

# SHIPMAN & WRIGHT NEWSLETTER

SHIPMAN & WRIGHT QUARTERLY NEWSLETTER OCTOBER 2011

ATTORNEYS AT LAW

## IN THIS EDITION

### From Stem Cells to Jail Cells...

*By Attorney Cory Reiss, page 2*

### Bill vs. Paid: Taking Away from Injured Victims One Step at a Time

*By Attorney James T. Moore, page 3*

### Practice Area Highlight: Lender Liability, Loan Modification & CRE Workouts

*By Attorney Matthew Buckmiller, page 3*

### Meet Attorney Kyle Nutt, Newest Member of the S&W Team

*page 2*

FOLLOW US ON:



## New Medical Malpractice Law Effective October 1, 2011 in NC

article written by S&W attorney cory reiss

New restrictions on medical malpractice claims took effect in North Carolina on October 1, 2011, pursuant to legislation written by Sen. Thom Goolsby and passed by the state legislature this past summer. Among the changes taking effect are caps on damages for non-economic injuries such as pain and suffering in nearly all cases; the law raises the proof required to avoid those caps to a level that few, if any, cases could meet even when loss of life or limb has occurred. Medical malpractice cases already are some of the most expensive to litigate, and we expect this law to encourage physicians and their insurers to refuse settlements regardless of the strength of an injured patient's claim, driving up those costs.

This law will have a profound effect on the ability of injured patients to recover, which is already causing law firms across the state to decline meritorious cases that would nevertheless be too expensive to litigate in light of the limitations.

The law will have a disproportionate impact on North Carolinians. The impact will be negative, for example, for lower wage-earners and older persons whose economic damages are not high but who may have suffered severe non-economic damages that now are limited by law. High-wage earners with lost wages and earning capacity, and who therefore may show greater economic damages, may be more likely to pursue a claim under the new laws.

## S&W Wins 750k Verdict for Client in Columbus County

S&W is pleased to announce that it has obtained a \$750,000.00 verdict on behalf of client Alexis Barkley in a Columbus County case arising from her accidental shooting on December 20, 2007. Ms. Barkley was shot in the head and immediately transported to New Hanover Regional Medical Center for treatment. Alexis made a remarkable recovery after being shot. Matt Buckmiller represented Ms. Barkley in the two day trial, which included the testimony of Ms. Barkley, the defendant, witnesses to the shooting, and experts in firearms. The highest settlement offer by the defendant was \$10,000; the defendant's position was that Ms. Barkley carelessly walked into the path of the gun while the defendant was pulling the trigger. One of the primary issues in the case was whether the actions of the defendant were negligent (which could have been discharged in bankruptcy) or grossly or culpably negligent (which could not have been discharged in bankruptcy). The verdict was that the Defendant was grossly negligent—the mental state required for the intentional tort of battery—thereby making the judgment against the defendant non-dischargeable in bankruptcy. The upshot is that bankruptcy was no protection for this defendant. S&W is especially pleased with the verdict in a county where verdicts are traditionally low.

# Meet Attorney Kyle Nutt

the newest member of the shipman & wright team

Born and raised in Wilmington, Kyle Nutt graduated from Laney High school in 2002. Kyle then attended the University of North Carolina at Charlotte, and graduated with a Bachelor of Science in Accounting from the Belk College of Business in 2006. After college, Kyle worked in accounting and finance for Maersk Inc., the world's largest international shipping company. In 2008, he left accounting to pursue his lifelong dream of becoming a lawyer, attending the Charlotte School of Law. While at Charlotte Law, Kyle served on the Law Review as Senior Articles Editor, was inducted into the Order of the Crown (Charlotte Law's scholastic leadership society), interned in the

Business Court for the Honorable Judge Albert Diaz, who now sits on the 4<sup>th</sup> Circuit Court of Appeals, and performed pro-bono work helping defrauded home purchasers. Kyle also worked as a legal clerk in three different law firms, including Shipman & Wright, gaining experience in environmental law, business litigation, consumer class action lawsuits, and personal injury. Kyle was Valedictorian of the Fall 2011 graduating class, graduating Magna Cum Laude. Kyle was admitted to the North Carolina bar in 2011 and returned to Shipman & Wright to practice civil litigation and grow a bankruptcy practice.



## Impatient Patients Drive Market for Hope From Stem Cells to Jail Cells

written by s&w attorney cory reiss

When you're sick, ethical debates about developing a treatment for your ills can look a lot less attractive than someone selling hope, pure and simple. But someone has to do the dirty work.

