

## ADMINISTRATIVE LAW

**Agency authority – imposition of fees – inmates – specific statute controls general** – It was evident from the statutory structure that the Legislature intended that N.C.G.S. § 12-3-1 operate as a general limitation on the rule-making powers of state agencies, but the particular statute addressing the Department of Correction's rule-making authority for prisoners, N.C.G.S. § 150B-1(d)(6), prevails over the general statute. **Griffith v. N.C. Dep't of Corr.**,

## APPEAL AND ERROR

**Cross-appeal – unnecessary determination** – Although plaintiff SPX argued on conditional cross-appeal that the trial court erred by holding that defendant Liberty was entitled to a full and separate per occurrence deductible for each claim covered by its policies, this issue did not need to be considered because the Court of Appeals already affirmed the trial court's 13 March 2009 order. **SPX Corp v. Liberty Mut. Ins. Co.**,

**Denial of petition for costs – no written order** – The Court of Appeals did not address plaintiff's argument that the trial court erred by denying her petition for costs as there was no written order entered regarding plaintiff's petition. **Dafford v. J.P. Steakhouse, LLC**,

**No notice of appeal — dismissed** – Plaintiffs' argument that the trial court erred by failing to make findings of fact supporting its order of dismissal in a breach of contract case was dismissed. Plaintiffs' notice of appeal did not provide notice from the trial court's order of dismissal. **Wellikoff v. Progress Dev. Corp.**,

**Preservation of issues – failure to argue** – An issue regarding the valuation and distribution of certain property in an equitable distribution action was not preserved for appellate review where defendant did not argue that the court improperly accepted his oral stipulation as to the value of the trucks, did not direct the appellate court to any later objection to his stipulation, and did not argue that the finding was not supported by competent evidence. **Quesinberry v. Quesinberry**,

**Preservation of issues – failure to raise constitutional issue at trial** – Although defendant contended that the trial court violated his constitutional rights by requiring him to wear prison clothing during the jury selection and first day of trial, defendant failed to preserve this issue for appeal by not raising it at trial. **State v. Woodard**,

**Stay pending appeal – mediated settlement agreement – "other matter" not covered by stay** – A decision of the Industrial Commission in a workers' compensation case was remanded where the Commission decided that a mediated settlement was outside its jurisdiction because the underlying case was on appeal. N.C.G.S. § 1-294 defines the scope of an appeal stay to exclude other matters not affected by the judgment appealed from; and the Industrial Commission had jurisdiction as an administrative agency to make administrative decisions about the parties' mediated settlement agreement. **Shepard v. Nat'l Fed'n,**

**Timeliness of appeal – Rule 59 motion – pending issues** – Defendant timely appealed an equitable distribution judgment where the original period was tolled by a Rule 59 motion, there were other claims pending after the Rule 59 motion was denied, and the notice of appeal was within thirty days from the court's order dismissing those claims. **Quesinberry v. Quesinberry,**

**Violation of appellate rules – plaintiff's violations nonjurisdictional – defendant's counsel taxed printing costs** – Although plaintiff's brief did not strictly comply with the relevant provisions of N.C. R. App. P. 28, those deficiencies constituted a violation of nonjurisdictional requirements that did not lead to dismissal of the appeal. Defendant's single-spaced brief violated N.C. R. App. P. 26(g)(1). Pursuant to N.C. R. App. P. 34, the Court of Appeals sanctioned defendant's counsel by requiring that they pay the printing costs of the appeal. **Dafford v. J.P. Steakhouse, LLC,**

## **BURGLARY AND UNLAWFUL BREAKING OR ENTERING**

**Felonious breaking and entering – motion to dismiss – sufficiency of evidence** – The trial court did not err by denying defendant's motion to dismiss the charge of felonious breaking and entering. The State provided sufficient evidence that defendant broke into a drugstore with the intention of stealing narcotics. **State v. Woodard,**

## **COMPROMISE AND SETTLEMENT**

**Oral settlement – settlement conference – slip of tongue or misnomer** – The trial court did not err by enforcing an oral settlement. A slip of the tongue or misnomer cannot overcome statutory requirements and transform a settlement conference into a court-ordered mediation under N.C.G.S. § 7A-38.1. **SPX Corp v. Liberty Mut. Ins. Co.,**

