

SHIPMAN & WRIGHT NEWSLETTER

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SHIPMAN & WRIGHT QUARTERLY NEWSLETTER October 1, 2010

Case Update: Certification Awarded to Sonic Class Action

this is great news for shipman & wright and the consumers they fight to protect

Our firm is currently involved in a multi-state proceeding against Sonic Automotive, Inc. for unfair and deceptive trade practices in the marketing and sale of a product known as Etch. Marketed as an theft deterrent, Etch is a small number applied by stencil to car windows. This case, pending before the American Arbitration Association, alleges that Sonic encouraged and/or pressured the finance and insurance departments at its dealerships to engage in practice of "packing" and "stuffing" the product in consumer sales or lease transactions through non-disclosure and/or improper disclosure of the product by: (1) promoting a product, which is worthless and no aid to vehicle recovery; (2) not disclosing the price of the product; (3) varying the price from \$40 to \$1000 without regard to the actual value of the product, and; (4) disguising the application

form to suggest that it was an officially required item.

Recently, this arbitrator in this case conditionally certified a class action for "All customers who, on or after November 15, 2000, purchased or leased from a Sonic dealership a vehicle with the Etch product as part of the transaction" in fourteen states. Sonic automobile dealerships are located in Alabama, California, Colorado, Florida, Georgia, Maryland, Michigan, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

This is great news for these buyers as well as our law firm. Shipman and Wright has worked hard to provide justice for the consumers that have been deceived by Sonic Automotive's unfair and deceptive business practices.

Gary K. Shipman Selected for 2011 Best Lawyers in America

gary is recognized in the 2011 edition

We would like to congratulate Gary K. Shipman for his recent honor of being recognized in the 2011 Edition of The Best Lawyers in America in the following areas of practice: Medical Malpractice Law, Mass Tort Litigation and Personal Injury Litigation. This designation is such an honor as it is decided upon by over 31 million confidential evaluations by some of the most prominent lawyers in the country and is noted as one of the most respected achievements in the field. Again, congratulations to Gary K. Shipman of Shipman and Wright, LLP! For More Information please visit www.bestlawyers.com

Meet Our Newest Team Members

we would like to welcome cory & josh to the S&W team

Learn More about our Staff at our
website www.shipmanlaw.com



Josh McIntyre (left) Cory Reiss (right)

Attorney Cory Reiss:

Cory grew up in the Washington, D.C., area and spent his summers at Wilmington-area beaches. He graduated from the University of Virginia in 1994 with a double-major in English and Rhetoric and Communication Studies, focused on writing and mass communication. He embarked on a nearly 15-year journalism career immediately after graduation, when he joined the small staff of a 30,000-circulation weekly newspaper in Virginia, the Charlottesville & Albemarle Observer, as a news and sports reporter. He was quickly promoted and as Managing Editor turned the Observer into a hard news competitor while reversing the paper's declining revenue stream. Cory left the Observer in 1997 after winning several press association awards to join the Wilmington Star-News as a reporter covering state and federal courts in southeastern North Carolina. He was often tasked with investigative projects and later created a beat

focused on public housing and other underserved urban communities. Cory left the Star-News in 2000 to return to the nation's capitol as the Washington Correspondent for the New York Times Regional Media Group, a chain of 14 daily newspapers that includes the Star-News. He covered Capitol Hill, federal agencies and the Supreme Court for the next seven years, also contributing to the New York Times News Service and the International Herald-Tribune.

Drawn to the law since his days covering courts in North Carolina, Cory decided to leave journalism and enter the Wake Forest University School of Law in 2007. He was the Senior Notes and Comments Editor of the Wake Forest Law Review, which published his article in 2009 suggesting how Congress could protect journalists from being forced to identify confidential sources in federal criminal and civil cases while addressing national security concerns about leaks of classified information. Cory also earned a place on the Moot Court board, led his trial team as co-captain, and was a teaching assistant for legal writing. Cory graduated in 2010 and was inducted into the Order of Barristers, a national honor society for trial and appellate advocacy. Cory is married and has two young sons.

