Circuit Court for Anne Arundel County
Case No. C-02-CV-22-000070

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 405

September Term, 2025

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NANCY EICHHORN

v.

JEFFREY BEAHM

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Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: July 2, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Jeffrey Beahm, appellee, sued Nancy Eichhorn, appellant, after he was denied insurance coverage for injuries he sustained as a pedestrian hit by a motor vehicle. The complaint, filed in the Circuit Court for Anne Arundel County, alleged, among other things, that Ms. Eichhorn committed insurance agent malpractice. Ms. Eichhorn filed a motion for summary judgment and a motion to strike the testimony of Mr. Beahm's expert witness on the standard of care. The court denied the motions, and a jury determined that Ms. Eichhorn was liable for malpractice, finding that she failed to use reasonable care as insurance agent. It awarded damages in the amount of $500,000.

Ms. Eichhorn subsequently filed a motion for judgment notwithstanding the verdict on the grounds that: (1) Mr. Beahm failed to demonstrate that she had a duty to provide unsolicited advice regarding the adequacy of his insurance coverage; and (2) the court should have reduced the judgment by the amount Mr. Beahm recovered from the at-fault driver. The court denied the motion.

On appeal, Ms. Eichhorn presents the following questions for this Court's review,[1] which we have consolidated and rephrased, as follows:

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[1] Ms. Eichhorn's questions presented are as follows:

> 1. Did the Court err by denying Eichhorn's Motion for Summary Judgment as to Count I when, as a matter of law, Eichhorn had no affirmative duty to provide unsolicited advice or recommendations to Beahm about the adequacy of the UM/UIM coverage under Starboard's CAP when Beahms' Personal Auto Policy ("PAP") cancelled?

1. Did the circuit court err by denying Ms. Eichhorn's motion for summary judgment?

2. Did the circuit court err by denying Ms. Eichhorn's motion to strike Mr. Beahm's expert?

3. Did the circuit court err by denying Ms. Eichhorn's motion for judgment and motion for judgment notwithstanding the verdict?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises from an accident involving Mr. Beahm and his nephew, Zacharia Smith, at a birthday party held at Mr. Beahm's home on the evening of August 1, 2020. Mr. Smith struck Mr. Beahm with his truck as Mr. Beahm walked on his driveway, toward his house, after attempting to stop Mr. Smith from leaving the party. Mr. Beahm sustained serious injuries from the accident and was hospitalized in shock trauma for eight days. He was later readmitted to the hospital for complications from his injuries, and he suffers from ongoing neurological deficits.

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2. Was the Court's denial of Eichhorn's Motion to Strike Boylan, whose opinions misrepresented the standard of care of an insurance agent in Maryland, founded upon an error of law?

3. Did the Court err by denying Eichhorn's Motions for Judgment and Motion JNOV when Beahm failed to demonstrate that Eichhorn had an affirmative duty to provide unsolicited advice or recommendation about the adequacy of the UM/UIM coverage under Starboard's CAP when the Beahms' PAP cancelled?

4. Alternatively, did the Court err by denying Eichhorn's Motion JNOV seeking to reduce the judgment by $30,000.00—the amount Beahm recovered from Smith?

Because coverage under his nephew's policy was insufficient to pay for Mr. Beahm's damages, Mr. Beahm submitted a claim for Underinsured Motorist Coverage ("UIM") to Erie Insurance Exchange ("Erie") under a commercial auto policy issued to Starboard Technologies ("Starboard"), Mr. Beahm's information technology ("IT") consulting company. Erie denied the claim because Mr. Beahm was not occupying a Starboard-owned vehicle at the time of the accident, and although the commercial policy had uninsured motorist pedestrian coverage, the policy listed only Starboard as the named insured, not Mr. Beahm individually. Mr. Beahm unsuccessfully sued Erie for coverage. *Beahm v. Erie Ins. Exh.*, 260 Md. App. 201, 205 (2024). He then filed a lawsuit against Nancy Eichhorn and Lisa Bayliss, his insurance agents, alleging that his claim was denied due to insurance agent malpractice and negligent misrepresentation.[2]

## I.

## Insurance History

At the time of the accident, Mr. Beahm was the president of Starboard, an incorporated IT consulting company. Prior to 2000, Mr. Beahm operated Starboard as a sole proprietorship and obtained insurance through an agent in Silver Spring, Maryland. When he and his former wife, Terri, purchased a home in Pasadena, Maryland, they decided to get an insurance agent closer to their new home and began working with Ms. Eichhorn.

[2] The court subsequently granted judgment in favor of Ms. Eichhorn and Lisa Bayliss on the negligent representation claim, and it dismissed the complaint against Ms. Bayliss with prejudice.

In June 2000, Ms. Eichhorn met with the Beahms to assist them in obtaining a homeowner's policy and to transfer their family auto policy, boat policy, and general liability business policy over to her agency for management. Ms. Eichhorn testified at trial that these policies were "on automatic renewal" and "further intervention on [her] part" was unnecessary.

In 2000, Mr. Beahm changed the status of Starboard, which had been a sole proprietorship, and he incorporated the business. After receiving notice of the change, Ms. Eichhorn contacted Mr. Beahm to update his general liability policy "to reflect the proper named insured of Starboard."[3] Because Mr. Beahm was "too busy to come by the office" to sign a general liability policy application, Ms. Eichhorn mailed the application with a cover letter to Mr. Beahm, which he signed and returned to her. In the cover letter, Ms. Eichhorn confirmed that "all his coverage would be the same" with regard to the business' general liability policy, stating: "Signature application only to confirm change in entity from sole proprietorship to corporation. No change in coverages."

As Starboard grew, Mr. Beahm began to purchase commercial vehicles for employee use. Ms. Eichhorn obtained commercial auto coverage for these vehicles beginning in approximately 2001. Mr. Beahm and his wife also had personal automobile insurance with Erie from 2000 to 2008, which Ms. Eichhorn managed. Both the commercial and personal auto policies included UIM coverage, which Ms. Eichhorn testified covers damages "in the event that insured is involved in a covered claim where the other party is responsible" for

[3] Ms. Eichhorn testified that a general liability policy is "written on behalf of someone who is pursuing business pursuits" to transfer "the financial risk for any unintentional injury, property damage as a result of a covered claim under the policy."

the damages, but that party either has no insurance or does not have adequate insurance to cover the claim.

The UIM coverage in the Beahm's personal auto policy applied to Mr. Beahm as a pedestrian, but the UIM coverage in the commercial policy did not because Starboard was the named insured on that policy. At the time Mr. Beahm obtained the 2001 commercial auto policy, he did not specially ask about pedestrian UIM coverage on the commercial auto policy, and Ms. Eichhorn did not offer any advice on the topic. Mr. Beahm stated in his deposition and at trial that he told Ms. Eichhorn that he wanted the commercial policy to be the same as his personal auto policy, he wanted his employees covered, and he wanted UIM coverage as well. He stated at his deposition that he could not remember what Ms. Eichhorn said to him. Neither the application for the commercial auto policy, nor the policy itself, listed Mr. Beahm as a named insured, and Mr. Beahm did not ask to be added as a named insured after reviewing the application.[4]

The Starboard commercial auto policy renewed each year until 2012, when it was cancelled for non-payment. In November 2012, Erie issued a new commercial auto policy to Starboard, with the assistance of Ms. Eichhorn, which was renewed each year until at least 2023. The Starboard policy had UIM limits of 1 million dollars to protect Starboard employees in the event of an accident involving a company vehicle.

[4] Ms. Eichhorn testified at her deposition that Mr. Beahm was not eligible to be a named insured on the commercial auto policy because he was not the title owner of the Starboard vehicles.

In 2007, Mr. Beahm and his wife separated, and she moved to Texas with the sole vehicle covered under the personal auto policy. Because Erie did not operate in Texas, the personal auto policy was canceled in February 2008. At that point, Mr. Beahm no longer had the pedestrian bodily injury UIM coverage associated with this policy. Ms. Eichhorn testified at trial that she did not inform Mr. Beahm in writing that he had lost coverage under the personal auto policy, but she did advise him orally. Ms. Eichhorn told Mr. Beahm "that there was an opportunity to purchase a policy that would have covered this type of claim." Ms. Eichhorn told him that "there were certain coverages under a personal auto policy that he would no longer enjoy," including automatic coverage when renting vehicles. Mr. Beahm "never specifically asked about uninsured motorist coverage" during that conversation.

