

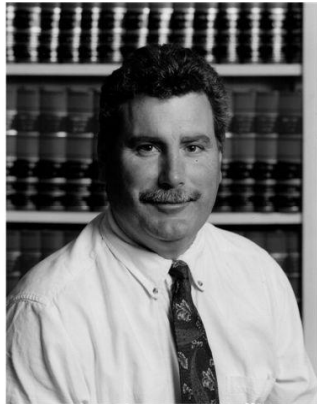


Wendy Weikal-Beauchat, Esq.

# REPORT FROM COUNSEL

*Third Quarter 2009*

## **Beauchat & Beauchat, LLC** **Unique Solutions for Unique Clients**



Mark D. Beauchat, Esq.

### **IN THIS ISSUE:**

<i>FDIC Insurance Update</i> .....	<i>Page 1</i>
<i>Charitable Remainder Trusts</i> .....	<i>Page 1</i>
<i>Caregiver Bias in Employment</i> .....	<i>Page 4</i>
<i>Life Insurance Policy Rescinded</i> .....	<i>Page 6</i>
<i>News About Our Firm</i> .....	<i>Page 8</i>



Andrea M. Singley, Esq.

## FDIC INSURANCE UPDATE

In October  
2008,  
Congress  
increased the  
basic limit  
on federal



deposit insurance coverage from \$100,000 to \$250,000. The limit is scheduled to return to \$100,000 on January 1, 2014.

The temporary limit now in effect has not changed the fact that a customer has various means by which to effectively raise the applicable limit for the customer's collection of deposits at any one institution. The basic limit applies separately to different ownership categories. A single account in one name is insured up to \$250,000; a joint account for two or more people is insured up to the same limit, per owner; certain retirement accounts, such as IRAs, are covered up to the limit; and deposits meant to pass on to named beneficiaries on the death of the owner can be protected up to \$250,000 for each named beneficiary. This

last category of deposits is a revocable trust account.

There also are other recent changes that favor depositors in insured institutions. For example, it used to be that the only beneficiaries under a revocable trust account who qualified for additional deposit insurance coverage were the account owner's spouse, child, grandchild, parent, or sibling. Now an account owner can name almost any beneficiary, such as a more distant relative, a friend, or a charitable organization, and each beneficiary will still benefit from the additional coverage.

---

## CHARITABLE REMAINDER TRUSTS

As the name implies, a charitable remainder trust involves the transfer of assets to a trust with the income going to an individual or individuals (which can include the owner of the assets) and with a charity receiving the assets at the expiration of the trust period. Such a trust device benefits the individuals who are the objects of the property owner's

generosity, it transfers assets to the property owner's preferred charities, and it yields tax savings for the property owner.

If the trust is created during the property owner's life, there is a charitable tax deduction equal to the present value of the charity's remainder interest, and the transferred property will escape federal estate tax. If the trust is established under a will, the charitable tax deduction will remove the property from the taxable estate. There can be other, not as obvious, benefits. Where appreciated assets are transferred, especially where the assets have a low cost basis and there is a likelihood that the property owner would have sold the assets at some point had he not transferred them to the trust, the property owner avoids a capital gains tax that would be imposed upon an outright sale. If the trust sells the assets, it will have no capital gains tax liability because the trust is a tax-exempt entity. If the property owner has established the trust in his lifetime, the fact that the trust can sell the property tax-free maximizes the income base for the income beneficiary, which can be the property owner himself.

Moreover, if the trust is a charitable remainder unitrust (CRUT), under which the income is measured as a percentage (no less than 5% of the value of the trust property in a given year), the trust serves as a hedge against inflation for the income beneficiary because as the trust property appreciates in value the income paid out increases. This is not true under the other type of charitable remainder trust, the charitable remainder annuity trust (CRAT), under which a fixed amount of income is paid out each year. A CRUT can also be used as a retirement plan. Although a CRUT usually pays a percentage of the trust's annual value, it can provide that income distributions may not exceed the amount of income actually earned by the CRUT in a given year. Any shortfall in income can then be made up when there is sufficient income. During the property owner's preretirement years, the CRUT can be invested in growth stocks, thus producing little or no income. Upon retirement, those assets can be sold, with the proceeds invested in income-producing assets that will yield the agreed-upon income percentage, plus a "make-up"

portion to compensate for the earlier shortfalls. Thus, income distributions from a CRUT can be minimized during the preretirement years and then maximized for the retirement years.

It is important to remember that a charitable remainder trust must meet a series of technical requirements and therefore should be drafted only by an experienced professional.

---

## **C**AREGIVER BIAS IN **EMPLOYMENT**

Today, it is commonplace for workers to handle both work and caregiving responsibilities for spouses and children, parents and other older family members, or relatives with disabilities. Women still are disproportionately more likely to exercise primary caregiving responsibilities but, in increasing numbers, men also have assumed the dual roles of caretaker and breadwinner.

Our society may be evolving toward more individuals simultaneously sharing the duties of an employee and a caregiver, but old stereotypes in the workplace sometimes die hard. The result is a steady rise in claims of employment discrimination based on what is sometimes called “family responsibility discrimination.” You would search in vain for a federal law that expressly prohibits discrimination at work against caregivers, but complaining employees have been able to pursue claims under other employment discrimination statutes, such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA).

The cases brought under Title VII tend to allege sex discrimination or gender stereotyping. A classic example is the pregnant woman who is let go or passed over for a promotion because the employer's decisionmaker assumes that with the baby will come a diminished commitment to the employer and a failure by the employee to meet all of the obligations of her job. Such was the case in a recent litigation in which a

mother of triplets was denied a promotion because, in the employer's words to her, "you have a lot on your plate right now." When a federal appellate court reinstated the lawsuit after its dismissal by the trial court, the employer likely came to the belated conclusion that it should concern itself only with the employer's portion of the employee's "plate."

