

**MARYLAND STATE BAR ASSOCIATION, INC.
NEGLIGENCE, INSURANCE & WORKERS'
COMPENSATION SECTION**

**SOLO DAY PROGRAM
FRIDAY, JUNE 10, 2011**

**THE HAZARDS OF MARYLAND'S WRONGFUL
DEATH LAW: WHAT'S WRONG WITH THIS
PICTURE (AND HOW TO FIX IT)?**

Educational Materials

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*The materials are presented in the hope that they will assist Maryland attorneys in representing clients in wrongful death cases. The seminar and accompanying materials are not intended to be all encompassing or to render any legal or other advice with respect to specific circumstances.

WRONGFUL DEATH AND SURVIVAL ACTION LAW OUTLINE

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

A. Qualified Beneficiaries

1. **Primary** – 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)
2. **Secondary** – If there are no primary beneficiaries, an action shall be for the benefit of any person related to the deceased person by blood or marriage who was “substantially dependent” upon the deceased. CTS. & JUD. PROC § 3-904(b)

II. Wrongful Death Action

A. **One Action Rule** – Only one action under this subtitle lies in respect to the death of a person. CTS. & JUD. PROC. §3-904(f)

B. Use-Plaintiffs

1. **Plaintiff** – 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). *Walker v. Essex*, 318 Md. 516, 569 A. 2d 645 (1990); *Williams v. Work*, 192 Md. App. 438, 995 A.2d 744 (2010), *aff’d*, *Ace Am. Ins. Co. v. Williams*, 2011 WL 941342 (Md. 2011).
2. **Notice to Use Plaintiff** – The party bringing the action shall mail a copy of the complaint by certified mail to any use plaintiff at the use plaintiff’s last known address. Md. Rule 15-1001(c).
3. **Complaint** – The complaint shall state the relationship of each plaintiff to the decedent whose death is alleged to have been caused by the wrongful act. Md. Rule 15-1001(d).

C. Statute of Limitations

1. Except in the case of “occupational disease,” 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)
2. If an occupational disease was the cause of a person’s death, an action shall be filed within ten (10) years of the time of death or within three

(3) years of the date when the cause of death was discovered, whichever is the shorter. CTS. & JUD. PROC. §3-904(g)(2)(ii)

3. **Condition Precedent** – The statute of limitations in a wrongful death action is a condition precedent to filing suit and must be affirmatively alleged in the complaint.
4. **Minority** – A minor shall file an action within the lesser of three years or the applicable period of limitations after the date the disability is removed. CTS. & JUD. PROC. § 5-201(a)
5. **Fraudulent Actions** – If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud. CTS. & JUD. PROC. § 5-203

III. **Damages**

- A. **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, or other noneconomic damages authorized under Title 3, Subtitle 9 of this article. CTS. & JUD. PROC. § 11-108(a)(2)(i)(2); CTS. & JUD. PROC. § 3-904(d)
- B. **Economic Damages (“Pecuniary Loss” or “Pecuniary Benefit”)** – Economic damages are based on the evidence and the relationship of each plaintiff to the deceased person.
 1. **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. You 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. MPJI 10:22
 2. **Parent of Deceased Child** – The economic losses to be considered are any financial benefits a parent would have been expected to receive from the deceased child. MPJI 10:23
 3. **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

IV. **Damages Awarded In Proportion To Injury**

- A. Damages may be awarded to the beneficiaries proportioned to the injury resulting from the wrongful death. CTS. & JUD. PROC. § 3-904(c)(1)
- B. The amount recovered shall be divided among the beneficiaries in shares directed by the verdict. CTS. & JUD. PROC. § 3-904(c)(2)

V. **Noneconomic Damages Cap**

- A. **If One Beneficiary** – In any action for damages for wrongful death in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. CTS. & JUD. PROC. § 11-108 (b)(2)(i)
- B. **Yearly Increase** – The limitation on noneconomic damages shall increase by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount shall apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. CTS. & JUD. PROC. § 11-108 (b)(2)(ii)
- C. **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)
- D. **Juries Not To Be Informed of Limitations** – In a jury trial, the jury may not be informed of the limitation on noneconomic damages. CTS. & JUD. PROC. § 11-108 (d)(1)
- E. **Award Reduced Proportionately by Court** – In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the limitation on noneconomic damages, the court shall reduce each individual award of a primary claimant proportionately to the total award of all of the primary claimants so that the total award to all claimants or beneficiaries conforms to the limitation. CTS. & JUD. PROC. § 11-108 (d)(2)(ii)(1)(A)

VI. **Survival Action**

- A. **Damages** – In an action instituted by the personal representative against a tortfeasor for a wrong which resulted in the death of the decedent, 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)

1. **Noneconomic Damages**

- a. Conscious pain and suffering (between the time of injury and the time of death)
- b. Mental anguish including pre-impact fright

2. **Economic Damages**

- a. Funeral expenses up to \$5,000 or \$10,000
- b. Expenses, including medical expenses (between the time of injury and the time of death)
- c. Loss of wages (between the time of injury and the time of death)

- B. **Counsel Fee** – An attorney is entitled to reasonable compensation for legal services rendered to the estate and/or the personal representative. Upon the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services. The compensation shall be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney. EST. & TRUSTS § 7-602(a)-(b)

C

West's Annotated Code of Maryland Currentness
Courts and Judicial Proceedings

▣ Title 3. Courts of General Jurisdiction--Jurisdiction/Special Causes of Action (Refs & Annos)

▣ Subtitle 9. Wrongful Death (Refs & Annos)

→ § 3-904. Wrongful death action

Actions for benefit of spouse, parent, and child of deceased person

(a)(1) Except as provided in paragraphs (2) and (3) of this subsection, an action under this subtitle shall be for the benefit of the wife, husband, parent, and child of the deceased person.

(2) A parent may not be a beneficiary in a wrongful death action for the death of a child of the parent if:

(i)1. The parent is convicted under §§ 3-303 through 3-308, § 3-323, § 3-601, or § 3-602 of the Criminal Law Article; or

2. The parent committed an act prohibited under §§ 3-303 through 3-308, § 3-323, § 3-601, or § 3-602 of the Criminal Law Article;

(ii) The other parent of the child is the victim of the crime or act described under item (i) of this paragraph; and

(iii) The other parent of the child is a child of the parent.

(3)(i) An action under this subtitle for the wrongful death of a child caused by the parent of the child allowed under the provisions of § 5-806 of this article may not be for the benefit of that parent of the deceased child.

(ii) An action under this subtitle for the wrongful death of a parent caused by a child of the parent allowed under the provisions of § 5-806 of this article may not be for the benefit of that child of the deceased parent.

Actions for benefit of persons related by blood or marriage

(b) If there are no persons who qualify under subsection (a), an action shall be for the benefit of any person related to the deceased person by blood or marriage who was substantially dependent upon the deceased.

Damages awarded in proportion to resulting injury

(c)(1) In an action under this subtitle, damages may be awarded to the beneficiaries proportioned to the injury resulting from the wrongful death.

(2) Subject to § 11-108(d)(2) of this article, the amount recovered shall be divided among the beneficiaries in shares directed by the verdict.

Death of spouse, minor child, parent of minor child, or unmarried children

(d) The damages awarded under subsection (c) of this section are not limited or restricted by the “pecuniary loss” or “pecuniary benefit” rule but may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education where applicable for the death of:

(1) A spouse;

(2) A minor child;

(3) A parent of a minor child; or

(4) An unmarried child who is not a minor child if:

(i) The child is 21 years old or younger; or

(ii) A parent contributed 50 percent or more of the child's support within the 12-month period immediately before the date of death of the child.

Death of child or parent of child who is not a minor

(e) For the death of a child, who is not described under subsection (d) of this section, or a parent of a child, who is not a minor child, the damages awarded under subsection (c) of this section are not limited or restricted by the “pecuniary loss” or “pecuniary benefit” rule but may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, attention, advice, counsel, training, education, or guidance where applicable.

One action for death of person

(f) Only one action under this subtitle lies in respect to the death of a person.

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Limitations

(g)(1) Except as provided in paragraph (2) of this subsection, an action under this subtitle shall be filed within three years after the death of the injured person.

(2)(i) In this paragraph, "occupational disease" means a disease caused by exposure to any toxic substance in the person's workplace and contracted by a person in the course of the person's employment.

(ii) If an occupational disease was a cause of a person's death, an action shall be filed:

1. Within 10 years of the time of death; or
2. Within 3 years of the date when the cause of death was discovered, whichever is the shorter.

Persons with unmarried parents

(h) For the purposes of this section, a person born to parents who have not participated in a marriage ceremony with each other is considered to be the child of the mother. The person is considered to be the child of the father only if the father:

(1) Has been judicially determined to be the father in a proceeding brought under § 5-1010 of the Family Law Article or § 1-208 of the Estates and Trusts Article; or

(2) Prior to the death of the child:

(i) Has acknowledged himself, in writing, to be the father;

(ii) Has openly and notoriously recognized the person to be his child; or

(iii) Has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

CREDIT(S)

Added by Acts 1973, 1st Sp. Sess., c. 2, § 1, eff. Jan. 1, 1974. Amended by Acts 1974, c. 494, § 1; Acts 1975, c. 120, § 1; Acts 1983, c. 520; Acts 1984, c. 369, § 2; Acts 1986, c. 374; Acts 1987, c. 629; Acts 1997, c. 318, § 1, eff. Oct. 1, 1997; Acts 1998, c. 21, § 1, eff. April 14, 1998; Acts 1999, c. 34, § 1, eff. April 13, 1999; Acts 1999, c. 685, § 1, eff. May 27, 1999; Acts 2001, c. 199, § 1, eff. Oct. 1, 2001; Acts 2002, c. 213, § 6, eff. Oct. 1, 2002; Acts 2002, c. 273, § 3, eff. Oct. 1, 2002; Acts 2006, c. 44, § 6, eff. April 8, 2006.

Formerly Art. 67, § 4.

Current through Chapters 6, 12, 61, 64, 65, 83, 84, 93, 123, and 127 of the 2011 Regular Session of the General Assembly.

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West's Annotated Code of Maryland Currentness
Courts and Judicial Proceedings

▣ Title 11. Judgments (Refs & Annos)

▣ Subtitle 1. Judgments--Miscellaneous (Refs & Annos)

→ § 11-108. Noneconomic damages related to personal injury or wrongful death

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2)(i) "Noneconomic damages" means:

1. In an action for personal injury, pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; and

2. In an action for wrongful death, 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, or other noneconomic damages authorized under Title 3, Subtitle 9 of this article.

(ii) "Noneconomic damages" does not include punitive damages.

(3) "Primary claimant" means a claimant in an action for the death of a person described under § 3-904(d) of this article.

(4) "Secondary claimant" means a claimant in an action for the death of a person described under § 3-904(e) of this article.

Personal injury actions arising on or after July 1, 1986

(b)(1) In any action for damages for personal injury in which the cause of action arises on or after July 1, 1986, an award for noneconomic damages may not exceed \$350,000.

(2)(i) Except as provided in paragraph (3)(ii) of this subsection, in any action for damages for personal injury or wrongful death in which the cause of action arises on or after October 1, 1994, an award for noneconomic

damages may not exceed \$500,000.

(ii) The limitation on noneconomic damages provided under subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount shall apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive.

(3)(i) The limitation established under paragraph (2) of this subsection shall apply in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

(ii) 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 established under paragraph (2) of this subsection, regardless of the number of claimants or beneficiaries who share in the award.

Awards by health claims arbitration panel

(c) An award by the health claims arbitration panel in accordance with § 3-2A-05 of this article for damages in which the cause of action arose before January 1, 2005, shall be considered an award for purposes of this section.

Juries not to be informed of limitations

(d)(1) In a jury trial, the jury may not be informed of the limitation established under subsection (b) of this section.

(2)(i) If the jury awards an amount for noneconomic damages that exceeds the limitation established under subsection (b) of this section, the court shall reduce the amount to conform to the limitation.

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the limitation established under subsection (b)(3)(ii) of this section, the court shall:

1. If the amount of noneconomic damages for the primary claimants equals or exceeds the limitation under subsection (b)(3)(ii) of this section:

A. Reduce each individual award of a primary claimant proportionately to the total award of all of the primary claimants so that the total award to all claimants or beneficiaries conforms to the limitation; and

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B. Reduce each award, if any, to a secondary claimant to zero dollars; or

2. If the amount of noneconomic damages for the primary claimants does not exceed the limitation under subsection (b)(3)(ii) of this section or if there is no award to a primary claimant:

A. Enter an award to the primary claimant, if any, as directed by the verdict; and

B. Reduce each individual award of a secondary claimant proportionately to the total award of all of the secondary claimants so that the total award to all claimants or beneficiaries conforms to the limitation.

Verdicts under Title 3, Subtitle 2A

(e) The provisions of this section do not apply to a verdict under Title 3, Subtitle 2A of this article for damages in which the cause of action arises on or after January 1, 2005.

CREDIT(S)

Added by Acts 1986, c. 639. Amended by Acts 1989, c. 5, § 1; Acts 1989, c. 629; Acts 1994, c. 477, § 1, eff. Oct. 1, 1994; Acts 1997, c. 318, § 1, eff. Oct. 1, 1997; Acts 2000, c. 61, § 1, eff. April 25, 2000; Acts 2004, c. 25, § 1, eff. April 13, 2004; Acts 2004, 1st Sp. Sess., c. 5, § 1, eff. Jan. 11, 2005.

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West's Annotated Code of Maryland Currentness
Courts and Judicial Proceedings

▣ Title 11. Judgments (Refs & Annos)

▣ Subtitle 1. Judgments--Miscellaneous (Refs & Annos)

→ **§ 11-109. Economic damages for personal injury or wrongful death**

Economic damages defined

(a)(1) In this section, “economic damages” means loss of earnings and medical expenses.

(2) “Economic damages” does not include punitive damages.

Itemization of award

(b) As part of the verdict in any action for damages for personal injury in which the cause of action arises on or after July 1, 1986 or for wrongful death in which the cause of action arises on or after October 1, 1994, the trier of fact shall itemize the award to reflect the monetary amount intended for:

(1) Past medical expenses;

(2) Future medical expenses;

(3) Past loss of earnings;

(4) Future loss of earnings;

(5) Noneconomic damages; and

(6) Other damages.

Payment of future economic damages

(c)(1) The court or the health claims arbitration panel may order that all or part of the future economic damages portion of the award be paid in the form of annuities or other appropriate financial instruments, or that it be paid

in periodic or other payments consistent with the needs of the plaintiff, funded in full by the defendant or the defendant's insurer and equal when paid to the amount of the future economic damages award.

(2) In the event that the court or panel shall order that the award for future economic damages be paid in a form other than a lump sum, the court or panel shall order that the defendant or the defendant's insurer provide adequate security for the payment of all future economic damages.

(3) The court or panel may appoint a conservator under this subsection for the plaintiff, upon such terms as the court or panel may impose, who shall have the full and final authority to resolve any dispute between the plaintiff and the defendant or the defendant's insurer regarding the need or cost of expenses for the plaintiff's medical, surgical, custodial, or other care or treatment.

Death of plaintiff prior to final payment of award

(d) If the plaintiff under this section dies before the final periodic payment of an award is made, the unpaid balance of the award for future loss of earnings shall revert to the estate of the plaintiff and the unpaid balance of the award for future medical expenses shall revert to the defendant or to the defendant's insurer if the insurer provided the funds for the future damages award.