## **CONSTITUTIONAL LAW**

**North Carolina – government fees – trial by jury – issues of law only**– The trial court did not deny plaintiff his North Carolina constitutional right to a trial by jury by ruling on a matter involving fees taken without legislative approval. The proper interpretation of statutory provisions presented only a question of law, not fact. **Griffith v. N.C. Dep't of Corr.,**

**Right to trial – New York law – allocation of defense and indemnity obligations** – The trial court did not err by ruling that under New York law, an insurer was not entitled to a trial to determine the appropriate method for allocating defense and indemnity obligations under equitable principles. **SPX Corp. v. Liberty Mut. Ins. Co.,**

## **CONSTRUCTION CLAIMS**

**Delay damages – concurrent delay – partial responsibility** – The trial court erred in a construction claims case by overruling defendant EDCI's exceptions to the referee's determination that EDCI was not entitled to recover delay damages from plaintiff CCI for a 12.5 week delay at the end of the project based on the principle of concurrent delay because EDCI was found to be not responsible for any portion of the delay. However, there was no authority supporting the proposition that CCI was fully liable for EDCI's delay damages despite being only partially responsible for the delay. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

**Delay and disruption – cost sharing – doctrine of implication of unexpressed terms – customary practice** – The trial court did not err in a construction claims case by overruling its exception to the referee's requirement that plaintiff CCI share the costs defendant EDCI incurred in pursuing CCI's delay and disruption claims against the owner and designers of the project based on the doctrine of implication of unexpressed terms. There was no evidence regarding the existence of a customary practice in the construction industry concerning the sharing of recovery costs or CCI's actual or constructive knowledge of such a custom. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

## **CONTRACTS**

**Breach of contract – conclusion of law – finding of fact – unlicensed contractor** – The trial court erred in its conclusion of law, which was actually a finding of fact, that there was no evidence that plaintiff would not have contracted with defendants had he known that they did not have a general contractor's license. The evidence was conflicting and the matter was remanded for more detailed findings. **Wellikoff v. Progress Dev. Corp.,**

**Breach of contract – conclusion of law – supported by the evidence –** The trial court did not err in a breach of contract case by failing to make sufficient findings of fact to support its challenged conclusion of law. The conclusion of law was sufficiently supported by the factual findings. **Wellikoff v. Progress Dev. Corp.,**

**Breach of contract – finding of fact – unlicensed contractor –** There was conflicting evidence in the record to support the trial court's finding of fact in a breach of contract case that the parties did not discuss whether defendant Scott was a licensed contractor. The case was remanded for more detailed factual findings. **Wellikoff v. Progress Dev. Corp.,**

## CRIMINAL LAW

**Defenses – withdrawal – completion of assigned task –**The trial court did not err by refusing defendant's requested instruction on the defense of withdrawal in a prosecution for first-degree burglary and assault with intent to kill inflicting serious injury where defendant completed his assigned task when he kicked the victim's door even though he expressed some hesitancy before doing so and even though he left the scene after kicking the door. **State v. Wright,**

**Failure to give final not guilty mandate – not plain error –** The trial court's failure to give the final not guilty mandate in a burglary and assault prosecution did not rise to plain error. **State v. Wright,**

## DIVORCE

**Alimony – pleading –**The trial court erred by dismissing defendant's claim for alimony where his pleading, read in its entirety, provided a sufficient basis to give plaintiff fair notice of the ground for the alimony claim. **Quesinberry v. Quesinberry,**

**Equitable distribution – marital property – date of valuation –**There was no error in an equitable distribution action where the trial court did not expressly state in its judgment that marital property valuations were based on the date of separation, but the trial court's pre-trial order reflected the parties' stipulation as to the separation and valuation date and the court referred to the pre-trial order in its equitable distribution judgment. **Quesinberry v. Quesinberry,**

**Equitable distribution – marital property – depreciation – credibility of defendant –**The trial court did not abuse its discretion in an equitable distribution action by valuing an account at the amount stipulated by both

parties as the date of separation amount despite defendant's unsupported testimony that the value had decreased. The credibility of evidence in an equitable distribution trial was for the trial court to determine. **Quesinberry v. Quesinberry,**

