



A Newsletter Published by Phillips & Garcia, P.C.

Phillips & Garcia News

Strong heart. Strong mind.

October 2010

This newsletter is published monthly by Phillips & Garcia, P.C. It is for informational purposes only; no legal advice is intended.

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Happy Halloween!

Andrew J. Garcia

Fall is upon us. Mornings are crisp, and the leaves are changing color. The kids are back at school and soccer, and I'm coaching again. (Phillips & Garcia is a proud sponsor of my daughter's U15 girls Dartmouth Youth Soccer Association team named the "Yellow Jackets.") It's October 1st, and the kids are already excited for Halloween.



Phillips & Garcia Yellow Jackets

For kids Halloween is supposed to be about scary, make-believe: ghosts, goblins, witches and hags. Oh, and let's not forget: CANDY. But for me, it's a bit more than that. It's about community, and it's a night I look forward to every year.



Andrew's Girls, Halloween 2009

On Halloween night, weather permitting, we fire up our chiminea in the front yard, set out a circle of chairs, and order enough pizza to feed a small army. That night, we welcome family, friends and neighbors while the kids come and go for candy. Neighbors stop by to warm up by the fire and share a quick chat about how quickly the time passes. And every year, one neighbor hooks up a hay-filled wagon to his John Deere, decorates it with orange lights, and tows the kids up and down the street. It is a wonderful place to live. Hardly scary at all.

But as lawyers, we know scary. Often we see bad things happen to good people, and I am reminded, once more, of what is truly scary: the unexpected and the unprepared.

So in this issue, we hope to help you plan and prepare. First, we tackle auto insurance. If you think of auto insurance as an "expense," and you are paying rock bottom premiums, you may be underinsured and *terribly exposed* — See Truly Scary #1. Next we address guardianship of minors. Without legal documents in place, did you know that the court must choose who takes care of your kids? — See Truly Scary #2.

Fall is a wonderful time to explore. Go apple picking, plant bulbs and mums, hike through crunchy leaves, go to an Oktoberfest celebration, carve a pumpkin, or get ready for Halloween. There's so much simple fun to be had, just don't forget to plan for the unexpected. There's a lot more than goblins and witches lurking around every corner!



Cruella Deville Phillips '09

For more articles, reports, studies, news and commentary on these and other legal matters, visit our websites:

www.PhillipsGarcia.com www.SloppyBankPractices.com www.SouthCoastAccidentAttorney.com www.PlaceKidsFirst.com



Truly Scary #1 — Underinsured Motorist Coverage: Do You Have Enough?

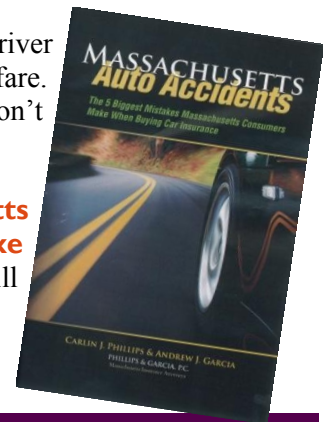
A big mistake that I often see are motorists without enough auto insurance. I'm not talking about insuring "the other guy" if you cause the accident. I'm talking about auto insurance that protects you and your family in case some "yahoo" out there comes along

and *creams you* in a terrible accident. **With no warning, a car accident can rob you of your health, your job and your savings.**

At minimum, a driver needs a \$20,000 auto policy to put a car on the road. If this \$20K driver hits you and you suffer serious injuries, the maximum you are likely to collect from that driver's insurer is \$20,000. So if you don't have adequate underinsured motorist coverage on your vehicle, you and your family face a real threat. **You could get a measly \$20,000 to cover unpaid medical bills and attorneys' fees, not to mention that the accident may have cost you your job.** Now that's scary.

