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Referrals

Did you know that referrals are our number one source of new cases? People find us several different ways, but mostly they come from other lawyers, current and former clients, and friends and family.

We are so appreciative of the referrals that we like to thank our friends directly. But sometimes we don't know when a true referral was made, or the new client doesn't remember who recommended us. Please, if you refer someone to us, let us know so that we can express our gratitude.

Reminder About Our Communication Policy

Our promise to you is that while your attorneys are working on your case, we will not check or answer emails, take phone calls, read faxes, or surf social media (unless we are surfing for your case). When we are working on your case we will be completely focused on the task in front of us. Because of this promise, our attorneys do not take unscheduled inbound phone calls. It makes us much more productive and helps get your case resolved faster.

You can always call the office at 434-515-2807, and schedule an in-person or phone appointment. That is a lot better than playing "phone tag." The same goes for email or MyCase messages. An email or message is "quick," but is checked no more than twice a day and replies are then scheduled into the calendar

Tell us what you want to know!

Our goal is to be well known to our clients, referral partners, local attorneys, and healthcare providers. So with that in mind, tell us what you want to know! Send us an email at inquiry@osterbindlaw.com.

THE INSIDE LOOK

Osterbind Law PLLC

December 2019

Newsletter #6

What's on my mind?

By Brandon S. Osterbind, Esq.

How is it December already? I'm in denial. It's still February in my book. It is amazing how time seems to march onward faster and faster each day. I remember well-intentioned folks telling me that time flies as you get older, but I was always skeptical. Now, I believe.

But as time marches on we are approaching the year end and that gives us an opportunity to look back and be thankful for the many blessings this year has brought. And indeed, this year has brought blessings: watching the kids get older and learn new things, taking a huge trip to Disney World and a 2 week vacation to the beach, welcoming new members to our team, expanding our practice, joining a new men's Bible study at church, and launching this newsletter.

I can't tell you how many other things I am thankful for. But as I sit here thinking about them, my fingers can't type fast enough. I hope you are the same way.

We have the responsibility here at Osterbind Law to help people who are struggling because of an injury or disability. Often, it may seem like there isn't much to be thankful for.

That is not lost on us. Even still, we don't get this opportunity to build up our tribe as much as we'd like. So let me take this moment to encourage you with a psalm:

Psalm 100
A psalm. For giving grateful praise.

1. *Shout for joy to the Lord, all the earth.*
2. *Worship the Lord with gladness; come before him with joyful songs.*
3. *Know that the Lord is God. It is he who made us, and we are his; we are his people, the sheep of his pasture.*
4. *Enter his gates with thanksgiving and his courts with praise; give thanks to him and praise his name.*
5. *For the Lord is good and his love endures forever; his faithfulness continues through all generations.*

If you've questioned or forgotten, let me remind you that "the Lord is good and his love endures forever; his faithfulness continues through all generations." If there is any time, let this be the time we stop and "Shout for joy to the Lord, all the earth." Let us join together with our family and friends and "Worship the Lord with gladness, come before Him

with joyful songs." If you feel like mourning, turn to Creator of it all and ask for gladness.

Psalm 30
Joy Comes with the Morning
A Psalm of David. A song at the dedication of the temple.

11. *You have turned for me my mourning into dancing; you have loosed my sackcloth and clothed me with gladness,*
12. *that my glory may sing your praise and not be silent. O Lord my God, I will give thanks to you forever!*

He is able to transform your heart by the renewing of your mind.
- **Romans 12:2.**

If we are always looking for the negative, we will find it. If we are always looking for the positive, we will find it. This reminds me of the Henry Ford quote: "Whether you think you can, or you think you can't - you're right." Chris Hogan always says "it's hard to be hateful when you're grateful."

Regardless of where you are today, whether you are injured, disabled, or recovered, take a moment to think of the positives in your life and be thankful.

Insurance Policy Must Haves: *Uninsured Motorist/Underinsured Motorist Coverage*

By David Abraham

This month I'd like to discuss two coverages that many times may be overlooked. You may even look at them as being unnecessary, however, they protect you, the policyholder or anyone that is a member of your household.

The first coverage is uninsured motorist coverage. This coverage protects you or any member of your household if you are in an accident with an uninsured motorist. I'm sure you are thinking, everyone has insurance so why do I need this to protect myself? If you think all drivers on the highway have insurance on their vehicle, you are incorrect. While they may have had insurance at one point they may have not paid their premium and their coverage has lapsed. You are not required

to buy insurance in Virginia, only that you have the means to pay if they are involved in an accident. I'm sure you have seen the box you need to check on the back of your registration renewal. At Osterbind Law, we don't see it often, however it does come up now and then that a defendant is uninsured.

