

SHIPMAN & WRIGHT NEWSLETTER

SHIPMAN & WRIGHT QUARTERLY NEWSLETTER JULY 2011

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WHILE NORTH CAROLINA SLEPT

BY GARY SHIPMAN, SEE PAGE 2

Summertime Fun: “I came on vacation and left on probation

article written by S&W attorney josh mcintyre

Wrightsville Beach is known for its white sands, clear blue waters, lively bar scene, and...slow speed limits and voluminous police patrols. From speeding tickets to Driving While Impaired (DWI) charges to a host of other misdemeanors, you are far from alone if an unfortunate circumstance led to your arrest or citation.

Nor are you without hope that just because you have been charged or arrested that you will be found guilty in a court of law. Even if you have not used the best judgment or made a mistake, you still have rights and defenses that law enforcement officers have a duty to respect. And

if your rights are violated, there is a good chance that your charges may be dismissed. This is why it is so important to contact an attorney before you plead guilty to a charge or pay a fine that could stay on your record for several years or the rest of your life.

Don't come to the beach on vacation and leave on probation. The State already has zealous officers on its side. Choose a zealous attorney to be on yours.

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

IRS Increases Standard Mileage Rate to 55.5/mile

The Internal Revenue Service announced a midyear increase in the business mileage rate available to be claimed as a business tax deduction. The 4.5 cent change will go into effect July 1, 2011. The increase, however, is not retroactive to the beginning of the 2011 tax year. Therefore, the rate will remain at 51 cents for miles travelled from January 1, 2011 to June 30, 2011.

“This year’s increased gas prices are having a major impact on individual Americans. The IRS is adjusting the standard mileage rates to better reflect the recent increase in gas prices,” said IRS Commissioner Doug Shulman. “We are taking this step so the reimbursement rate will be fair to taxpayers.”

The new rates are contained in Announcement 2011-40 on the optional standard mileage rates.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

Estate Planning: Are You Prepared?

written by s&w attorney gregory m. katzman

I recently had the pleasure of baby-sitting a newborn baby for a few hours while a close friend went to run some errands with my fiancé. I was left with a highly detailed checklist, consisting but not limited to: milk preparation notes, favorite lullabies, proper burping technique, etc. My friend was to be gone only a few hours, yet I had clear direction for this child's foreseeable future.

Unfortunately, the same cannot be said for the estate planning. Approximately fifty-five (55%) percent of American adults lack a will or any existing estate planning documents. Loved ones are going to leaving us for the rest of our lives and are leaving us no direction, no instruction, no guidance.

The most popular reason for not having an estate plan is that people do not wish to speak about their mortality. Other popular reasons for not having planning include: unfamiliar with an attorney that handles these matters, refusal to believe their assets financially justify an estate plan and current limited economic conditions. Without proper planning techniques detrimental consequences can occur; and therefore people risk having their assets distributed in a way contrary to their wishes.

People spend their entire lives working to acquiring all sorts of assets (cash, property, IRAs), it seems logical that they should invest some time and energy in protecting our life's work. This is where the Wilmington law firm of Shipman & Wright's assistance can help.

A Simple Estate Plan consists of a Durable Power of Attorney, Health Care Power of Attorney, HIPPA Release Form, Living Will and Last Will & Testament. More complex



plans may require complex trust structures using Irrevocable Life Insurance Trusts (ILITs), Individual Retirement Account Trusts, and other Asset Protection Trusts. However, most Americans can accomplish their goals using a Revocable Living Trust and ancillary documents listed in the above Simple Estate Plan. Usually this cost is substantially less than the fees associated with probate.

The Revocable Living Trust can reduce the time and money spent in post-death administration because a properly drafted and funded avoids probate. The key to the trust is that it is properly funded. These documents should be drafted and prepared by a professional, and you should avoid trust mills and form documents generated on websites. A Revocable Living Trust should be customized to your particular situation.

A Revocable Living Trust offer clients great flexibility and control, as they can be can be changed or amended. Furthermore, usually the Trustmaker will serve as the trustee of the trust while he or she is alive and competent. The Trustmaker will also designate the Successor trustees to serve in the event of the incompetence or death of the Trustmaker.

In a properly drafted Revocable Living Trust can create great tax planning involving the discounting of various assets. The Revocable Living Trust provides you with a greater degree of privacy than a will because the trust provisions and the assets in your estate are not subject to public disclosure.

If you are wondering whether a Revocable Living Trust is right for you, please call us to schedule a free initial consultation. We look forward to hearing from you.

While North Carolina Slept

written by s&w attorney gary k. shipman

Political activism is alive and well in North Carolina, thanks to the "will" of the minority, namely, those misguided members of the North Carolina Legislature who have totally ignored their obligation to represent all of their constituents, and protect rights, not

take them away. During the past several months, we have witnessed a conscious effort on the part of the Honorables (I don't really mean that; nothing they have done is honorable) to dumb down our State, by stripping funds from public education, both

secondary and higher; at a time when those same legislators attempt to promote the creation of jobs. It should be obvious that drastic cuts to education, which Legislators have a constitutional obligation to fund, will not create jobs, but will only insure that our



State will not be able to meet the demand of employers for a highly educated and trained work force. This abdication of responsibility, based upon irrational political rhetoric and promises, will be generational changing. As one career educator recently told me, in explaining his decision to retire, "I can't bear to watch it anymore."