**Equitable distribution – subject matter jurisdiction** –The trial court had subject matter jurisdiction to distribute items of property which defendant contended belonged to a business that was not joined to the action where defendant had stipulated that those assets were marital property. **Quesinberry v. Quesinberry,**

**Equitable distribution – value of business** –The trial court did not abuse its discretion in an equitable distribution action in its conclusion that defendant's unsupported assertions about the value of a business were not credible or relevant to the value of the business on the separation date. **Quesinberry v. Quesinberry,**

## **DRUGS**

**Trafficking opium by possession and transportation – motion to dismiss – sufficiency of evidence – identity – weight** – The trial court did not err by denying defendant's motion to dismiss the charge of trafficking opium by possession and transportation. Contrary to defendant's assertion, the State was not required to conduct a chemical analysis on a controlled substance in order to sustain a conviction under N.C.G.S. § 90-5(h)(4). A pharmacist's identification of the stolen drugs as more than 28 grams of opium derivative hydrocodone acetaminophen was sufficient evidence of identity and weight of the stolen drugs. **State v. Woodard,**

## **ESTOPPEL**

**Equitable estoppel – improper assertion of statute of limitations defense** – The referee did not err in a construction claims case by concluding that plaintiff CCI timely filed suit within the three-year statute of limitations provided by N.C.G.S. § 1-52(1). Having obtained, through third party settlements, funds derived from CCI's claims, EDCI was equitably estopped from asserting the statute of limitations as a defense to those claims. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

**Quasi-estoppel – received periodic payments without conditions – construction claims** – The trial court did not err in a construction claims case by granting partial summary judgment in favor of defendant EDCI on plaintiff CCI's extra/changed work, delay/disruption, and inefficiency claims. Based on the doctrine of quasi-estoppel, CCI was precluded from asserting

the claims which it expressly acknowledged that it did not have as a condition of payment when it received periodic payments based on the applications submitted. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

## **EVIDENCE**

**Admission of witness testimony – within the trial court’s discretion – supported by the record** – The trial court did not commit plain error in a first-degree statutory sexual offense, indecent liberties with a child, and crime against nature case by allowing the State to elicit allegedly misleading and irrelevant testimony from two witnesses. The trial court’s decision was within its discretion and properly supported by the record. **State v. Oliver,**

**Extrinsic evidence – referee exceeded scope of trial court’s summary judgment order** – The referee erred in a construction claims case by considering extrinsic evidence regarding the scope of the trial court’s summary judgment order for the claims of delay, disruption, and inefficiency damages occurring prior to 21 June 2001. The trial court’s order unequivocally stated that all claims not specifically reserved by CCI arising prior to 21 June 2001 were barred. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

**Prior bad acts – eighteen years earlier – probative value outweighed by prejudicial effect – reasonable probability of different result** – The trial court committed prejudicial error in a first-degree sexual offense and taking indecent liberties with a child case by admitting evidence that defendant had sexually assaulted a four-year-old boy eighteen years before the alleged sexual assault in this case. Any probative value of the evidence was substantially outweighed by the danger of unfair prejudice and there was a reasonable possibility that, had the improper evidence not been admitted, a different result would have been reached at trial. **State v. Gray,**

**Prior bad acts – pattern jury instruction – substantial conformity with defendant’s request** – The trial court did not commit plain error in a first-degree statutory sexual offense, indecent liberties with a child, and crime against nature case by failing to specifically instruct the jury that evidence admitted under Rule 404(b) could not be used to prove defendant’s character or that he acted in conformity therewith. The trial court followed the pattern jury instruction format and the jury instruction was in substantial conformity with defendant’s request. **State v. Oliver,**

**Prior bad acts – substantially similar – no fundamental error** – The trial court did not commit plain error in a first-degree statutory sexual

offense, indecent liberties with a child, and crime against nature case by admitting evidence of defendant's prior bad acts. Some of the evidence was substantially similar to the acts of defendant toward the victim in the instant case and supported the purposes for which it was introduced. Admission of the remaining challenged evidence did not amount to fundamental error. **State v. Oliver,**

**Prior crimes or bad acts – broke into another pharmacy to obtain drugs** – The trial court did not abuse its discretion in a drugs case by allowing the State to admit evidence allegedly in violation of N.C.G.S. § 8C-1, Rules 404(b) and 403 including that defendant and his coparticipants broke into another pharmacy but were unable to obtain narcotics. The evidence was sufficiently similar and the jury was specifically instructed to consider the testimony for the limited purpose of motive, plan, opportunity, intent, preparation, knowledge, and/or identity with regard to the current offenses. **State v. Woodard,**