CREDIT(S)

Added by Acts 1986, c. 639. Amended by Acts 1994, c. 477, § 1, eff. Oct. 1, 1994.

Current through Chapters 6, 12, 61, 64, 65, 83, 84, 93, 123, and 127 of the 2011 Regular Session of the General Assembly.

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Estates and Trusts

▣ Title 7. Administration of the Estate (Refs & Annos)

▣ Subtitle 4. Powers of Personal Representative

→ § 7-401. General powers

(a)(1) In the performance of a personal representative's duties pursuant to § 7-101 of this title, a personal representative may exercise all of the power or authority conferred upon the personal representative by statute or in the will, without application to, the approval of, or ratification by the court.

(2) Except as validly limited by the will or by an order of court, a personal representative may, in addition to the power or authority contained in the will and to other common-law or statutory powers, exercise the powers enumerated in this section.

(b) He may retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment.

(c) He may hold a security in the name of a nominee or in other form without disclosure of the interest of the estate. In this case, the personal representative is liable for a wrongful act of the nominee in connection with the security held.

(d) He may receive assets from fiduciaries or other sources.

(e) He may deposit funds for the account of the estate, including money received from the sale of assets, in checking accounts, in insured interest-bearing accounts, or in short-term loan arrangements which may be reasonable for use by a trustee.

(f) He may agree to deposit assets of the estate with a financial institution so that the assets cannot be withdrawn or transferred without:

(1) The written consent of the surety on the bond; or

(2) An order of court.

(g) He may satisfy written charitable pledges of the decedent.

(h) He may pay a valid claim as provided in this article or effect a fair and reasonable compromise with a creditor or obligee, or extend or renew an obligation due by the estate.

(i) He may pay the **funeral** expenses of the decedent in accordance with the procedures provided in § 8-106 of this article, including the cost of burial space and a tombstone or marker, and the cost of perpetual care.

(j) He may pay taxes, assessments, and other expenses incident to the administration of the estate.

(k) He may insure the property of the estate against damage, loss, and liability, and himself, as personal representative, against liability in respect to third persons.

(l) He may vote stocks or other securities in person or by general or limited proxy.

(m) He may sell or exercise stock subscription, conversion or option rights, consent to or oppose, directly or through a committee or agent, the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(n) He may invest in, sell, mortgage, pledge, exchange, or lease property.

(o) He may borrow money.

(p) He may release or terminate a mortgage or security interest, if the obligation secured by the mortgage or security interest was fully satisfied during the lifetime of the decedent or during the administration of the estate. He may also extend or renew any obligation owed to the estate.

(q) If assets of the estate are encumbered by a mortgage, pledge, lien, or other security interest and if it appears to be in the best interests of the estate, he may pay the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his security interest, in whole or in part, whether or not the holder of the encumbrance has filed a claim.

(r) Regardless of a contrary provision in the will, he may execute, upon the written demand of the owner of a redeemable leasehold or subleasehold estate, a full and valid conveyance of the reversion or subreversion held by the estate.

(s) He may continue an unincorporated business or venture in which the decedent was engaged at the time of his death:

(1) In the same business form for a period of not more than four months from the date of appointment of a personal representative, where continuation is a reasonable means of preserving the value of the business includ-

ing goodwill;

(2) In the same business form for an additional period of time that may be approved by order of court, in a proceeding to which all persons interested in the estate are parties; or

(3) Throughout the period of administration, if the business is incorporated after the death of the decedent.

(t) He may incorporate a business or venture in which the decedent was engaged at the time of his death if none of the probable distributees of the business who are competent adults objects to its incorporation and retention in the estate.

(u) He may convert a sole proprietorship the decedent was engaged in at the time of his death to a limited liability company and may become a limited partner in any partnership or a member in any limited liability company, including a single member limited liability company.

(v) He may perform the contracts of the decedent that continue as obligations of the estate, and execute and deliver deeds or other documents under circumstances as the contract may provide.

(w) He may exercise options, rights, and privileges contained in a life insurance policy, annuity, or endowment contract constituting property of the estate, including the right to obtain the cash surrender value, convert the policy to another type of policy, revoke a mode of settlement, and pay a part or all of the premiums on the policy or contract.

(x) He may employ, for reasonable compensation auditors, investment advisors, or persons with special skills, to advise or assist him in the performance of his administration duties.

(y) He may prosecute, defend, or submit to arbitration actions, claims, or proceedings in any appropriate jurisdiction for the protection or benefit of the estate, including the commencement of a personal action which the decedent might have commenced or prosecuted, except that:

(1) A personal representative may not institute an action against a defendant for slander against the decedent during the lifetime of the decedent.

(2) In an action instituted by the personal representative against a tort-feasor for a wrong which resulted in the death of the decedent, the personal representative may recover the **funeral** expenses of the decedent up to the amount allowed under § 8-106(b) of this article in addition to other damages recoverable in the action.

(z) If the decedent died testate, he may designate himself on documents as an executor, or if the decedent died intestate, as an administrator.

(aa) He may make partial and final distributions, in cash, in kind, or both, from time to time during the administration.

(bb) If the estate is of a physician, podiatrist, optometrist, or dentist who was a sole practitioner, the administrator shall follow the notice requirements under § 4-305 of the Health-General Article before the destruction or transfer of any medical records of a patient of the decedent.

(cc)(1) To comply with an environmental law, a personal representative may:

(i) Inspect property held by the personal representative, including any type of interest in a sole proprietorship, partnership, limited liability company, or corporation, and any assets owned by a sole proprietorship, partnership, limited liability company, or corporation to determine compliance with an environmental law and respond to an actual or potential environmental liability relating to the property;

(ii) Before or after the initiation of a claim or a governmental enforcement action, take any action necessary to prevent, abate, or otherwise remedy an actual or potential environmental liability relating to property held by the personal representative;

(iii) Settle or compromise at any time a claim against the estate based on an alleged environmental liability that may be asserted by any person; and

(iv) Pay from the estate the costs of an inspection, review, study, abatement, response, cleanup, or other remedial action that involves an environmental liability as provided under § 15-524 of this article.

(2) If a personal representative acts prudently and in good faith, the personal representative is not liable to a person with an interest in assets held by the personal representative for a decrease in the value of the assets for taking action under this subsection or otherwise taking action to comply with an environmental law or reporting requirement.

(3) Acceptance by the personal representative of property or failure by the personal representative to take action under this subsection does not imply that there is or may be liability under an environmental law with respect to any property.

(dd) A personal representative may donate a conservation easement on any real property in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the United States Internal Revenue Code of 1986, as amended, if:

(1) The will authorizes or directs the personal representative to donate a conservation easement on the real property; or

(2) Each interested person who has an interest in the real property that would be affected by the conservation easement consents in writing to the donation.

CREDIT(S)

Acts 1974, c. 11, § 2; Acts 1986, c. 695; Acts 1987, c. 11, § 1; Acts 1994, c. 480, § 2, eff. Oct. 1, 1994; Acts 1995, c. 424, § 1, eff. Oct. 1, 1995; Acts 1999, c. 663, -, eff. Oct. 1, 1999; Acts 2000, c. 61, §§ 1, 7, eff. April 25, 2000; Acts 2000, c. 603, § 1, eff. July 1, 2000; Acts 2001, c. 29, § 1, eff. April 10, 2001. Amended by Acts 2006, c. 531, § 1, eff. July 1, 2006; Acts 2007, c. 18, § 1, eff. Oct. 1, 2007; Acts 2007, c. 19, § 1, eff. Oct. 1, 2007; Acts 2009, c. 36, § 1, eff. Oct. 1, 2009.

Formerly Art. 93, § 7-401.

Current through Chapters 6, 12, 61, 64, 65, 83, 84, 93, 123, and 127 of the 2011 Regular Session of the General Assembly.

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C

West's Annotated Code of Maryland Currentness

Estates and Trusts

▣ Title 7. Administration of the Estate (Refs & Annos)

▣ Subtitle 6. Compensation and Expenses

→ § 7-602. Attorneys

(a) An attorney is entitled to reasonable compensation for legal services rendered by him to the estate and/or the personal representative.

(b) Upon the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services. The compensation shall be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney.

(c) If the court shall allow a counsel fee to one or more attorneys, it shall take into consideration in making its determination, what would be a fair and reasonable total charge for the cost of administering the estate under this article, and it shall not allow aggregate compensation in excess of that figure.

CREDIT(S)

Acts 1974, c. 11, § 2; Acts 1974, c. 763.

Formerly Art. 93, § 7-602.

Current through Chapters 6, 12, 61, 64, 65, 83, 84, 93, 123, and 127 of the 2011 Regular Session of the General Assembly.

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C

West's Annotated Code of Maryland Currentness

Estates and Trusts

▣ Title 8. Claims of Creditors (Refs & Annos)

▣ Subtitle 1. General

→ § 8-106. Payment of funeral expenses

(a) Subject to the priorities contained in § 8-105 of this subtitle, the personal representative shall pay the funeral expenses of the decedent within six months of the first appointment of a personal representative.

(b) Funeral expenses shall be allowed in the discretion of the court according to the condition and circumstances of the decedent. In no event may the allowance exceed \$10,000 for an estate administered under Title 5, Subtitle 3 or Subtitle 4 of this article, or \$5,000 for a small estate administered under Title 5, Subtitle 6 of this article unless the estate of the decedent is solvent and a special order of court has been obtained. If the estate is solvent and the will expressly empowers the personal representative to pay the expenses without an order of court, an allowance by the court is not required.

(c) If the funeral expenses are not paid within six months, the creditor may petition the court to require the personal representative to show cause why he should not be compelled to make the payment. If the court finds that the claim is valid, it shall fix the amount due and shall order the personal representative to make payment within ten days after the order is served upon him. If the personal representative does not have sufficient funds, the claimant may at a later date resubmit his petition when the personal representative has sufficient funds.

CREDIT(S)

Acts 1974, c. 11, § 2; Acts 1983, c. 162; Acts 1988, c. 237; Acts 1991, c. 636; Acts 1997, c. 693, § 1, eff. Jan. 1, 1998. Amended by Acts 2005, c. 107, § 1, eff. Oct. 1, 2005.

Formerly Art. 93, § 8-106.

Current through Chapters 6, 12, 61, 64, 65, 83, 84, 93, 123, and 127 of the 2011 Regular Session of the General Assembly.

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C

West's Annotated Code of Maryland Currentness

Maryland Rules (Refs & Annos)

▣ Title 15. Other Special Proceedings

▣ Chapter 1000. Wrongful Death

→ **RULE 15-1001. WRONGFUL DEATH**

(a) Applicability. This Rule applies to an action involving a claim for damages for wrongful death.

Cross references: See Code, Courts Article, §§ 3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, § 5-806, relating to wrongful death claims between parents and children arising out of the operation of a motor vehicle. See also Code, Labor and Employment Article, § 9-901 et seq., relating to wrongful death claims when worker's compensation may also be available, and Code, Insurance Article, § 20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, § 8-103, relating to the limitation on presentation of claims against a decedent's estate.

(b) Plaintiff. If the wrongful act occurred in this State, 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.

(c) Notice to Use Plaintiff. The party bringing the action shall mail a copy of the complaint by certified mail to any use plaintiff at the use plaintiff's last known address. Proof of mailing shall be filed as provided in Rule 2-126.

(d) Complaint. In addition to complying with Rules 2-303 through 2-305, the complaint shall state the relationship of each plaintiff to the decedent whose death is alleged to have been caused by the wrongful act.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule Q40.

Section (b) is derived from former Rule Q41a.

Section (c) is new.

Section (d) is derived from former Rule Q42.

CREDIT(S)

Adopted June 5, 1996, eff. Jan. 1, 1997. Amended May 9, 2000, eff. July 1, 2000; amended Jan. 8, 2002, eff. Feb. 1, 2002.

Current with amendments received through 2/1/2011

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Maryland Lawyers' Rules of Professional Conduct:

- 1.0 (f) Informed Consent
- 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
- 1.4 Communication
- 1.6 Confidentiality of Information
- 1.7 Conflict of Interest: General Rule
- 1.8(g) Conflict of Interest: Aggregate Settlement

Rule 16–812, Preamble

COURTS, JUDGES, AND ATTORNEYS

Notes of Decisions

In general 1

1. In general

Attorney may not delegate the responsibility to another under the umbrella of advice of counsel and

thereby create a defense to a violation of the Rules of Professional Conduct. Attorney Grievance Com'n of Maryland v. Pennington, 2005, 876 A.2d 642, 387 Md. 565. Attorney And Client ⇐ 46

Rule 1.0. Terminology

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (f) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) “Firm” or “law firm” denotes:

(1) an association of a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association formed for the practice of law; or

(2) a legal services organization or the legal department of a corporation, government or other organization.

(e) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(h) “Law firm.” See Rule 1.0(d).

(i) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(j) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(k) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(l) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(m) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

Rule 16-812, MRPC 1.1

Note 23

A.2d 542, 377 Md. 646. Attorney And Client ⇔ 59.14(1)

Failure to obtain prior approval of the Orphans' Court of commission payments and travel expenses from estate for attorney's work as personal representative, failure to hold estate assets in trust, resulting in harm to the heirs, and failure to pay estate taxes promptly or to pay employee withholding taxes warranted indefinite suspension from practice of law with right to reapply after expiration of one year, rather than three years, for attorney who had not been disciplined before and evinced no fraudulent intent in the tax matters. Attorney Grievance Com'n v. Thompson, 2003, 830 A.2d 474, 376 Md. 500, reinstatement granted 869 A.2d 837, 385 Md. 466. Attorney And Client ⇔ 59.13(9)

Disbarment was warranted for attorney who failed to provide competent and diligent representation, failed to keep clients reasonably informed, brought frivolous action, failed to make reasonable efforts to expedite litigation, knowingly failed to respond to law-

COURTS, JUDGES, AND ATTORNEYS

ful demand for information from disciplinary authority, engaged in dishonest conduct, and failed to withdraw from representation during period of suspension, where attorney had previously been disciplined for similar violations and had been warned that repeat violations could result in disbarment. Attorney Grievance Com'n of Maryland v. Davis, 2003, 825 A.2d 430, 375 Md. 131. Attorney And Client ⇔ 59.14(1)

Attorney's neglect and mishandling of bankruptcy and foreclosure matter, causing client severe distress, loss and inconvenience, warranted indefinite suspension from practice of law, with right to reapply for reinstatement no sooner than six months, where current disciplinary proceedings were first brought against attorney, charges stemmed from his representations of single client, and attorney showed some remorse for his failure adequately to represent client. Attorney Grievance Com'n of Maryland v. Granger, 2003, 823 A.2d 611, 374 Md. 438. Attorney And Client ⇔ 59.13(7)

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

Rule 16-812, MRPC 1.3

Note 17

Disbarment was warranted for attorney who failed to provide competent and diligent representation, failed to keep clients reasonably informed, brought frivolous action, failed to make reasonable efforts to expedite litigation, knowingly failed to respond to lawful demand for information from disciplinary authority, engaged in dishonest conduct, and failed to withdraw from representation during period of suspension, where attorney had previously been disciplined for similar violations and had been warned that repeat violations could result in disbarment. Attorney Grievance Com'n of Maryland v. Davis, 2003, 825 A.2d 430, 375 Md. 131. Attorney And Client ⇔ 59.14(1)