Ms. Eichhorn testified that she told Mr. Beahm that he could maintain the personal automobile policy by converting it to a named non-owner policy, but there was a limited window of time to do that. Mr. Beahm disclosed, however, that he had a very serious moving violation, which Ms. Eichhorn knew would disqualify him from that policy and could jeopardize the Starboard commercial auto policies. Mr. Beahm also told her he did not "have the funds to pay for such a policy" and was concerned only with "being able to continue to operate the Starboard vehicle and maintain [his] insurance with Erie for that vehicle."[5] At the time of the accident, Mr. Beahm did not have a personal auto policy, and he did not have pedestrian UIM coverage under Starboard's commercial auto policy because he was not a named insured.[6]

## II.

## Complaint and Summary Judgment Motions

On January 14, 2022, Mr. Beahm filed a complaint against Ms. Eichhorn, alleging insurance agent malpractice.[7] Mr. Beahm alleged, in relevant part, that Ms. Eichhorn

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[5] At trial, Mr. Beahm testified that he did not remember discussing any change or loss of coverage with Ms. Eichhorn when Erie cancelled the personal policy. He stated that Ms. Eichhorn never told him that there was a difference in the uninsured motorist coverage coverage regarding personal injuries suffered while a pedestrian. When Erie canceled the policy in 2008, he "understood that [he] had a $1 million policy on [his] corporate car insurance" that would cover him as a pedestrian.

[6] Bodily injury UIM coverage is a required coverage in Maryland. It applies when a party causing an accident does not have adequate liability insurance to pay for damages resulting from the accident. In the case of an accident caused by an underinsured motorist, injured parties can seek coverage from their own personal auto policy to cover any damages incurred. UIM coverage follows the insured vehicle, and therefore, it also covers damages incurred by any passenger injured by an underinsured motorist.

Personal liability auto coverage is issued to individuals based on the titling of the vehicle. The named insureds are the individuals on the vehicle's title. Personal liability auto coverage follows the insured to other vehicles. If an insured borrows or rents a car with lapsed insurance, and then causes an accident, the insured's own personal liability auto coverage will cover the cost of any damages.

A commercial auto policy is issued to vehicles titled in the name of a business entity. At the time of the accident in this case, only the business entity holding title to the vehicle could be a named insured on a commercial policy issued by Erie.

[7] The complaint also alleged negligent misrepresentation, but the court dismissed that on summary judgment, finding that there was no evidence of negligent

"rewrote [his] motor vehicle policy to a business policy" before the accident and sent him a letter assuring him that rewriting from personal insurance to a commercial insurance policy would not affect his coverage. He asserted that, in failing to "properly complete the insurance forms and other errors and omissions," Ms. Eichhorn breached her duty "to act with reasonable skill and care causing denial of his claim." He alleged that the failure to include him as an insured on the business policy precluded coverage, and although he had "a one million dollar underinsured motorist policy limit with Erie Insurance," coverage was "being denied to him due to the professional malpractice, errors, and omissions of [Ms.] Eichhorn."

On October 14, 2024, Ms. Eichhorn filed a motion for summary judgment, arguing that Mr. Beahm failed to demonstrate a breach of the standard of care because, absent a special relationship, which Mr. Beahm did not allege, an insurance agent has no affirmative duty to provide unsolicited advice to an insured regarding the adequacy of coverage. Ms. Eichhorn asserted that Erie never "re-wrote" Mr. Beahm's personal auto policy to a commercial auto policy or sent any letter in that regard, but rather, the letter that Mr. Beahm referenced was a General Liability ("GL") policy issued in Mr. Beahm's name that was converted to a GL policy in Starboard's name. The Personal Auto Policy obtained in 1998 covered the Beahms' personal auto, and the Starboard Commercial Policy obtained in December 2001 covered Starboard's company-owned vehicles. Ms. Eichhorn alleged that

misrepresentation. Mr. Beahm does not challenge that ruling on appeal. Accordingly, we will not discuss the claim in that regard.

there “was never a ‘re-writing’ of the Beahm[s’] Personal Auto Policy to a Starboard Commercial Auto Policy.”

With respect to the claim that Ms. Eichhorn should have added him as a named insured, Ms. Eichhorn stated that Mr. Beahm never asked her to do that despite reviewing the application for the policy, which did not list him as a named insured. In any event, he was not eligible to be a named insured because the company vehicles were not titled in his name.

Addressing testimony by Mr. Beahm’s expert at deposition regarding available coverage alternatives that could have been offered in 2008, after Mr. Beahm’s marital separation and subsequent loss of personal auto insurance, Ms. Eichhorn alleged that the proposed coverage alternatives were either unavailable, rejected by Mr. Beahm, or beyond the standard of care applicable to an insurance agent under Maryland law. Specifically, she alleged that corporate officer coverage was not available when the policy was eligible for conversion in 2008, that Mr. Beahm declined her offer to obtain a named non-owner policy, and that Erie did not offer “Drive Other Car” coverage.

On November 11, 2024, Mr. Beahm filed an opposition to Ms. Eichhorn’s motion for summary judgment, alleging that Ms. Eichhorn “owed him a duty to correctly advise that there would be a reduction in his UIM coverage if he discontinued his Personal Auto Policy and went exclusively with the Starboard Commercial Auto Policy.”[8] He argued that

[8] As explained, *infra*, the factual basis for Mr. Beahm’s claim of duty shifted during the course of the proceedings.

there were material facts in dispute regarding whether Ms. Eichhorn assured Mr. Beahm that "his coverage under the commercial policy was the same as [his] personal policy" and whether Ms. Eichhorn could have added him as a named insured to the Starboard policy. In addition, he asserted that his expert witness disputed Ms. Eichhorn's claims that other alternative coverage options were unavailable to Mr. Beahm after he lost his personal auto coverage in 2008. He argued that the opinions of his expert witness must be considered by the trier of fact.

## III.

## Motion to Strike Mr. Beahm's Expert

On January 8, 2025, Ms. Eichhorn filed a motion to strike Mr. Beahm's expert witness, Vincent Boylan. In Mr. Beahm's Supplemental Designation of Expert Witnesses, he stated that Mr. Boylan would testify that Ms. Eichhorn did not meet the standard of care because she failed to either secure an endorsement on the commercial auto policy to ensure pedestrian bodily injury UIM coverage or ensure that one corporate vehicle remained on a personal policy with a business use rating. Mr. Boylan would testify that any time there was a material decrease in coverage, an agent is required to advise the insured of the reduction in coverage. He would testify that Ms. Eichhorn failed to meet the standard of care "by failing to recognize" that Mr. Beahm had a need for pedestrian bodily UIM coverage once Erie canceled his personal auto policy and by failing to provide "solutions to solve that need." In his deposition, Mr. Boylan clarified that Ms. Eichhorn breached the standard of care in 2008 when Mr. Beahm "was no longer protected by a personal automobile insurance policy," not in 2001 when the commercial policies were issued.

Ms. Eichhorn argued that, under Maryland law, she had "no legally cognizable duty to [Mr.] Beahm to offer unsolicited advice, make recommendations, or offer 'solutions' about the adequacy of [Mr.] Beahm's uninsured/underinsured motorist coverage under the Starboard Commercial Auto Policy." She stated that Mr. Boylan did not contend, nor was there any evidence, that Mr. Beahm had a special relationship with her that would impose a heightened duty to offer "unsolicited insurance 'solutions'" when he lost coverage due to his marital separation. She argued that Mr. Boylan's opinions far exceeded the applicable standard of care for insurance brokers in Maryland and moved to strike his opinions.

On January 17, 2025, Mr. Beahm filed an opposition to the motion to strike his expert. He asserted that the Maryland pattern jury instructions "make no mention of a special relationship for the jury to decide," and it was clear that a special relationship existed between him and Mrs. Eichhorn.[9] In support, he stated that the standard of care of "specialization" can be shown when the agent holds herself out as a highly skilled insurance expert, and the insured "relies on his detriment on that expertise." He argued that Ms. Eichhorn was licensed to sell insurance in Maryland, had a B.A. degree and an insurance

[9] Maryland Civil Pattern Jury Instruction ("MPJI-Cv") 14:7 provides:

> Although an insurance agent acts on behalf of the insurance company and not the insured, the agent owes the insured a duty of reasonable care if the agent undertakes to act for the insured, and the insured may rely on the agent to perform this duty.

designation, so she was an insurance expert, and Mr. Beahm relied to his detriment on that expertise, "which cost him the coverage that would have paid his claim." He argued that *Sadler v. Loomis Co.*, 139 Md. App. 374 (2001), which Ms. Eichhorn relied on, was distinguishable from this case, where he had a relationship with Ms. Eichhorn for more than 20 years, he met with Ms. Eichhorn for hours when converting his policies to her agency, and he solicited advice regarding his UIM coverage when he went from personal to commercial insurance. He further argued that Ms. Eichhorn "did not advise of a decrease in coverage when the personal auto policy was cancelled[,] leaving [him] with commercial auto coverage."

## IV.

## Motions Hearing

On March 3, 2025, the court held a hearing on the motion for summary judgment and motion to strike. Ms. Eichhorn's counsel explained that, when Mr. Beahm incorporated Starboard in 2001, Ms. Eichhorn converted his already existing general liability policy, not his personal auto policy, to a corporate policy. Although Ms. Eichhorn did send Mr. Beahm a letter assuring him there would be "[n]o change in coverages," this related only to the general liability policy, not to his personal auto coverage.