If you choose uninsured motorist coverage, the limits should be equal to that of your liability coverage. It only protects you and the higher limits are not as expensive as you might expect. I would recommend at least \$500,000.00/\$500,000.00. If you are injured in an accident with an uninsured vehicle and require substantial medical treatment, your medical bills could be significant. Easily, an emergency room bill today can top \$10,000.00 if several procedures

are performed, not to mention if you are admitted. Follow up visits and care may be necessary, further increasing your medical expenses. Minimum limits may not be enough to fully compensate you in an accident. If you believe you can collect personally from the at fault party for your injuries, chances are very slim that will happen. If the at fault party doesn't have the available funds to carry auto insurance, chances are they are judgment proof, meaning they have very little, if any assets.

The second coverage I wanted to bring to your attention is underinsured motorist coverage. Many drivers on the roads today carry only minimum limits on their liability coverage. Those minimum limits of \$25,000.00/\$50,000.00 are often not enough to fully



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Social Media Matters, especially in an injury/disability case

By Hannah Bowie

I remember sitting in my dorm room in Fairchild Hall at the University of New Hampshire. I received an invite to a new website called "The Facebook." To join, you had to be invited by an existing member. Very few colleges and universities were part of Facebook when I joined. Each connection originated from a student at Harvard. I recall signing up and instantly having a profile. That's it though—just a profile with my name, school, date of birth, and other basic information. Relationship statuses and timelines weren't a thing, and photo albums were books you put together in your family room with actual photographs you took with an actual camera and had printed from a local store.

When I created my first profile on Facebook, I had no idea how much social media would impact my career. In law school, I assisted an attorney in a custody matter. That custody matter lasted almost three years and it was partly because of the information I was able to find on social media about the opposing parties that helped our client prevail. You see, the opposing parties believed their pages were private and they could post anything and everything. Their pages weren't completely private, and I was able to navigate from profile to profile, linking family members and friends together. Once I was able to link people together, I scoured timelines and photographs and uncovered some pretty damning evidence. I used social media to

my advantage and helped change the trajectory of a child's life which has significantly impacted mine.



When it comes to the world of injury law, the impact social media has can be detrimental if you are a plaintiff who claims extensive damage to your leg to the point where you have trouble walking, and the defense lawyer finds a video the plaintiff posted to social media of them skiing down a double black diamond in Colorado three weeks after the alleged injury. A seemingly innocent photo of you and your family on a hayride through an apple orchard may bring questions as to how severe your injuries really are.

If you claim a traumatic brain injury in one breath but post a photo to social media showing you having a grand ol' time at the orchard, the insurance company and defense counsel will jump all over the opportunity to say you are not as injured as you are claiming. At the end of the day, a simple photograph can significantly decrease the value of your case.

Maybe that day at the orchard was the first time you were feeling like yourself and you wanted to capture and share it with your family and friends on social media. And maybe your head was throbbing, but you wanted to put on your best face for your family. We, as plaintiff attorneys, understand that. However, it doesn't bode well when we have to explain to the insurance adjuster or jury the symptoms that you were experiencing at the time the photo was taken. The saying "a picture speaks a thousand words," is true. Even if the words spoken from the picture don't tell the whole story.

What you post on social media matters, especially if you are involved in an injury or disability case. From the photos you post to things you share, be mindful. What happens on the internet stays on the internet, even if you think it is deleted or marked as private. Social media probably won't make your case, but it can definitely break it with one single click.

We advise our clients to stop posting on social media after you've been injured in a car accident, slip and fall, medical malpractice, on the job, or if you're claiming a disability. If you have posted, we are allowed to advise you that you can make your settings completely private or you can deactivate your account, but you cannot delete things. If you have a current ongoing case and have posted on social media, give us a call and we'll walk you through what to do.

compensate you or any member of your household for injuries received in an accident. I recommend limits of at least \$500,000.00/\$500,000.00 and here's why. In Virginia, your insurance company is entitled to offset the liability carrier's limits from your underinsurance limits. For instance, if the vehicle you are involved in the accident with, carries the minimum of \$25,000.00 in liability coverage and you have a \$100,000.00 underinsurance policy, your insurance company gets the offset of the at fault carrier limits. This means your insurance company is only exposed to \$75,000.00 because of the offset. The maximum you could receive is \$100,000.00. This brings up another point. If the at fault carrier has \$25,000.00 in liability coverage and you have \$25,000.00

in underinsurance coverage, your coverage is not exposed at all and the most you can collect is \$25,000.00. Having the minimum limits of underinsurance coverage can be a coverage you are paying for and you may never use it.