COURTS, JUDGES, AND ATTORNEYS

Attorney's neglect and mishandling of bankruptcy and foreclosure matter, causing client severe distress, loss and inconvenience, warranted indefinite suspension from practice of law, with right to reapply for reinstatement no sooner than six months, where current disciplinary proceedings were first brought against attorney, charges stemmed from his representations of single client, and attorney showed some remorse for his failure adequately to represent client. Attorney Grievance Com'n of Maryland v. Granger, 2003, 823 A.2d 611, 374 Md. 438. Attorney And Client ⇔ 59.13(7)

Rule 1.4. Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
- (2) keep the client reasonably informed about the status of the matter;
- (3) promptly comply with reasonable requests for information; and
- (4) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Under Rule 1.2(a), a lawyer is required, when appropriate, to consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(2) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(3) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Rule 16–812, MRPC 1.5

COURTS, JUDGES, AND ATTORNEYS

Note 24

Disbarment was warranted, in attorney disciplinary case, where attorney failed to file an inventory and administration account while representing a client in an estate administration case, she failed to return telephone calls from client or keep client informed of the status of the case, she improperly disbursed estate funds, she took estate funds without authorization, and she failed to respond to letters from bar counsel about client's grievance. Attorney Grievance Com'n of Maryland v. Somerville, 2004, 842 A.2d 811, 379 Md. 586. Attorney And Client ⇌ 59.14(1); Attorney And Client ⇌ 59.14(2)

Disbarment, rather than a private reprimand, was warranted by collection of an unreasonable attorney fee from settlement with automobile liability insurer, failure to keep client funds in a separate and properly

labeled account, decision to ignore a conflict of interest between his obligations to his client and the client's health insurer, and deliberate misrepresentations to the client's personal representatives concerning the trust account and their right to the money; even though the attorney has practiced law since 1977 and has no prior discipline history, he did not put client money into his trust account, engaged in a deliberate course of misrepresentation in his letters to the representatives, took \$9,000 to which he was not entitled after taking one-fourth of the gross settlement proceeds of \$25,000, and misstated the statute of limitations as barring representatives' claims. Attorney Grievance Com'n of Maryland v. Braskey, 2003, 836 A.2d 605, 378 Md. 425. Attorney And Client ⇌ 59.14(1); Attorney And Client ⇌ 59.14(2)

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules, a court order or other law;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge, civil claim, or disciplinary complaint against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with these Rules, a court order or other law.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject

MISCELLANEOUS

Rule 16-812, MRPC 1.7

out a waiver, in attorney disciplinary proceeding against attorney who was involved in sale of complainants' house. Md.Rule 16-812, Rules of Prof.Conduct, Rule 1.6. Attorney Grievance Com'n of Maryland v. Johnson, 2001, 770 A.2d 130, 363 Md. 598. Attorney And Client ⇌ 53(1)

Failure of attorney to reveal that which he may reveal, as opposed to that which he must reveal, is not a basis for disciplinary action. Rules of Prof.Conduct, Rule 1.6(b). Attorney Grievance Com'n of Maryland

v. Rohrback, 1991, 591 A.2d 488, 323 Md. 79. Attorney And Client ⇌ 42

13. Claim or defense of attorney

Attorney-client privilege did not bar, under Maryland law, disclosures by former in-house attorney for municipal police department, made in support of claim that he was subjected to employment discrimination. Hoffman v. Baltimore Police Dept., 2005, 379 F.Supp.2d 778. Privileged Communications And Confidentiality ⇌ 145

Rule 1.7. Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

MISCELLANEOUS

Rule 16-812, MRPC 1.8

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client or confirmed on the record before a tribunal. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice ~~unless the client is independently represented in making the agreement;~~ or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

MPJI-Cv 10:22 Damages-Spouse of Deceased
MPJI-Cv 10:23 Damages-Parent of Deceased Child
MPJI Cv 10:24 Damages – Minor Child of Deceased Parent
MPJI-Cv 10:25 Damages-Action by Estate
MPJI-Cv 10:26 Present Value Qualification-Wrongful Death

B. WRONGFUL DEATH CASES

MPJI-Cv 10:22

DAMAGES — SPOUSE OF DECEASED

In determining the damages which will reasonably and adequately compensate the spouse of the deceased as a result of the death, you shall consider both economic and noneconomic losses.

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. You 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.

The noneconomic losses to be considered are the mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, attention, advice or counsel the surviving spouse has experienced or probably will experience in the future.

Comment

A. Statutory Provisions:

1. Md. Code Ann., Cts. & Jud. Proc., Title 3, Subtitle 9 (1974, 2002 Repl. Vol. & Supp. 2005) governs actions for Wrongful Death. Section 3-904(a) creates a primary right to recover in the spouse, parent and child of the deceased. Section 3-904(b) creates a secondary right in other blood and marital relations who were "substantially dependent" on the deceased. For application of § 3-904(a) to issue of abatement of wrongful death claim, see *Owens-Corning Fiberglass Corp. v. Garrett*, 343 Md. 500, 682 A.2d 1143 (1996).
2. Md. Code Ann., Est. & Trusts § 7-401(y) (1974, 2001 Repl. Vol. & Supp. 2005) provides for actions on behalf of the decedent's estate.
3. Damages for death of a spouse, child or parent of a child are not limited or restricted by the "pecuniary loss" rule but may include damages for loss of solatium. Md. Code Ann., Cts. & Jud. Proc. § 3-904(d)&(e). However, a showing of emotional pain is not required. See *Eagle-Picher Indus., Inc. v.*

MPJI-Cv 10:23

DAMAGES — PARENT OF DECEASED CHILD

In determining the damages which will reasonably and adequately compensate each parent as a result of the death of their child you shall consider both economic and noneconomic losses.

The economic losses to be considered are any financial benefits a parent probably would have been expected to receive from the deceased child.

The noneconomic losses to be considered are the mental anguish, emotional pain and suffering, and the loss of society, companionship, comfort, protection, care, attention, advice, counsel or guidance, a parent has experienced or probably will experience in the future.

Comment

A. Generally:

1. The word "parent" includes both parents of a deceased illegitimate child, and "child" includes an illegitimate child. Md. Code Ann., Cts. & Jud. Proc. § 3-901(b) and (c) (1974, 2002 Repl. Vol. & Supp. 2005).
2. A viable child born dead is a "person" for which wrongful death and survival actions may be brought. *State ex rel Odham v. Sherman*, 234 Md. 179, 198 A.2d 71 (1964).
3. For a comprehensive review of damages recoverable by parents of deceased minor, see *Barrett v. Charlson*, 18 Md. App. 80, 305 A.2d 166 (1973).

MPJI-Cv 10:24

DAMAGES — MINOR CHILD OF DECEASED PARENT

In determining the damages which will reasonably and adequately compensate [each] [a] surviving child of a deceased parent as a result of the death of a parent you shall consider both economic and noneconomic losses.

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.

The noneconomic losses to be considered are the mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, parental care, attention, advice, counsel, training, guidance or education which the child has experienced or probably will experience in the future.

Comment

A. Procedure:

1. See Md. Code Ann., Cts. & Jud. Proc. § 3-904(d) (1995, 2002 Repl. Vol. & Supp. 2005).

B. Generally:

1. A step-child is not considered to be the stepparent's child and cannot assert a claim for the stepparent's death. *Flores v. King*, 13 Md. App. 270, 282 A.2d 521 (1971).
2. A fetus is not a person within the definition of the wrongful death statute. *Bell v. Heitkamp, Inc.*, 126 Md. App. 211, 728 A.2d 743 (1999).
3. Recovery elements may include mental anguish, loss of society, loss of educational benefits upon a showing of only a reasonable expectation the deceased parent would have provided those benefits and a probability that the child will pursue an education. *Ory v. Libersky*, 40 Md. App. 151, 389 A.2d 922, cert. denied, 283 Md. 737 (1978); see *Baltimore Transit Co. v. State*, 194 Md. 421, 71 A.2d 442 (1950); *Davidson Transfer & Storage Co. v. State*, 180 Md. 63, 22 A.2d 582 (1941).

MPJI-Cv 10:25

DAMAGES — ACTION BY ESTATE

In determining the damages to be awarded to the estate of the deceased as a result of the death you shall consider both economic and noneconomic losses.

The economic losses to be considered include the fair and reasonable medical expenses which were incurred by the deceased, and the loss of earnings from the time of injury to the time of death. You shall also consider the funeral expenses up to \$5,000.

The noneconomic losses to be considered are any conscious pain, suffering or mental anguish that the deceased experienced as a result of the injury until death [and any pre-impact fright that you find the deceased may have experienced] [and any punitive damages for which you find the defendant responsible].

Comment

A. Generally:

1. Wrongful death recovery is exclusive of the deceased's estate's recovery for the pain and suffering and other damages for which the deceased could have recovered had deceased survived. See *Tri-State Poultry Coop., Inc. v. Carey*, 190 Md. 116, 57 A.2d 812 (1948); *Rhone v. Fisher*, 224 Md. 223, 167 A.2d 773 (1961).
 - (a) For differences between a wrongful death action and a personal representative's action, see *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 297 A.2d 721 (1972). See also *Stewart v. United Elec. Light & Power Co.*, 104 Md. 332, 65 A. 49 (1906); *Jones v. Flood*, 118 Md. App. 217, 702 A.2d 440 (1997), *aff'd*, 351 Md. 120, 716 A.2d 285 (1998) (future loss of earnings recoverable in a wrongful death action but not in a survival action).
2. Personal representative may not recover for decedent's future loss of earnings as the recovery is limited to the pain, suffering and loss of earnings sustained before death. *Jones v. Flood*, 351 Md. 120, 716 A.2d 285 (1998). In a survival action, loss of earnings is measured for period between the injury and death; the estate cannot recover for loss of earnings if death was instantaneous. *Jones v. Flood, supra*.

MPJI-Cv 10:26

PRESENT VALUE QUALIFICATION — WRONGFUL DEATH

a. Spouse

In deciding upon the amount of economic damages for the plaintiff [spouse of deceased], you shall consider:

- (1) how long the plaintiff [spouse of deceased] would have been likely to have received financial benefits from the deceased;
- (2) how long the deceased was likely to have lived; and
- (3) how long the plaintiff [spouse of deceased] is likely to live.

The damages for such economic loss shall be for the period of their joint life expectancy.

b. Children

In deciding upon the amount of economic damage for the child[ren] of the deceased parent, you shall consider the financial benefits [the] [each] child[ren] would have been likely to have received from the deceased. The damages for such economic loss shall be for the period of time until the child[ren] would reach the age of 18 years.

In figuring the amount of the economic damages, you must not multiply the number of years by the financial benefits. Instead, you must determine the present cash value of such future financial benefits.

“Present cash value” means that sum of money needed now, which, when prudently invested over the applicable number of years, will equal the amount of financial benefits lost because of the death of the deceased.

Wrongful Death and Survival Actions: Important Appellate Decisions

Walker v. Essex, 318 Md. 516, 569 A. 2d 645 (1990)

Williams v. Work, 192 Md. App. 438, 995 A.2d 744 (2010), *aff'd*, Ace Am. Ins. Co. v. Williams, 2011 WL 941342 (Md. 2011).

Scamardella v. Illiano, 126 Md. App. 76, 727 A. 2d 421 (1999)

Muti v. Univ. of Md. Med. Sys. Corp., 2011 WL 338439 (Md. 2011).

Beynon v Montgomery Cablevision, Ltd. Partnership, 351 Md. 460, 718 A. 2d 1161 (1998)

Greentree v. Fertitta, 338 Md. 621, 659 A. 2d 1325 (1995)

Beyer v. Morgan State University, 139 Md. App. 609, 779 A. 2d 388 (2001), *aff'd* 369 Md. 335, 800 A. 2d 707 (2002)

SIMPLIFIED MARYLAND NONECONOMIC DAMAGES CAP CHART (rev. 4/05)

cause of action arises on or after	medmal			non medmal		
	cap	wrongful death	total cap	cap	wrongful death	total cap
10/1/1994	\$500,000.00	\$750,000.00	\$1,250,000.00	\$500,000.00	\$750,000.00	\$1,250,000.00
1995	\$515,000.00	\$772,500.00	\$1,287,500.00	\$515,000.00	\$772,500.00	\$1,287,500.00
1996	\$530,000.00	\$795,000.00	\$1,325,000.00	\$530,000.00	\$795,000.00	\$1,325,000.00
1997	\$545,000.00	\$817,500.00	\$1,362,500.00	\$545,000.00	\$817,500.00	\$1,362,500.00
1998	\$560,000.00	\$840,000.00	\$1,400,000.00	\$560,000.00	\$840,000.00	\$1,400,000.00
1999	\$575,000.00	\$862,500.00	\$1,437,500.00	\$575,000.00	\$862,500.00	\$1,437,500.00
2000	\$590,000.00	\$885,000.00	\$1,475,000.00	\$590,000.00	\$885,000.00	\$1,475,000.00
2001	\$605,000.00	\$907,500.00	\$1,512,500.00	\$605,000.00	\$907,500.00	\$1,512,500.00
2002	\$620,000.00	\$930,000.00	\$1,550,000.00	\$620,000.00	\$930,000.00	\$1,550,000.00
2003	\$635,000.00	\$952,500.00	\$1,587,500.00	\$635,000.00	\$952,500.00	\$1,587,500.00
2004	\$650,000.00	\$975,000.00	\$1,625,000.00	\$650,000.00	\$975,000.00	\$1,625,000.00
1/1/2005	\$650,000.00	\$812,500.00	\$812,500.00	\$665,000.00	\$997,500.00	\$1,662,500.00
2006	\$650,000.00	\$812,500.00	\$812,500.00	\$680,000.00	\$1,020,000.00	\$1,700,000.00
2007	\$650,000.00	\$812,500.00	\$812,500.00	\$695,000.00	\$1,042,500.00	\$1,737,500.00
2008	\$650,000.00	\$812,500.00	\$812,500.00	\$710,000.00	\$1,065,000.00	\$1,775,000.00
2009	\$665,000.00	\$831,250.00	\$831,250.00	\$725,000.00	\$1,087,500.00	\$1,812,500.00
2010	\$680,000.00	\$850,000.00	\$850,000.00	\$740,000.00	\$1,110,000.00	\$1,850,000.00
2011	\$695,000.00	\$868,750.00	\$868,750.00	\$755,000.00	\$1,132,500.00	\$1,887,500.00
2012	\$710,000.00	\$887,500.00	\$887,500.00	\$770,000.00	\$1,155,000.00	\$1,925,000.00
2013	\$725,000.00	\$906,250.00	\$906,250.00	\$785,000.00	\$1,177,500.00	\$1,962,500.00
2014	\$740,000.00	\$925,000.00	\$925,000.00	\$800,000.00	\$1,200,000.00	\$2,000,000.00
2015	\$755,000.00	\$943,750.00	\$943,750.00	\$815,000.00	\$1,222,500.00	\$2,037,500.00
2016	\$770,000.00	\$962,500.00	\$962,500.00	\$830,000.00	\$1,245,000.00	\$2,075,000.00
2017	\$785,000.00	\$981,250.00	\$981,250.00	\$845,000.00	\$1,267,500.00	\$2,112,500.00
2018	\$800,000.00	\$1,000,000.00	\$1,000,000.00	\$860,000.00	\$1,290,000.00	\$2,150,000.00
2019	\$815,000.00	\$1,018,750.00	\$1,018,750.00	\$875,000.00	\$1,312,500.00	\$2,187,500.00
2020	\$830,000.00	\$1,037,500.00	\$1,037,500.00	\$890,000.00	\$1,335,000.00	\$2,225,000.00

June 10, 2011

Mother
Daughter
Daughter
Daughter

Re: Husband and Father, deceased
Date of Loss: _____

Dear _____:

Our deepest sympathies are with you following the tragic loss of your husband and father, _____.