What many people fail to realize is that auto insurance coverage and underinsured driver coverage is really just "Step One" in protecting their family's financial health and welfare. There are so many ways drivers are not properly insured, but my editor tells me that I don't have enough room to elaborate, so here's a treat for you:

Log on to www.phillipsgarcia.com and request a free copy of our book: **Massachusetts Auto Accidents: The 5 Biggest Mistakes Massachusetts Consumers Make When Buying Car Insurance.** It's free, it covers these issues in depth, and it will help you find out if you and your family are adequately insured.



RAQs — "Really Asked Questions"

"Can my boss deduct money from my paycheck if I make mistakes at work?"

The short answer is No, or at least not without your permission. Unauthorized wage deductions from your pay under Massachusetts wage payment law is illegal. The only exception is when an employee quits after receiving a pay advance. If you have caused property damages to your employer while working, then your employer must file a separate claim against you rather than making any unauthorized wage deductions to recoup the loss. Under Massachusetts law, any employer deductions from your paycheck other than taxes can only occur through your written consent. However, even in the case of employee authorization, Massachusetts wage payment law states that wage deductions cannot result in the employee making less than the minimum wage.

If you have a question, please email mmorin@phillipsgarcia.com. By submitting it, you authorize us to publish your question in any of our newsletters or on any of our websites.

www.SouthCoastAccidentAttorney.com

Thanks for Your Referrals!

One of the greatest compliments that we receive is the referral of new business from our clients and friends. This month we'd like to thank the following people:

- Jean Bernard | Manny Garcia
- Mary Klienberger | Nicole Letendre
- Beverly Slover | Gabe Tavares

We are accepting the following types of cases:

- Serious Auto & Truck Accidents
- Dog Attacks | Bicycle Accidents
- Wrongful Bank Seizures | Consumer Class Actions
- Family Legal Planning | New Business Formation

Truly Scary #2 — Have You Designated a Legal Guardian for Your Minor?



According to a survey by FindLaw.com, nearly 75% of people, ages 25-34, do not have a will. Worse, FindLaw.com estimates that nearly 75% of all parents haven't chosen a guardian for their minor children! That's right, **approximately 3 out of 4 sets of parents have not decided who should raise their children should the unthinkable happen.**

As soon as a couple has a child, there is no excuse not to have an estate plan prepared. Yet over the years I have noticed a funny thing about expectant and new parents. They do everything in their power to plan for, protect and nurture their child. Everything, that is, except an estate plan. They spend countless hours mulling over names, "nesting," choosing childcare, shopping for the safest furniture and travel gear, planning the nursery, even trading in their sporty car for a more "family friendly" minivan. Yet for all this planning, many neither draft a will or set forth guardianship documents in the event of their own death. **Who will take care of your kids should you and your spouse die?**

Rather than go into a long debate about why 75% of parents don't plan for their own deaths and the long-term care of their children, let's just focus on the consequences of avoiding the choice. **If you don't choose a guardian for your minor(s) via a legally binding document, you are leaving a critically important decision up to a judge of an overburdened, broken-down Probate Court, a judge that neither knows you, your children, your family, or your values.** Without a legal document in the form of an Estate Plan, your children are at risk of being placed in an inappropriate living situation. Now that's scary!

A **Family Legal Plan** assures that certain things happen at death. It ensures that your property transfers to the desired individuals, and it determines who will handle the business affairs of the estate, who will manage your children's property, and most importantly, who will raise and care for your children if you are not there to do so.

Client Spotlight — Cravings Café & Cakery

98 State Road, Dartmouth, MA | 508.858.5037 | www.cravingscafeandcakery.com

Jessica Marmelo came to **Phillips & Garcia** with her dream to open a cake designing business. She had outgrown her home-based business, and it was time to take her talent to the next level. Dartmouth's very own "cake boss," Jessica joined her passion for cake design with her passion

for good, nurturing food in a nice, clean, well lit place, serving breakfast, lunch, pastries, and, of course, fabulous cake and Custom House coffee.