Attorney Josh McIntyre:

Josh spent the first eighteen years of his life in Lumberton, which is his hometown and has been his family's for two centuries. In 2001, he attended the University of North Carolina at Chapel Hill as a Pogue Scholar, where he majored in Journalism, with a concentration in

Public Relations and a minor in Religious Studies. It was in Chapel Hill where Josh met his wife, Caroline, and they were married the summer after he graduated UNC in 2005. Josh then moved to Washington, D.C., where he worked in communications and media sales for a year before returning to North Carolina. With an undetermined passion of how to further his studies after college, Josh split his time into two possible career areas, serving as Director of Youth Ministries at his home church, First Presbyterian of Lumberton, and working for a local attorney as a title researcher and paralegal. The next year Josh made his decision to attend law school, and he returned to his alma mater in 2007 to become a "Double Tar Heel."

During law school, Josh served his classmates as a second and third-year class representative on the Student Bar Association, the Vice-President of the Christian Legal Society and as an officer and published CLE symposium editor with the Environmental Law Project. He was also awarded the Best Advocate – 2nd Round certificate during the Kirkpatrick Stockton Mock Trial Competition in his first-year, and he was recognized at his 2010 commencement for completing over 100 hours of pro bono work as a law student. Josh considers his greatest achievement, however, as cheering on the Tar Heels to their second national basketball title (2005 and 2009) while he was in school. Josh continues to stay involved with youth fellowship as a volunteer and middle school Bible Study leader at Saint Andrews-Covenant Presbyterian Church, where his wife is the Director of Children's Ministries.

Pharmaceutical/Medical Device Update

we want to keep you informed of the latest updates in the industry

Written by Attorney Jean S. Martin

The pharmaceutical drug and medical device industry has become a multi-billion dollar business thanks to fast tracking approval processes for new prescription drugs and medical products and decreased restrictions on direct-to-consumer advertising. Unfortunately, the number of consumers injured by these new products is also on the rise. Each year more than 100,000 people die from adverse drug reactions and another 2 million are seriously injured.

Over the last several years, a record number of unsafe drugs and devices have been recalled from the market, raising serious questions about the safety and quality of these products. Since the FDA sped up the approval process, one in five new drugs has

either had to be removed from the market or receive a black box warning. According to the FDA, 426 drugs and medications were recalled from the market in 2008. That number skyrocketed to over 1,700 in 2009. The first half of 2010 has seen over 300 drug recalls so far. While the FDA is apparently ramping up its efforts to remove dangerous drugs and medical products from the market, the recalls often happen too late to prevent serious harm from being done.

Sometimes people call us wanting to blame their physician for a new or worsening medical condition and, upon review, we determine that a medication or a medical device - not the doctor - is at fault. When your health depends on a medication or

medical device, you have the right to expect that the manufacturer has sold

you a safe product. You deserve to be properly warned of any risks. The attorneys at Shipman and Wright, LLP are experienced in representing individuals who have been harmed by a pharmaceutical drug or medical device. We strongly believe in holding manufacturers responsible for the products they make. Here is a list of some of the drugs and devices currently in the news because of the injuries being caused to consumers:

Accutane:

For many, Accutane was the first and only medication that completely cleared their acne.



Since Accutane was first approved by the FDA in 1982, it is estimated that over 13 million Americans have taken the drug. Accutane was intended to be prescribed for only the most severe forms of cystic acne, but through the years it became widely prescribed for milder forms of acne as well.

Unfortunately, while hailed initially as a miracle drug, Accutane's dangerous side effects have caused tragic consequences in some users. In the late 1980's, Accutane was linked to serious birth defects in children born to female patients. The birth defect rate was 100% in women who took Accutane during pregnancy or became pregnant during treatment. Strong warnings went on the label while the medication stayed on the market.

Manufacturer Hoffmann LaRoche finally pulled Accutane off of the market in 2009 amidst growing and alarming reports of Accutane users developing serious gastrointestinal illnesses. The gastrointestinal disorders that are linked to the use of Accutane include Crohn's disease, Irritable Bowel Syndrome (IBS) or Irritable Bowel Disease (IBD), and ulcerative colitis. In fact, gastrointestinal disorders are the most common side effect associated with Accutane. In most cases, the disorder does not develop until many months, even up to a year, after use of the drug.

Birth Control-Nuva Ring & Yaz:

Adding to men's discomfort regarding feminine products, every commercial break these days seems to advertise some new form of birth control. Things that our

mothers did not talk about are now portrayed as the hot topic of conversation among girlfriends sipping their cosmos in a trendy nightclub. And don't forget those women clad in yellow swimsuits diving into the pool singing, "Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, Everyday...." Does the snappy jingle replay over and over in your head every time you hear it?

While these commercials flaunt choices and convenience that women have never had, these latest generation contraceptives have triggered a startling increase in serious health side effects. Given that these drugs are marketed mainly to young women, it is not surprising that these young ladies are the group hardest hit by these dangers, which are most commonly heart-related.

