M&B SINCE 1937

MESSAGE & BULLETIN

A Newsletter from Martinson & Beason, P.C., Attorneys at Law

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M&B is a full service law firm that has attorneys who specialize in the following areas:

- Serious Personal Injury
- Car, Truck & Motorcycle Accidents
- Wrongful Death
- Breach of Contract & Fraud
- Probate, Estates & Trusts
- Real Estate Transactions
- Business Law
- Criminal Domestic Relations

Douglas Claude Martinson

On November 12, 2014, the M&B family lost the patriarch of our firm Doug Martinson, Sr. For over 50 years, Doug was an active member of the legal and local community throughout his life, serving as the President of the Huntsville-Madison County Bar Association from 1987-1988. He was a founder of the Huntsville-Madison County Law Foundation, a not-for-profit corporation. He was also a charter member and founder of the Madison County Mothers Against Drunk Driving (MADD) Chapter, and served on the Board of Directors of such organizations as Land Trust of North Alabama. In his article, "A Reflection on 50 Years of Practicing Law" Doug, said, "It has been an interesting and fun-filled 50 years. I learned so much about so many areas of life that it is unbelievable."

Doug was a lawyers' lawyer. He was an extremely intelligent southern gentleman who was honest and fair to everyone he met. Doug's family is very grateful and appreciative of the outpouring of well wishes and memorials to Doug. Everyone at M&B dearly misses Doug, but we will continue to honor him through our enduring commitment to our clients.

March of Dimes: Team Will

Team Will was started 2 years ago by M&B attorney Morris Lilienthal and his wife Shannon to honor their late son. Team Will helps support the March of Dimes and their mission to promote healthy pregnancies, improve prenatal care, and prevent health issues threatening babies. Last year Team Will was the top raising family team in Alabama raising over $7,500.

The 2015 Huntsville March for Babies walk is April 18th at HudsonAlpha McMillian Park at 9am. You can support Team Will by making a donation, walking with Team Will, and by liking and sharing their Facebook page: https://www.facebook.com/marchofdimesteamwill Go Team Will.

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Using Veterans Benefits to Pay for Long-Term Nursing Care

NON-SERVICE CONNECTED PENSION (AID & ATTENDANCE)

The Department of Veterans Affairs offers a special pension that is largely unknown to America's Veterans and their family members. The VA Non-Service Connected Pension, more commonly known as Aid & Attendance is a medical expense reimbursement program wherein war-time Veterans and their surviving dependents can receive tax-free pension payments for unreimbursed medical expenses incurred. This special pension providing tax-free payments to Veterans and their surviving spouses who require certain types of assistance or custodial care is comprised of three pension levels: Base Pension, Housebound Pension, and Aid & Attendance.

The Base Pension is a strictly income-based benefit similar to Supplemental Security Income (SSI) and does not actually require a custodial care need. The Housebound Pension is designed for Veterans and their surviving dependents who are disabled and are substantially confined to their home due to that disability. The Aid & Attendance Pension is designed for Veterans and their surviving dependents receiving long-term custodial care in a nursing home setting but can help pay for care in the home, assisted-living facility, or nursing home. This important benefit is overlooked by many families with Veterans or surviving spouses who need additional monies to help care for ailing parents or loved ones. This is a "pension benefit" and is not dependent upon service-related injuries for compensation.

- This is a monthly, tax-free benefit amount that ranges depending on who is applying
  - Veteran with no dependents: $1788/month
  - Veteran with Spouse: $2,120/month
  - Widow(er) of Veteran: $1,149/month
  - Veteran married to Veteran: $2,837/month

These monthly, tax-free benefits can be used to pay family members, other than a spouse, to provide skilled or un-skilled nursing care to a Veteran or surviving spouse in need of custodial care.

ELIGIBILITY FACTORS:

Wartime Veteran: In order to qualify for this pension benefit a claimant must be either a wartime Veteran or a surviving dependent of a wartime Veteran. Specifically, a Veteran (alive or deceased) must have served 90 consecutive days on Active Duty with at least one day of service occurring during a period of war or hostilities. It is important to note that a Veteran did not have to deploy to a combat zone. The finance clerk's service at Redstone Arsenal or Ft. Benning, GA who never deployed counts just as much as the combat infantryman's service at Normandy, Bastogne, Iwo Jima or the Chosin Reservoir. These qualifying periods of war are listed at 38 C.F.R. §3.2.