Counsel stated that, in 2001, Starboard purchased its first company vehicle and obtained a brand-new commercial auto policy for it with a policy period of December 21, 2001 to December 21, 2002. Erie canceled that policy in 2012 for non-payment, but it issued a new policy to Starboard soon after Mr. Beahm submitted an application for coverage. This policy was in effect until at least 2023. At the time of the accident, Mr. Beahm was not occupying one of the corporation's vehicles, and therefore, he was not covered by the commercial auto policy.

Counsel argued that the allegation in Mr. Beahm's complaint that Ms. Eichhorn "rewrote the personal auto policy to a commercial policy and sent [him] a letter" assuring the coverage would be unchanged was "based on a theory that conflates policies and policy periods" and had no factual or legal basis. Mr. Beahm had a preexisting personal auto policy when Erie issued the first commercial auto policy. Counsel explained:

> There were never any vehicles moved from the personal auto policy to the commercial auto policy . . . . The commercial auto policy never insured any of the same vehicles at any time as the personal auto policy.
>
> The policies for the commercial auto policy and his personal auto policy were separate and distinct, insuring different parties, different vehicles over different periods of time.

Counsel reiterated that the letter referred to in the complaint clearly related "to the GL policy and the switch over from being a sole proprietor to being an incorporated entity that is Starboard."

Counsel asserted that, after discovery, Mr. Beahm pivoted from the original allegations in his complaint and claimed that Ms. Eichhorn was negligent in 2008 when he lost his personal auto coverage due to his divorce. Counsel argued there was no evidence to support this new theory because Mr. Beahm "produced no writing, no testimony or other evidence demonstrating that [Mr. Beahm] ever asked [Ms. Eichhorn] if there would be any change or reduction in his UIM coverage in 2008 . . . if he discontinued his personal auto policy." Because there was no evidence of a special relationship, Ms. Eichhorn was not required to provide unsolicited advice regarding the adequacy of coverage.

Even if Ms. Eichhorn did have a duty to provide unsolicited advice to Mr. Beahm about his personal auto coverage, counsel argued that Ms. Eichhorn offered Mr. Beahm a named non-owner auto policy and "the only testimony we have in this case is it was offered and it was rejected." With respect to other coverage options, including a drive other car endorsement and listing as a named insured, counsel stated that they were not available to Mr. Beahm. Counsel requested that the court grant Ms. Eichhorn's motion for summary judgment.

Counsel for Mr. Beahm argued that there were issues of fact that precluded summary judgment. He stated that Ms. Eichhorn testified at a deposition in 2021 that, after Mr. Beahm got divorced and only had commercial auto coverage, she did not advise Mr. Beahm that he would not have pedestrian bodily injury UIM coverage with the commercial policies because "[h]e never asked." In at 2024 deposition, however, Ms. Eichhorn testified that she did advise Mr. Beahm he was losing personal auto coverage after his divorce in 2008 and offered him a non-owned auto policy.[10] Counsel argued that Ms. Eichhorn's conflicting testimony on whether she offered coverage alternatives was a question of fact that precluded summary judgment. Counsel further argued that *Sadler v. Loomis* was inapplicable because

[10] The 2021 deposition was taken in connection with Mr. Beahm's lawsuit against Erie Insurance. *See Beahm v. Erie Ins. Exh.*, 260 Md. App. 201, 205 (2024). The 2024 deposition was taken in connection with the lawsuit against Ms. Eichhorn involved in this appeal.

that case involved unsolicited advice, and in this case, Mr. Beahm did solicit advice from Ms. Eichhorn regarding coverage.

In reply, counsel for Ms. Eichhorn argued that her testimony was not inconsistent. Instead, it reflected two different time periods and policies. In the 2021 deposition, she was talking about the change to the GL policy in 2001, and in the 2024 deposition, she was responding to questions regarding Mr. Beahm's loss of personal auto insurance in 2008. Counsel stated that there was "no testimony that [Ms. Eichhorn] didn't offer [Mr. Beahm] something that he asked for. The only testimony we have is that . . . she suggested an option [] in 2008," which he declined. There was "no testimony from Mr. Beahm to the contrary."

The court denied Ms. Eichhorn's motion for summary judgment. It stated, in relevant part, that the case involved technical definitions and disputes about the context of conversations, which required interpretation by a trier of fact.

**V.**

**Jury Trial**

**A.**

**Motion to Strike**

Before trial, the court heard argument on several preliminary motions, including Ms. Eichhorn's motion to strike Mr. Beahm's expert witness, Mr. Boylan. Counsel for Ms. Eichhorn argued that, under *Sadler*, Ms. Eichhorn did not "have a duty or an obligation to provide unsolicited advice" to Mr. Beahm regarding his UIM coverage. She asserted that Mr. Boylan's proffered testimony that Ms. Eichhorn should have offered Mr. Beahm certain insurance solutions was unsubstantiated, speculative, and far beyond the standard of care. She argued that Mr. Beahm proposed to "present Mr. Boylan . . . to articulate a standard of care for insurance agents in Maryland that simply does not exist" because there was "no special relationship . . . that would require [Ms. Eichhorn], under these circumstances, to provide [Mr. Beahm] unsolicited advice."

Counsel for Mr. Beahm asserted that this case did not fall under *Sadler* because Ms. Eichhorn gave *solicited* advice. He contended that, after Mr. Beahm's divorce, he and Ms. Eichhorn "had a long sit-down" about coverage changes and "[w]hat was said is what is in disagreement." He argued that Ms. Eichhorn did not comply with the standard of care and tell Mr. Beahm "about the product that would have given him coverage when the personal automobile policy was taken away by his divorce." Even if *Sadler* did apply, counsel argued that there was a special relationship between the parties requiring a heightened standard of care. Counsel asked the court to deny Ms. Eichhorn's motion to exclude Mr. Boylan's testimony.

Counsel for Ms. Eichhorn responded that there was no evidence that Mr. Beahm solicited advice from Ms. Eichhorn regarding UIM auto coverage. She argued that the lengthy conversation between the parties involved conversion of *general liability* coverage, which pre-dated the 2008 loss of personal auto coverage. The court denied the motion to strike. The court stated that an "insured is entitled to place [trust] and confidence in their insurance agent."

**B.**

**Mr. Beahm's Case**

**1.**

**Ms. Eichhorn**

Mr. Beahm called Ms. Eichhorn as a witness. She testified that she was an insurance agent and owned Eichhorn Insurance Agency ("Eichhorn"), which had more than 6,000 policyholders and sold 99 percent of its insurance for Erie Insurance. Mr. Beahm had been her client since 2000 when he moved to Anne Arundel County from Montgomery County. At that time, he transferred his existing policies to Ms. Eichhorn's agency, and she handled Mr. Beahm's homeowners, personal auto, business auto, tenant, and life insurance.

Mr. Beahm owned an IT business that provided services to Eichhorn for many years. In 2000, after operating as a sole proprietorship, Mr. Beahm incorporated his business. Ms. Eichhorn updated Mr. Beahm's insurance policy to reflect the corporate status of Starboard. Mr. Beahm said that he was too busy to come to the office, so she put the application for a general liability policy in the mail for him to sign and return. The attached cover letter said: "Signature application only to confirm change in entity from sole proprietorship to corporation. No change in coverages." Ms. Eichhorn sent the updated information to Erie, and the policy was changed to reflect Starboard as the insured. She confirmed the coverage in writing at the direction of Erie Insurance.

Over the next few years, Starboard grew and began to acquire commercial vehicles insured by Erie. Between 2000 and 2007, Ms. Eichhorn handled the commercial insurance for the Starboard vehicles, as well as Mr. Beahm's personal auto insurance coverage.

Ms. Eichhorn explained that UIM coverage is a liability coverage required by the State of Maryland to cover the insured's damages when the responsible party either has no insurance or is underinsured. During the time that Mr. Beahm had a personal auto policy, he had UIM bodily injury coverage if he sustained injury as a pedestrian, but the commercial polices did not give him coverage for a pedestrian injury. In 2020, at the time of Mr. Beahm's accident, his injuries would have been covered if he still had a personal auto policy. Mr. Beahm's personal auto policy was canceled in 2008 after he and his wife separated, and she moved to Texas. Ms. Eichhorn knew that Mr. Beahm and his wife were not living together because she sold Mr. Beahm a tenant's policy, providing renter's coverage. When Mr. Beahm lost his personal automobile coverage, Ms. Eichhorn did not send Mr. Beahm anything in writing to inform him of the coverage he lost, but she did have a conversation with him about it.

Counsel for Mr. Beahm introduced into evidence an Erie Agency Guide, which stated that agents should communicate with insureds in writing. Ms. Eichhorn testified that the Guide was issued in June 2010, after Mr. Beahm had lost his coverage, and it was "not a directive, per se," but a suggestion. From 2010 to the time of the accident, the commercial auto policy renewed annually, with the exception of 2012, when the policy was briefly canceled for non-payment. When the policy was reinstated, Ms. Eichhorn did not advise

Mr. Beahm that he lacked bodily injury UIM coverage because she had already advised him of the "opportunity to purchase a policy that would have covered this type of claim" in 2008 when his personal auto policy was canceled.