NuvaRing is a contraceptive medication in the form of a non-biodegradable and latex-free vaginal ring that supplies a steady stream of estrogen and progestin. Yaz, which was approved by the FDA in 2006, is a popular contraceptive pill manufactured by Bayer AG. Both of these contraceptives have been associated with heart-related side effects, including heart attack, blood clots, pulmonary embolism, deep vein thrombosis and stroke. The labels for these birth control medications fail to adequately warn of these serious potential risks.

ASR™ Hip Replacement:

Hip replacement surgery is one of the most common orthopedic procedures performed. While the procedure has become safer and more successful, and the products used more innovative and

advanced, it is still not without its complications as evidenced by the latest news in the field. Two hip replacement components are the subject of a recent international product recall due to a higher than normal failure rate. Just weeks ago, DePuy Orthopaedics, a medical device division of Johnson & Johnson, issued a voluntary recall of its ASR XL Acetabular System, a total hip replacement system, and ASR Hip Resurfacing System, a partial hip replacement system. First used in U.S. in 2004, these metal components are used for replacing worn and weakened parts of the hip. These devices have been preferred by surgeons for young patients who were thought to gain benefit from the perceived stability of the device.

Patients with these hip devices implanted have reported pain and swelling in the hip, even months following their surgery. Diagnostic imaging scans have shown that the components have slipped out of the bone socket and, in some cases, have chipped or broken. DePuy is also concerned that these hip replacement products wear out in five years or less. Because of the associated problems, many patients have had to endure a second hip replacement surgery, commonly referred to as a revision surgery.

More than 90,000 of the ASR devices have been implanted in patients worldwide. The high failure rate of the DePuy ASR system was first documented in 2008 and has been determined to be greater than 12% for both products. The device was recalled overseas in December of 2009, but DePuy waited more than eight months to issue a recall in the United States.

Helpful Information from our Attorneys here at S&W we want to keep our readers informed and we think these articles will help

Why You Need A Will:

Written by Attorney Hugh Currin

I wish I had a nickel for every time I heard someone say that they didn't need a will because they didn't have anything. Better yet, I wish I had a quarter for every estate I have handled when the deceased did not have a will and everyone involved agreeing that the end result was not what the deceased would have wished for their property...I would be a rich man. If you think that your children do not get along now, imagine leaving your estate in their hands with no instructions. If you have a spouse, a house, a bank account or even grandmother's gray bowl, you should have a will. If you have recently married, divorced, re-married, had a child or inherited property, you need to update your will.

A will can be very straight forward or extremely complex depending on your personal situation and what your wishes are after you pass. Do you have a spouse? Does

he or she have a substantial estate of their own? Do you have minor children? Do you have a disabled beneficiary? Do you have a beneficiary who will run through the inheritance if no limits are set? Do you and your spouse have children by a prior marriage? Do you have heirlooms that you want to preserve? Do you have debt that needs to be addressed? These are just a few of many questions that need to be addressed in planning for your passage.

It isn't pleasant to consider and plan for our demise, but what makes us different than the animals is that we know life is limited and the day will come, so to speak. Our advice is to confront those issues now and get everything in place as you wish it to be so there are no worries when that day comes.

We usually address four important things with each of our clients at our first meeting:

1) **Your Will:** this is the main document that will direct how you want your assets handled at the time of your passing.



A will is the main document that will direct how you want your assets handled at the time of your passing.

2) **Your Living Will:** this document directs your wish for a natural death with certain contingencies that you choose. I call this document your gift to your family. I call it this because if the time were to come that they must make a difficult decision, you have relieved them of that burden.

3) **Your Durable Power of Attorney:** this piece of the puzzle is important because it allows you to designate a certain person to handle your affairs if you are unable to do so. I remind my clients that this could be one of the most important documents to consider. I say this because as soon as you need one, it is generally too late to prepare in that you are unable to sign it. The result could be a costly guardianship proceeding before the Court, amongst numerous other issues.

4) **Your Health Care Power of Attorney:** It is here wherein you designate someone to look after your health care decisions and business if you are unable to do so yourself. Many of our health care providers and insurance providers now want a document designated specifically as a health care power of attorney rather than the general power of attorney.

Another important aspect of your estate planning may involve the establishment of a trust to accomplish specific things such as protecting the assets received by a beneficiary, preserving your assets for another generation, preserving and allowing investment of assets for the benefit of minor children, using your assets to help look after a love one and then passing on what is not used to your beneficiaries, gifts to charity, etc.