We appreciate the confidence you have placed in our firm by requesting that we pursue each of your respective wrongful death claims and the claims of _____'s estate in this matter. This letter will confirm that Azrael, Franz, Schwab & Lipowitz, LLC ("AFSL") will represent each of you and _____'s estate pursuant to the terms stated herein.

We are taking this opportunity to summarize in detail the types of claims available to each of you and _____'s estate as a result of this tragedy and to disclose to all of you the implications, limitations and the conflicts of interest that would inherently exist as a result of our firm's common representation of more than one client in a single action.

Types of Claims

As we have explained, Maryland has two independent causes of action for the negligent death of a person: a wrongful death action and a survival action.

The wrongful death statute creates a single cause of action with the primary right of recovery for the spouse, parents and children of the deceased. As it relates to your family, this means that you are each entitled, as primary wrongful death beneficiaries, to make claims in the wrongful death action for your respective non-economic damages including your respective mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital or parental care, attention, advice, counsel, training, guidance, or education that resulted from _____'s tragic death. The amount recovered will have to be divided in shares among all of you.

In addition to her claim for non-economic damages, _____, as _____'s wife, is entitled to make a claim for her economic losses arising from _____'s death including the loss of his income and household services in the future. _____'s claim for economic damages is solely for her benefit and is not shared with anyone.

Please note that we will need _____ to furnish us with a copy of her marriage certificate and for _____, _____ and _____ to provide

Mother
Daughter
Daughter
Daughter
June 10, 2011
Page 2

us with official copies of their respective birth certificates. Moreover, although we understand that _____'s parents, _____ and _____, predeceased _____, we will need official copies of their respective death certificates in order to verify the facts as needed.

A survival action is normally made with a wrongful death action. The personal representative of a decedent's estate may bring a survival action on behalf of the estate to recover for the decedent's conscious pain and suffering between the time of injury and time of death and his pre-impact fright, if any. In addition, the survival action may include claims for the decedent's medical expenses and funeral expenses not to exceed \$5,000.00. As we explained, in order to pursue the claims of _____'s estate (the "Estate"), we will need to file a petition to have the Estate opened and to have an appropriate person appointed as Personal Representative of the Estate. You have informed us that to the best of your knowledge, _____ did not have a Last Will and Testament. If you find that _____ did have a Last Will and Testament, please notify us immediately.

In the course of our investigating the Estate's claims, it will be necessary for us to obtain _____'s medical records. As such we are providing _____ with five (5) copies of a Medical Authorization form that we would like her to sign as the Personal Representative (to be appointed) to enable us to obtain all of the necessary records.

Disclosures

As we discussed, a potential conflict of interest exists when an attorney undertakes the common representation of more than one client in a matter where the attorney's clients will be competing for the same limited insurance proceeds or assets in regard to a potential settlement. We have explained to you the implications, limitations and risks associated with our firm's common representation of more than one client in this matter and disclosed to you that a conflict of interest inherently exists on how to apportion any potential settlement in this matter. Notwithstanding the existence of this conflict of interest, after consultation with you, we reasonably believe we will be able to provide competent and diligent representation to you, subject to the terms of this letter, and that a mechanism will exist for each of you, if desired, to obtain independent advice on the apportionment of any recovery.

We will seek to identify all sources of liability and uninsured motorist insurance coverage available to satisfy these claims. Although we have not yet had the opportunity to

Mother
Daughter
Daughter
June 10, 2011
Page 3

investigate the liability insurance coverage, if any, for the drunk driver, _____, Jr., in this matter, it appears that MAIF insured the vehicle owned by _____ with liability coverage limits in the amount of \$20,000 per person and \$40,000.00 per accident. We will also be making an underinsured motorist ("UIM") claim against _____'s policy with State Farm which we understand afforded UIM coverage in the amount of \$250,000 per person and \$500,000 per accident on the date of the crash. In any event, it appears that there is not enough insurance to cover the aggregate value of the overall claims in this matter.

Prior to the conclusion of the wrongful death and survival actions in this matter, you each agree to reasonably apportion the proceeds among yourselves and the Estate, as needed, or to permit an appropriate court to provide for such an apportionment. AFSL will not represent any one of you or the Estate in regard to the issue of apportionment. Once a proper apportionment of any potential proceeds is made, we will prepare the necessary documentation required to memorialize and complete the distribution of the overall recovery. If you are unable to agree on the division of the net proceeds in this matter, our firm will further consult with each of you regarding any conflicts of interest that may exist or arise regarding the apportionment of limited proceeds and we will advise all of you to seek independent counsel to resolve those issues, if necessary, at that time.

Fee Agreement

With regard to our fee, this will confirm that you have each agreed proportionately to pay Azrael, Franz, Schwab & Lipowitz, LLC a contingency fee of _____ percent (_____%) of the total gross recovery in this matter. If a recovery is obtained we are entitled to our fee. In the event that this case necessitates the filing of a lawsuit, our fee will remain at _____ percent (_____%) of the total gross recovery in this matter.

All costs incurred during AFSL's representation of you in this matter including costs associated with the administration of the Estate will be advanced by AFSL, but are your responsibility and shall be reimbursed to AFSL out of the gross proceeds recovered in regard to these claims. If no recovery is obtained, you will not have to reimburse AFSL for any such costs or pay any attorney's fee.

In the course of our representation, it may be necessary for AFSL to retain, as it deems appropriate, the services of one or more expert witnesses or consultants to assist in

Mother
Daughter
Daughter
June 10, 2011
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the investigation and/or presentation of your case. Such expert witness or consulting expense shall be considered a cost of the case.

We make no additional charge for pursuing claims, if any, for property damage, Personal Injury Protection (PIP) benefits or life insurance proceeds. Furthermore, we intend at no additional charge to devote considerable time and effort advocating your rights as victims during the criminal process to help ensure that the prosecution of this case is as focused and successful as possible.

We also make no additional charge for opening the Estate and for estate administration matters that are related solely to the crash. If the Estate requires significant legal services that are unrelated to the motor vehicle accident, we reserve the right to seek a separate additional fee from the Estate to pay us for such unrelated work.

AFSL is not required to take an appeal or represent you or the Estate regarding an appeal. If after final resolution of this matter there is a verdict and a need or desire to file an appeal or defend an appeal, a separate additional agreement must be arranged in writing prior to AFSL having an obligation to represent you or the Estate in an appeal.

This letter involves important rights, undertakings and disclosures. Please let us know if you have any questions or concerns and feel free to have this letter reviewed by independent counsel selected by you.

If you are in agreement with the terms set forth in this letter, please sign the enclosed copy of this letter where indicated.

Very truly yours,

AZRAEL, FRANZ, SCHWAB & LIPOWITZ, LLC

Judson H. Lipowitz

JHL/crl
Enclosures

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Mother
Daughter
Daughter
Daughter
June 10, 2011
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We have read the foregoing letter and agree to be bound by the terms stated therein. We consent to AFSL's common representation of us and the Estate in this matter and understand and agree that AFSL will not represent any one of us or the Estate in regard to the issue of apportionment. We additionally agree that we will not engage any other attorney to represent our interests in this matter without prior compensation to AFSL for its services as permitted under Maryland law. By signing below we acknowledge our understanding and agreement to the terms contained herein.

Wife

Daughter

Daughter

Daughter

Wife,
Personal Representative (to be appointed)
of the Estate of _____, deceased

June 10, 2011

HAND DELIVERED

Souse
Mother
Father
Child

Re: Disclosures, Retainer Agreement and Informed Consent
_____, deceased
Date of Crash: _____

Dear _____:

As you know, our firm early in the process undertook representation of _____ and _____'s Estate in their claims. Our present obligation is to them and to maximize the value of their claims and the amount they recover from _____ and/or her insurer. This necessarily involves hiring an expert to quantify the lost wages and other economic losses that _____ suffered as the surviving spouse. Besides seeking to recover the most from the driver and her insurer, we would under our present arrangement be an advisor to and advocate for _____ and the Estate in the discussions and any arbitration or litigation on how the amount paid by _____ or her insurer is divided among _____ and the Estate.

_____ initially hired _____, Esquire to represent them and to obtain a recovery against _____ and/or her insurer and to advocate for and advise them on the allocation of that recovery. As we would have been for _____ and the Estate, Mr. _____ would have been an advisor to and advocate for them on the allocation of any recovery.

We understand that _____ have severed ties with Mr. _____ and have not hired another attorney to represent them and their interests. Instead, they have asked our firm to represent them as well as _____ and the Estate.

Our firm, Azrael, Franz, Schwab & Lipowitz, LLC ("AFSL") is honored that _____ have asked us to take on their representation. As this representation would create a conflict of interest regarding the division of any recovery and would result in _____ and the Estate giving up the right to have our firm represent and advise them and only them, we cannot take on the expanded representation unless everyone in the family gives their informed written consent to that representation. Beyond what we have discussed in our meeting and what is outlined in this letter, I have advised you that this letter involves important rights and you

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Spouse
Mother
Father
Child
June 10, 2011
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should have an attorney of your own choosing review this letter for you.

The letter confirms the substance of our consultation with you this afternoon during which we summarized in detail the types of claims available to you as a result of this tragedy and disclosed to you the implications, limitations and the conflicts of interest that would inherently exist as a result of our firm's common representation of you. Should you wish to go forward, this letter will serve as our firm's retainer agreement with you and will confirm in writing your informed consent authorizing us to proceed with our common representation of all of you in this matter.

Types of Claims

As we explained, Maryland has two independent causes of action for the negligent death of a person: a wrongful death action and a survival action.

The wrongful death statute creates a single cause of action with the primary right of recovery for the spouse, parents and children (whether adult or minor) of the deceased. As it relates to your family, this means that you are each entitled, as primary wrongful death beneficiaries, to make claims in the wrongful death action for your respective mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, attention, advice, counsel, training, guidance, or education (collectively referred to as "non-economic damages") because of _____'s tragic death, however, the amount recovered will have to be divided in shares among all of you. In addition to her claim for non-economic damages, _____ is entitled to make a claim for her past and future economic losses for _____'s wages and household services. _____'s claim for economic damages is solely for her benefit and is not shared with anyone. _____ may be able to make a claim for economic damages if they can prove they would have expected to receive financial benefits from _____ had he survived.

A survival action claim is normally made along with a wrongful death action. The personal representative of one's estate may bring a survival action on behalf of the estate to recover for the decedent's conscious pain and suffering between the time of injury and time of death and for his or her pre-impact fright. In addition, the survival action may include claims for medical expenses and funeral expenses not to exceed \$_____. As we explained, _____, as the Personal Representative, is entitled to bring a survival action on behalf of _____'s Estate.

_____ was severely injured in the crash. As a result, _____ is entitled to pursue a bodily injury claim for her past and future pain and suffering and mental anguish and for her past and future medical expenses and lost wages. In addition, _____ are entitled to pursue a joint claim for the damage to their marital relationship (loss of consortium) which occurred due to _____'s injuries.

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Spouse
Mother
Father
Child
June 10, 2011
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Disclosures

As we discussed, a potential conflict of interest exists when an attorney undertakes the common representation of more than one client in a matter where the attorney's clients will be competing for the same limited liability insurance policy limits or assets in to a potential settlement. We have explained to you the implications, limitations and risks associated with our firm's common representation of you and disclosed to you that a conflict of interest inherently exists on how to apportion any potential settlement in this matter. Notwithstanding the existence of this conflict of interest, after consultation with all of you this afternoon, we reasonably believe we will be able to provide competent and diligent representation to each of you, subject to the terms of this letter and that a mechanism will exist for each of you, if desired, to obtain independent advice on the apportionment of any recovery.

If there is no settlement and your claims are ultimately tried in Court, the jury verdict will allocate the award or awards among each of your claims. This will alleviate any conflict as to your respective entitlements.

Ms. _____ purportedly has a policy of insurance with _____ which affords liability coverage in the amount of \$ _____ per person and \$ _____ per accident and an umbrella policy which affords coverage in the amount of \$ _____ per accident (collectively referred to as the "policy limits"). Therefore, the total insurance coverage available to satisfy all of the personal injury claims arising from the crash (including the claims of the occupants of the other vehicles) is \$ _____.

_____ informed us that it received a claim from _____ that it settled for approximately \$ _____ and that it also received a claim from _____ that it "hoped" to settle soon for considerably less than \$ _____. These settlements will, of course, reduce the coverage available to you through _____. However, based on our discussions with _____, it appears that these other claims are being adjusted in a fair and reasonable manner. We believe that these early settlements will benefit you in the end because they eliminate the potential of the other claimants holding up the resolution of your claims.

Obviously, the remaining balance of _____'s insurance proceeds in this matter and _____'s excess settlement offer, if any, will represent an exact sum that must be divided among all of you. In your case, where your claims collectively exceed the maximum available insurance, the issue of apportionment of the potential insurance proceeds between you presents an inherent conflict of interest for our firm. This is obvious as however much one party receives automatically means a detriment to the other party or parties.

Spouse
Mother
Father
Child
June 10, 2011
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Any payment from _____ would be conditioned on it receiving a general release of all claims signed by all potential claimants in this matter; namely all of you and the Estate. Prior to our accepting any offer from _____, all of you will need to meet to seek an agreement as to each party's respective share of the potential settlement. The same is true if we are successful in obtaining an offer from Ms. _____ for a sum in excess of her available insurance.

In the alternative, if no agreement is reached as to a percentage or the amount of your individual shares, all of you may agree to authorize our firm to accept _____'s policy limits and Ms. _____'s excess contribution, if any, with a further agreement that resolution of your respective shares will be left to a later date and your dispute will be submitted to the court for resolution or you may agree to use mediation or arbitration as a vehicle to resolve the issue of apportionment.

AFSL will not present any view of an appropriate monetary apportionment of the potential settlement and all of you will be informed of your need to secure separate and independent counsel on the issue of apportionment as discussed further below. Moreover, in that we represent all of you, we will not participate in making an aggregate settlement of your claims unless we receive informed consent in writing, signed by each of you or an appropriate court order.

With the consent of _____ and _____, AFSL will disclose to each of you the information it obtains regarding the nature and extent of their respective claims. For example, with _____'s consent, AFSL will disclose the economic assessment of past and future economic losses for wages and household services it obtains in this matter and, with _____'s consent, AFSL will disclose the extent of medical treatment it obtains concerning _____'s care and information regarding her past and future economic losses for medical expenses and lost wages, if any.

Unfortunately, there are also damage caps which apply to wrongful death and survival actions and _____'s bodily injury claim in this matter. In that regard, we have reviewed and given you copies of a Simplified Maryland Non-Economic Damages Cap Chart. Moreover, we have explained how life expectancy tables are used to establish the life expectancy for each party and why the life expectancy of _____ and each of the beneficiaries is important to some of the determinations regarding the value of these claims.

Notwithstanding your clear indication that you are all very confident that your family will reach an agreement as to how to reasonably apportion the potential settlement proceeds, if there is a dispute or if any of you is unable to agree on the division of the proceeds, AFSL will advise each of you to consult with separate independent counsel and will not represent any of you with respect to the apportionment issue as that would be a conflict of interest for our firm. Once a proper agreement as to the apportionment of the potential recovery is made, we will prepare the necessary documentation to effectuate and memorialize a settlement and to complete the

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Spouse
Mother
Father
Child
June 10, 2011
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distribution of the overall gross recovery in accordance with your agreement and joint instructions to our firm.