**Prior crimes or bad acts – reported stolen gun possessed by defendant** – The trial court did not err in a robbery with a dangerous weapon, possession of stolen property, and misdemeanor fleeing to elude arrest with a motor vehicle case by admitting under N.C.G.S. § 8C-1, Rule 803(6) testimony that the National Crime Information database indicated a gun with the same serial number as the one possessed by defendant had been reported stolen in Florida. Even assuming *arguendo* that the remaining evidence challenged on appeal should have been excluded, defendant failed to demonstrate plain error. **State v. Sneed,**

**Statements made at mediation – oral settlement agreement – invited error** – The trial court did not err by considering statements made at mediation to find that an oral settlement agreement was reached despite a stipulation that all evidence produced at the mediation would be inadmissible. Having presented the trial court with evidence about what was said and done at the settlement conference, defendant Liberty may not now complain that the trial court considered that very evidence. **SPX Corp. v. Liberty Mut. Ins. Co.,**

## INSURANCE

**Choice of law – last act to make binding contract** – The trial court did not err by holding that New York law, rather than Connecticut law, governed the application of defendant Traveler's policies. The last act to make a binding contract, receipt, and acceptance of the insurance policies, occurred in New York. **SPX Corp. v. Liberty Mut. Ins. Co.,**

**Defective home construction and repair – date of injury – issue of fact** –Whether the date of damages to a house from faulty construction and attempts to repair the defects occurred during an insurer's coverage period was a genuine issue of material fact and should not have been resolved by summary judgment. **Builders Mutual Ins. Co. v. Mitchell,**

**Duty to defend – multiple claims** –An insurance company had a duty to defend claims for defective construction of a house and damaging repairs where the complaint alleged damages that may be covered by the policy. Where there were multiple claims, the duty to defend was triggered if some may be covered even if others were not. **Builders Mutual Ins. Co. v. Mitchell,**

**Home construction – issue of fact – defective workmanship or damaging repairs** –The trial court should not have granted summary judgment for an insurance company on the issue of whether a policy covered construction defects where there was an issue of fact as to whether some of the damages were the result of faulty workmanship, which would not be covered, or the result of attempted repairs. **Builders Mutual Ins. Co. v. Mitchell,**

**Home repairs – exclusion** – An insurance exclusion for "your work" would not apply to damages from repair attempts to previously undamaged portions of a house. Such damages would indicate an accident and thus an occurrence covered by the policy. **Builders Mutual Ins. Co. v. Mitchell,**

**New York law – duty to pay defense costs** – The trial court did not abuse its discretion by ruling that under New York law, an insurer has the duty to pay 100% of defense costs associated with every underlying asbestos claim in which the complaint alleged bodily injury or disease that potentially occurred during the period when the insured provided coverage. **SPX Corp. v. Liberty Mut. Ins. Co.,**

**New York law – payment of defense costs** – The trial court did not abuse its discretion by applying New York law to require that defendant Travelers pay all of plaintiff SPX's defense costs. **SPX Corp. v. Liberty Mut. Ins. Co.,**

## **INTEREST**

**Prejudgment – breach of contract claims – waiver** – The trial court did not err by awarding plaintiff CCI prejudgment interest on disputed breach of contract claims from the date of 3 November 2005. After the 1985 amendment to N.C.G.S. § 24-5(a), interest is awarded as a matter of law once

the relevant facts have been established entitling the party to damages. By failing to contest the referee's finding regarding the date of breach, defendant EDCI waived review of that determination. **Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.,**

## JUDGES

**Ex parte communication – calendaring motions to continue –** There was no *ex parte* communication between the trial judge and defendant in the calendaring of defendant's motions to continue. Defendant's written notice to plaintiff and the trial court administrator's subsequent notice of hearing followed proper procedure. **Griffith v. N.C. Dep't of Corr.,**

**Motion to recuse – personal knowledge – waiver –** The trial court did not err by refusing to recuse itself from resolving disputed factual issues where the trial judge had personal knowledge. A party may not argue its substantive point in the trial court with full knowledge of the alleged ground for disqualification, and then, upon losing on the merits, resort to a motion for recusal. **SPX Corp. v. Liberty Mut. Ins. Co.,**