A 57-year-old woman pleaded guilty August 18 to federal charges of trafficking in illegal stem cells. Yes, stem cells: those cells that scientists can manipulate to make different tissues, that have raised hopes high for curing dread diseases, that prompted partisan and theological warfare over their collection from human embryos during the Bush years and beyond.

The U.S. Attorney for the Southern District of Texas issued a press release reporting that Fredda Branyon teamed up with a medical school professor in Charleston, S.C., to create stem cells from umbilical cord tissue. She bought the umbilical cords from a birthing facility in Del Rio Texas, manufactured the stem cells through her company, Global Laboratories, LLC, and sold them to a person in Brownsville, Texas, on 27 separate occasions from April 2009 through February 2010. The purchaser used the 183 vials of stem cells, which all told netted about \$300,000, on patients with autoimmune diseases.

None of this was done with FDA approval, so Branyon pleaded guilty to introducing an unapproved new drug into interstate commerce. She faces some jail time and a fine.

The case shines a light on a global trend in the trafficking and use of illegal stem cells. From Hungary to India to the Dominican Republic, and now to Brownsville, Texas, patients are either desperate enough to seek illicit stem cell treatments or are being duped into believing they are getting the legitimate treatment they are paying for—but the former is more likely than the latter.

One thing is clear, stem cell researchers have promised a lot more than they have delivered and a black market is moving forward without them. How much of that is a product of the political wrangling over stem cell production from human embryos I don't know, but supply-and-demand is a powerful force that will be exploited where the law ends and the jungle begins. Criminal aspects aside, this U.S. case raises some interesting legal questions and potential causes of action involving, for example, the birthing center that sold women's umbilical cords for a side profit.

It's also poignant that the case is in Texas, home of staunchly conservative Governor Rick Perry, whose presidential bid has scrambled the 2012 race. The Associated Press reports that Perry underwent a stem cell procedure on July 1 on his back. Doctors injected stem cells into his spine that were made from his own fat cells with the apparent intent of building bone.

The FDA hasn't approved this treatment and some doctors blasted him for having it, not

only because it could be dangerous for him but also because it could be dangerous generally. Dr. George Q. Daley, a past president of the International Society for Stem Cell Research, put it this way: "As a highly influential person of power, Perry's actions have the unfortunate potential to push desperate patients into the clinics of quacks," who are selling unproven treatments "for everything from Alzheimer's to autism."

In other words, quackery is Perry tested, Perry approved. At least he knows where his stem cells came from—and didn't come from. But don't be surprised if Perry touts his own procedure at some point as proof that stem cell therapies need not involve human embryos.

For Perry, this isn't much of a logical leap. When you've already dismissed the broad consensus that climate change and the human role in it are real and dangerous; when you treat evolution and creationism as equivalent "theories" in public schools; and when you pretty much ignore the scientific method as an actual method, approval by the FDA and scientific community for a new medical procedure is understandably optional.

So now I'm confused: why is Fredda Branyon going to jail?

**VISIT US ONLINE:**

[www.shipmanandwright.com](http://www.shipmanandwright.com)

## PRACTICE AREA HIGHLIGHT

### Lender Liability, Loan Modifications & Commercial Real Estate Workouts

written by S&W attorney matt buckmiller

Shipman & Wright has prided itself on its ability to quickly transform its practice based on the amorphous and ever-changing business and legal climate. The recession that has occurred and the potential for a double dip have demonstrated the critical need for debtor-oriented law firms across North Carolina and all of the Southeast. One of the benefits of being a general litigation law firm is our ability to incorporate our previous legal experience in many different areas of law; particularly into new specializations such as Lender Liability, Loan Modifications and Commercial Real Estate Workouts.

S&W has been extremely successful in working with many banks to modify and resolve loans with our clients ranging from owners with small home loans to businesses with over \$100 million of debt. The relationships formed between S&W attorneys and bank employees and their attorneys, coupled with the firm's litigation record, has generally fostered a spirit of cooperation by banks to resolve claims and reach workout agreements on loans in a fair manner for our clients, without great expense. The firm has saved its clients tens of millions of dollars, with each new client reaping the benefits of the firm's reputation and experience in dealing with banks. While most cases are resolved, in the event that the bank and our clients can't reach an agreement, S&W's litigation team is more than willing and able to aggressively litigate against the banks; normally, however, banks learn to avoid protracted litigation with our firm. The recent introduction of lawyers to S&W with a focus on bankruptcy and tax law make S&W a one-stop shop for all a borrower's needs.

