

SHIPMAN & WRIGHT NEWSLETTER

ATTORNEYS AT LAW

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SHIPMAN & WRIGHT QUARTERLY NEWSLETTER April 2011



Traffic Ticket? You might not need an attorney

Read more on page 3

S&W Receives Verdict for Client, Seapath Yacht Club

\$304,000 verdict for blocked easement rights

Shipman & Wright recently landed a \$304,000 verdict for our client, the Seapath Yacht Club, after a neighboring condominium tower blocked the marina from using its easement rights to maintain a critical bulkhead.

Interestingly, the bulkhead not only supports the marina's facilities in Wrightsville Beach, it prevents the Seapath condominium tower standing only about 25 feet from the water from being undermined by storm surge. Nevertheless, the condominium refused to let the yacht club use a 10-foot strip of land along the property line for construction access and a safety buffer so that the yacht club could replace the bulkhead's failing tieback system, which keeps the 400-foot bulkhead upright. The yacht club invoked an easement granted by the condominium in 1987 for the purpose of maintaining the tieback system,

but the condominium objected anyway. That prevented the yacht club from completing its repairs, and it caused the ultimate cost of finishing the work to skyrocket.

After a four-day non-jury trial in New Hanover County Superior Court, Judge D. Jack Hooks, Jr., ruled in February that an easement existed and that the board of directors of the Seapath condominium tower did not act in good faith when blocking the bulkhead project. Judge Hooks also declared that the yacht club need not repair the bulkhead, though it protects the tower, until the yacht club's judgment is paid. Based on the testimony at trial, Judge Hooks found that the condominium was responsible for the increased cost to finish the project due to the condominium's interference, which was \$304,000, plus interest from November 2009.

S&W Attorneys Gary Shipman & Matthew Buckmiller Recognized by Super Lawyers 2011 Edition

Shipman & Wright is proud to announce that Attorney Gary K. Shipman and Attorney Matthew Buckmiller have both been recognized by Super Lawyers in their 2011 Edition. Super Lawyers has been widely recognized across the country for their superior rating service of lawyers that have achieved a high level of peer recognition and professional achievement.

This is Shipman's 6th consecutive year being nominated to the prestigious club of Super Lawyers in North Carolina and Buckmiller's 2nd consecutive year being selected to North Carolina's Super Lawyers Rising Star Award. We are proud to announce their achievements and have them as leaders at Shipman & Wright.

New Recommendations for Child Restraint Systems

children should remain in rear facing seats until age 2

Written By Attorney Jean S. Martin: Motor vehicle crashes continue to be the leading cause of death of children ages 4 years and older, despite dramatic improvements in vehicle crashworthiness and greater use of child restraint systems over the past decade. Recently the American Academy of Pediatrics released a policy statement providing new recommendations for child restraint systems. The goal of these recommendations is to optimize safety for children from birth through adolescence.

Restraint systems are designed to reduce the risk of ejection during a crash, better distribute the energy load of the crash through the entire body to structurally stronger bones rather than soft tissues, and limit the contact of the occupant with the interior vehicle structures. Achieving optimal performance of the restraint system depends on an adequate fit between the occupant and the restraint system. Restraint systems include the vehicle restraints – airbags and seat belts – along with restraints made specifically for children – child restraint systems. Child restraint systems include car seats and booster seats.

The American Academy of Pediatrics now recommends that toddlers continue riding in rear-facing child safety seats until they are two years. This represents a change from past recommendations allowing children to ride face forward when they reached one year of age. For many parents, turning face forward at age 1 has been seen as a rite of passage so to speak, but now it is

recommended that the turn be delayed for another year.

Other notable recommendations in this new policy statement include:

- 1) Forward-facing car seats for most children through age 4;
- 2) Booster seats for most children through age 8 to allow for better belt positioning;
- 3) Lap and shoulder belts for all children who have outgrown booster seats; and
- 4) All children continuing to ride in the rear seats of vehicles until age 13.

Current statistics from the National Highway Traffic Safety Administration estimate that the use of child restraint systems versus seat belts reduces the risk of injury by 11% and the risk of death by 28%. Among children ages 4 – 8, booster seats reduce the risk of injury by 45% when compared to seat belts. Despite this progress, approximately 1500 children under the age of 16 die in motor vehicle crashes each year. Nearly half of those were completely unrestrained, meaning they were not even using a seat belt. For every fatality, approximately 18 children are hospitalized and more than 400 receive medical treatment for injuries sustained in a motor vehicle accident each year. These numbers show just how important the use of child restraint systems is for the safety of our children.