Fee Agreement

With your informed consent (as evidenced by all of your signatures where indicated below), Azrael, Franz, Schwab & Lipowitz, LLC will represent all of you in regard to your respective claims and you have each agreed to pay AFSL a contingency fee of _____ percent (____%) of your respective gross recovery obtained in this matter. If you obtain a recovery, we are entitled to our fee.

AFSL will seek the maximum potential recovery for you to share as described above. We will seek to identify all sources of liability and underinsured motorist insurance coverage available to satisfy your claims.

In regard to _____'s bodily injury claim, there will be a considerable issue involving the reimbursement claims and/or liens of _____ Healthcare and Medicare. This means that _____ Healthcare and Medicare will expect to be paid back for all or part of the medical bills which they respectively paid as a result of _____'s injuries. We understand that the total of _____'s past medical bills exceeds \$_____ at this time. We will work with _____ and _____ to make sure that all of _____'s medical records are obtained and that all bills are properly accounted for and that there are no double payments. Our firm will also correspond with _____ Healthcare and Medicare in a vigorous effort to reduce their respective claims and/or liens to the extent we are permitted to do so based on the applicable contracts and laws involved.

All costs incurred during our representation of you in this matter will be advanced by us, but your respective share of our costs is your responsibility and shall be reimbursed to us out of your respective gross recovery obtained in this matter. If no recovery is obtained for you, you will not have to reimburse us for any such costs or pay any attorney's fee.

In the course of our representation, it may be necessary for AFSL to retain, as it deems appropriate, the services of one or more expert witnesses or consultants to assist in the preparation and/or presentation of your case. The fees and costs paid to such expert may be significant and shall be considered costs of the case.

AFSL is not required to take an appeal or represent you or the Estate in an appeal following a trial or arbitration of any of these claims. If after the trial or arbitration of this matter there is a need or desire to file an appeal or defend an appeal, a separate additional written fee

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Mother
Father
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agreement must be signed prior to AFSL having an obligation to represent you or the Estate in an appeal.

In the course of our investigating _____'s bodily injury claim it will be necessary for us to obtain certain medical records. As such we are providing _____ with five (5) copies of a Medical Authorization form that we will need signed to enable us to obtain all of the necessary medical records.

This letter involves important rights, undertakings and disclosures. Please let us know if you have any questions or concerns and feel free to have this letter reviewed by independent counsel selected by you.

If you are in agreement with the terms set forth in this letter and wish to retain our services at this time, please sign this letter which will be your indication of your understanding of the conflict issue presented in this letter and during our meeting, and your consent for us to proceed as outlined in this letter.

Very truly yours,

AZRAEL, FRANZ, SCHWAB & LIPOWITZ, LLC

Judson H. Lipowitz

JHL/crl
Enclosures

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Mother
Father
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June 10, 2011
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We have read the foregoing letter and hereby agree to be bound by the terms stated therein. We consent to AFSL's continued representation of _____ and the Estate in regard to their respective claims in this matter. We acknowledge and understand that AFSL will not represent _____, the Estate or any one of us in regard to the issue of how to apportion the recovery as that would be a conflict of interest for AFSL as disclosed above. By signing below we acknowledge our understanding and agreement to the terms contained herein.

I have read the foregoing letter and hereby consent to AFSL's representation of _____ in regard to their respective claims in this matter. On behalf of myself and _____'s Estate, I hereby agree to continue to be bound by the terms of the fee agreement I previously signed with AFSL. I acknowledge and confirm my understanding that AFSL will not represent any of the claimants in this matter in regard to the issue of how to apportion the recovery as that would be a conflict of interest for AFSL as disclosed above. By signing below I acknowledge my understanding and agreement to the terms contained herein and thus sign personally in my individual name and in my capacity as the Personal Representative of _____'s Estate.

_____, Individually and
as Personal Representative of the
Estate of _____

LIST OF INFORMATION FOR ESTATES

A. *Necessary Items to Open an Estate:*

1. Certified death certificate
2. Copy of paid funeral bills (funeral home, cemetery, etc. ~ no bills for food, flowers, etc., they are not usually approved).
3. Original Last Will & Testament and Codicils
4. Names, addresses and birthdates of Interest Persons—usually those listed below:
 - a) Personal Representative and Persons who will receive part of the Estate under the Will.
 - b) Spouse if married
 - c) Children and if a child has predeceased the decedent, the children of the deceased child.
 - d) Living Parent(s) if no spouse, child or grandchild.
5. General information on Decedent's debts--mortgages, credit cards, car loans, medical bills, etc. (The more precise the better.)
6. List of Probate assets (bank accounts, brokerage accounts, vehicle and boat title, real estate) It is helpful to have statements that cover the date of the Decedent's death.

B. *Information Usually Obtained During Estate Administration.*

1. Copy of previous year's income tax returns
2. Decedent's Employer ~ name, address, telephone number ~ point of contact for benefits
3. Names, addresses, and phone numbers for decedent's:
 - Insurance agents
 - Investment advisors
 - Accountants
4. If spouse predeceased the decedent, a copy of the spouse's death certificate

5. Information on any pending lawsuits
6. Information on any safe deposit box? If so, where and who has the keys?
7. Citizenship – If not a US citizen, copies of passport, visa, green card, etc.
8. Copies of life insurance policies
9. Dates and amounts of any substantial financial gifts (usually more than \$5,000) decedent made in the two years before death.

Plaintiffs' Demand Letter / Mediation Statement

Mediation Date: _____

Mediator: _____

Nature of Matter: Motor Tort, Wrongful Death

Plaintiffs: _____

Attorneys for Plaintiffs: Keith S. Franz, Judson H. Lipowitz and Azrael,
Franz, Schwab & Lipowitz, LLC

Defendants: _____

Attorneys for Defendants: _____

Insurance Companies: _____

The Plaintiffs' Case Summary

On _____, Defendant _____ was traveling at a high rate of speed and lost control of the 2008 Cadillac _____ he was negligently operating southbound on _____ Street in Baltimore County, Maryland. Mr. _____'s vehicle crossed over the center median and violently collided with the front of the 2009 Hyundai _____ that was being operated by Plaintiffs' decedent, _____, in the northbound direction on _____ Street. The Cadillac was owned by _____'s father, _____. At the same time and place, Defendant _____ was following Mrs. _____ too closely and negligently drove a 1999 GMC Package Truck owned by _____ into the rear of and then up and over Mrs. _____'s vehicle, trapping her inside her crushed vehicle. The _____ truck was being operated by Mr. _____ in the course of his employment. Photographs of all three of the vehicles involved in the collision are attached hereto collectively as Plaintiffs' Exhibit 1.

Mrs. _____ was an active wife and mother who participated in many activities with her family. She was employed as a registered nurse and had intended to continue in her work indefinitely into the future in order to support her family. Some photographs taken of Mrs. _____ and her family are attached hereto collectively as Plaintiffs' Exhibit 2.

The Plaintiffs are confident that a jury will appreciate the vitality, commitment, devotion and hope for the future that was lost when this 47 year old, college-educated, hard-working nurse, wife and mother was killed in this horrible occurrence caused by the negligence of the Defendants. Mr. _____ and his son, _____, are now facing the greatest challenge of their life. _____ has lost a devoted wife, and _____, who was only 8 years of age at the time of this unnecessary tragedy, has lost his mother forever.

The Plaintiffs' Claims

The Plaintiffs' are claiming the following damages:

I. Wrongful Death Action

A. Economic Damages

Mr. _____ is claiming economic damages for the loss of his wife including the present value of the amount of the contributions and support he would have expected to receive had Mrs. _____ not been killed by the Defendants' negligence. Mr. _____ is also claiming economic damages for the loss of household services that would have been provided to him by his wife.

The minor child, _____, is claiming economic damages for the pecuniary loss caused by the death of his mother up to the attainment of the age of majority. _____ is also claiming economic damages for the loss of household services that would have been provided to him by his mother. Furthermore, since there was a reasonable expectation that Mrs. _____ would have provided support to allow _____ to obtain a post high school education, _____ is claiming the cost of such support. *Ory v. Libersky*, 40 Md. App. 151, 389 A. 2d 922 (1978).

The Plaintiffs provided the Defendants with a Labor Market Survey prepared by _____, R.N. on _____. A copy of the Labor Market Survey is attached hereto as Plaintiffs' Exhibit 3.

The Plaintiffs also provided the Defendants with an Economic Loss report prepared by _____, Ph.D., Professor of Economics and Chair, Department of Economics, _____ University. A copy of the Economic Loss report is attached hereto as Plaintiffs' Exhibit 4.

Dr. _____ has quantified the present value of the economic loss to Mr. _____ and his son, _____ in the amount of \$ _____ of which \$ _____ is net income and \$ _____ is household service loss.

B. Non-Economic Damages

The Plaintiffs are claiming non-economic damages suffered by _____ and _____ for their mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advise, counsel, training, guidance or education. *Wrongful Death Act*, §3-904(d). Maryland's statutory cap on damages limits these

damages to \$_____ in the aggregate. *Maryland Annotated Code, Courts & Judicial Proceedings Volume*, §11-108.

II. Survival Action

The Personal Representative is claiming damages for Mrs. _____'s pre-impact fright, mental anguish and conscious pain and suffering. Maryland's statutory cap on damages limits these damages to \$_____. *Maryland Annotated Code, Courts & Judicial Proceedings Volume*, §11-108.

A. Pre-Impact Fright

There is sufficient evidence to prove that Mrs. _____ experienced fear and apprehension of imminent death just before impact. *Beynon v Montgomery Cablevision, Ltd. Partnership*, 351 Md. 460, 718 A. 2d 1161 (1998). The evidence will show that Mr. _____ "saw the Hyundai's brake lights come on" before he struck Mrs. _____'s vehicle. This would support the inference that Mrs. _____ knew of the impending crash with the _____ vehicle and suffered emotional distress during the interval before impact. Moreover, even though the anguish was brief, a tremendous amount of fear and horror can be inferred. *Smallwood v. Bradford*, 352 Md. 8, 720 A.2d 586 (1998).

B. Conscious Pain and Suffering

There is sufficient evidence to prove that Mrs. _____ was conscious and suffered pain. *Ory v. Libersky*, 40 Md. App. 151, 389 A. 2d 922 (1978). _____, M.D. was informally questioned by Plaintiffs' counsel at the Chief Medical Examiner's Office. _____ is expected to testify within a reasonable degree of medical certainty that Mrs. _____ was capable of experiencing pain prior to her death and did, in fact, suffer conscious pain and suffering for a period of "some minutes time." _____ reached this conclusion after he examined Mrs. _____'s body and found no specific injuries that would have caused her an immediate death.

The Plaintiffs' Demands

As set forth in a letter to _____, dated _____, a copy of which is attached hereto as Plaintiffs' Exhibit 5, the Plaintiffs previously demanded \$_____ including \$_____ to reimburse the Estate for the decedent's medical, funeral and burial expenses. After being advised by _____ that the _____ vehicle had only \$_____ of liability insurance coverage, the Plaintiffs made demands for the purported policy limits as set forth in letters dated _____ and _____, copies of which are attached hereto as Plaintiffs' Exhibits 6 and 7, respectively. _____ has refused to tender its policy limits or to certify or confirm in writing the full extent of the _____ available liability coverage in this matter. _____ has not made an offer.

The Plaintiffs' Confidential Settlement Position

The Plaintiffs would agree to settle their claims in the aggregate for \$ _____, subject to an appropriate apportionment among the Plaintiffs' respective claims, a structured settlement arranged by the Plaintiffs' designee and Court approval of the minor child's settlement, as required by law.

Respectfully submitted,

Keith S. Franz

Judson H. Lipowitz
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue, Fifth Floor
Baltimore, Maryland 21286
410-821-6800
Attorneys for Plaintiffs

_____	*	IN THE
Surviving Widow of _____, Deceased	*	CIRCUIT COURT
and	*	FOR
_____	*	_____ COUNTY
Surviving Daughter of _____, Deceased	*	
and	*	
_____, as Personal Representative of the	*	Civil Action No.: _____
Estate of _____, Deceased	*	
and	*	
To the Use of _____,	*	
Surviving Son of _____, Deceased	*	
and	*	
To the Use of _____,	*	
Surviving Father of _____, Deceased	*	
	*	
Plaintiffs	*	
	*	
v.	*	
	*	
_____	*	
	*	
Defendant		
* * * * *		

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, _____, Surviving Widow of _____, deceased and _____, Surviving Daughter of _____, deceased and Plaintiff, _____, as Personal Representative of the Estate of _____, deceased, and to the use of _____, Surviving Son of _____, deceased and to the use of _____, Surviving Father of _____, deceased, by their attorneys, Judson H. Lipowitz, Keith S. Franz and Azrael, Franz,

Schwab & Lipowitz, LLC, hereby sue the Defendant, _____, and in support thereof allege as follows:

PARTIES

1. Plaintiff _____ is the surviving widow of _____, deceased and is a primary beneficiary in this wrongful death action pursuant to §3-904(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

2. Plaintiff _____ is the surviving adult daughter of _____, deceased, and is a primary beneficiary in this wrongful death action pursuant to §3-904(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

3. Plaintiff _____, by virtue of Letters of Administration granted by the Register of Wills for _____ County on _____, is the duly appointed Personal Representative of the Estate of _____, deceased.

4. Use-Plaintiff _____ is the surviving adult son of _____, deceased, and pursuant to Chapter 1000, Maryland Rules, Wrongful Death Section 15-1001, is designated as a "Use-Plaintiff" in this action.

5. Use-Plaintiff _____ is the surviving father of _____, deceased and pursuant to Chapter 1000, Maryland Rules, Wrongful Death Section 15-1001, is designated as a "Use-Plaintiff" in this action.

6. The Defendant, _____ ("Ms. _____") is the driver who killed Mr. _____ on _____.

FACTS COMMON TO ALL COUNTS

7. On _____ at approximately _____, the two-lane southern span of the _____ Bridge, commonly known as the eastbound span, a public highway in _____,

Maryland and _____, Maryland, was in two-way contra flow lane operation; one lane westbound and one lane eastbound.

8. At the same time and place, the Decedent, _____ (“Mr. _____”), was operating his employer’s 1999 International Tractor and was pulling a 2005 Great Dane Trailer, in a careful and prudent manner, westbound on _____ at mile-marker _____ on the southern span of the _____ Bridge.

9. At the same time and place, Defendant _____ was negligently operating her 1997 Chevrolet Camaro, Maryland Registration _____, eastbound on the southern span of the _____ Bridge when, suddenly and without warning, she caused her vehicle to cross over the center lines directly in the path of Mr. _____’s tractor trailer. After observing the vehicle operated by Defendant Ms. _____ approaching his vehicle head-on, Mr. _____ swerved to avoid a head-on crash with Defendant Ms. _____’s vehicle and, after being sideswiped by Defendant Ms. _____’s vehicle, his tractor-trailer slid across the roadway, crashed through the _____ Bridge’s parapet walls and plummeted approximately 30 feet where it impacted with the waters of the _____ Bay with great force and sank. Mr. _____ disengaged his seatbelt but was trapped in the cab of his vehicle, water entered the cab, water entered his lungs and stomach and he drowned.