We know the task of creating your will can be uncomfortable and intimidating process but the benefits of preparing far outweigh the costs of waiting. Please contact our office if you need help planning for your future, we are ready to help you prepare.

We All Make Mistakes-Even Doctors:

Written by Attorney Matthew Buckmiller

We all make mistakes. To err is human, right? But we seem to believe this about anyone but doctors.

Did you know that more deaths are caused by medical errors than car accidents annually? Research published by the Journal of the American Medical Association estimated that 250,000 deaths per year are caused by medical error, third only to heart disease and cancer. Isn't it interesting that a mistake by a doctor is not called a mistake, but a breach of the standard of care? We can't even put the label on the error when it does occur.

So, why is there still a belief that doctors can do no wrong? Does it stem from a personal

relationship with the doctor or an inherent regard for those that can endure all those years of school? Whatever the reason, this belief that doctors can do no wrong perhaps contributes to the number of medical-related deaths and injuries because patients are reluctant to question the doctor about a diagnosis or prescription because they don't want to offend him/her and don't want to take up his/her time.

This belief that doctors do not make mistakes probably also leads to a severe underreporting of medical errors. When someone is involved in a car accident, they believe, rightly, that the person who is at fault will pay for any damage to their car and their person. The same sentiment does not hold true for mistakes made by doctors which cause injury. The JAMA report mentioned above surmised that only 5-20% of medical errors are actually reported. There is no good explanation for why people are so reluctant to hold their doctor responsible for any mistakes that harm them or a loved one, even to the point of not reporting the errors.

If you think you've been the victim of a medical error there are several things you can do: i) do some research on your own (it's amazing the information you can find out on the internet); ii) speak to another doctor; iii) talk to a friend. If you believe that a doctor has made a medical error in his/her treatment of you, speak to a lawyer or contact the state medical board. Get informed. Who knows, your research, your actions may save the life of the next person being treated by that doctor.

Autopsy or no Autopsy?

Written by Attorney Gary K. Shipman

A family member has undergone what was supposed to be a routine medical procedure, but something happened and now, that family member is dead. A loved one was recovering beautifully from a medical test or procedure, but now, without warning, they have developed complications and died. You're no medical expert, and the explanation that is given to you is just so blurry, especially in the face of the trauma that your family member's death. Can you ask for an autopsy? Should you ask for an autopsy?

First, an autopsy is an incredibly detailed examination of the body, the purpose of which is to detect, analyze and document the medical aspects of a death. In North Carolina, certain types of deaths are required by law to be reported to the county medical examiner, including those with cause of death listed as "unknown, unnatural or suspicious circumstances," deaths during surgical or anesthetic procedures, and sudden, unexpected deaths not reasonably related to known previous

disease. If the death of your family member seems to fall within any of these categories, you should inquire of the health care provider(s) whether the death has been reported to the county medical examiner; and if not, request that the notification be provided. If, for whatever reason, the health care provider refuses to make that notification, you should contact the medical examiner yourself to inform him/her of the death of your family member.

The medical examiner is then required to make a rapid evaluation of the circumstances, and may direct that the body be moved to a location where a more detailed examination or autopsy may be performed. The medical examiner then has "jurisdiction" over the body until all investigations, including the autopsy, are performed. The medical examiner has the authority to order an autopsy, and the rules and regulations from the Office of the Chief Medical Examiner in North Carolina provides that the medical examiner should order an autopsy in sudden, unexpected deaths where the decedent does not have a well documented illness that would explain death. If an autopsy is performed, a local medical doctor/pathologist will be ordered to perform the procedure. After the autopsy is concluded, the medical examiner, relying upon the autopsy findings, will file a report, setting forth the autopsy findings, and the causes of death.

Invariably, deaths that are followed by autopsy provide more accurate information regarding the cause of death than those without autopsy. Yes, an autopsy is an invasive process, but it is also scientific and dignified. Information is developed from which further analysis can be performed by other experts, if necessary. However, other experts will not have had the opportunity to examine the body after death unless an autopsy is performed, and accordingly, any such experts' opinions will be subject to challenge unless an autopsy is performed.

Yes, the death of a family member or loved one presents a very emotional time - a time during which many decisions must be made under the most difficult of circumstances. If there are questions about the circumstances surrounding your family member's death, you should request that an autopsy be performed. The autopsy may just give you some needed answers and peace.

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