



We hope that you had a happy new year and have been able to wind down now that the holidays have come to a close. 2013 brings changes to laws and policies both locally and nationwide that could affect you personally and professionally and we have highlighted some of those changes for you in our first newsletter of this year.

A Brief Overview of the “Fiscal Cliff”

Contributed by Michael G. Knox



With much talk of the Fiscal Cliff, I thought it might be helpful to relay some of the happenings since January 1st. As most are aware, a deal was reached on January 1st that prevented an income tax increase that would have affected nearly all Americans. That deal, The American Taxpayer Relief Act, kept the former Bush-era tax cuts in place except for those individuals earning more than \$400,000 or married couples earning more than \$450,000. For those folks, their rate rises from 35% to 39.6%. In addition, the Act also kept in place the estate tax exemptions (up to 5 million) and kept massive federal budget cuts from taking place.

While the extension of the tax cuts was welcome news, wage earners will still see less take home pay. The reason: Social Security payroll tax. In 2010, this tax was cut from 6.2% to 4.2% on the first \$110,000 of annual pay. This tax cut was not renewed and therefore has reverted back to 6.2%. This increase is expected to affect 77% of Americans. The Tax Policy Center, an independent organization that analyzes American tax issues, estimates workers can expect to see 1% to 1.7 % less in after-tax income each pay period. There are bills before Congress to address this issue, but until action is taken, the rate will remain at 6.2%.

Parents of college students benefitted under the Act. Several college-related credits and deductions that were set to be scaled back or eliminated were actually expanded. Unfortunately, what cuts will be made to Federal Financial Aid remains up in the air and could outweigh the benefits gained.

2013 Queens Feast- Charlotte Restaurant Week- January 18th-27th



[Click here](#) to see what restaurants are participating in Charlotte's Queens Feast 2013 and don't miss out on this excellent opportunity to try some of those upscale restaurants that may normally be outside of your budget! Participating restaurants are offering 3 or more courses for only \$30 per person.

Tort Reform will limit Medical Malpractice Recovery in North Carolina

Contributed by Lisa Godfrey



North Carolina Senate Bill 33 entitled "Medical Liability Reforms" will apply to all malpractice lawsuits against doctors, nursing homes, hospitals and other health care providers in North Carolina filed after October 1, 2011. The new law limits a patient's ability to recover civil damages for medical negligence that occurs in this state. **In North Carolina, it has been estimated that more than 4,000 patients die each year as a result of preventable medical errors. This number is greater than the number of deaths from motor vehicle accidents, breast and prostate cancer, and homicides combined in this state in any given**

year. While significant funds and public attention are directed to the prevention of motor vehicle accidents and cures for cancer, the North Carolina legislature has not put the same emphasis for victims of medical negligence to recover for their injuries.

For example, if a patient is injured as a result of the actions of an emergency room physician or health care provider, the patient must prove that the health care provider's departure from the standard of care amounted to gross negligence, wanton conduct or intentional wrongdoing. In the past, it was only necessary to prove that the physician or health care provider failed to meet the standard of care of others in the same profession with similar training or experience in the same or similar communities. This is the standard definition of negligence. Under the legislative reforms, negligence by an emergency care provider is no longer enough for a patient to recover.

An injured party's recovery for "non-economic damages" has been capped at \$250,000. Non-economic damages include pain, suffering, emotional distress, loss of a loved one's support and companionship, physical impairment, disfigurement or other permanent disability. Even if a jury seeks to award damages in excess of the \$250,000 limit, the judge is required to reduce any award to the statutory limit.

Another significant reform is that evidence of damages cannot be submitted to the jury until the jury has made a determination on the issue of liability. Thus, under the new law, all medical malpractice cases are divided into two sections. The jury hears only the evidence relating to liability in the first trial and all damages evidence is reserved until the second trial.