10. The State of Maryland, through its governmental agency, the Maryland Transportation Authority (“MdTA”), owns and operates the _____ Bridge and at all times relevant to this Complaint was responsible for the planning, design, construction, maintenance, management, operation and preservation of the _____ Bridge including, without limitation, its parapet wall system.

11. Earlier in the evening prior to the crash, Defendant Ms. _____, age 19, consumed at least three alcoholic beverages while attending her mother's wedding at her home in _____, Maryland. Defendant Ms. _____ then left her mother's wedding at approximately _____ p.m. and drove her vehicle to a bar and night club known as _____, located in _____, Maryland where she consumed additional alcoholic beverages. Defendant Ms. _____ was seen leaving _____ and getting behind the wheel of her vehicle at approximately _____ a.m., less than two hours before she killed Mr. _____.

12. Defendant Ms. _____ owed Mr. _____ a duty to use reasonable and prudent care in the operation of her automobile.

13. By consuming alcoholic beverages while underage and by driving over the center line and by causing the collision and by failing to maintain proper control over her vehicle and by otherwise failing to use reasonable care in the operation of her vehicle, Defendant Ms. _____ breached her duty of care owed to Mr. _____ and was therefore negligent, all without any negligence on the part of Mr. _____ thereunto contributing.

14. As a direct and proximate result of the negligence of Defendant Ms. _____, Mr. _____ suffered horrific pre-impact fright and post-impact/pre-death fright and multiple and fatal bodily injuries and severe conscious pain and suffering and mental anguish.

COUNT I
Wrongful Death

Plaintiffs, _____, Surviving Widow of _____, deceased, and _____, Surviving Daughter of _____, deceased, individually, and to the use of _____, Surviving adult son of _____, deceased, and to the use of _____, Surviving father of _____, deceased, hereby sue and bring this wrongful death action against the Defendant

_____ pursuant to §§3-901 through 3-904 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland and Maryland Rule 15-1001, and allege as follows:

15. The Plaintiffs incorporate and adopt by reference the allegations of paragraphs 1 through 14 above as if fully set forth herein.

16. This Complaint is timely filed within three years after the death of Mr. _____ pursuant to §3-904(g) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

17. Mr. _____ died as a direct and proximate result of the negligence of Defendant Ms. _____.

18. As a direct and proximate result of the negligence of Defendant Ms. _____ in causing Mr. _____'s death, each Plaintiff (and each Use-Plaintiff) in this wrongful death action sustained and will continue to suffer separate and distinct pecuniary loss, mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of marital or parental care, loss of filial care, loss of attention, loss of advice, loss of counsel, loss of training, loss of guidance, loss of education and loss of services and support which the Decedent could have and would have afforded and rendered had he continued to live, all without any negligence on the part of Mr. _____ thereunto contributing.

WHEREFORE, Plaintiffs, _____, Surviving Widow of _____, deceased, and _____, Surviving Daughter of _____, deceased, individually, and to the use of _____, Surviving adult son of _____, deceased, and to the use of _____, Surviving father of _____, deceased, demand, in the aggregate, judgment against the Defendant _____ for compensatory damages in the amount of _____ (\$_____) to be apportioned pursuant to

Maryland Rule 15-1001 and §3-904 (c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

COUNT II
Survival Action

Plaintiff, _____, as Personal Representative of the Estate of _____, deceased, hereby sues the Defendant _____ and brings this survival action pursuant to §7-401(y) of the Estates and Trusts Article of the Annotated Code of Maryland and alleges as follows:

19. The Plaintiff in this survival action incorporates and adopts by reference the allegations of paragraphs 1 through 14 above as if fully set forth herein.

20. As a direct and proximate result of the negligence of Defendant Ms. _____, Mr. _____ suffered horrific pre-impact fright and post-impact/pre-death fright for which Mr. _____ would have been able to maintain an action against Defendant Ms. _____ and recover damages if he had survived the crash and lived.

21. As a direct and proximate result of Defendant Ms. _____'s negligence in causing the crash, Mr. _____ suffered multiple bodily injuries and severe conscious pain and suffering and horrific mental anguish between the time of the collision and the time he drowned to death for which Mr. _____ would have been able to maintain an action against Defendant Ms. _____ and recover damages if he had survived the crash and lived.

22. As a further direct and proximate result of the negligence of Defendant Ms. _____, the Estate of _____, deceased incurred monetary loses and expenses including, without limitation, funeral and burial expenses and property damage.

23. All of the Decedent Mr. _____'s injuries and damages were caused solely

by the actions of Defendant Ms. _____ without any negligence on the part of the Decedent thereunto contributing.

WHEREFORE, Plaintiff, _____, as Personal Representative of the Estate of _____, deceased, demands judgment against the Defendant _____ for compensatory damages in the amount of _____ (\$ _____), plus interest and costs.

Judson H. Lipowitz

Keith S. Franz
AZRAEL, FRANZ, SCHWAB & LIPOWITZ, LLC
101 E. Chesapeake Avenue, Fifth Floor
Baltimore, Maryland 21286
410-821-6800
Attorneys for the Plaintiffs

June 10, 2011

PERSONAL AND CONFIDENTIAL

Mrs. _____

Re: Informed Consent Letter on Defendant's Offer

Dear Mrs. _____:

I am writing to provide information to assist you in considering the offer recently received from the attorney for _____ ("_____") and to get your direction on how you wish to proceed with respect to it. As _____ was driving under the influence when his vehicle killed _____, we filed suit against him in the Circuit Court for _____ County, naming you, your children, and his parents as plaintiffs in the wrongful death action and _____'s estate as the Plaintiff for the survival action.

You as well as the other wrongful death claimants have claims for the mental anguish, emotional pain and suffering, loss of society, companionship and comfort because of _____'s death. The wrongful death claims of you and the children also have economic components for lost income and household services and additional non-economic claims for loss of protection, marital/parental care, attention, advice, counsel, training and guidance. The trial is scheduled for _____, 2_____.

As we need your direction on how to proceed with respect to _____'s offer and how to apportion the net proceeds received from any settlement, the following paragraphs provide information to help you make informed decisions on these matters.

I. Information on Claims against _____.

A. Maximum Recovery against _____. It is impossible for any lawyer to accurately predict a jury's decision on a Defendant's liability or the damages to be awarded to the Plaintiffs. On liability, _____ has previously pled guilty to driving under the influence, and his lawyer has not filed or said anything that indicates _____ will deny his liability for _____'s death. There are claims for economic and

non-economic damages against _____. The economic claims are not subject to any statutory caps or limits. As set forth in the enclosed Confidential Mediation Statement ("Mediation Statement"), these include \$_____ for funeral expenses and \$_____ for economic losses as calculated by our expert, _____ ("_____"). The potential recovery for non-economic damages is capped at \$1,042,500.00 for the wrongful death claimants and \$695,000.00 for the pre-impact fright we are alleging _____ suffered before the collision. Thus, if the jury awarded the Plaintiffs everything sought in the suit, the maximum amount they could expect to recover is \$_____ as shown in Section 3 of the Mediation Statement.

B. Discussion of Claims against _____. There are two parts of a personal injury case. One is establishing that the Defendant is negligent. If the Defendant is found to be negligent, the second part is how much is awarded to the Plaintiff(s).

1. Liability. We are not aware of any intention by _____ to contest his negligence. In fact, his attorneys have asked us to stipulate to his negligence.

2. Damages. There is always a risk that a jury will not award a large amount to the Plaintiffs. While the "traditional thinking" is that juries in _____ County are less likely to award big verdicts than ones in _____ City or other areas of the State, we believe that the facts are favorable for significant awards on the economic loss and the non-economic damages on the wrongful death claims.

(a) Economic Damages. _____ has not designated an expert to dispute _____'s figure. His attorney, may, however, try on cross examination to discredit our expert or say that some of the assumptions used in arriving at its number result in too large a figure for the monetary damages.

(b) Non-Economic Damages. There are _____ claimants (you, the children, his mother and his father) that have suffered a severe loss because of _____'s death. While this and the relationships he had with each one of you are favorable for an award in excess of \$1,042,500.00, it is possible that a jury could award less. For example, if the jury as a compromise decided to award \$100,000.00 to each claimant, the recovery would be \$900,000.00. If they were to award \$50,000.00 to each claimant, the recovery would be \$450,000.00.

(c) Pre-Impact Fright. This is the part of the claim we expect _____ to contest the most. He most likely will object to any attempt to introduce evidence about his driving the wrong way so we will probably have to rely on the "black box" showing that _____ had applied his brakes in a hard and continuous manner for two seconds before impact. If the jury finds that _____ was aware of the impending collision and his likely severe injury and/or death, it is hard to predict the amount of that award. Verdicts on pre-impact fright have a wide range, many of which are significantly less than the \$695,000.00 cap applicable to this claim.

C. Potential Appeal. Any time there is a jury verdict, each side has the opportunity to request a new trial or take an appeal based on matters that arose before or during the trial. _____ unsuccessfully tried earlier in the case to change the venue to outside of _____ County. If he were dissatisfied with the verdict, he could move for a new trial or modification of the judgment. If the motion were denied or even without filing a motion _____ could take an appeal based on the Court's venue decision or a ruling or decision made during the trial. While it would be hard, but not impossible, for _____ to win an appeal of the venue determination, we need to discuss this with you. The following paragraphs outline what would or could happen during the appeal period.

1. Interest. During the appeal, interest would accrue on the unpaid judgment at the rate of 10% per annum. If the Plaintiffs prevail on an appeal, the amount due is the original judgment plus accrued interest.

2. Insurance Money. An appeal does not necessarily stop the Plaintiffs from taking actions to collect on a judgment. _____ has insurance of \$1,250,000.00 with respect to the claims. _____'s insurer would have to make a decision if there were an appeal. Since interest would accrue on the unsatisfied judgment at the rate of 10%, the insurance company might decide to pay the amount that is its responsibility, which could be as high as \$1,250,000.00 to avoid the risk of having to pay that amount plus interest in the future. It could, however, decide to make a filing that would relieve it from having to pay the insurance monies at that time.

3. Collection from _____'s Assets. If the jury's verdict were for more than \$1,250,000 and he took an appeal, _____ would have to decide whether to file what is known as a supersedeas bond. This is a bond issued by a surety. It is conditioned upon (1) the satisfaction, in full of the judgment from which the appeal is taken together with costs and interest if the judgment is affirmed or (2) any modified judgment and costs, interest and damages entered on appeal. The bond is to be for

an amount that will cover the amount of the judgment unsatisfied by insurance plus interest and costs unless otherwise ordered by the court. If _____ were to post such a bond, the Plaintiffs would have to stop collection efforts, but the bond could be collected upon if _____ after the appeal did not satisfy the judgment. If _____ did not post this bond, the Plaintiffs could seek to collect on their judgment during the appeal.

D. Judgment and Collection on a Judgment.

1. Interest on Judgment. As indicated, interest accrues on judgments at the rate of 10% per annum.

2. Collecting Judgment in Excess of Insurance from _____.

As you may have gathered from the discussion above, _____'s assets after the entry of a judgment could be seized to try and satisfy the balance of any judgment in excess of the \$1,250,000.00 of insurance ("Excess"). As a judgment creditor, the Plaintiff's lien and ability to collect would come behind any existing mortgages on his real property or other liens arising before the date of the judgment. The Plaintiffs as judgment creditors would be able to get _____, his father, his accountant and others to produce documents and answer questions under oath about _____'s assets, income and other matters. To the extent that _____ had income, a judgment creditor could seek to garnish the income. The judgment creditor could also attach and if reasonable have the Sheriff sell _____'s assets to satisfy the judgment. There would of course be costs and time associated with the collection efforts.

3. Bankruptcy. In most cases, there is a concern that to avoid a judgment the debtor will file a bankruptcy and seek to be discharged from that debt. Bankruptcy laws, however, provide that a debt for death or personal injury caused by the debtor's operation of a motor vehicle is not discharged by a bankruptcy if the operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.

II. Discussion of _____'s Offer. The background given above is to help you in considering the offer made by _____'s attorney.

A. Information on _____'s Assets and Income. We cannot require _____ to provide information about his income and assets until there is a judgment. We have, however, researched his assets. We have also requested that he provide copies of tax returns and financial statements so that we can intelligently analyze

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Mrs. _____
June 10, 2011
Page 5

any settlement offer. _____ has never provided a complete copy of any tax return or any financial report prepared by his accountant or another third party. Instead, in _____ of 2____ his attorneys provided an undated "Declaration" that did not list specific assets and stated that his "maximum personal exposure" was \$ _____ and that at "fair market value" his assets had a value "near" \$ _____.

On _____, 2____ his attorney emailed the enclosed letter with various attachments, which include the first two pages of his 2____ income tax return. Rather than discussing _____'s assets in detail in this letter, I will make some general comments below and Keith and I will review the specifics during our meeting.

_____ has significant real estate and other property. I question, however, whether _____'s June 22 documents disclose all of his assets. For example, he provides the first pages of his 2____ income tax return, but not Schedule E that gives the specifics of the \$ _____ of income he earned in 2____ from rental real estate, partnerships, S corporations, etc. While much of that income may have come from _____, LLC (\$ _____), _____ (\$ _____) and _____ (\$ _____), we don't know if there are other businesses from which he received income.

I doubt the accuracy of the values _____ placed on the various pieces of real estate. We do not have independent values for any of the properties, but my belief is that _____ and his father are very knowledgeable and savvy real estate investors and that the values of the properties are not as low as claimed by _____. You may have knowledge about the values of the _____ properties and the lots on _____.

Even if you take _____'s word, which we doubt and have not verified, he had income of over \$ _____ in 2____ and has assets that he believes if involuntarily liquidated would produce approximately \$ _____ to pay any judgment in excess of the \$ _____ of insurance coverage. My guess is that _____ is paying down the claimed mortgage debt and that his future income will be significantly higher than in 2____, which was a terrible year in the real estate market that he spent in jail. The income for _____ supports this; it earned almost as much in the first five months of 2____ as it did in all of 2____.

B. Payments to be Made under Offer. As you know, the offer is that \$ _____ would be paid by the insurance company upon acceptance and an

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Mrs. _____

June 10, 2011

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additional \$ _____ within 90 days. If you are inclined to accept the offer, one issue is what "security" you have to protect yourself in case _____ does not make the \$ _____ payment and whether your recovery against him will be limited to \$ _____ if he does not make the promised payment. His offer does not address what happens if he fails to pay the \$ _____. Could you only seek to collect \$ _____ even though that amount would be accepted in large part based on it being paid quickly and not having to seize _____'s assets to obtain payment? His offer appears to contemplate that. Another issue is what security, if any, you have, for _____'s promise in a settlement agreement to pay \$ _____ in 90 days. Is there a recorded consent judgment against _____? Is he or any of his companies giving the Plaintiffs a mortgage? No consent judgment or other security appears to be provided for in _____'s offer. Needless to say, our advice is that if you decide to accept the number, you need more protection, which we will discuss in more detail.

C. Amount Available for Family if Accept the Offer. To give you an idea of the amounts available for the family if it were to accept _____'s offer and he made the \$ _____ payment, I am enclosing two preliminary settlement statements. One is for the insurance company's payment. The other is for the \$ _____ from _____.

D. Additional Issues to Address if Case Resolved by Settlement. While we think that the best resolution for you as well as for _____ is a fair settlement, Plaintiffs in a wrongful death case which is resolved by a settlement need to address two issues. The issues will exist whether a settlement is reached now or on the eve of trial.