S&W Announces New Practice Area in Criminal Defense

Shipman & Wright announces new practice areas in criminal defense. If you have been accused of a crime, you need to choose a law firm that has your best interests in mind. Shipman & Wright, LLP has the knowledge and experience of handling these matters and our attorneys will be there for you every step of the way. For more specific questions about your case and our criminal defense practice areas, please contact Shipman & Wright, L.L.P.

Criminal Defense Practice Areas:

- I. Misdemeanors/ District Court
 - All misdemeanor charges
- II. DWI/DUI: Drunk Driving Charges
- III. Traffic Citations
 - Speeding
 - Careless and Reckless Driving
 - Aggressive Driving
 - Driving While License Revoked
 - Other moving violations
- IV. Expungement/Expunction of a Past Conviction
 - Setting aside judgment
 - Permanently Expunging records
- V. Juvenile Defense Work
 - If you are 16 or under and charged with a law violation

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The American Academy of Pediatrics now recommends that toddlers continue riding in rear-facing child safety seats until they are two years of age.



The reports from the American Academy of Pediatrics can be found at:
<http://pediatrics.aappublications.org/cgi/reprint/peds.2011-0213v1>
<http://pediatrics.aappublications.org/cgi/reprint/peds.2011-0215v1>

SHIPMAN & WRIGHT, L.L.P.
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Traffic Ticket? You Might Not Need an Attorney

learn more about your options in handling your ticket

Written By Attorney Josh McIntyre: By the end of today over 100,000 people in the United States will have received a speeding ticket. That means that nearly 40 million tickets are issued every year and that one in every 6 drivers will be charged with a speeding violation.

However, an even more staggering statistic might be that only about five percent of drivers hire an attorney to contest their ticket. The other 95 percent just result to paying the fine, which, unfortunately, often leads to points on one's license and significantly higher insurance premiums. But did you know there is often a third option?

If you have the time to go to court and talk to the District Attorney, the outcome could be the same as if you had retained an attorney. Some of these situations include:

- If you were cited for an expired registration or were driving without a license
- If you were cited for an unlawful window tint or burned out headlight or taillight
- If you received a speeding ticket for less than 15 miles per hour over the speed limit

In most jurisdictions, the district attorney's office will dismiss citations for expired registration, unlawful window tint, and failure to burn headlights and taillights if you present documentation that the problem is corrected. Additionally, you might be given the option to attend an approved driving class, which could mean the district attorney will reduce your infraction to an "Improper Equipment" and you will avoid points on your license or higher insurance costs.

Of course, these outcomes are not guaranteed, and there are often serious consequences if you fail to retain adequate legal representation. The District Attorney is also not required to inform you of the consequences of your decisions. That's why it is so important to be fully informed and, if there is even a shadow of doubt about the outcome of your traffic citation, to hire an attorney who handles such matters on a day-to-day basis.

In any case, knowing all your options and knowing how the system works will get you the best results.

Shipman & Wright offers representation for a range of District Court matters from DWIs to criminal defense to traffic citations.

Rambling Thoughts

by shipman & wright attorney, gary shipman

Written By Attorney Gary Shipman: The political landscape, both in North Carolina and the United States, changed in November, 2010. According to the rhetoric at that time, government was too big and too intrusive. While the costs of "doing government" was clearly the subject of debate, by economic necessity if nothing else, the "change" that voters were asked to endorse was a government that was smaller and more respectful of individual rights. However, given what's occurred in the North Carolina Legislature since the "new majority" took control, the political hype of 2010 was nothing short of shameful, given the efforts of the majority to pass new laws designed to lessen, not increase, individual liberties, while at the same time granting special privileges and immunities to influential and wealthy special interests.

Since the beginning of the 2011 Legislative Session in Raleigh, the "majority", led by Rep. Danny McComas and Sen. Thom Goolsby from our own area, has introduced legislation to make it tougher for ordinary citizens of this State to get justice. As this newsletter goes to print, the Legislature has passed so-called "tort

reform" measures that will make it tougher for those injured/killed by reason of medical mistakes to bring an action against responsible health care providers. The "Honorable" have changed, by increasing the burden of proof for actions brought involving emergency health care providers, after attempting to provide immunity to those in the emergency departments of this State. Injured workers, who already have a limitation on available remedies for injuries received while on the job, may find benefits available to them, including lost wages and medical bills, capped at some arbitrary date that bears no relationship to the nature of the injury received. Other beneficiaries of the votes of the majority include nursing home operators, insurance companies, product manufacturers, and drug companies, and they're not finished.