You may even look at them as being unnecessary, however, they protect you, the policyholder or anyone that is a member of your household.

Keep in mind, all of my coverage recommendations and scenarios are based on your Virginia policy and you being involved in an accident

with another Virginia policyholder, in Virginia. Each state has different laws concerning these coverages and you could be afforded more or less coverage depending upon the laws of that state. A quick check of state minimum liability coverages across the country shows that most states require at or below the state minimum here in Virginia. Therefore, higher underinsurance limits could be a huge benefit to you in case of an accident out of state.

I have only touched on injuries resulting from these two coverages. Next month I will discuss the property damage aspect of how these coverages can affect you in an accident, especially if you do not carry collision coverage on your car.

Estate Planning Made Simple

Intro: By Brandon Osterbind

Sometimes, people need help in areas that I can't help in. I have been practicing law for about 10 years now and I've really dialed down our practice to injury and disability litigation. But people still call me with questions about wills, powers of attorney, medical directives, and trusts. At this point, I don't do them enough to give good advice, so I rely on people who focus on those things and have created a referral list for practice areas that I don't do anymore. Hilary Leitch is on that list, and I asked her to write this article about the basics of estate planning.

Estate Planning Made Simple:

By Hilary Leitch, Esq.

"Estate planning" is an immensely broad category. It encompasses not only the writing of one's **last will and testament**, but also those documents necessary for aging gracefully and for protecting financial resources. For many people, a durable **power of attorney** and an **advance medical directive** will accomplish their goals in these areas; for others, consideration should be given to a **revocable living trust**. This article will give a brief overview of these four documents.

The **last will and testament** (or simply, a "will") is the epitome of "estate planning." What could be

more essential than a document that captures a person's wishes for how his or her property should be divided after departing from this world? Beyond the division of assets, a will also name an executor, as well as nominates for the guardian for minor children. A will is deemed to "speak" at the person's death; therefore, it has no power until that moment. An executor named in the will is powerless to act before that point in time.

In contrast, in a **power of attorney** (or "POA"), one person – the principal – gives power to another person – the agent – to act on the principal's behalf while the principal is still living. If it is "durable," the POA will survive any cognitive decline of the principal and will allow the agent the ability to assist the principal with financial tasks

of daily living, such as balancing a checkbook, making bank deposits/withdrawals, or contracting with an assisted living or memory care facility. The POA becomes powerless upon the death of the principal. Broadly speaking, the executor of the will picks up where the POA agent leaves off.

An **advance medical directive** names an agent to make medical decisions on someone's behalf only if the principal cannot make medical decisions for themselves. The document also captures the principal's wishes regarding end-of-life care, organ donation, and participation in drug trials or studies. This document puts as much power as possible in the hands of the selected agent, rather than leaving such important decisions in the hands of an unknown doctor or hospital.

A **revocable living trust** (or "RLT") bridges the gap in responsibilities between a will and a POA. While its maker is still living, an RLT can own bank accounts, investment

accounts, and real estate, and be the beneficiary of life insurance policies. When the maker passes away, the RLT can continue holding onto these assets for an almost indefinite period. The terms of the RLT—as determined by the maker—spell out how those assets should be used for the benefit of children, grandchildren, and other beneficiaries. If the beneficiaries are fiscally responsible, great; the trust can make an outright distribution of assets directly to them. If a beneficiary has a less-than-stellar track record, the RLT can hold those assets until the beneficiary proves themselves responsible: graduation from college; successful completion of a rehabilitation program; or reaching a certain age.

It must be pointed out that the variety of trust discussed here will not qualify an individual for the Medicaid program or mitigate any federal estate tax due. Medicaid planning is tailored to the specifics of an individual's situation, and trusts are just one piece in what

can become a complicated puzzle. Likewise, few people need to be concerned about estate tax planning these days (the federal estate tax is only applicable to estates worth more than \$11.4 million for individuals or \$22.8 million for married couples), and the trusts involved with such planning are highly tailored to the specific individual or family involved.

With both lifetime and post-departure goals to consider, estate planning is something that everyone should do. Don't think that because you "don't own anything" that it is not for you. The unfortunate nature of estate planning is that once the documents are needed, it is frequently too late. Talk to your spouse, your parents, your adult children and have an estate planning attorney assist you with getting your documents put in place.