The ADA can come into play as a vehicle for caregiver discrimination claims because the phrase "discriminate against a qualified individual on the basis of disability" in the statute includes "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association."

The FMLA may be the existing federal statute that by its terms most directly addresses caregiver rights in employment, but it affords employees more restricted protection than do Title VII and the ADA. The FMLA provides that covered employers (private-sector employers with at least 50 employees in a 75-mile radius) must provide

up to 12 weeks of unpaid medical leave during a 12-month period to eligible employees (those who have worked for the employer for at least 12 months or 1,250 hours) for childbirth and newborn care, adoption or foster care placement, care for immediate family members with a serious health condition, or to handle the employee's own serious health condition.

In its recently published guide to the best practices for employers on this subject, the Equal Employment Opportunity Commission (EEOC) touts the benefits and advantages of employers adopting flexible workplace policies that help employees achieve a satisfactory work-life balance. According to the EEOC, employers taking that approach may not only experience decreased complaints of unlawful discrimination but, according to many studies, may also benefit their workers, their customer base, and even their financial picture. Flexible workplace policies also aid recruitment and retention efforts, helping employers to keep a talented, knowledgeable workforce and save the money and time that would otherwise have been spent recruiting,

interviewing, selecting, and training new employees.

## **LIFE INSURANCE POLICY RESCINDED**

A business executive was answering questions for an application for a \$3 million life insurance policy that named as the beneficiary a company he had started with others. He answered in the negative when asked the common question as to whether he “[e]ngaged in auto, motorcycle or boat racing, parachuting, skin or scuba diving, skydiving, or hang gliding or other hazardous avocation or hobby.” In fact, on about 20 occasions, the executive had gone heli-skiing, which involves skiing down remote mountain trails after being dropped off by a helicopter.

Only three months after the policy was issued, the executive was killed in an avalanche while heli-skiing. The tragedy for his survivors and former business partners was compounded in the courtroom when a

federal appeals court upheld the life insurer’s rescission of the life insurance policy on the ground of a misrepresentation on the application.

A reasonable person in the position of the life insurance policy applicant would have known that his heli-skiing avocation

**“THE  
APPLICANT  
CLEARLY  
WAS AWARE  
OF THE  
HEIGHTENED  
AVALANCHE  
RISKS  
ASSOCIATED  
WITH  
HELI-SKIING,  
AS  
COMPARED TO  
RESORT  
SKIING.”**

constituted a hazardous activity, as that term was used in the application. The applicant clearly was aware of the heightened avalanche risks associated with heli-skiing, as compared to resort skiing. He had routinely signed waivers to that effect whenever he engaged a company that made arrangements for such excursions.

It was hardly necessary for the insurer to point out, in making this argument, that heli-skiing commonly involves rescue and survival training and the use of specialized lights and breathing devices meant to increase one’s chances of surviving an avalanche.

About three weeks after the executive had completed the insurance application by telephone, an underwriter making calls for

the insurer called him with some follow-up questions, including the same inquiry about executive mentioned in the conversation that he enjoyed skiing and golf, among other things, but still there was no mention of heli-skiing. Nor did the executive show any concerns or confusion over what the term “hazardous activities” meant. The beneficiary under the rescinded policy unsuccessfully sought to use this exchange to argue that the life insurer was chargeable with knowledge of the insured's concealment of his heli-skiing avocation, and thus was precluded from seeking rescission.

The court ruled that the insured's “skiing” statement, when combined with the negative responses to the general question of whether he engaged in hazardous activities, would not have put a prudent underwriter on notice

“any hazardous activities.” This time, the of the need to investigate further. Otherwise, any report by an applicant of a generally low-hazard recreational activity, such as wrestling, juggling, or fishing, would unreasonably require the insurer to investigate the myriad possible “extreme” variants of such activities.

Instead, to make an insurer legally chargeable with knowledge of an undisclosed fact, generally it must be shown that it had knowledge of evidence indicating that the applicant was not truthful in answering a particular application question. In this case, there was no such “red flag” that might have allowed the policy beneficiary to avoid the consequences of the executive's untruthfulness.

## NEWS ABOUT OUR FIRM



### ABOUT OUR OFFICE NEWSLETTER

Beauchat & Beauchat, LLC's office newsletter is designed to inform you of new changes in the law that could affect your personal life and business. Also, the newsletter will provide information about the individuals working in the firm whom you work with on a regular basis.

Please feel free to contact the office with any comments regarding the newsletter at (717) 334-4515 or [jkulp@bblawinfo.com](mailto:jkulp@bblawinfo.com). Thank you in advance for forwarding your feedback.

### *Our Firm Provides the Following Services:*

- ❖ Estate and Trust Planning
- ❖ Estate and Trust Administration
- ❖ Divorce and Domestic Relations Law
- ❖ Bankruptcy and Financial Reorganization
- ❖ Business Organization and Commercial Related Matters
- ❖ Real Estate Settlements and Title Insurance
- ❖ Landlord/Tenant Matters

**Our office is located at 63 West High Street, Gettysburg, Pennsylvania 17325**

**Phone:** (717) 334-4515  
**General Fax:** (717) 337-2009  
**Real Estate Department Fax:** (717) 334-2399

**Hours:** Monday thru Friday  
8:30a.m.-4:30p.m.

\*After Labor Day our office will be open from 8:30a.m. - 5:00p.m.

(Our office is open during the lunch hour, except for Monday's when we hold office meetings)

**Upcoming Holidays:** September 7<sup>th</sup> for Labor Day, October 12<sup>th</sup> in observance of Columbus Day, and November 11<sup>th</sup> in Honor of Veterans Day