In the meantime, what have they done for the "rest" of us? What they've done is forget about the United States and North Carolina Constitutions. They've forgot about fixing what's already wrong, instead of creating new things that are wrong. Look, there's plenty wrong with the way that government has typically done business, but government, including the

North Carolina Legislature, can't rewrite the Constitution and create special laws for only a chosen few. The concept of equal protection of the laws and the right to due process pertains to every citizen, and not just those that the new majority deems worthy of their attention. The hypocrisy of taking away (from you) with one hand, and "giving" (to insurance companies and big business) with the other can't go unchallenged. Rest assured that come election time, the hand that they provided to their friends will also contain big checks from big donors who will profit from the illogical and nonsensical actions of their friends in Raleigh.

What's particularly disturbing about all of this is the lack of evidence supportive of the need for such action, at least in North Carolina. This is not a State with runaway juries, stupid trial judges, and lazy appellate courts. There is simply no evidence supportive of the idea that these types of reforms were needed. North Carolina isn't losing doctors, it's gaining them. Increasing insurance premiums aren't related to big verdicts in this State (or any other State). There are already plenty of rules that judges have at their disposal to insure that

Rambling Thoughts

continued from page 3...

excessive verdicts, not based upon the evidence, are set aside. There is no lawsuit crisis in this State. But don't let the truth get in the way of the newly elected majority following (blindly) what higher political powers tell them to think and how to vote. The truth doesn't matter.

November, 2012, is right around the corner. We do need political change, but not hypocrisy. Those who promised less government really meant less justice for you. Remember this when you vote. Meanwhile, we'll help you identify those who have deceived us.



A Message From Our Inquiry Department

have you suffered a personal injury? what do to before you call an attorney

Written by our Director of Inquiries, Brandon Gay: If you or someone you love is injured by the actions of another, it may seem only natural that the person, or their insurance agency, would fairly compensate you for the harm done. However, many people are unwilling to accept responsibility for their actions and Insurance Agencies look to profit by under-compensating the victims of injury.

An experienced personal injury attorney will know how to build your case, how to negotiate your case, and if necessary how to take your case to trial. So what questions should you have when hiring a personal injury attorney?

Should I hire the attorney with the commercials and 1-800 number? Let's face it, we have all seen the commercials, heard the catch phrases, and seen the ads on the back of the phone book. But any law office with a decent advertising budget can effectively do the same. A law firm shouldn't have to seek you out but instead should assist if and where needed. Obviously not all firms that advertise are disreputable, but some of the best firms do little or no advertising at all. This is simply because they don't need to. When a firm is established enough, a majority of their cases will come from referrals. These referrals come from attorneys and satisfied clients and tend to be the best method of locating a reputable attorney.

Will they go to trial for you? We understand the idea of going to trial is intimidating. Unfortunately, it also frightens some personal injury attorneys as well. You can usually determine whether a personal injury attorney will look out for your best interest by asking one question; "How many cases have you tried?" To understand the importance of this question you first have to understand how insurance companies work. In order to maximize profits funded by costly premiums, Insurance companies seek to pay out as little money as possible. When they try to come up with a value that represents their exposure, they are focusing on one aspect: RISK. Specifically, they try to determine the risk of going to trial. That risk is measured by the probability of the plaintiff's attorney actually taking the case to trial and the skill, expertise, and history of associated with that attorney. Put simply, Insurance agencies know who the settlement attorneys are, and they don't feel threatened by them.

Are they influential in the Personal Injury field? An examination of an attorney's involvement in the legal and social community can give insight as to their status and reputation. Lawyers who play an active role in leadership opportunities within the Personal Injury field warrant more respect from insurance companies and their settlement values. When you

are researching an attorney, look for the following:

- Does he/she write articles or blog about personal injury law?
- Does the attorney teach or speak at seminars within the field?
- Do they belong to or are they officers of any trial lawyer organizations?
- Have they been recognized or received awards for their work in this field?

How much will this cost me? Personal injury attorneys almost always accept cases on a contingency basis. This means that instead of billing you for the hours they have dedicated to the case, they will be paid a percentage of the award. This percentage varies from state to state but is usually between 33%-40%.