Counsel for Mr. Beahm then introduced excerpts of Ms. Eichhorn's deposition testimony in 2021 in connection with Mr. Beahm's suit against Erie. At that time, she testifies that she first insured him for commercial auto insurance in "[r]oughly 2001." The remaining portion of the deposition introduced was as follows:

> Question: Okay. So you've been insuring him for 20 years. Did you ever tell Mr. Beahm that he would not be covered in the situation like the one that occurred on August 1st of 2020?
>
> Answer: No.
>
> Question: Why not?
>
> Answer: He never asked me.
>
> Question: Do you feel that it's up to, you know, the non-insurance professional, to ask questions about what coverage there is and what coverage there isn't?
>
> Answer: I don't have an opinion on that.
>
> Question: You're -- I mean, you understand Mr. Beahm is not an insurance professional, correct?
>
> Answer: Correct.
>
> Question: And it's your testimony that you are, correct?
>
> Answer: Correct.
>
> Question: So you sold him a policy that had less than full coverage without advising him of that, correct?

> [Answer: ]Page 15. "Mr. Beahm did not ask me any questions about coverage ." Moving to page 19, line 15.
>
> Question: Okay. Well, since Mr. Beahm is the owner of Starboard Business Technologies, why isn't his name listed under named insured and address?
>
> Answer: Because he does not have a titled interest in that vehicle in his personal name.
>
> Question: Okay. And this would -- you've never explained this to him, that he would not be [covered] under insured motorist coverage because he doesn't actually the own vehicle? You never told him that, correct?
>
> Answer: He never asked.
>
> Question: Again, you never told him that, correct?
>
> Answer: He never asked.

Ms. Eichhorn explained that the deposition excerpt referred to a conversation with Mr. Beahm when he called her at the office in 2001 to inform her that Starboard was purchasing a vehicle, and he needed a commercial auto policy. Mr. Beahm "described what he wanted on the policy in terms of liability" and "physical damage coverages." He requested and obtained "higher limits of liability" because the vehicle would be "used in conjunction with the business." Mr. Beahm did not ask Ms. Eichhorn about UIM motorist coverage during the 2001 telephone conversation regarding commercial auto insurance, and the parties did not discuss the issue.

In 2007/2008, after Mr. Beahm's marital separation, she had a conversation with him over the phone and informed him that he would "no longer going to have a personal auto policy that covered him in some situations." Mr. Beahm "never specifically asked about uninsured motorist coverage" and directed her only to update his mailing address to reflect his new residence. She stated:

> Our conversation started with . . . [t]he policy was going to be canceled and there were certain coverages under a personal auto policy that he would no longer enjoy. And one of the ones that I think is most common for people that just -- it resonates with them; is the fact that they no longer have coverage, automatic coverage, when they rent vehicles.
>
> So that was the beginning of the conversation and then it took a very, very different turn.

Ms. Eichhorn offered Mr. Beahm a named non-owner policy, but he disclosed "information that made it quite clear that he was not qualified for that policy at Erie."[11] She stated that she did not confirm the offered coverage in writing, explaining that "Erie makes the suggestion," but "Erie does not require that."

There was only a "one-time window of opportunity" to obtain the named non-owner auto policy, which was when the personal auto policy in both names was still in existence. The process involved asking underwriting to review the account, including payment history, driving record, claims history, and longevity. When Mr. Beahm disclosed that he had a very serious moving violation, Ms. Eichhorn advised that, if discovered, the violation would disqualify him from a named non-owner policy and could jeopardize the Starboard commercial policy. Mr. Beahm stated that he did not want the coverage for financial reasons and was concerned only with continuing "to operate the Starboard vehicle and

[11] Mr. Lipshultz, Ms. Eichhorn's expert on the standard of care, explained that, under a named non-owner personal auto insurance policy, an individual would have liability, uninsured, and underinsured motorist coverage, but no insurance for physical damage because the person does not own a car.

maintain [his] insurance with Erie for that vehicle." The Starboard policy had UIM coverage at that time, but it did not cover Mr. Beahm as a pedestrian. After the one-time opportunity to obtain the named non-owner policy in 2008, that coverage became unavailable to Mr. Beahm.

**2.**

**Mr. Boylan**

Mr. Boylan testified as an expert witness on the standard of care for insurance agents with regard to personal and commercial insurance, as well as bodily injury UIM coverage. He explained that Mr. Beahm's commercial auto policy did not cover the injuries he sustained as a pedestrian because he was not a named insured on that policy; the named insured was Starboard. Where the named insured is a corporation, there is no coverage for pedestrian injuries involving an UIM. Mr. Beahm's personal auto policy, however, did provide coverage for UIM pedestrian injuries before it was canceled.

Mr. Boylan testified that when an insured loses coverage, the standard of care is to "act reasonably and with diligence." He stated that, in a situation where a client loses their personal automobile coverage, which covers the person when they are in another person's vehicle, or as a pedestrian, the insurance agent should make the person aware that they are "losing something, and to make them aware of solutions for correcting that problem." He stated that advising the client in writing is desirable, and if the client is rejecting an offer of coverage, having that in writing protects the insurance agent in case a claim arises in the future.

Mr. Boylan testified about proposed solutions that he believed Ms. Eichhorn could have offered to Mr. Beahm when his personal auto policy was canceled, stating that the named non-owner policy was the "most immediate solution." He testified that Ms. Eichhorn violated the standard of care because she "did not offer the . . . named non-owner coverage to Mr. Beahm, did not provide him with a premium quote for that coverage, and did not produce, prepare or retain any kind of record that she had done so." He acknowledged, however, that Mr. Beahm's driving and payment history would impact his eligibility for the coverage. He further acknowledged that, if Ms. Eichhorn offered coverage and Mr. Beahm rejected it, the decision whether to obtain it was up to Mr. Beahm.

Mr. Boylan testified that Ms. Eichhorn also could have offered to add Mr. Beahm as a named insured on the commercial policy or suggested that he transfer one of the vehicles on the commercial policy to a personal policy by changing the title to the vehicle or executing a lease between himself and Starboard. Mr. Boylan conceded, however, that Mr. Beahm did not own the commercial vehicles, Starboard did. Mr. Boylan was not familiar with the limited window of opportunity to obtain a named non-owner policy that Ms. Eichhorn discussed in her testimony.

He also stated that, in 2019, Erie made available an endorsement that allowed corporate officers to be named insureds. Mr. Boylan acknowledged, however, that he was not familiar with Erie's process for obtaining this endorsement. He also did not know whether Starboard was eligible for such an endorsement because he was unaware of its corporate standing from 2016 onward.

One other possible coverage alternative, drive other car coverage, was not offered by Erie, and therefore, it was "not a good option in this particular case." He explained that it made sense to have all insurance in one place, "which is what Mr. Beahm did for decades with Erie and Eichhorn Insurance Agency."

**3.**

**Mr. Beahm**

On August 1, 2020, Mr. Beahm hosted a 50th birthday party for his wife at his home in Pasadena, Maryland. That evening, Mr. Beahm's intoxicated nephew got upset and attempted to drive home in his truck. Mr. Beahm approached his nephew to convince him to stay, but he was unsuccessful. As Mr. Beahm turned and walked up his driveway back toward his house, his nephew struck him with the truck. Mr. Beahm suffered serious injuries, requiring an eight-day hospitalization in Shock Trauma. After the accident, Mr. Beahm filed a UIM claim with Erie Insurance because his nephew was underinsured. Erie denied the claim.

Mr. Beahm had been insured with Erie since he was 16 years old and lived in Silver Spring, Maryland. In 2000, when he and his first wife moved to Pasadena, they purchased homeowner's insurance through Ms. Eichhorn and then transferred their existing policies to her office. In 1999, Mr. Beahm incorporated his IT business, and in 2000, he met with Ms. Eichhorn about converting his business policies to reflect the newly incorporated status. In 2001, Starboard was expanding and purchased its first commercial vehicle.

In 2007, Mr. Beahm and his wife separated, and she moved to Texas. Because Erie does not operate in Texas, the couple's personal auto policy had to be canceled, leaving Mr. Beahm with no personal auto coverage. Mr. Beahm testified that he and Ms. Eichhorn "definitely had communication about cancelling [the personal auto] policy, for sure," but he did not recall whether the loss of UIM coverage due to his not having a personal vehicle was addressed. He did not believe they ever discussed that there would be a change in coverage when he lost the personal auto policy. He had the corporate auto policy with Erie. Because most of Starboard's work was done in the Baltimore metropolitan area, it obtained a higher UIM limit because "there would probably be more instances of coming into contact with individuals that may not have insurance or may not have adequate insurance." Mr. Beahm did not recall any conversation with Ms. Eichhorn where she offered him a named non-owner insurance policy.

