

WHEN DO WE TELL DAD OR MOM THAT THEY CAN'T DRIVE ANYMORE?

March 21, 2011 for Immediate Release-Nashua, NH

By David M. Gottesman, Esq.
dgottesman@nh-lawyers.com

We all love the freedom that independent transportation gives us, but there may come a time that we have to explain to our parents and relatives that it is just too dangerous or too risky to allow them to continue to drive their car. The risks of liability that an elderly driver takes when he or she gets behind the wheel are significant. First, and most importantly, they can seriously injure someone who is on the road as a driver of a car, a bicyclist, a motorcyclist, or a pedestrian. Second, they can seriously injure themselves and impose a tremendous burden upon their family. Third, they can put all of their life's savings and assets at risk to be attached or levied upon by a person or estate of that person who was severely injured as a result of the elderly person's negligence.

I recently handled a case where the defendant was an 88 year old man who ran a red light and struck the side of my client's car, causing devastating injuries. Aside from the fact that the defendant acted negligently by running a red light as witnessed by three bystanders, he never even realized that he did something wrong, and in his mind, was unable to comprehend the magnitude of the situation. The defendant had significant insurance coverage, but it was not enough to satisfy the claims of my injured client. I had no choice, but to sue the defendant, and attach his real estate. Some of his estate was protected by the Homestead exemption, but some of it was not protected. On behalf of my injured client, I was able to recover in excess of the insurance policies, by convincing the defendant, through his counsel, and with the help of successful mediation, to pay personally toward my client's recovery of damages.

Another matter I handled was for a 50 year old man who was hit head-on by a 78 year old woman who was driving erratically in the opposite direction. She struck a school bus and her car catapulted into my client's driver's compartment, causing life threatening injuries. The elderly woman did not have any idea how she got to the scene of the crash, nor a clear picture of what was going on. Her explanation was that she was crying from being upset at a family situation, but no one could explain her erratic behavior. In that case, all of her assets were at risk, but because my client had his own significant insurance coverage, including very extensive underinsured coverage available, the case was able to be settled without having to dip into the woman's personal estate.

Children of elderly parents need to have a discussion with their parents, albeit very difficult. This is one risk that you want to have your parents avoid. Preservation of their estate should be paramount, as their care and standard of living ought to be protected. If, however, there is agreement that the elderly person is capable and will continue to drive, then that elderly driver needs to have enough liability insurance coverage in place to protect him or her from having their estates diminished by claims of other people who may have been injured by the

negligence of an elderly driver. We recommend having in place a base auto liability policy that is large enough to allow the driver to obtain an excess liability policy of at least \$1,000,000.00, if not more. This way the assets of the elderly driver are protected from loss or shrinkage should any unpredicted auto event should occur.

There is no magic time for a child to have this discussion with their parents, but if you see this situation developing, have the conversation before it is too late.