1. Allocation of Recovery. As we have told _____ and you, we cannot and will not make any recommendation as to how the funds should be divided among you, _____'s Estate, his children, his mother and his father's estate. Our advice in these situations is that you and the other claimants each get independent legal advice regarding the apportionment of any potential settlement.

The enclosed settlement statements give an idea of how much money would be available under _____'s offer to be apportioned between the family members and the estates of _____ and his father. With respect to how much to allocate to _____'s estate you would need to consider whether there are any unpaid creditors of the estate that could object to an allocation made or not made to it and the ultimate distribution of any money allocated to the estate.

If _____ and you decide to enter into a settlement with _____, I would need for you, after _____ and you and any advisors hired by either of you have discussed the

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settlement offer and the apportionment of any recovery, to provide me with your direction as to how you wish to proceed with respect to _____'s offer and if the decision is to accept it how much of the net proceeds from the insurance company's payment and from _____'s payment are to be received by you and each of your children on their respective wrongful death claims and John's estate on the survival action for his pre-impact fright.

2. Structuring of All of Part of Settlement Payments. As I have mentioned, you or any child receiving a portion of the settlement can ask a settling defendant to pay all or part of your share of the recovery in the form of a structured settlement. Instead of receiving the cash now, with a structured settlement an annuity purchased by the insurance company would make periodic payments of a specified amount to you or your family for a designated number of months or years. There are a number of options with and advantages to a structured settlement, including significant tax benefits. A structured settlement, however, also entails certain restrictions and limitations. You should promptly consult with your tax or other advisor on the advantages and disadvantages of receiving some or all of your payment in the form of a structured settlement and get back to me with your decision.

III. Effect of Counteroffer. If you decide that you want to ask for a higher figure to settle the case, we are not certain what will be _____'s response. His attorney said that this offer is _____'s "final, highest and best offer" and that there will be no other offers and that it must be accepted without any conditions. This may or may not be the case if you respond with a counteroffer. Some Defendants say things similar to what is being said by _____ attorney and will not increase their offer in response to a counteroffer. Other Defendants increase their offer upon receipt of a reasonable counteroffer, but some not until the eve of trial. A final group of Defendants respond to a counteroffer by revoking the initial offer and never making another settlement offer.

IV. Expense and Risks of Litigation and of Accepting Offer. You do not have to settle the case at any figure and we will be prepared to go to trial. As you know, going to trial has risks and expenses. _____ too has risks at trial and neither your lawyers nor his can tell what will be awarded by a jury.

Regardless of the ultimate result achieved at trial, there are expenses of continuing the case. These would include the costs associated with bringing our expert to trial and subpoenaing certain witnesses. These expenses would probably be around \$ _____ and would be paid before any proceeds are paid to you or any of the other claimants.

Mrs. _____
June 10, 2011
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Finally, there is time involved with proceeding to a trial, which _____ intends to try to postpone at the last minute. The trial will require your attendance in Court for a number of days. As we have discussed has its share of anxiety associated with it.

V. Conclusion. In deciding how you wish to proceed, please consider all the information outlined above and provided in our meeting and feel free to ask Keith and me any questions that you may have. You are the client, and our goal is to assist you in making an informed and intelligent decision on this important matter.

Very truly yours,

Judson H. Lipowitz

JHL/meh

Enclosures

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**THIS WAIVER AFFECTS IMPORTANT LEGAL RIGHTS
READ AND CONSULT WITH COUNSEL BEFORE SIGNING**

WAIVER

I, _____, am the father of _____. (“_____”). I am fully aware that I have the right to assert claims and to share in the proceeds of any wrongful death recovery arising from the death of my son, _____, which occurred as a result of a collision on _____ (the “Collision”). Other wrongful death claimants are _____’s widow, _____ (“_____”), _____’s daughter, _____ (“_____”), and _____’s son, _____, (“_____”) (collectively “Other Wrongful Death Claimants”).

_____’s Estate (“Estate”) is the sole claimant in the survival action, which claims damages for any pre-impact fright or conscious pain and suffering _____ experienced in the Collision. _____ is the Personal Representative of the Estate.

The other vehicle involved in the Collision was driven by _____ (“Driver”). The claims against the Driver and the Maryland Transportation Authority (“Authority”) are outlined in the Amended Complaint and Demand for Jury Trial (“Amended Complaint”) in the case entitled _____ filed in the Circuit Court for _____ County, Maryland that has been assigned Civil Action No.: _____ (“Civil Action”). The Amended Complaint and a summons in the Civil Action have been delivered to me.

While Maryland law required the law firm of Azrael, Franz, Schwab & Lipowitz LLC (“AFSL”) and its attorneys, including Paul J. Schwab, III (“Schwab”) and Judson H. Lipowitz (“Lipowitz”), to name me as a Plaintiff in the Civil Action, I acknowledge that AFSL do not and never have represented me in the Civil Action or with respect to the Collision. They represent the Estate and the Other Wrongful Death Claimants except for _____. AFSL have advised me to and given me the opportunity to consult with an attorney selected by me and to ask them any questions I may have about my claims and to receive written answers to my questions, including the amount of liability insurance carried by the Driver, which is believed to be _____ Hundred Thousand Dollars (\$_00,000.00), and the status of the claims against the Authority.

In consideration of the payment of the sum of Ten Dollars (\$10.00), and my love and affection for certain Other Wrongful Death Claimants and payments to be made in the future to them and possibly others by the Driver, Driver’s insurer, and/or other insurers, the receipt and adequacy of which is hereby acknowledged, I hereby voluntarily and knowingly waive and release any and all claims that I have or may have resulting from the Collision, including those raised in the Amended Complaint. I further voluntarily and knowingly waive and release any and all claims I have or may have resulting from or with respect to any settlement or any portion of any insurance or other settlement proceeds. Moreover, I consent (i) to the Other Wrongful Death Claimants and the Estate settling their claims and/or the Civil Action and sharing in any settlement on

such terms as they deem appropriate and (ii) to the dismissal of the claims against the Driver and/or the Authority with or without prejudice.

I agree to sign all documents necessary or proper for the parties filing the Civil Action and/or who are participating in any settlement to conclude their claims and/or settlement and agree to cooperate fully in that regard, including, but not limited to, executing any release or dismissal that may be sought by the Driver, the Driver's insurance company and/or the Authority.

AFSL have clearly instructed me to consult with my own attorney prior to my signing of this Waiver. I acknowledge that this Waiver involves important rights and claims and understand that by signing this Waiver I am giving up those rights. I am knowingly and voluntarily signing this Waiver of my own free will and accord. I understand that the Estate, the Other Wrongful Death Claimants and other parties to the Civil Action will be relying upon and taking actions based on this Waiver.

I represent that I have read this Waiver prior to signing it and have had the opportunity to have an attorney selected by me review it.

WITNESS

_____ DATE

COMMONWEALTH OF VIRGINIA, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ___ day of _____, 20___, before me, the subscriber, a Notary Public of the Commonwealth of Virginia, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he has executed the foregoing Waiver for the purposes therein contained.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

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SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** (“Agreement”) is made this ____ day of _____, 2010, by and among _____, individually and in her capacity as the Personal Representative of the Estate of _____ and in her capacity as parent and next friend of minor children _____, _____, _____, _____ and _____, and _____, individually and in her capacity as the Personal Representative of the Estate of _____, (collectively the “_____ Plaintiffs”); and _____ (“_____”); all on behalf of themselves and any others acting on their behalf (collectively, the “Parties”).

WITNESSETH

WHEREAS, this dispute concerns a crash that occurred on _____, 2____ on _____ near its intersection with _____, _____ involving motor vehicles operated by _____ and _____ (the “Occurrence”); and

WHEREAS, _____ died in the Occurrence; and

WHEREAS, _____ was survived by his wife, _____, his six minor children, _____, _____, _____, _____, _____ and _____, and his parents _____, and _____; and

WHEREAS, by virtue of Letters of Administration granted by the Register of Wills for _____ County on _____, 2____, _____ was appointed the Personal Representative of the Estate of _____; and

WHEREAS, _____ is the parent and next friend of _____, _____, _____, _____ and _____; and

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WHEREAS, _____ died subsequent to the Occurrence. By virtue of Letters of Administration granted by the Register of Wills for _____ County on _____, 2____, _____ was appointed the Personal Representative of the Estate of _____; and

WHEREAS, in a criminal action brought by the State of Maryland in connection with the Occurrence, Case No.: _____, _____ pled guilty to a charge of negligent manslaughter and was sentenced to incarceration for a period of _____ (____) years with _____ (____) years suspended. _____ was also ordered to pay funeral expenses/restitution in the amount of Nine Thousand Three Hundred Fifty Eight Dollars and Fifty Seven Cents (\$9,358.57) (the "Restitution Obligation"); and

WHEREAS, the _____ Plaintiffs allege that _____ was negligent in the operation of his motor vehicle and was the sole proximate cause of the death of _____; and

WHEREAS, on _____, 2____, the _____ Plaintiffs filed a lawsuit against _____ in the Circuit Court for _____ County, Maryland (the "Court") captioned _____, Civil Action No. _____ (the "Action"). The Action contains two causes of action: (a) Count I - Wrongful Death; and (b) Count II – Survival Action; and

WHEREAS, the Parties hereto wish to resolve, fully and completely, the remaining disputes in the Action, thereby avoiding the further expense and uncertainty of further litigation; and;

WHEREAS, _____ stipulated and conceded that he was the sole proximate cause of the Occurrence and the damage resulting therefrom and would not have contested liability at the trial of the Action.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto hereby agree as follows:

- A. Recitals. The foregoing recitals are incorporated herein by this reference.
- B. Settlement Payments.

(1) In consideration for the full and final settlement of the Action, under the terms of this Agreement, _____'s insurer on behalf of _____ shall pay to the _____ Plaintiffs, collectively, the sum of _____ Dollars (\$ _____) within five (5) calendar days of the Court's entry of the Consent Judgment described in Paragraph C. In addition, _____ shall pay to the _____ Plaintiffs, collectively, the sum of _____ Dollars (\$ _____) within Ninety (90) calendar days of the "Effective Date" (as hereinafter defined), which payment shall be secured by a Consent Judgment against _____ in the amount of _____ Dollars (\$ _____) ("Judgment"). The payments to be made by or on behalf of _____ hereunder are referred to individually as a "Payment" and collectively as "Payments", and the sum of the two Payments shall be hereafter referred to as the "Settlement Payment". Nothing herein shall release _____ from the Restitution Obligation.

(2) The Payments shall be allocated among the _____ Plaintiffs as set forth on Exhibit A (Apportionment of Recovery) attached hereto.

(3) The Payments shall be made by one or more checks payable as directed in Exhibit A and shall be delivered to the _____ Plaintiffs' counsel.

C. Joint Motion, Consent Judgment and Certificate of Satisfaction.

(1) Within three (3) calendar days of the Effective Date, the Parties shall file a joint motion with the Court seeking judicial approval of this Agreement and the Judgment ("Judgment") in the form attached hereto as Exhibit B. In consideration of the joint motion, a copy of this Agreement shall be submitted to the Court under seal.

(2) If both Payments are made in a timely manner, the _____ Plaintiffs agree to waive interest on the Judgment. If either Payment is not made on time, interest shall be due on the Judgment at the legal rate from the date of its entry.

(3) The _____ Plaintiffs agree that so long as _____ and his insurer are not in default or delinquent in the making of a Payment, they shall not undertake to collect on the Judgment or the Settlement Payment.

(4) Upon the making of the Settlement Payment and the payment of any interest or other costs due on the Judgment, the _____ Plaintiffs shall deliver a certificate of satisfaction for the Judgment to _____'s attorney along with an executed Stipulation of Dismissal with Prejudice of the Action in the form attached as Exhibit C.

(5) If _____ fails to make any payment hereunder when due, the _____ Plaintiffs shall have the rights and remedies available to them in law and equity, including but not limited to enforcing this Agreement and/or collecting on the Judgment.

D. Releases

The _____ Plaintiffs, for the consideration of the Settlement Payment, do hereby, individually and for their former, present and future, agents, servants, employees, heirs, beneficiaries, executors, administrators, predecessors, successors, assigns, principals, partners, partnerships, corporations, general partners, limited partners, joint venturers, attorneys, members, officers, directors, managers, shareholders, parent entities, subdivisions, departments, insurers, subsidiary entities, affiliates, and anyone else entitled to claim by or through them, release, acquit and forever discharge _____ along with his agents, servants, employees, heirs, beneficiaries, executors, administrators, predecessors, successors, assigns, principals, partners, partnerships, corporations, general partners, limited partners, joint venturers, attorneys, members, officers directors, managers, shareholders, parent entities, subdivisions, departments, insurers, subsidiary entities, and affiliates, (collectively the “_____ Releasees”) from any and all claims, demands, obligations, suits, actions, charges, complaints and causes of action of any kind whatsoever, whether known and/or unknown, and whether fixed and/or contingent, which the _____ Plaintiffs ever had, now had and/or hereafter can, shall and/or may have against the _____ Releasees for, upon, and/or by reason of any matter, cause, thing, conduct, act, omission and/or transaction from the beginning of the world to the Effective Date (as defined below) of this Agreement arising from the Occurrence, including, but not limited to the acts, omissions and/or damages alleged in the Action as defined above, saving except, the _____ Plaintiffs reserve and expressly do not release any and all claims arising from or relating to the Restitution Obligation as defined above or the enforcement of this Agreement, including

but not limited to, any claims or causes of action concerning or relating to the Settlement Payment and/or the Judgment.

E. Time.

Time is of the essence in this Agreement. Unless expressly provided otherwise, "days" means calendar and not business days.

F. Non-Dischargeable Debt of _____.

The Parties agree that the Payments to be made by or on behalf of _____ and the Judgment to be entered against _____ are for the death of _____ caused by _____'s unlawful operation of a motor vehicle. _____ stipulates and agrees that sufficient undisputed evidence exists to prove all facts necessary to establish the non-dischargeability of all debts created by this Agreement pursuant to 11 U.S.C.A. § 523(a)(9). _____ further stipulates and agrees that the debts created by this Agreement are non-dischargeable pursuant to 11 U.S.C.A. § 523(a)(9).

G. No Prior Assignment.

The _____ Plaintiffs hereby represent and warrant that no other person or entity has, or had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

H. Court Approval.

The Parties agree to cooperate in seeking the Court's approval of this Agreement, however, refusal by the Court to approve any one or more terms of this Agreement,

saving except entry by the Court of a consent judgment against _____ in the amount of _____ Dollars (\$ _____), shall not affect the validity of this Agreement.

I. Outstanding Liens.

The _____ Plaintiffs understand and agree that they are solely responsible for any and all outstanding liens or other demands for payment that may now exist, or that may arise in the future, arising from or relating to the Occurrence, and that the payment of any and all such liens shall be made by the _____ Plaintiffs out of their own proceeds, including those received in the Settlement Payment, and that no additional monies are to be paid by the _____ Releasees to the _____ Plaintiffs, or to any of the lien-holders, beyond the amount specified herein. It is further understood that should a legal action subsequently be filed against the _____ Releasees by one or more of the _____ Plaintiffs' lienholders, the _____ Plaintiffs shall defend, indemnify and hold harmless the _____ Releasees and any of his agents and insurers named in any such action. Upon such an occurrence, it is expressly understood and acknowledged by the _____ Plaintiffs, that the _____ Releasees are entitled to counsel of their own choosing.

J. Binding Effect. This Agreement shall be, and is intended to be, binding upon and inure to the benefit of the _____ Plaintiffs and the _____ Releasees as well as their respective personal representatives, successors, assigns and heirs.