Mr. Beahm did not receive anything in writing from Ms. Eichhorn about the loss of UIM coverage when Erie canceled the personal auto policy. Ms. Eichhorn did not offer coverage alternatives, and he did not realize that he was losing any coverage because there was UIM coverage on the corporate vehicles. Even if she did offer coverage alternatives, Mr. Beahm would not have purchased it because he did not have a personal vehicle, and he thought he had coverage with his commercial policy.

On cross-examination, Mr. Beahm stated that he did read the commercial insurance policy when he obtained it in 2000. He did not ask to be added as a named insured on the policy. He acknowledged that Starboard lost its corporate status in 2016 due to unpaid taxes.

**4.**

**Motion for Judgment**

At the end of Mr. Beahm's case, counsel for Ms. Eichhorn moved for judgment. With respect to the claim that Ms. Eichhorn rewrote the personal auto policy as a commercial policy, assuring Mr. Beahm that there was no change in coverage, counsel noted that the October 2001 letter on which Mr. Beahm relied related to a general liability policy, which converted the name of the policy holder to Starboard when Mr. Beahm switched the business "from a sole proprietor to incorporated." Starboard did not obtain its first commercial auto insurance until 2001, when it purchased its first vehicle. The 2001 transaction was not a rewrite of a personal auto policy, but instead, it was "a new policy for a new insured for new vehicles." At that time, Mr. Beahm continued to have UIM coverage under his personal auto policy.

In 2007, when Mr. Beahm lost his personal auto coverage due to marital separation, Ms. Eichhorn testified that she told him about the option of getting a named non-owner policy, but he declined because he did not have the money. Moreover, after Ms. Eichhorn told him about the option, he advised that he had issues with his driving record, which impacted not only his ability to get named non-owner coverage, but also could have affected his commercial policy. Counsel stated that Mr. Beahm did not deny the conversation; rather, he claimed he did not recall it. Mr. Beahm stated that he had a commercial policy and was satisfied with that. Because he never asked about UIM coverage, there was no basis for a malpractice claim, and with respect to the proposed alternative options, they either were not available, or there was no evidence they were available.

Mr. Beahm's counsel argued that this was "a classic he said, she said." Ms. Eichhorn's testimony was inconsistent, and although she testified that she had a conversation with Mr. Beahm in 2008, she stated in an earlier deposition that she did not advise Mr. Beahm that he lost coverage because "he didn't ask." He also asserted that Mr. Beahm sat down with Ms. Eichhorn in 2000 and 2008, working with her on his insurance and soliciting her advice.

The court denied the motion for judgment on the issue of insurance malpractice, stating that, whether the 2007/2008 conversation regarding lost coverage took place was for the jury to decide because it involved credibility determinations. The court stated that, taking the evidence in the light most favorable to Mr. Beahm, there was sufficient evidence from which a jury could conclude that there was insurance agent malpractice. The court noted that, based on Ms. Eichhorn's testimony that she had the conversation, cross-examination suggesting that the conversation did not occur, and the testimony of Mr. Beahm and his expert, there was a credibility question for the jury.

**C.**

**Ms. Eichhorn's Case**

**1.**

**Ms. Eichhorn**

Ms. Eichhorn had been an agent with Eichhorn Insurance Agency since June 1990. More than ninety-nine percent of the policies she wrote were with Erie Insurance. At the time Ms. Eichhorn converted Mr. Beahm's general liability policy to Starboard's name, there was no discussion about any auto insurance policies, either personal or commercial.

When Mr. Beahm first transferred his policies to Eichhorn Insurance in 2000, he had a preexisting auto policy that was in his and his wife's name. Ms. Eichhorn did not assist the couple in obtaining the policy, and the policy was set to renew automatically.

Starboard acquired commercial auto, worker's compensation, and business umbrella liability policies through Erie. In December 2001, Mr. Beahm completed a commercial auto application for a vehicle purchased by Starboard. Ms. Eichhorn prepared a quote for the policy based on the coverages Mr. Beahm requested. The parties did not discuss Mr. Beahm's personal auto policy when the commercial auto policy was issued.

The Starboard commercial policy was renewed by Erie's underwriter. Ms. Eichhorn's agency did not have any role in the renewal process.

The Starboard commercial policy was canceled twice by Erie. In April 2012, Mr. Beahm contacted Eichhorn Insurance after receiving notice from the Maryland Motor Vehicles Administration ("MVA") that Starboard's insurance had lapsed. Eichhorn contacted Erie, which allowed the policy to be reinstated within a 30-day timeframe. In September 2012, Erie canceled the policy for a second time due to nonpayment of the premium, and the MVA again issued Mr. Beahm a notice. This time Eichhorn could not reinstate the policy and had to petition Erie for replacement coverage. On November 8, 2012, Erie issued a new commercial auto policy for the vehicle, which was subject to the "typical underwriting process prior to renewal."

In June 2007, Mr. Beahm called Ms. Eichhorn to obtain renter's insurance because he was moving out of the marital home to a rental apartment. Mr. Beahm informed Ms. Eichhorn that he and his wife were in the process of divorcing and Ms. Beahm would be contacting her about the personal auto policy. At that time, or in a later conversation, they "discussed what was going to be happening moving forward." Ms. Eichhorn advised Mr. Beahm that, without a personal auto policy, he would no longer have certain types of coverage, such as "rental cars coverage." When he rented vehicles, "he was going to need to purchase the collision damage waiver under the policy." She further advised that, when "the personal auto policy was canceled or in the process of being canceled, . . . there was an option to convert that policy at that time to a named non-owner policy, which would have preserved the personal auto coverage under the policy, and then it would have been in his name." She explained that a named non-owner policy is a continuation of an existing personal auto policy and would not be available after Erie canceled the Beahms' personal auto policy.

Mr. Beahm declined the option to pursue a named non-owner policy. He told Ms. Eichhorn that he "wasn't going to pay for a non-owne[r] policy," and "all he wanted to do was to be able to continue to drive the . . . Starboard Erie-insured vehicles to continue with his business."[12] He also disclosed that he had a serious violation on his driving record. Ms. Eichhorn testified that, if Erie was alerted to the violation through the underwriting process for the named non-owner policy, the Starboard commercial auto policies could be in jeopardy of cancellation. Mr. Beahm told her "in no uncertain terms he didn't want Erie to find out [about] that ticket." On February 20, 2008, the Beahm's personal auto policy was canceled because Terry Beahm moved to Texas where Erie does not write insurance. Ms. Eichhorn did not put anything in writing regarding the advice she gave Mr. Beahm, or that he declined the named non-owner policy she offered to him, but she testified that she did not need to keep written documentation of this type of transaction. When Ms. Eichhorn told Mr. Beahm that there would be a loss of coverage based on the cancellation of the personal auto policy, he never asked about the coverage he was losing. Ms. Eichhorn never specifically told him that he was losing pedestrian bodily UIM coverage, noting that he never asked.

Ms. Eichhorn testified that Mr. Beahm never asked her to add him as a named insured to the Starboard commercial auto policy, and in any event, Erie would not have permitted that because the vehicle was titled in Starboard's name. The named corporate officer

[12] At that time, there were two vehicles on the Starboard commercial policy.

endorsement was not available until 2019, and at that time, Mr. Beahm would not have qualified for this endorsement because Starboard was not in good corporate standing, beginning in 2016.[13] With regard to drive other car coverage, Erie did not offer that coverage, as Mr. Boylan acknowledged, and Ms. Eichhorn did not write commercial insurance with the two companies that did offer that coverage. Although Mr. Beahm had the option to lease back a vehicle from Starboard to obtain personal auto coverage, agents typically do not give advice regarding "how an insured manages or manipulates their business agreements."

With regard to renewals, Ms. Eichhorn testified that she did not advise Mr. Beahm each time his commercial auto policy renewed from 2007 to 2020 that he lacked pedestrian UIM coverage. She acknowledged that the Erie agency guide instructed agents to examine an insured's coverages and loss history prior to renewal, but she stated that the guidance was "a suggestion." When the commercial auto policies lapsed for nonpayment, each policy had to reissue "exactly the way that it was under the policy that lapsed for nonpayment."[14]

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[13] Starboard's lack of good standing did not make it ineligible for coverage under its existing policies.

[14] Lisa Kay Bayliss, an insurance agent and customer service representative for Eichhorn Insurance also testified. She was not involved in conversations that took place in 2007 when Mr. Beahm's personal auto insurance policy was canceled.

**2.**

**Mr. Lipshultz**

Stanley Lipshultz, an expert on the standard of care for an insurance agent, testified that the standard of care in Maryland for agents such as Ms. Eichhorn was to "follow the instructions of their client" and "obtain the best insurance that they can obtain using reasonable skill and ordinary diligence." He testified that Ms. Eichhorn met the standard of care in obtaining commercial auto coverage for Starboard in 2001. At that point, counsel for Mr. Beahm said the claim was limited to actions taken from 2007 going forward.

