003					
OTHER THAN COLLISION	\$100	\$100		\$58	\$94		
COLLISION	\$500	\$500		\$140	\$289		
TOWING AND LABOR LIMIT	\$100	\$100		\$9	\$9		
TRANSPORTATION EXP	\$ 50/1500	50/1500					
A00015							
TOTAL PREMIUM PER AUTO				\$568	\$751		
				TOTAL PREMIUM		\$1,319	

PIP and Medical Payments Coverage – No lien
Health insurance – Lien



insured.™

ACE PRIVATE RISK SERVICES®
ACE PLATINUM PORTFOLIO™

POLICY NUMBER

A 0208

AUTO DECLARATIONS PAGEPolicy issued by **BANKERS STANDARD INSURANCE COMPANY** - an ACE Group Company.

Policy Period From: 09/01/2015 To: 09/01/2016 12:01 A.M. standard time

POLICY CHANGES MADE AS OF 03/21/2016 . PLEASE ATTACH TO YOUR POLICY.
AUTO DEDUCTIBLE REVISED

COVERED VEHICLE DESCRIPTION					
VEH	YEAR	MAKE	MODEL	VIN	DEDUCTIBLE COMP COLL
1	2010	AUDI	Q7	WA1VYBFE9AD001231	1000 1000

COVERAGE DESCRIPTION	COVERAGE LIMIT	PREMIUMS
COVERAGE IS PROVIDED WHERE A COVERAGE LIMIT OR PREMIUM IS SHOWN FOR THE COVERAGE		
		VEH 1
LIABILITY	500,000	309.00
UNINSURED/UNDERINSURED MOTORISTS	500,000	220.00
PERSONAL INJURY PROTECTION (SEE ADDITIONAL POLICY INFORMATION)		8.00
MEDICAL EXPENSES	25,000	37.00
COMPREHENSIVE - FULL GLASS		74.00
COLLISION		244.00
VEHICLE PREMIUM		892.00

ENHANCED UNDERINSURED MOTORIST COVERAGE

- House Bill 5 Senate Bill 0403 enacted 2017 Legislative Session* - permits "stacking" of certain Uninsured Motorist Coverage
- Defendant's Liability Coverage is less than, more than or equal to Plaintiff's UM Coverage
 - \$30k Liability + \$50k UM = \$80k Total
 - \$50k Liability + \$30k UM = \$80k Total
 - \$30k Liability + \$30k UM = \$60k Total
- Insurer must offer the First Named Insured an opportunity to purchase Enhanced Underinsured Motorist Coverage
- First Named Insured may elect to obtain Enhanced Underinsured Motorist Coverage
- Additional Premium
- Offer Form

*Effective date of Act: 10/01/2017

REPRESENTATION OF TORTFEASOR

INSURANCE MATTERS

- Review Policies and Notify Carriers
- Monitor Carrier's Handling of Claim

DEFENDING CRIMINAL/TRAFFIC/MVA HEARINGS

- Find Competent Counsel

PROTECTION OF ASSETS

- Would judgment be dischargeable?
- Review possible "inheritances"
 - Deeds
 - Family Members' Beneficiary Designations
 - Family Members' Wills or Trusts

FAMILY OF VICTIM

A. SOLE RESPONSIBILITY/ENTIRE FEE

- Conflicts
 - Among Wrongful Death Claimants
 - Differing Divisions of Wrongful Death and Survival Action Recoveries
- All Work and Expenses
 - Fee Agreement
 - Notices and Other Deadlines
 - Advance All Litigation Costs
 - Handle Medical Provider/Medicare or Other Liens

B. ACCEPT JOINT RESPONSIBILITY WITH EXPERIENCED ATTORNEY AND SHARE FEE

- Maryland Rules of Professional Conduct allow with client disclosure and consent
- Confirm agreement between lawyers on fees, work and costs

C. REFER OR DECLINE MATTER WITH NO RESPONSIBILITY

- No right to referral fee and no client issues or expenses

CLOSING

QUESTIONS