K. Entire Understanding. This Agreement sets forth the entire understanding of the Parties hereto with respect to the subject matter of this Agreement and the settlement of the Action, and supersedes all prior agreements, arrangements and understandings, written and/or oral, as to the subject matter hereof. The Parties further agree to execute

any and all documents and to take any such reasonable action as may be necessary to carry out the express terms and intent of this Agreement.

L. Effective Date. The "Effective Date" as referred to herein means the date upon which this Agreement is executed by the last party to sign. This Agreement may be executed in counterparts.

M. Non-Waiver. The failure of any one of the Parties to enforce any section and/or subsection hereof shall not constitute a waiver of its rights under this Agreement. This Agreement may not be amended or modified except in writing, as signed by all Parties hereto.

N. Enforcement. In the event that it becomes necessary for either one or more of the Parties to seek the intervention or direction of the Circuit Court for _____ County, Maryland to enforce the terms of this Agreement and/or the Judgment, it shall not be necessary to maintain this Agreement under seal. Nothing in this Agreement shall restrict in any way the right of any Party hereto to enforce any and all terms of this Agreement.

O. Notice.

Any notice contemplated by this Agreement shall be in writing and shall be deemed given on the next business day after deposit with a national overnight courier service and addressed to both the _____ Plaintiffs and _____ as follows:

_____ Plaintiffs: Judson H. Lipowitz
Paul J. Schwab, III
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue
Fifth Floor
Baltimore, Maryland 21286

_____ Releasees: _____

P. Validity. Each and every covenant, agreement, obligation or other provision within this Agreement shall be a separate and independent covenant and agreement, unless this Agreement specifically provides otherwise. If any provision or portion thereof of this Agreement is found by any court of competent jurisdiction to be invalid and/or null and void, the remaining provisions hereof shall continue in full force and effect to the extent permitted by law.

Q. Capacity.

The Parties hereto, in entering into this Agreement, represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Agreement and the Settlement Payment; that the terms of this Agreement have been completely read by the Parties and explained to them by their attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by the Parties, and that the individuals signing for any party are authorized to do so.

R. Interpretation. This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel of their own selection. Neither the _____ Plaintiffs nor the _____ Releasees shall hereafter contend that any provision of this Agreement should be construed and/or interpreted against any him/her/it on the basis that he/she/it did not draft the disputed provision.

S. Governing Law; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, and any action arising out of the interpretation or enforcement of the provisions of this Agreement shall be brought in the

Circuit Court for _____ County, Maryland, with the parties waiving the right to trial by jury.

T. Headings. The paragraph headings used herein are intended for convenience only, are not intended, and do not form a part of this Agreement.

U. Counterparts. This Agreement may be executed in counterpart originals, all of which shall have the same force and effect as if the parties had executed one original of this Agreement.

IN WITNESS WHEREOF, the Parties hereto set forth their hands and seals on the date listed below.

_____, Individually and in her capacity _____ Date
As the Personal Representative of the Estate of
_____ and in her capacity as the
Parent and Next Friend of _____,
_____, _____, _____,
_____, and _____

[NOTARY SECTIONS- OMITTED]

Exhibit B

IN THE CIRCUIT COURT FOR _____ COUNTY, MARYLAND

_____, et al.

*

Plaintiffs

*

CASE NO.: _____

v.

*

*

Defendant

*

* * * * *

CONSENT JUDGMENT

Upon consideration of the Plaintiffs and Defendant's Consent Motion for Judgment ("Consent Motion") and the Settlement Agreement filed under seal with the Consent Motion ("Settlement" Agreement") it is HEREBY ORDERED this _____ day of _____, 20____ as follows:

1. That the Consent Motion be and hereby is **GRANTED**;
2. That the total amount of the payments to be made by the Defendant and his insurer to the Plaintiffs under the Settlement Agreement and the apportionment of the recovery as between the Plaintiffs and in particular the minor Plaintiffs and the other terms of the Settlement Agreement are fair and reasonable under the circumstances and approved by the Court;
3. The undertakings by _____ in the Settlement Agreement are because of the death of _____ caused by Defendant's unlawful operation of a motor vehicle while he was intoxicated from using alcohol;

4. A judgment in the amount of _____ Dollars
(\$ _____) is entered against Defendant, _____;
and
5. That the Defendant shall pay all open costs in this case.

JUDGE, Circuit Court of _____ County

Approved as to Form:

Paul J. Schwab, III, Esquire

Judson H. Lipowitz, Esquire
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue
Fifth Floor
Towson, Maryland 21286
410-821-6800
Attorneys for Plaintiffs

Attorneys for Defendant

EXHIBIT C

(Stipulation of Dismissal with Prejudice - Omitted)

_____ , et al.	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
_____ ,	*	_____ COUNTY
Defendant.	*	Case No. _____
* * * * *	*	* * * * *

**JOINT MOTION TO APPROVE
SETTLEMENT AND ENTER CONSENT JUDGMENT**

Plaintiffs, _____, individually and in her capacity as the Personal Representative of the Estate of _____, _____, in her capacity as parent and next friend of minor children _____, _____, _____, _____, _____ and _____, and _____, individually and in her capacity as the Personal Representative of the Estate of _____, and Defendant, _____, by and through undersigned counsel, hereby respectfully request that the Court: (a) approve the parties' settlement and the parties' Settlement Agreement and Release and the apportionment contained therein as fair and reasonable under the circumstances; and (b) enter the attached form of Consent Judgment.

Keith S. Franz, Esquire

Judson H. Lipowitz, Esquire
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue
Fifth Floor
Towson, Maryland 21286
(410) 821-6800
Attorneys for Plaintiffs

Attorneys for Defendant _____

**SETTLEMENT MEMORANDUM FOR INSURANCE COMPANY
PAYMENT ON CLAIMS ARISING FROM DEATH OF _____
D/A: _____**

Wrongful Death Beneficiary
Wife of _____, deceased

Personal Representative of
Estate of _____, deceased

Wrongful Death Beneficiary
Surviving Minor Child of
_____, deceased
by _____, his Mother
and Next Friend

Wrongful Death Beneficiary
Surviving Minor Child of
_____, deceased
by _____, her Mother
and Next Friend

Wrongful Death Beneficiary
Mother of _____, deceased

_____, Personal
Representative of Estate of

Wrongful Death Beneficiary

Gross Recovery from Insurance Company \$ _____

Less Attorney's Fee to Azrael, Franz, Schwab & Lipowitz, LLC
("AFSL") _____

Less Costs Advanced by AFSL _____

**NET RECOVERY FROM INSURANCE COMPANY
PROCEEDS** \$ _____

Pursuant to the Settlement Agreement and Release signed by the undersigned and approved the Circuit Court for _____ County and instructions from _____, the Net Recovery from the Insurance Company shall be allocated and paid as follows:

Escrow for Payment of Claims filed in Estate of _____	\$ _____
_____, Wife	\$ _____
_____, Trustee, under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, for _____, minor	\$ _____
_____, Trustee, under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, for _____, minor	\$ _____
Estate of _____, (Father of Decedent)	\$ _____
_____, (Mother of Decedent)	\$ _____
Estate of _____	\$ _____
Escrow Balance after payments above.	\$ -0-

I authorize, direct and instruct AFSL to deduct and pay from its escrow account the fees, expenses and disbursements as shown above. I agree that any unused escrow set aside for the payment of the claims filed in the Estate of _____ shall be paid to _____.

I understand and agree that the apportionment of the net recovery as set forth above is the result of an agreed allocation between all of the beneficiaries, at our direction and approved by the Circuit Court for _____ County. AFSL provided me with information on the nature and extent of my respective wrongful death and survival claims, as the case may be, and I acknowledge that AFSL did not represent anyone with respect to the apportionment of the net recovery. AFSL strongly advised all of us to consult with independent counsel selected by us with respect to the allocation of the net recovery.

The undersigned _____ further acknowledges that she has previously received a letter from AFSL advising her of her responsibilities as Trustee of each minor's net recovery under Maryland law for recoveries by minors in torts ("Law") and agrees to deposit, maintain and preserve the funds received on behalf of each of her children in accordance with the Law.

_____, Individually and in her capacity
as the Personal Representative of the Estate of
_____ and in her capacity as the
Parent and Next Friend of _____ and
_____.

June 10, 2011

HAND DELIVERED

Ms. _____

Re: Recoveries for Grandsons

Dear _____:

Maryland law requires that the tort recoveries made on behalf of your minor grandchildren be made payable to a responsible adult as "Trustee under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland" for the benefit of the named minor. It is my understanding that you have agreed to serve as Trustee for _____ and _____'s recoveries.

This letter gives you guidance about the trusts for your grandsons and your obligations as trustee. In understanding the law with respect to these trusts, it is helpful to know its purpose. Maryland's policy is that money recovered by a minor should be preserved for the benefit of the minor until he reaches the age of 18.

Names on Accounts. You will need to open a separate account for each grandchild. The accounts should be in the following names:

_____, Trustee under Title 13 of the Estates and Trusts Article,
Annotated Code of Maryland, for _____, Minor

_____, Trustee under Title 13 of the Estates and Trusts Article,
Annotated Code of Maryland, for _____, Minor

Holding of Funds. There are a limited number of places you can invest/deposit the checks from our firm's escrow account. They are outlined in the following paragraphs:

1. Federal or State Chartered Bank, Savings and Loan or Credit Union.

You may deposit each check in a bank, trust company, savings institution or credit union chartered and supervised by the United States or any state of the United States or the District of Columbia. If you deposit a check in such a financial institution, you may direct it to

invest or reinvest the proceeds of the check in a certificate of deposit or other interest-bearing account.

2. Limited Investments Options. You may invest or reinvest the proceeds of the check in any of the following:

(A) General Obligations of United States or State.

The general obligations of or obligations guaranteed by the United States or any state of the United States or the District of Columbia. Accordingly, Treasury Bills issued by the United States or Maryland general obligation bonds could be purchased with the check or its proceeds.

(B) Other Obligations of the United States or Maryland.

You could also as Trustee invest in other obligations of the United States or Maryland or any of its counties, agencies, or authorities that are rated in one of the two highest rating categories by a nationally recognized credit rating agency. Some Maryland bonds at the present fall within this category of permitted investment.

(C) Certain Money Market Funds and Stock Mutual Funds. Up to a total of 30% of the Trust's assets (as of the time of the investment) may be invested in any "open end management investment company" or "investment trust" that is registered under the Federal Investment Company Act of 1940 ("Act") that

(1) meets the criteria of a money market fund that are specified in the Act, or

(2) in a prospectus filed with the Securities and Exchange Commission states as a principal objective long-term growth or capital appreciation through investments in equity securities.

No Reports for Court. You do not need to file an account or other report on the trusts with the Court.

Withdrawals from Trust. Until the minor attains the age of 18 years, no withdrawal shall be made except upon an order of court. If a petition to withdraw funds is filed for any purpose other than to pay for medical expenses or education of the minor, the Court shall require a strong showing of necessity by the trustee at a hearing.

Income from Trust. Any statements of income or taxable gains with respect to the trust should be turned over to the person that assists you with your taxes to ensure that it is handled properly and

June 10, 2011

Page Two

any income taxes are paid on it. My understanding is that the accounts for the minors are opened using the minor's social security number, but you may want to consult with your tax advisor.

Termination of the Trust. Each trust terminates upon the grandchild attaining the age of 18 or his death. If the minor dies, the funds are to be paid to the personal representative of the minor's estate. Otherwise, the funds are to be paid to the minor upon his attaining the age of 18.

I realize I have provided you with a good deal of information. Please call me at (410) 821-6800 with any questions.

Very truly yours,

AZRAEL, FRANZ, SCHWAB & LIPOWITZ, LLC

Paul J. Schwab, III

PJS/klp

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**IN THE ORPHAN'S COURT FOR
(OR)
BEFORE THE REGISTER OF WILLS
FOR
_____ COUNTY, MARYLAND**

THE ESTATE OF _____

* Estate No. _____

* Date of Death: _____

* * * * *

**PETITION OF PERSONAL REPRESENTATIVE
TO PAY COUNSEL**

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petitioner, _____, Personal Representative of the Estate of _____, and AZRAEL, FRANZ, SCHWAB & LIPOWITZ, LLC ("Law Firm"), her counsel, respectfully represent unto this Honorable Court that:

1. The Decedent, _____, died intestate on _____.
2. Prior to her death, the Decedent sustained injuries in an _____, automobile accident ("Crash").
3. The Decedent, in _____, retained the Law Firm to investigate, negotiate and prosecute her claims with respect to the Crash ("Claims") on a contingent fee basis, i.e. the Law Firm would not receive any fee if there were no recovery and the size of the fee was dependent upon its result in representing the Decedent.
4. The fee the Decedent agreed to with the Law Firm provided for it to be paid _____ of any gross recovery received from a settlement, mediation or arbitration of the Claims and _____ of the gross recovery in the event it became necessary to file a lawsuit to resolve the Claims.

5. On or about _____, _____ (“Personal Representative”) was appointed Personal Representative of the _____ (“Estate”), and she worked with the Law Firm on the Claims and authorized the filing of a lawsuit in connection with the Claims (“Suit”) and approved the final settlement of the Suit for _____ Dollars (\$____.00).

6. The Law Firm has worked on the Claims for over ____ years, having investigated and litigated it and the Estate’s recovery on the Claims is a direct result of its efforts.

7. The purpose of this Petition is to obtain authority to pay the Law Firm the agreed upon contingent fee of _____ Dollars and _____ Cents (\$_____) in connection with the Estate’s recovery on the Claims.

8. No prior allowance of counsel fees has been granted.

9. No separate personal representative commissions have been requested and none is anticipated.

10. The Estate is solvent

11. The requested fee is fair and reasonable.

WHEREFORE, Petitioner respectfully requests this Honorable Court to enter an Order:

1. Ordering Petitioner to pay Azrael, Franz, Schwab & Lipowitz, LLC a fee of _____ Dollars and _____ Cents (\$_____) for its legal services on the Claims.

2. Granting Petitioner such other and further relief as may be appropriate.

AND, AS IN DUTY BOUND, ETC.

We do solemnly declare under the penalties of perjury that the contents of this Petition

are true and correct to the best of our knowledge, information and belief.

Respectfully submitted,

PAUL J. SCHWAB, III
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue, 5th Floor
Baltimore, Maryland 21286
(410) 821-6800
Attorneys for the Estate of _____

_____,
Personal Representative for the
Estate of _____

VERIFICATION

We do solemnly declare under the penalties of perjury that the contents of this Petition are true and correct to the best of our knowledge, information and belief, and that notice as is required under §7-501 of the Estates and Trust Article of the Annotated Code of Maryland and Rule 6-416(c) has been given to all interested persons.

PAUL J. SCHWAB, III
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue, 5th floor
Baltimore, Maryland 21286
(410) 821-6800
Attorneys for the Estate of _____

_____,
Personal Representative
Estate of _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of _____, 20___, a copy of the foregoing Petition for Attorney Fees was mailed, postage prepaid, together with the Notice required under Md. Rule 6-416(c), to the following interested person:

PAUL J. SCHWAB, III
Azrael, Franz, Schwab & Lipowitz, LLC
101 E. Chesapeake Avenue, 5th floor
Baltimore, Maryland 21286
(410) 821-6800
Attorneys for the Estate of _____

_____,
Personal Representative
Estate of _____

NOTES: Give notice to Interested Persons and file Petition with proposed Order.