Mr. Lipshultz testified regarding the insurance solutions that Mr. Boylan claimed were available after the cancellation of Mr. Beahm's automobile policy. With respect to the corporate officer as a named insured on a commercial auto policy, that particular endorsement did not become available until late 2018 or early 2019, and to be eligible, the corporation had to be in good standing, which Starboard was not because it had not paid its taxes. With respect to adding Mr. Beahm as a named insured on the commercial policy, as an individual and not a corporate officer, he did not believe that Erie would have done that because Mr. Beahm did not have any ownership interest in any of the commercial vehicles. He stated that the noninsurance solutions offered by Mr. Boylan were outside the standard of care of an insurance agent.[15]

[15] Non-insurance solutions included transferring title to the vehicles or leasing a vehicle back from Starboard.

Mr. Beahm was eligible to purchase named non-owner coverage in 2008, which would have involved an underwriting review of his claim history, payment history, and driving record. Ms. Eichhorn did not breach the standard of care in "not obtaining a named non-owner policy with Erie for Mr. Beahm" because she offered to obtain it. With respect to "drive other car coverage," which allows "individuals to drive other cars and be fully insured while driving these other cars that are not owned by the insured," Erie did not offer this endorsement, and other carriers that Ms. Eichhorn worked with either did not write commercial policies or were "considerably below" standards. It would not have been within the standard of care to cancel the Erie policies to get this coverage.

On cross-examination, Mr. Lipshultz testified that the only way that Ms. Eichhorn could be outside the standard of care was if Mr. Beahm had asked her a specific question regarding loss of pedestrian UIM coverage, and she answered it incorrectly. He clarified, however, that she would have breached the standard of care if she had not informed him that he had a "reduction in coverage" when he lost the personal auto policy.[16]

**D.**

**Rebuttal**

On rebuttal, Mr. Beahm testified that, in 2008, when he lost his personal auto policy, he understood that he had $1 million in coverage on his commercial auto policy, and he believed that he did not need additional coverage because he would be covered as a

[16] At the close of Ms. Eichhorn's case both parties renewed their motions for judgment, which the court denied.

pedestrian under that policy. Ms. Eichhorn did not tell him that he would not have pedestrian bodily injury UIM coverage under the commercial policy.

**E.**

**Jury Verdict and Motion for Judgment Notwithstanding the Verdict**

The jury found that Ms. Eichhorn failed to exercise reasonable care as an insurance agent, and it awarded Mr. Beahm damages of $500,000, consisting of $76,000 for past medical expenses and $424,000 for noneconomic damages. Ms. Eichhorn's counsel moved to set aside the verdict. The court instructed her to file a motion in writing.

On April 21, 2025, Ms. Eichhorn filed a Motion for Judgment Notwithstanding the Verdict ("JNOV") on two grounds. First, she argued that the $500,000 verdict should be reduced by the amount Mr. Beahm received from his nephew's insurance. Second, she asserted that the court improperly allowed Mr. Boylan to testify as to the standard of care for insurance agents in Maryland. She asserted that Mr. Boylan's testimony, that Ms. Eichhorn's failure to offer Mr. Beahm various insurance and noninsurance solutions was a breach of the standard of care, was contrary to the decision in *Sadler*, 139 Md. App. at 374. Ms. Eichhorn argued that, absent a special relationship, an insurance agent has no duty to provide unsolicited advice to an insured regarding the adequacy of coverage. Because there was no evidence of a special relationship between the parties, Ms. Eichhorn argued that she had "no legally cognizable duty to Mr. Beahm to offer unsolicited advice, make recommendations, or offer 'solutions' about the adequacy of Mr. Beahm's" UIM coverage.

She asserted that Mr. Boylan's opinions far exceeded the standard of care, they should not have been admitted, and therefore, the judgment should be set aside.

Mr. Beahm opposed the motion, arguing that an insurance agent owes an insured a duty of reasonable care, and the insured may rely on the agent to perform this duty. He stated that Ms. Eichhorn admitted that, when he lost his personal automobile coverage, she did not advise him that his coverage under his commercial policy covered only situations where he was in the vehicle at the time of the accident, not pedestrian coverage. He asserted that, based on this testimony, and other facts, "the jury could find her behavior [wa]s outside the standard of reasonable care." He further asserted that the verdict should not be reduced by the $30,000 because "no []UIM policy is involved in satisfying the judgment," and the "money [wa]s from two separate liability policies with no offset available to [Ms. Eichhorn]."

On April 28, 2025, the court denied the motion. This appeal followed.

## DISCUSSION

Before discussing the specific allegations raised, we note some difficulties with this case. Initially, in his Complaint, Mr. Beahm alleged that Ms. Eichhorn "rewrote" his personal auto policy to a business policy prior to the accident, and she assured Mr. Beahm in a written letter that "rewriting" his personal insurance to a commercial insurance policy "would not affect his coverage." It is undisputed, however, that the letter written in 2000 referenced in the complaint did not refer to automobile insurance coverage, but rather, it referred to general liability coverage that remained unchanged when it was revised to reflect

Starboard's newly incorporated status. In his argument at summary judgment, Mr. Beahm argued that he solicited advice regarding coverage in 2001 when he obtained commercial auto policies for Starboard, noting that, at his deposition, he stated that, when he purchased the commercial auto insurance for Starboard in 2001, he "asked [Ms. Eichhorn] specifically to make the coverage the same that [he] had" with his personal vehicles and that she advised there would be no "changes to the policy." He argued at the summary judgment stage that *Sadler* did not apply because Mr. Beahm solicited advice about his coverage in 2001.

As the trial progressed, however, Mr. Beahm abandoned this theory, stating: "I don't claim anything went wrong in 2000 or 2001. It is 2008, 2007, forward. That is the standard of care we are concerned about." In closing argument, counsel stated that Ms. Eichhorn breached her duty of care by (1) not telling Mr. Beahm in 2007/2008, when he lost his personal auto insurance, that he was losing coverage as a pedestrian; (2) not doing something about that loss of coverage each year thereafter when the policy renewed; and (3) by failing to tell Mr. Beahm in 2019 that Erie added the option to include corporate officers as a named insured. On appeal, Mr. Beahm's arguments similarly are limited to Ms. Eichhorn's actions after learning that his personal auto policy lapsed in 2007. Construing the context of testimony and arguments below is more difficult because of the shifting theory of the allegations.

Another difficulty in this case is that Mr. Beahm's brief does not conform to the appellate rules. In his seven-page brief, he includes two and a half pages under the heading "statement of undisputed facts," which does not include record cites in support of these facts. *See* Md. Rule 8-504(a)(4) ("Reference shall be made to the pages of the record extract or appendix supporting the assertions."). His legal argument is sparse; it is limited to two- and one-half pages.

With that background in mind, we now turn to the issues presented.

**I.**

**Summary Judgment**

Ms. Eichhorn contends that the circuit court erred when it denied her motion for summary judgment. She argues that because there was no evidence of a special relationship between the parties or that Mr. Beahm solicited her advice in 2007/2008 about the adequacy of his UIM coverage under his commercial policy, she had no affirmative duty to provide unsolicited advice to Mr. Beahm regarding the adequacy of his pedestrian bodily injury UIM coverage after his personal auto policy was canceled.[17] She further argues that Mr. Boylan's proposed insurance solutions "wholly mischaracterized the standard of care applicable to an insurance agent in Maryland," and in any event, the solutions "were either unavailable to [Mr.] Beahm" or he "flatly rejected" them. Accordingly, she contends that she was entitled to summary judgment.

Mr. Beahm argues that the court did not err in denying Ms. Eichhorn's motion for summary judgment. He contends that Ms. Eichhorn breached the duty of reasonable care and skill by: (1) failing to advise Mr. Beahm of the availability of a corporate officer

[17] Because Mr. Beahm has abandoned any claims related to action or inaction prior to 2007, we will not discuss any arguments in that regard.

endorsement when it became available in 2019; (2) failing to inform Mr. Beahm that he lost pedestrian UIM coverage in 2007, when Erie canceled his personal auto policy, or anytime thereafter; (3) failing to advise Mr. Beahm to move the commercial vehicles to a personal policy; and (4) failing to "remedy the lack of pedestrian BUIM coverage" during renewal periods after 2007. He asserts that Ms. Eichhorn's own expert admitted that she had a duty to advise about a loss of coverage.