These changes in the law will make it more difficult for patients who have been injured by the negligence of a physician, nursing home, hospital or other health care provider to recover for their injuries. In the years leading up to the passage of Senate Bill 33, the number of medical malpractice cases filed in North Carolina has actually declined while the population of North Carolina and the number of physicians practicing in the State continues to increase. Of the low number of medical negligence cases that were filed, 96 percent were settled or dismissed before or during trial. Of the 4 percent that actually went to a verdict, the vast majority of those verdicts were in favor of the Defendant. In the five-year period from 2006 to 2010, only 57 malpractice cases resulted in a Plaintiff's verdict of which the median jury award was \$302,600. Patients' rights

advocates question whether the legislature needs to limit patients' rights to recover for medical errors when the number and size of medical negligence verdicts against physicians is decreasing.

If you or someone you know suffers from a serious, permanent injury from medical negligence, you should have your case evaluated by an experienced personal injury attorney to discuss your options for recovery.

“FAD” Diets: The Quick But Temporary Fix

Contributed by Amber Thomas



When you hear the term “Fad Diets”, some of the following may come to mind: Atkins Diet, Grapefruit Diet, Negative Calorie Diet, Acai Berry Diet, Cabbage Soup Diet, etc. A fad diet is by definition intended to be a temporary drastic change in your normal dietary intake which eliminates either one or more of the essential food groups or allowing excess amounts of a food group, to replace another. The intended result of a fad diet is the “quick fix” or expedited weight loss.

While some of these diets are true to their claims to fame and result in expedited results, they fail to provide permanent results. Once you re-introduce the eliminated food group, normally the weight returns without delay. And who wants to lose 5 pounds this week only to gain 7 pounds next week? If your New Year’s resolution is to lose weight, remember that “slow and steady wins the race.” Portion control is essential so try eating on smaller plates and use a smaller spoon! And without exercise ladies, it just isn’t going to happen so beware of any diet or infomercial claim that says their product results in weight loss with no exercise: hitting the gym is a definite must.



SIGNIFICANT 2012 NC COURT OPINIONS

Two times a year, Lawyers Weekly provides a list of the most important opinions that have come down from the NC Court of Appeals and the NC Supreme Court. We review cases as they are announced on a weekly basis at our office. We have chosen a few to pass on to our special clients that we feel impact the areas of law that may interest you.

Alienation of Affection/Criminal Conversation

- **Crockett v. Prantner**

Trial court denies Defendant Prantner’s motion to dismiss which alleged the Court did not have “personal jurisdiction”. Personal Jurisdiction is the authority the Court has over the parties in a case. In this case, Prantner appealed Wake County Superior Court’s

denial of her motion. Plaintiff Crockett alleges that Defendant Prantner emailed Crockett's husband in NC with the intent of arranging sexual rendezvous(s) with Plaintiff Crockett's husband outside of North Carolina. The Court affirmed trial court's denial of Prantner's motion to dismiss stating the complaint showed "sufficient facts to authorize the exercise of personal jurisdiction" over Defendant Prantner.

Real Property

- **Matthieu v. Miller**

HOA covenant in these parties' neighborhood forbid commercial activity to take place within the neighborhood. Rockingham trial court found that defendants could do their business's administrative work in their home. Holding affirmed by NC Court of Appeals.

Tort/Negligence

- **Bryson v. Coastal Plain League**

NC Court of Appeals affirms trial court decision for Defendant Coastal Plain League who was sued by Plaintiff Bryson for injuries sustained when he was hit by a wild pitch during a baseball game at park owned by Defendant. The Court affirmed that since the Defendant had provided screen-in seating and Plaintiff chose to sit elsewhere, Defendant had exercised reasonable care for visitors.

Medical Malpractice

- **Smith v. Axelbank**

Court affirmed that although Defendant Axelbank assumed responsibility for prescribing medication to Plaintiff Smith that caused side effects, his statements do not provide the foundation for a finding of negligence against Defendant. Expert testimony would be required to establish if Defendant was negligent.

Workers' Compensation

- **Mintz v. Verizon Wireless**

If an employee is injured on property "owned and controlled" by his employer while on an unpaid lunch hour, should the injured party be awarded benefits under Workers' Compensation. The NC Court of Appeals says yes.

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