As a lawyer, I have always believed in our Constitution, which I swore to uphold. I have fought to protect the rights of those who could not protect themselves. I

believe in the concept of "equal protection under the law." I believe that "all men (and women) are created equal", and that no citizen should enjoy privileges and immunities that other citizens are not afforded. I believe that, as a citizen of this Country and State, I have an obligation to actively participate in the political process, and speak out against those who seek to advance the cause of the special interests, to the detriment of those with little or no political clout.

During this year's legislative session, the concept of equal protection, representation for all and the promotion of fairness has been obliterated. In North Carolina, the chosen few have passed legislation that makes this State resemble India's caste system, thereby creating a system of social stratification and social restriction based solely upon one's special status as a physician or insurance company on the one hand, or someone whose life has been forever altered (or in some instance, ended) through no fault of their own, on the other. The new majority in the Legislature, who arrogantly proclaim that they know what's best for our State while demonstrating their ignorance about where the true problems in this State lie, have engrafted special privileges and immunities, thereby making it more difficult for those members of the "untouchable"

class (you and me) to achieve justice. Those who are fortunate enough to jump the additional hurdles to justice placed in their way by our Legislature will find that the "law" has already pre-determined their recovery, much like the state-sanctioned form of discrimination experienced by "untouchables" in India.

Who is to blame? There is a school of thought that those who blindly sponsored legislation in this State that will place North Carolina near the bottom in educational expenditures and strip away the rights of our citizens, as well as those who blindly voted for it, should be pitied and/or forgiven. "Forgive them Lord, for they know not what they do." I don't subscribe to that school of thought, as I have a conscious aversion for them and the harm they have created. I blame myself and the other citizens of this State who simply sat back and let it happen. It's not because we don't care. It happened because we don't care enough to awake from the slumber of our everyday lives and to stop pretending that we can't reverse the madness. Wake up people, or get accustomed to the continued destruction of your way of life and that of your children, and the further enrichment of the lives of the elitists.

Halting Lawsuits, High Court Puts Global Warming Focus on EPA as Election Season Heats up

written by s&w attorney cory reiss

First the bad news. The sea level along the U.S. Atlantic coast is rising faster now than at any time in the last 2,000 years, and a warmer climate is a clearly established reason.

That comes from a study conducted by the National Science Foundation and published this week by the National Academy of Sciences in its scientific journal. Researchers reconstructed sea levels over time from sediment core samples taken

from coastal salt marshes in North Carolina.

Now the, well, not so terrible news. The United States Supreme Court on Monday halted lawsuits from eight states against five major power plant operators for emissions of gasses linked to global warming. But in the process the Court affirmed the Environmental Protection Agency's full authority to regulate those emissions,

namely carbon dioxide, under the Clean Air Act.

Coming from a high court that has been especially protective of big business—and ruling on the same day that it eviscerated the largest class action in history, brought by women claiming discrimination by Wal-Mart—the Supreme Court's decision Monday in [American Electric Power Co. v. Connecticut](#) was a mixed message but one that will be better understood,

unfortunately, as the presidential election gears up.

Environmentalists issued statements hailing the decision as a resounding affirmation of the EPA's authority over greenhouse gas emissions first established by the Court in Massachusetts v. EPA in 2007, although those groups would have liked to see the litigation move forward anyway. The National Petrochemical & Refiners Association, which represents the oil industry, "welcomed" the Court's decision to "resoundingly reject attempts to address greenhouse gas emissions through the use of common law 'nuisance' lawsuits." The spin doctors on both sides were working overtime to claim victory, but no doubt EPA administrators were cringing just a little bit at having the whole global warming debate dropped so squarely in their laps at this particular moment in political history.

The lawsuits were brought by eight states, New York City, and three nonprofit land trusts against four private power companies and the Tennessee Valley Authority, which are the top emitters of carbon dioxide in the country. The Supreme Court decided that since its decision in Massachusetts, the EPA had

undertaken rule making under the auspices of federal statutes to regulate carbon dioxide. Therefore, the plaintiffs cannot sue under "common law," the body of judicial decisions that fill in legal gaps between statutes passed by Congress, because the Clean Air Act and the EPA regulatory actions preempt any such lawsuits.

That's not exactly a victory for the states trying to stop pollution from blowing in from neighboring states, but it does highlight (and in some ways support the industry view) that the global warming issue is, well, global and needs to be addressed in a broader way (or not at all by government). Trouble is, the Clean Air Act is a terrible vehicle for regulating an emission like carbon dioxide. The standards for ambient air quality that are the core enforcement tools under the Clean Air Act are not easily applied to a gas like carbon dioxide, which dissipates and spreads out in ways that are very different than the other noxious fumes the Act was designed to control.

Congress, of course, could create a better system, but don't hold your breath. The Massachusetts decision should have been an elbow in lawmakers' collective side to

craft something that will work better to curb any manmade contributors to climate change, but the gridlock on Capitol Hill has even worsened since then.

The Supreme Court's Connecticut decision comes at a delicate moment. The next election is rolling around, and politicians are competing to see who has the sharper budget ax. Calls for the EPA's proverbial head are rising, and with them the global warming debate will certainly regress into an unintelligible shouting match. With the EPA having the only authority over the carbon dioxide question, and busy writing regulations that will likely please no one, look for the Supreme Court's decision to invigorate calls by Republican candidates to do away with the EPA or gut it. Michelle Bachmann has already vowed to flatten the agency she calls a job-killer and House Republicans have been paving her way for months.

But what about that study of coastal core samples from North Carolina, you ask?

The good news is that if we ignore studies like that, it's almost like they don't exist.



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