## JUDGMENTS

**Oral orders – not reduced to writing – motions not ruled upon –** The trial court did not err by not reducing to writing its rulings on two motions where it was not clear that the court was ruling on those motions. **Griffith v. N.C. Dep't of Corr.,**

**Oral orders – not reduced to writing – non-existent –** Two assignments of error were not properly before the Court of Appeals where they were based on oral orders which were not reduced to writing. The orders therefore did not exist. **Griffith v. N.C. Dep't of Corr.,**

**Order – delegation of drafting – guidance –** Although plaintiff contended that the trial court erred by ordering defendant to draft a court order with insufficient guidance on conclusions or grounds, the court's acceptance of the proposed order as drafted manifested its agreement with the conclusions stated in the written order. Furthermore, the written order conformed with the oral judgment pronounced in open court. **Griffith v. N.C. Dep't of Corr.,**

## JURY

**Contact by member of public with juror – trial court's response – jurors capable of impartially rendering verdict – motion for mistrial**

**properly denied** – The trial court did not err in denying defendant’s motion for a mistrial in a first-degree statutory sexual offense, indecent liberties with a child, and crime against nature case where there was contact by a member of the public with a juror. Given the trial court’s response to the incident, as well as the lack of evidence tending to show the jurors were incapable of impartiality in rendering their verdict, the trial court’s denial of defendant’s motion was within the trial court’s discretion. **State v. Oliver,**

## JUVENILES

**Delinquency – permissible range of statutory dispositions** – The trial court did not abuse its discretion in a juvenile delinquency case arising out of simple assault and sexual battery by entering a Level 2 intermediate disposition without considering a Level 1 community disposition because it was within the range of statutorily permissible dispositions. **In re K.L.D.,**

## LARCENY

**Motion to dismiss – sufficiency of evidence** – The trial court did not err by denying defendant’s motion to dismiss the charge of larceny. The State provided sufficient evidence that defendant broke into a drugstore, took pills, and carried the pills away without consent with the intent to deprive the drugstore of the pills permanently. **State v. Woodard,**

## NEGLIGENCE

**Damages – denial of motion for new trial – no abuse of discretion** – The trial court did not abuse its discretion in failing to grant plaintiff’s motion for a new trial in a negligence case on the issue of damages based on plaintiff’s claim that the jury entered into a compromise verdict. Plaintiff’s evidence of damages was disputed and the jury may award damages based on the evidence they find credible and may disregard the evidence they do not find credible. **Dafford v. J.P. Steakhouse, LLC,**

**Liability – denial of motion of directed verdict – moot** – Plaintiff’s argument that the trial court erred by denying her motion for a directed verdict as to defendant’s liability in a negligence case was not addressed by the Court of Appeals. The issue was moot as the jury found that defendant was negligent. **Dafford v. J.P. Steakhouse, LLC,**

## PARTIES

**Aggrieved party – employee awarded all claimed workers’ compensation benefits** – Plaintiff employee was an aggrieved party in a

workers' compensation case even though he was awarded all workers' compensation benefits that he claimed because the award affected his ability to collect his monetary benefits and all but negated his ability to receive further treatment. **Diaz v. Smith,**

## PLEADINGS

**Judgment on – no factual issues** – The trial court properly granted defendant's motion for judgment on the pleadings where the factual allegations were admitted in the pleadings and the trial court's conclusions of law were an accurate construction of the statutes at issue. **Griffith v. N.C. Dep't of Corr.,**

## PRISONS AND PRISONERS

**Disciplinary fees – further legislative authority not needed** – The trial court did not err by concluding that the Department of Correction did not have to first obtain legislative authority before instituting a disciplinary fee against inmates. **Griffith v. N.C. Dep't of Corr.,**

**Inmates – not members of the public** – The phrase "to the public" in N.C.G.S. § 12-3-1, which limits the authority of agencies to raise fees, did not apply to Department of Correction disciplinary fees against inmates because inmates are removed from the community and are not members of the public. **Griffith v. N.C. Dep't of Corr.,**