A court's grant of summary judgment is subject to *de novo* review. *Webb v. Giant of Md., LLC*, 477 Md. 121, 135 (2021). A denial of a motion for summary judgment, however, is "more discretionary." *Six Flags Am., L.P. v. Gonazalez-Perdomo*, 248 Md. App. 569, 580 (2020), *cert. denied*, 474 Md. 206 (2021). A circuit court may "exercise its discretionary power to deny a motion for summary judgment . . . even if the moving party has shown that there is no genuine dispute of material fact and that it is entitled to judgment as a matter of law." *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 60 (2020). A court may exercise its discretion to deny a motion for summary judgment, even if it determines there are no material facts in dispute, "in favor of a full hearing on the merits" or to postpone judgment until the decision "can be supported by a complete factual record." *Dashiell v. Meeks*, 396 Md. 149, 164 (2006). "Thus, on appeal, the standard of review for a denial of a motion for summary judgment is whether the trial judge abused his discretion and in the absence of such a showing, the decision of the trial judge will not be disturbed." *Id*. at 165.[18]

An abuse of discretion occurs when a decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State,* 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). *Accord Katz, Abosch, Windesheim, Gersham &Freeman, P.A. v. Parkway Neuroscience & Spine Inst., LLC*, 485 Md. 335, 361 (2023). Appellate review pursuant to an abuse of discretion standard is highly deferential; it "will not be reversed simply because the appellate court would not have made the same ruling." *King*, 407 Md. at 697 (quoting *North*, 102 Md. App. at 14).

Based on our review of the record here, particularly given the shifting theory of the case, we conclude that the circuit court did not abuse its discretion in denying the motion for summary judgment.

**II.**

**Motion to Strike/for Judgment/for Judgment JNOV**

Ms. Eichhorn contends that, after denying the motion for summary judgment, the court erred in subsequent rulings. Initially, she argues that the court erred in denying her

[18] Some federal courts have held that, once a trial has occurred, an appeal of a denial of summary judgment based on a genuine dispute of material fact becomes moot and unreviewable because the factfinder has resolved any dispute of fact. *See ClearOne Commc'ns, Inc. v. Bowers*, 643 F.3d 735, 771 (10th Cir. 2011) (quoting *Snyder v. City of Moab*, 354 F.3d 1179, 1184 n.2 (10th Cir. 2003)). Because resolution of this issue is not dispositive here, we will not address it further.

motion to strike Mr. Boylan's testimony. She asserts that, although an insurance agent owes a duty of reasonable care to an insured, the agent "has no affirmative duty to provide unsolicited advice to an insured regarding the adequacy of coverage." Ms. Eichhorn argues that Mr. Boylan's opinions were in "direct contravention of Maryland law" under *Sadler*, 139 Md. App. at 397, which focuses on the "agent's duty while obtaining the insurance requested, not after." She contends that, "after complying with the obligation to obtain insurance, an agent has no continuing duty to advise, guide or direct the insured's coverage, no duty to advise an insured regarding coverage deficiencies or needs, and no ongoing duty of surveillance concerning an insured's constantly changing circumstances."

Mr. Beahm contends that the court's denial of Ms. Eichhorn's motion to strike was not an error of law. He cites no argument or law in support of this argument; he merely incorporates arguments from his earlier opposition to Ms. Eichhorn's motion to strike. This does not comply with Maryland Rule 8-504(a)(6) (brief shall include argument in support of the party's position on each issue).

Ms. Eichhorn also contends that, applying the proper standard of care, the court erred in denying her motion for judgment and motion for JNOV. Mr. Beahm contends that court did not err in denying those motions, without expressly addressing Ms. Eichhorn's contention of a lack of duty. He states that the jury could have found a "breach of reasonable care even without Boylan's testimony."

**A.**

**Standard of Review**

A decision to admit or exclude expert testimony is generally within the discretion of the trial judge. *Franch v. Ankney*, 341 Md. 350, 364 (1996). When a ruling on a motion to strike an expert is based "on a pure conclusion of law," however, "we review for legal correctness." *C&M Builders, LLC v. Strub*, 420 Md. 268, 278 (2011). We will reverse a circuit court's decision to admit expert testimony "only if it is founded on an error of law or some serious mistake, or if the judge has abused his discretion." *Franch*, 341 Md. at 364. "[I]f an expert's opinion testimony is based upon a premise which is shown to be unsound or faulty, the judge should strike the testimony." *Id. Accord Alban v. Fiels*, 210 Md. App. 1, 22-23 (2013) (excluding expert testimony founded on irrelevant evidence).

The existence of a duty may not be established by "calling an expert witness to the stand, no matter how qualified that expert might be." *Bd. of Cnty. Comm'rs for Cecil Cnty. v. Dorman*, 187 Md. App. 443, 454, *cert. denied*, 411 Md. 600 (2009). Rather, whether a duty exists is "a legal issue to be determined by the court." *Id.* A court must exclude, as a matter of law, expert testimony purporting to create a duty that does not exist under Maryland law. *See C&M Builders*, 420 Md. at 289 (court was legally correct in disallowing expert testimony on statutory duty that was contrary to law); *Franch*, 341 Md. at 364 (expert testimony that was based on incorrect interpretation of Maryland law excluded).

A circuit court decision to grant or deny a motion for judgment is reviewed *de novo*. *Adventist Healthcare, Inc. v. Mattingly*, 244 Md. App. 259, 274 (2020). On a motion for judgment, the circuit court "must determine if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question." *Webb v. Giant of Md., LLC,* 477 Md. 121, 136 (2021) (quoting *Thomas v. Panco Mgmt. of Md., LLC,* 423 Md. 387, 394 (2011)). "The court considers the evidence and reasonable inferences drawn from the evidence in the light more favorable to the non-moving party." *Id.* (quoting *Sugarman v. Liles*, 460 Md. 396, 413 (2018)). When the evidence permits only one inference regarding the issue presented, the "issue is one of law for the court and not one of fact for the jury." *Id.* (quoting *Thomas*, 423 Md. at 394).

When assessing a motion for judgment notwithstanding the verdict, we review whether the circuit court was legally correct. *Town of Riverdale Park v. Ashkar*, 474 Md. 581, 607 (2021). "[A] party is entitled to [JNOV] when the evidence at the close of the case, taken in the light most favorable to the nonmoving party, does not legally support the nonmoving party's claim or defense." *Francis v. Johnson*, 219 Md. App. 531, 563 (2014) (internal citations omitted), *cert. denied*, 442 Md. 516 (2015).

**B.**

**Duty of an Insurance Agent**

As in any negligence action, to prevail in an insurance agent malpractice claim, a plaintiff must prove the following four elements:

> (1) That the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached the duty; (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

*Sadler*, 139 Md. App. at 396 (quoting *Ins. Co. of N. Am. v. Miller*, 362 Md. 361, 387 (2001)). The circuit court focused on the second element, the breach of duty component, finding that whether Ms. Eichhorn told Mr. Beahm about the loss of coverage when he lost his personal auto coverage in 2008 was a question of fact for the jury. Ms. Eichhorn contends, however, that she had no duty at all to give unsolicited advice in that regard.

Ms. Eichhorn is correct that "there can be no negligence where there is no duty that is due," and therefore, our negligence analysis starts "with the question of whether a legally cognizable duty" exists. *Kennedy Krieger Ins., Inc. v. Partlow*, 460 Md. 607, 633 (2018) (quoting *Doe v. Pharmacia & Upjohn Co.*, 388 Md. 407, 414 (2005)). A duty for purposes of negligence liability is "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another." *Id.* (quoting *Dehn v. Edgecombe*, 384 Md. 606, 619 (2005)). "[T]he determination of whether a duty exists represents a policy question of whether the plaintiff is entitled to protection from the defendant." *Id.*

An insurance agent or broker "owes a duty to 'exercise reasonable care and skill in performing his [or her] duties.'"[19] *Sadler*, 139 Md. App. at 395. The "tort duty of an agent or broker stems from a relationship of 'confidence and trust' that an insured has placed in

[19] An insurance agent is employed by an insurance company "to solicit and write insurance by, and in the company." *Sadler v. Loomis Co.*, 139 Md. App. 374, 394 (2001) (quoting *Am. Cas. Co. v. Ricas*, 179 Md. 627, 631 (1941)). A broker is an "independent middleman not tied to a particular company." *Id.* at 395 (quoting 43 Am.Jur.2d Insurance § 109, at 187 (1982)). Mr. Beahm asserts that Ms. Eichhorn is an insurance agent.

an 'experienced and knowledgeable' insurance agent or broker." *Id.* (internal citations omitted). *Accord Popham v. State Farm Mut. Ins.*, 333 Md. 136, 153 (1993) ("[A]n insured is entitled to place trust and confidence in the insurance agent."). An insurance agent may be found negligent if the agent "is employed to obtain a policy that covers certain risks and [the agent] fails (1) to obtain a policy that covers those risks[,] and (2) to inform the employer that the policy does not cover the risks sought to be covered." *Schlossberg v. B.F. Saul Ins. Agency of Md., Inc.*, 148 F.Supp.3d 462, 470 (D. Md. 2015) (quoting *Int'l Bhd. of Teamsters v. Willis Corroon Corp. of Md.*, 369 Md. 724, 737 (2002)); *Cooper v. Berkshire Life Ins.*, 148 Md. App. 41, 84 (2002) (quoting *Willis Corroon*, 369 Md. at 737), *cert. denied*, 373 Md. 407 (2003).