Referred to **P&G** by a client, we helped Jessica form her corporation, negotiate her lease agreement, and obtain a variance from Dartmouth's Zoning Board of Appeals for her street sign. We are grateful for Jessica's business and wanted to give her an opportunity to highlight her own.

What's the best part of being in business for yourself? At the end of the day, good or bad, I did the best I could, and I did it for me. **What's the biggest challenge you face?** Marketing. It's hard to get customers to come into the café and give us a try. Feedback has been positive, but we've yet to get Cravings into their daily routine. **What are you highlighting for the Fall?** Soups and seasonal items like pumpkin flavored lattes, muffins, breads and cupcakes. We also offer a red velvet hot chocolate or latte topped with a cream cheese whipped cream. And, if you come in during October from 7:30-9:30 AM, you can get a free coffee!



Jessica Marmelo, Cake Designer & Owner
Cravings Café & Cakery



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YOUR LOOK INSIDE...



**Have You Designated
a Legal Guardian for
Your Minor?**



Happy Halloween!



**Do You Have
Enough
Underinsured
Motorist
Coverage?**



**Client Spotlight
CRAVINGS
CAFÉ & CAKERY**

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Bank of America Admits Mistake About Wrongful Foreclosure

In response to a lawsuit filed by Phillips & Garcia, Bank of America apologized to a Willcox, AZ, couple about its year long attempts to wrongfully foreclose on their home. The Newmans allege that they had paid off a prior mortgage on their home in a refi. The bank that held the paid-off mortgage closed, and BoA took over its assets and mortgages; however, in error, BoA treated the Newman's paid-off mortgage as unpaid and tried to collect on it through foreclosure, including scheduling an auction. The Newmans provided documents showing the loan paid in full, but BoA continued collection efforts until the Newmans hired wrongful foreclosure attorneys Phillips & Garcia. BoA released this statement: "We sincerely apologize to the Newman's for this mistake. We have cancelled the foreclosure sale and hope to resolve this with the Newmans." In an interview with KVOA-TV, Phillips said that the Newman's fight isn't over: "You can't just walk away and let these big box banks get away with that. We want to bring them to task before a jury in Arizona and see what they have to say about this kind of conduct." See video at: <http://www.kvoa.com/news/bank-admits-mistake-on-willcox-home-foreclosure/>

Massachusetts' Highest Court Hears Pelletier Case

In 2007, Phillips & Garcia, along with co-counsel, won a \$1.85 million sexual harassment jury verdict against the Town of Somerset in Fall River Superior Court for former Somerset Highway Department employee Kim Pelletier. The Town's appeal of the case was just argued before the Supreme Judicial Court in Boston. The Massachusetts Commission Against Discrimination filed a legal brief in support of Attorney Phillips' argument for reinstatement of the original jury verdict, which is now estimated to be valued at over \$3.5 million. Phillips & Garcia anticipates a decision from the SJC within 60 days. To watch the webcast of the Massachusetts State SJC argument, type the following link into your browser: http://www.suffolk.edu/sjc/archive/2010/SJC_10654.html.

Our Firm's Communication Policy

Generally the attorneys at Phillips & Garcia, P.C., do not take unscheduled phone calls. With office calls, cell calls, texts and e-mails, we would never get any work done on your case if we reacted to every incoming message. We realize this may seem unusual, but this actually allows us to better focus on our cases, resulting in higher quality legal services. This policy also helps us to resolve cases more quickly. Rather than play "phone tag," we prefer that you schedule an appointment for a phone call or an in-person meeting with us by contacting Donna Medeiros — 508.998.0800 #115; dmedeiros@phillipsgarcia.com — or Maura Morin — 508.998.0800 #110; mmorin@phillipsgarcia.com. Thank you.

This publication is intended to educate the general public about personal injury, wrongful foreclosure, family legal planning, small business law and other issues. For informational purposes only, it is not intended to be legal advice. Prior to acting on any information contained here, you should seek competent legal counsel. This information may be freely copied and distributed as long as the newsletter is copied in its entirety.