## RES JUDICATA

**Workers' compensation – prior opinion and award – issue decided – final decision** – The Industrial Commission did not err in concluding that the doctrine of *res judicata* precluded plaintiff from claiming that certain medical conditions were related to her 4 January accident. Plaintiff failed to appeal the Commission's determination in its prior opinion and award that certain medical conditions were not related to the 4 January 2000 accident, and that decision became final. **Spears v. Betsy Johnson Mem. Hosp.,**

## SATELLITE-BASED MONITORING

**First-degree sexual offense — indecent liberties with a minor – not aggravated offenses** – The trial court erred in ordering defendant to register as a sex offender and enroll in a satellite-based monitoring program for the rest of his natural life. A conviction for first-degree sexual offense, in violation of N.C.G.S. § 14-27.4(a)(1), and a conviction for taking indecent liberties with a minor, in violation of N.C.G.S. § 14-202.1, are not aggravated

offenses as defined by N.C.G.S. § 14-208.6(1a). The matter was remanded for a new satellite-based monitoring hearing. **State v. Oliver,**

## **SEARCH AND SEIZURE**

**Consent – material conflict in evidence – written findings required –** A conviction on cocaine charges was remanded where the trial court did not make written findings about whether a promise was made to defendant to obtain his consent for a search of his apartment. **State v. Neal,**

## **STATUTES OF LIMITATION AND REPOSE**

**Emotional distress claim – nervous breakdown – tolling of limitations period –** A dismissal under N.C.G.S. § 1A-1, Rule 12(b)(6) based on the statute of limitations was reversed where plaintiff alleged that she had been sexually assaulted at work in August of 2005, that she had a complete nervous breakdown a month later and was unable to manage her affairs from September of 2005 until February of 2007, and she filed her complaint in September of 2009. Plaintiff's argument on appeal focused only on the dismissal of her claims of intentional and negligent infliction of emotional distress, which are governed by a three-year statute of limitations with a provision that a person who is under a disability at the time the cause of action accrued may bring the action within the limitations period after the disability is removed. The cause of action accrued when plaintiff suffered emotional distress rather than when the harassment occurred, and plaintiff sufficiently alleged that she was mentally incompetent when she suffered the emotional distress. **Fox v. Sara Lee Corp.,**

## **STIPULATIONS**

**Willful violation – settlement agreement – sanctions –** The trial court did not err by imposing sanctions against defendant Liberty. Liberty willfully violated the stipulations it agreed to as part of a settlement agreement process, thereby frustrating the orderly and efficient resolution of the dispute. **SPX Corp. v. Liberty Mut. Ins.**

## **TAXES**

**General Assembly disbursement of funds – directly to private entity – not required to comply with statute –** The General Assembly was not required to follow the statutory guidelines pertaining to the allocation of funds from the One North Carolina Fund as set out in N.C.G.S. § 143B-437.70, *et seq.* when it granted funds directly to Johnson and Wales University. **Saine v. State of N.C.,**

**General Assembly disbursement of funds – private entity constitutional challenge – taxpayers lacked standing** – The trial court properly dismissed count three of plaintiffs’ complaint concerning the General Assembly’s granting of funds to Johnson and Wales University. Plaintiffs failed to identify any class to which they belonged which could have been prejudiced by the session laws other than their status as taxpayers and, thus, plaintiffs did not have standing to bring their constitutional challenge. **Saine v. State of N.C.,**

**General Assembly disbursement of funds – private entity – not exclusive emoluments** – The trial court did not err by granting defendants’ motion to dismiss plaintiffs’ claim that funds provided to Johnson and Wales University via five session laws constituted exclusive emoluments and were unconstitutional. Because the session laws served a public purpose, they were not providing exclusive emoluments and were, therefore, not unconstitutional on that ground. **Saine v. State of N.C.,**

**General Assembly disbursement of funds – private entity – public purpose** – The trial court did not err by granting defendants’ motion to dismiss plaintiffs’ claim that the General Assembly’s allocation of funds to Johnson and Wales University did not serve a public purpose and that the Session Laws which provided such funds were unconstitutional. Plaintiffs failed to plead facts demonstrating that the motivation, aim, or intent of the legislation was not a public one. **Saine v. State of N.C.,**