- WWI: April 6 thru November 11, 1918 (if in Russia, ending date is April 4, 1920)
- WWII: December 7, 1941 thru December 31, 1946
  - Also, in service on December 31, 1946 with continuous service before July 26, 1947
  - Merchant Marines ending date: August 15, 1945
- Korea: June 27, 1959 thru January 31, 1955
- Vietnam: February 28, 1961 thru May 7, 1975 if served inside Vietnam; otherwise August 5, 1964 thru May 7, 1975
- Gulf War Era: August 2, 1990 thru Present Day

Disabled: In order to qualify for this pension benefit a claimant must be deemed "disabled." Fortunately, under VA regulations any claimant 65 years of age or older is presumed disabled. However, the benefit is not automatic to America's senior Veterans. A claimant must also show a medical need.

Medical Need: A Veteran or their surviving spouse can establish entitlement via a medical need by showing that the claimant is unable to perform at least two Activities of Daily Living (ADLs) such as eating, bathing, dressing, toileting or incontinence training, transferring. Stated differently, if the claimant is unable to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; in frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. Entitlement to the benefit can be shown if the claimant is blind, or under full-time nursing care because of mental or physical incapacity.

Financial Need (Income & Asset Based): To qualify for Aid & Attendance a claimant must meet certain financial criteria in addition to the health criteria listed above. The VA examines the claimant's monthly income and assets to determine whether the claimant is "too rich" for receipt of Aid & Attendance. If a person pays a caregiver such as a nurse's aide, or they pay an assisted-living facility, those monthly expenses can impact a person's monthly income, causing a monthly shortfall. These necessary expenditures can help a claimant meet the income level criteria to qualify for Aid & Attendance.

Finally, if a Veteran or their surviving dependents have assets above a certain limit they may be ineligible for Aid & Attendance. While VA actually does not have written asset threshold policy it is fairly safe to say that if a Veteran or their surviving dependents own more than $80,000 in non-exempt assets (excluding their home, family care, and personal items used on a regular basis such as clothing) then the claimant will likely be ineligible for Aid & Attendance. Examples of non-exempt assets include: cash, checking & savings accounts, retirement accounts, stocks, bonds, business interests, second home, and cash value of life insurance policies.

If a Veteran or their surviving dependents have assets above a certain limit they are allowed to place those certain items into trusts such as a Veteran Asset Protection Trust and/or financial products such as annuities in order to have these assets sheltered. Proper asset sheltering for Aid & Attendance should be completed under the supervision of an accredited VA attorney.

Continued next column

[1] The VA uses a formula based on the claimant's assets, cost of unreimbursed medical expenses, and claimant's life expectancy. [2] To find a VA-accredited attorney visit the VA website at: http://www.va.gov/ogc/apps/accreditation/

Under current VA regulations, this sheltering does not have a penalty or "look-back period" associated with it. However, VA has proposed a 3-year look back period for non-service connected pension benefit eligibility. The proposed changes are listed in the Federal Register at: https://www.federalregister.gov/articles/2015/01/23/2015-00297/net-worth-asset-transfers-and-income-exclusions-for-needs-based-benefits?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.#sthash.6i07UJOT.dpuf.

If this new rule is approved, Veterans could be penalized for making gifts to family and friends in order to qualify for this pension. Families of Veterans can begin planning now to avoid this penalty before it is approved. If you or a loved one is concerned about funding long-term care costs and want to learn more about paying for nursing care with Veterans Benefits contact the legal professionals of Martinson & Beason, P.C. at 256-533-1667.

RECIPE OF THE MONTH

KAHLUA DIP

Kahula Dip - By: Robbie Burlison
(mother-in-law of Doug Martinson, II)

INGREDIENTS:

8 oz. Softened Cream Cheese
16 oz. Cool Whip
1/2 cup Kahlua
3/4 cup Brown Sugar (packed)
1 cup Sour Cream

DIRECTIONS:

Blead cream cheese, Cool Whip and brown sugar, Halua, then sour cream. Refrigerate 1-2 days before servions

*1/3 cup unsalted nuts is optional

What the Jury Doesn't Know Won't Help You

If you've ever watched an episode of Law & Order, you know that trials can range from the mundane to the dramatic. You also know that the lawyers are not always allowed to offer into evidence all of the information they have. This is because the law provides "rules of evidence" stating what information may and may not be used in court.

If you have a personal injury suit, it's important for you to know what a jury may never hear about your case—and why. We've outlined five of the most important pieces of information below that won't make it into evidence at trial.

#1 An Accident Report: This one may surprise you. After all, it's highly relevant to your case, and it can serve as a compelling piece of evidence in your favor. Unfortunately, your auto accident report is considered under the law as "hearsay." Hearsay is generally excluded from court because it is a statement made by a person outside of court who doesn't have direct knowledge of the incident. Because a police officer only shows up after the accident, he or she didn't see exactly what happened and can't say for sure what each party did.

#2 Offers to Pay Medical Expenses: If the defendant offered to pay your medical expenses after the accident, this offer will not be allowed in court. The reason behind this rule of evidence is fairly straightforward: offering to pay someone's medical expenses after an accident sounds like an admission of guilt. If a jury hears this, they will be strongly persuaded to rule in favor of you, the plaintiff. As a result, this information is barred.