There is a heightened duty of care to provide advice regarding insurance coverage, however, when the insured and agent have a "special relationship." *Sadler*, 139 Md. App. at 392. A "special relationship"

> in the context of insurance requires more than the ordinary insurer-insured relationship. It may be shown when an insurance agent or broker holds himself or herself out as a highly skilled insurance expert, and the insured relies to his detriment on that expertise. A special relationship may also be demonstrated by a long term relationship of confidence, in which the agent or broker assumes the duty to render advice, or has been asked by the insured to provide advice, and the adviser is compensated accordingly, above and beyond the premiums customarily earned.

*Id.*[20]

We begin with a discussion of *Popham* and *Sadler*, the cases primarily relied on by the parties here. In *Popham*, 333 Md. at 155, the Supreme Court of Maryland addressed whether an insurance agent was liable for negligence for failing to advise an insured that she could obtain UIM coverage in an amount equal to her excess liability policy coverage. Popham, who was injured by an under insured motorist, had purchased an umbrella liability insurance policy from State Farm. *Id.* She alleged that the agent had a "duty to exercise reasonable skill and care in seeing to [her] insurance needs, which included seeing that Popham obtained an appropriate amount of uninsured motorist coverage," and the agent breached this duty by failing to advise that Popham could obtain this insurance. *Id.* The Court agreed that this was an issue of fact for a jury, stating:

> In this case, [the agent] procured an excess or umbrella policy providing motor vehicle liability insurance presumably in the amount Popham requested. He did not, however, Popham alleges, offer Popham, orally or otherwise, an opportunity to contract for the same amount of uninsured motorist coverage. Because it appears that State Farm offered excess uninsured motorist coverage, to the extent that allegation encompasses [the agent's] failure to advise Popham . . . that he could obtain an equal amount of uninsured motorist coverage as liability coverage, a trier of fact could conclude that [the agent] failed to exercise the requisite skill and care of an insurance agent in that regard.

[20] Although Mr. Beahm alleged that the parties had a "special relationship" below, he did not argue in his brief that the heightened standard of care for a "special relationship" applied. At oral argument, he stated that "he didn't have to" because the pattern jury instruction did not reference a special relationship. Accordingly, we decline to address this issue. *Cruz v. State*, 232 Md. App. 108, 111 n.1 (declining to address argument not adequately briefed on appeal), *cert. denied*, 453 Md. 362 (2017). We note, however, that the evidence suggested nothing more than an ordinary insurance relationship.

*Id.* at 156.

In *Sadler*, 139 Md. App. at 377, there was a traffic accident, and a motorist was injured and had to have his leg amputated. The motorcyclist sued the driver of the other vehicle, Ms. Sadler, but she "was woefully" uninsured. *Id.* Ms. Sadler ultimately settled her case with the motorcyclist for an amount "well in excess of her policy limits." *Id*. Ms. Sadler then sued her insurance agency, alleging that it was negligent in failing to provide her with adequate information to make an informed decision regarding the appropriate amount of automobile liability coverage, and in failing to provide periodic quotes regarding the costs of greater liability coverage. *Id.* at 391. The circuit court granted the agency's motion for summary judgment. *Id.* at 388.

In affirming the circuit court's ruling, we noted that the case did not involve a situation where the agency failed to procure coverage requested by the insured. *Id.* at 391-92. Rather, the contention "[d]istilled to its essence" was

> that [the insurance agency] had an affirmative duty to provide its insured with unsolicited advice or information concerning the suitability or advisability of the level of liability coverage selected by the insured, and the cost of additional coverage. In the extreme, the question might well be this: "[H]ow many of the virtually infinite number of potential risks [is] a broker [required to] anticipate," in order to inform or educate his client about them, in the absence of any request by the insured. *CIGNA Property & Casualty Companies v. Zeitler*, 126 Md. App. 444, 468, 730 A.2d 248 (1999).

*Id.* at 391.

We held that, absent a special relationship, "an insurance agent or broker has no affirmative, legally cognizable tort duty to provide unsolicited advice to an insured regarding the adequacy of liability coverage." *Id.* at 410. The onus, we held, is "squarely on the insured to inform the agent of the insurance he requires." *Id.* at 378.

We noted that, in *Popham*, the optional UIM component that the agent failed to offer was "available only because the insureds were purchasing the underlying liability coverage," and it was an "option component of the umbrella policy itself." *Sadler*, 139 Md. App. at 399. In *Sadler*, however, there was no failure by the agent to disclose a legal right to purchase optional coverage available based on the purchase of an automobile liability policy. *Id.* Rather, the issue was whether the agency had a duty "to advise the insured about what amount of her coverage was appropriate." *Id.*

In our analysis, we noted that the insured is "in the best position to assess the value of his or her assets," and the extent of potential loss, and to balance the "risk versus the cost of greater protection." *Id.* at 400. We also noted that cases had cautioned against requiring agents to serve in "an advisory capacity," stating that, to require an agent to offer unsolicited advice to an insurer, or "even to inquire of its insured as to the suitability of existing coverage, would transform insurance agents or brokers into 'risk managers' with 'guarantor status,'" which went "well beyond anything required by law or dictated by common sense." *Id.* at 401 (quoting *Dubreuil v. Allstate Ins.*, 511 A.2d 300, 302 (R.I. 1986)). Imposing such a duty on agents could encourage "an insured who suffers a loss to fabricate that he or she would have bought more insurance had it been recommended," encourage agents to advise customers to purchase the maximum coverage regardless of cost, and subject agents "to liability for failing to advise their own clients of every possible insurance option, or even an arguably better package of insurance offered by a competitor." *Id.* at 401-02.

We noted that, in other cases, courts held that insurance agents did not have a continuing obligation to provide ongoing unsolicited guidance to an insured regarding the adequacy of liability coverage. *Id.* 407-08 (citing *Twin Tiers Eye Care Assoc., P.C. v. First Unum Life Ins.*, 705 N.Y.S.2d 466, 468 (2000); *Ambrosino v. Exch. Ins.*, 695 N.Y.S.2d 767, 769 (1994); *Blonsky v. Allstate Ins.*, 491 N.Y.S.2d 895, 897 (1985)). Those cases were consistent with treatises on the subject, which uniformly agreed that agents had no duty to advise "on specific insurance matters," "procure a policy affording complete liability protection," "update an insurance policy at the time it is renewed" based on possible changed circumstances, or "warn . . . of provisions contained in an insurance policy." *Id.* at 409-10 (quoting 44 C.J.S. *Insurance* § 215, at 411 (1993) and Thomas F. Segalla, *Couch on Insurance* § 55:5 at 55-10 (3rd ed. 1997)).

We cited with approval *Wied v. New York Central Mut. Fire Ins.*, 618 N.Y.S.2d 467, 468 (1994), which recognized that an insurance agency's duty to a customer is defined by the customer's request to the agent; absent a request, an agent has no affirmative or continuing duty to obtain additional coverage. *Id.* at 409. In sum, we held that, "in the absence of a special relationship, an insurance agent or broker has no affirmative, legally cognizable tort duty to provide unsolicited advice to an insured regarding the adequacy of liability coverage." *Id.* at 410. As Judge Ellen Hollander stated for this Court:

> some agents or brokers may consider it prudent business practice to adopt a proactive style, and volunteer information to an insured regarding additional types of coverage, the need for increased coverage, or to help the insured assess his or her particular insurance needs. In contrast, others may believe that they should only respond to a customer's particular request, without aggressively attempting to suggest alternatives.
>
> We empathize with appellant's unfortunate situation. We also recognize that other insurance agents may have been more assertive, proactive, or aggressive in suggesting that appellant procure greater protection, and that appellant would have been better served by such an agency. This does not mean, however, that appellee is liable in tort for failing to recommend to appellant that she secure greater liability protection.

*Id.* at 411-12.

Here, Mr. Beahm has abandoned any claim that Ms. Eichhorn was negligent when he purchased his commercial automobile insurance in 2001. Rather, he argues that Ms. Eichhorn had a duty to inform him, in 2008 when his personal auto policy was canceled, that he was losing pedestrian UIM coverage. In assessing this argument, however, it is important to note that the evidence produced was that Ms. Eichhorn was alerted to the loss of the personal automobile insurance when Mr. Beahm asked for a renter's insurance policy because he and his wife were in the process of getting a divorce. There was no evidence that Mr. Beahm asked about the adequacy of his automobile insurance coverage after his personal auto policy was canceled. As the Court stated in *Sadler*, an agent generally does not have a duty to offer unsolicited advice. *Sadler* at 410. Ms. Eichhorn had no duty either in 2008 or in future years to give unsolicited advice to Mr. Beahm that he lost pedestrian UIM coverage after the policy was canceled in 2008. The circuit erred in denying Ms.

Eichhorn's motion to strike Mr. Boylan's testimony that she had such a duty, and it erred in denying Ms. Eichhorn's motions for judgment and JNOV.

**JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.**