**North Carolina Property Tax Commission – constitutional challenges – valuation of airplanes – no contention that decision not supported by substantial evidence** – Taxpayer’s argument in an appeal from the North Carolina Property Tax Commission concerning the valuation of three of taxpayer’s airplanes that N.C.G.S. § 105-274(a) violates the uniformity requirements of the North Carolina Constitution and the equal protection clause of the United States Constitution was overruled. Taxpayer did not contend that any portion of the Commission’s decision was not supported by substantial evidence or otherwise unlawful in any specific way. **In re Appeal of Marathon Holdings, LLC,**

**North Carolina Property Tax Commission – valuation of airplanes – denial of motion to permit testimony of Commission member – properly denied** – The North Carolina Property Tax Commission did not err in an appeal from the valuation of three airplanes belonging to taxpayer by denying taxpayer’s motion to permit the testimony of a Commission staff member. 17 N.C.A.C. 11.0219 does not require the Commission to make findings in denying a motion to permit testimony from a staff member and the testimony sought was not necessary to prevent manifest injustice to

taxpayer. **In re Appeal of Marathon Holdings, LLC,**

## **TRIALS**

**Judge acting as fact finder – presumed to rely solely upon competent evidence** – The trial court did not err by allegedly using its own personal knowledge from *ex parte* communications to resolve a disputed factual issue. Where competent and incompetent evidence is before a trial court, it is presumed that the court functioned as the finder of facts and relied solely upon the competent evidence. **SPX Corp. v. Liberty Mut. Ins. Co.,**

**Motions to continue – no abuse of discretion – no prejudice** – The trial court did not abuse its discretion by granting defendant's motions to continue where sufficient grounds existed for granting the motions. Local rules were violated in the timing of its ruling, but plaintiff appeared at the hearing prepared to argue and was not prejudiced. **Griffith v. N.C. Dep't of Corr.,**

## **WORKERS' COMPENSATION**

**Claim for modification of prior award – properly denied** – The Industrial Commission properly denied plaintiff's claim for modification of her prior award. The Commission's conclusion that plaintiff did not satisfy her burden of proving a change of condition under N.C.G.S. § 97-47 was supported by the Commission's findings and the evidence upon which they were based. **Spears v. Betsy Johnson Mem. Hosp.,**

**Commissioners – qualified to sit on Full Commission – neither adjudicated claim in the first instance** – Two commissioners who participated in the Full Commission's decision to affirm the deputy commissioner's initial decision in plaintiff's workers' compensation case were qualified to sit on the Full Commission in the present case. Neither commissioner adjudicated plaintiff's claim "in the first instance" under N.C.G.S. § 97-84. **Spears v. Betsy Johnson Mem. Hosp.,**

**Denial of motion to set aside prior decision – failed to raise issue – denial proper** – The Industrial Commission did not abuse its discretion in denying plaintiff's motion to set aside its prior decision based on allegations that defendants committed fraud on the Commission. Plaintiff had the opportunity in the prior proceedings to raise her concerns, and failed to do so. **Spears v. Betsy Johnson Mem. Hosp.,**

**Requirements for cancellation of policy – power of attorney** – The Industrial Commission erred in a workers' compensation case by concluding that defendant's policy was effectively and properly cancelled under a power

of attorney held by a third party and in accordance with N.C.G.S. § 58-35-85. The case was reversed and remanded to the Commission for further proceedings to determine whether defendant insurance carrier complied with N.C.G.S. § 58-36-105. **Diaz v. Smith,**

## ZONING

**Denial of site plan renovation – impermissible expansion or enlargement of non-conforming use** – The superior court did not err by concluding that a city zoning board of adjustment correctly interpreted section 13.3(C) of a land zoning ordinance in denying approval of petitioner’s site plan for renovation of its asphalt plant. An increase in the scope, scale, or extent of a non-conforming use, namely the new equipment expanding plaintiff plant’s maximum operating capacity, constituted an impermissible expansion or enlargement of the non-conforming use. **APAC-Atl., Inc. v. City of Salisbury,**

**Interpretation of zoning official – not timely appealed – binding** – A statement by the Town's 2001 Planning Director in two letters that a proposed asphalt operation was a permitted use by right requiring only a general use permit was binding on the Town because the Town did not appeal the decision within the required thirty day period. **S.T. Wooten Corp. v. Bd. Of Adjust. Of the Town of Zebulon,**