## Bill vs. Paid: Taking Away from Injured Victims One Step at a Time

written by s&w attorney james t. moore



**NORTH CAROLINA is one of only five states that has Contributory Negligence.**

It's no secret, after you've been injured in an accident as a result of another person's actions, an insurance adjuster's goal is to "adjust" your claim at the lowest amount possible, thereby maximizing the insurance company's revenues. Given new laws that have been passed in North Carolina, the adjuster's job just got a whole lot easier:

First, North Carolina is one of only five states with a Contributory Negligence defense. In a nutshell, Contributory Negligence means that if the injured "victim" is even one percent at fault in the accident, she is completely barred from any recovery for her injuries—even if the other party is ninety-nine percent at fault.

As if that wasn't a big enough hurdle for injured victims, on October 1, 2011, House Bill 542 became effective in North Carolina. Essentially, the bill means the insurer of the party at fault now has the benefit of paying less to an injured victim who has health insurance. This new law will encourage insurance companies to argue that injured victims, and their families, should only recover their out-of-pocket medical expenses (what they paid) after an accident as

opposed to what they were billed by the medical provider. The effect of this can be substantial.

Everyone who has health insurance pays for this law. If the insurance is privately acquired, then a family is paying for it through monthly premiums. Now, purchasing health insurance gives an unfair advantage to the insurance companies because they are able to reap the benefit of an injured victim's health insurance. That obviously provides a disincentive to individuals who took the responsibility to buy health insurance

For years, as a practical matter, injured victims were only required to disclose the billed amount for their medical expenses. Lawyers would introduce an injured victim's medical expenses by providing a list of all the charges that a person had been billed by the medical provider. The injured victim's doctor would then have to testify that the medical services received were "medically reasonable and necessary."

Now, under the new law, the injured victim will have to disclose the amount of medical expenses paid by her insurance company, instead of just the total amount

continued from page 3

billed by the medical provider. This will lead most insurers representing the at-fault parties to argue that the injured victims should only be able to recover their out-of-pocket medical expenses.

So to those of you that dig into your pockets each month to pay for health coverage for you and your family, the law will no longer allow you to recover the full value of your medical bills from the at-fault insurance company if you are injured in an accident. Is it fair for the insurance company of the at-fault driver to get a discount when the injured victim has paid for health insurance? Apparently, our Legislature believes the answer to that question is yes. If you are injured in an accident that's the fault of someone else, the insurance adjuster should thank YOU for paying your hard-earned cash for coverage that benefits the wrongdoer's insurer.

### MEET OUR SUPER LAWYERS®



## From the Eyes of an S&W Intern

written by S&W legal intern sara clark

Since I was about 14, my family and friends always told me I would make a good lawyer. My innate argumentativeness, quick memory, and (occasionally obsessive) attention to details are all good reasons why everyone else seemed to think law is the profession for me. Being young and indecisive, I gradually adopted the idea over the course of the last seven years so that by the time I reached my third and final year at UNC-Chapel Hill, I was pretty quick on the draw when asked "So what do you want to do when you finish college?"

"I want to go to law school." Did I? Law school isn't something you jump into lightly, and, the merits of a liberal arts education aside, college offers limited practical experience on which to base a decision about what to do for a lifetime. Trying to answer this question is why I find myself here at Shipman and Wright every morning at 8:00 a.m. I decided to intern here to see how a law firm works—really works, that is. I chose this firm in particular because of the wide variety of practice areas and the potential to work

in an environment large enough to provide a broad range of experiences, yet small enough that I wouldn't find myself locked in a mail room stamping envelopes for eight hours a day.

Working as an intern here means doing a little bit of everything. I get to see cases develop from the ground up. Beginning with simple discovery and production, I familiarize myself with the issues at stake while organizing and preparing documents for more intensive review by the attorneys and paralegals. Some of it is scanning and copying, but a lot of my work is substantive review and consolidation of data that will be used to make our cases. I feel that each day, I am entrusted with more responsibility, and I try to rise to the firm's challenges and expectations. This firm is unique in that it provides the opportunity to genuinely become involved and invested in cases. I get the chance to work side by side with paralegals and attorneys, and to attend meetings with clients where I participate, rather than just observe. I can honestly say that my efforts make a difference to clients, and that in turn offers me the satisfaction of knowing I am in a place where I can help people find justice.

My experience here has strengthened my resolve to go to law school and has provided me experience that will no doubt support my future endeavors.



SHIPMAN & WRIGHT, L.L.P.  
ATTORNEYS AT LAW

Please contact us at our office:

P: 910-762-1990  
F: 910-762-6752  
TF: 800-762-1990  
575 Military Cutoff Rd.  
Suite 106  
Wilmington, NC 28405  
[www.shipmanandwright.com](http://www.shipmanandwright.com)

Follow us at:



Blog:  
[www.shipmanandwright.com](http://www.shipmanandwright.com)