#3 Steps Taken to Fix Negligent Acts or Behavior: Let's say, for example, that you tripped and fell in the parking lot of a grocery store. You fell because the lot was in disrepair and badly needed to be fixed. Because you are injured, you file a personal injury suit. After your accident, the store fixes the pavement so that it is not a fall hazard. In this scenario, the jury wouldn't be allowed to hear that the store had taken remedial measures to prevent future falls in their lot. Like an offer to pay medical expenses, fixing past behavior can be seen by the jury as a sign of guilt. In addition, the law doesn't want to discourage people from fixing wrongful behavior. If this information were allowed in court, people may avoid fixing problems to avoid liability—thereby endangering others.

#4 Offers to Settle: Sometimes, it makes more sense to settle than to go through the trial process. This may be because the defendant knows that he or she won't win the case or because it would be cheaper in the long run. However, offering to settle would look like an admission of fault to a jury, persuading them to rule in favor of the plaintiff. The law doesn't want to discourage people from settling outside of court, which is why this rule is in place.

#5 The Defendant's Liability Insurance Coverage: Whether or not the defendant has insurance—and how much insurance he or she has—is not allowed to be presented to a jury. Like several of the other pieces of information above, this information is excluded in order to prevent jury bias. If the jury knew that the defendant's insurance would cover any damages, they may be inclined to award damages or increase the damages awarded. The law wants the jury to decide a case based on the facts, not whether or not the insurance company would pay.

In just a few weeks, Martinson & Beason, P.C. will begin sending email updates on product liability, important recalls and other urgent legal matters. If you would like to be added to our electronic mailing list, please email us at info@martinsonandbeason.com Also, if you would prefer we email you a copy of our newsletter, please let us know.

Client's Bill of Rights

Lawyers will tell you that it is impossible to offer a guarantee in the legal business. WRONG! We say that law firm clients should settle for nothing less! Remember, your attorney works for you – not the other way around.

At Martinson & Beason we believe we can promise our clients quality service with personal attention. We believe that as our client you are entitled to have the:

1. Right to loyalty to you and your cause.
2. Right to be updated regularly and in a timely manner as to the progress of your case.
3. Right to our respect.
4. Right to expect competence from our firm and all who work here.
5. Right to know the truth about your case.
6. Right to prompt attention from us.
7. Right to have your legal rights and options explained in plain English without legal mumbo jumbo.
8. Right to a fair written fee agreement with our firm.
9. Right to a fair fee for the work we do.
10. Right to make the ultimate decision on your case.

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Zofran and Xarelto: Drugs In the News

Birth Defects: Zofran and Ondansetron

Did You Take Zofran for Morning Sickness?

The safety risks of Zofran are being investigated thoroughly and various agencies are monitoring all developments. Zofran and generic versions of ondansetron have been approved by the United States Food and Drug Administration to prevent nausea and vomiting caused by chemotherapy, radiation therapy, and surgery. It is in a class of drugs known as 5-HT3 receptor antagonists that work by blocking the action of serotonin, a natural chemical produced by the human body that can cause nausea and vomiting. However, it is not now, nor has ever been, approved to treat morning sickness at any stage of a pregnancy. If you or a loved one took Zofran for morning sickness during pregnancy and if your baby was born with a cleft palate, cleft lip, or congenital heart defect, please contact us by calling us for a confidential evaluation of your potential claim.

Uncontrolled Bleeding and Xarelto

What is Xarelto?

Xarelto (rivaroxaban) is an anticoagulant, more commonly known as a blood thinner that prevents the formation of blood clots. Xarelto, is a "new-generation" anticoagulant, which is used specifically to reduce the risk of blood clots and strokes. Xarelto was additionally marketed as being easier to use than Warfarin, also known more commonly as Coumadin, which is an older anticoagulant, because it does not require the same level of medical monitoring that is required with Coumadin.

It has been reported that Xarelto has been linked to incidences of increased risk of uncontrollable bleeding (hemorrhaging). The "newer generation" blood thinners do not have an antidote. This means that often very minor injuries—including minor cuts or undetectable internal bleeding—can result in uncontrolled bleeding, which can be fatal.

Injuries alleged to be associated with Xarelto include:

- Stroke
- Retinal hemorrhages
- Death
- Epidural hematoma
- Intracranial hemorrhages
- Pulmonary embolism
- Hemoglobin decrease
- Gastrointestinal hemorrhages
- Deep vein thrombosis
- Adrenal bleeding

If you or a loved one was prescribed Xarelto and have suffered a serious bleeding event or other serious side effect you should consult with an attorney regarding your legal options. The consult is free and confidential.