

## ADMINISTRATIVE LAW

**Exhaustion of administrative remedies – not required – inverse condemnation compensation** – The trial court did not err by concluding that plaintiffs had no administrative remedies to exhaust before bringing their inverse condemnation claim against defendant. Plaintiffs were not challenging the EMC certificate or defendants' right to exercise eminent domain, but were asking only to be compensated as a result of the diverted waters. **L&S Water Power, Inc. v. Piedmont Triad Reg'l Water Auth.,**

**Standard of review – unemployment insurance benefits** – The superior court applied an improper standard of review when reversing the Employment Security Commission's (ESC) decision to disqualify claimant from unemployment insurance benefits. The order setting aside the ESC's decision was vacated and remanded to the superior court for review utilizing the correct standard of review. **Edgecombe Cnty. Dep't of Soc. Servs. v. Hickman,**

## APPEAL AND ERROR

**Appealability – interlocutory order – substantial right** – Although the trial court's order was interlocutory since it left the amount of compensation to be resolved, orders under N.C.G.S. § 40A-47 are immediately appealable as affecting a substantial right. **L&S Water Power, Inc. v. Piedmont Triad Reg'l Water Auth.,**

**Notice of appeal – satellite-based monitoring – written notice required** – An oral notice of appeal was not sufficient to confer appellate jurisdiction to review a satellite-based monitoring (SBM) order because SBM is civil rather than criminal in nature. Although defendant noted his appeal orally rather than in writing, his motion for *certiorari* was granted because of the uncertainty about the proper method of appealing SBM orders at the time. **State v. Clark,**

**Preservation of issues — denial of second motion to dismiss —** The denial of a motion to dismiss evidence of illegal drugs seized from defendant and his car at a checkpoint was not properly before the Court of Appeals where a prior motion on the constitutionality of the checkpoint was denied and the second motion, on the seizure itself, was not ruled upon. Defendant did not challenge the trial court's failure to rule on the second motion or provide a reason for granting it not related to the first.

## ARBITRATION AND MEDIATION

**Motion for rehearing denied – trial court familiarity** – The trial court did not abuse its discretion by denying defendants’ motion for rehearing concerning the issue of arbitration upon remand from the Court of Appeals in light of the trial court’s familiarity with the case. **U.S. Trust Co., N.A. v. Rich,**

**Motion to stay litigation – motion to compel arbitration – associated person** – The trial court did not err by denying defendants’ motion to stay litigation and compel arbitration. Plaintiff did not qualify as an “associated person” under Financial Industry Regulatory Authority (FINRA) code of Arbitration Procedure for Industry Disputes or FINRA Bylaws, and plaintiff was not a third-party beneficiary of defendants’ Form U-4s. **U.S. Trust Co., N.A. v. Rich,**

## **ATTORNEY FEES**

**Workers’ compensation – stubborn unfounded litigiousness** – The Industrial Commission erred in a workers’ compensation case by finding that the defense of this claim was reasonable and not stubborn, unfounded litigiousness where the findings of fact and conclusions of law ignored certain evidence and declined to award attorney fees under N.C.G.S. § 97-88.1. The case was remanded for a determination of the amount of attorney fees. **Cawthorn v. Mission Hosp., Inc.,**

## **CHILD CUSTODY AND SUPPORT**

**Foreign custody order – modification – substantial change in circumstances – best interests of child** – The trial court did not abuse its discretion by modifying a Michigan child custody order. The evidence revealed substantial changes in circumstances affecting the welfare of the minor children and that modification was in the best interests of the children. **Crenshaw v. Williams,**

**Foreign support order – improper modification** – The trial court lacked authority to modify a Michigan child support order, and the portion of the trial court’s order modifying defendant mother’s support obligation was reversed. **Crenshaw v. Williams,**

## **CONFESSIONS AND INCRIMINATING STATEMENTS**

**Statements to detective – voluntary** – The trial court did not err by denying a first-degree rape defendant’s motion to suppress statements he made to a detective before he was given *Miranda* warnings. Although defendant was told to wait at a patrol car at the scene, this amounted only to

an attempt by officers to control the scene and prevent emotional encounters between a suspect and the victim's family. The detective who took the statements directly and clearly informed defendant that he was not under arrest, defendant repeatedly asked to speak with the detective, and defendant voluntarily accompanied the detective to the sheriff's department. **State v. Clark,**

## CONSTITUTIONAL LAW

**Ex post facto – ineffective assistance of counsel – not available to satellite-based monitoring claims** – Ineffective assistance of counsel claims are not available to satellite-based monitoring (SBM) defendants because SBM is civil in nature. Moreover, any *ex post facto* claim defendant's lawyer might have raised would not have been successful for the same reason. **State v. Clark,**

## CORPORATIONS

**Real estate development companies – not alter egos of realtor owners** – Real estate development companies were not the *alter egos* of two defendants who owned a real estate brokerage and who were partial owners of the development companies where the owners of the development companies were not acting as agents for the development company when dealing with plaintiffs. The action arose from plaintiffs' purchase through the brokerage of a coastal property with an ocean view across a tract that was about to be developed. **Sutton v. Driver,**

## CRIMINAL LAW

**Denial of requested instruction – denied opportunity to investigate or could have learned through reasonable diligence** – Although defendant contended that the trial court erred by refusing his request to instruct the jury that plaintiff must prove that he was denied the opportunity to investigate or that he could not have learned the true facts by exercise of reasonable diligence, defendant failed to demonstrate that the trial court's instruction likely misled the jury. **Walker v. Town of Stoneville,**

**Traffic checkpoint – constitutionally reasonable** – The trial court correctly determined that a traffic checkpoint was reasonable where the court applied the three-prong test of *Brown v. Texas*, 443 U.S. 47, and considered the gravity of the public concerns, the degree to which the public interest was advanced and to which the checkpoint was tailored to fit its primary purpose, and the severity of the interference with individual liberty. **State v. Nolan,**

**Traffic checkpoint – primary programmatic purpose – constitutional**  
– The trial court properly determined that the primary programmatic purpose of a traffic checkpoint was constitutionally permissible when the evidence was considered in its entirety, including the written plan as well as the officers' conflicting testimony. **State v. Nolan,**

## **DAMAGES AND REMEDIES**

**Calculation of compensation – capitalization of income approach – partial taking** – The trial court did not err by concluding that the capitalization of income approach used by the trial court was a reasonable method to calculate plaintiffs' compensation for a partial taking. **L&S Water Power, Inc. v. Piedmont Triad Reg'l Water Auth.,**

**Compensatory damages – causal connection** – The trial court did not err by submitting the issue of compensatory damages to the jury. The record did not establish that any claims adjudication procedure existed at the time the issue of damages was submitted to the jury. Further, plaintiff established a causal connection between defendants' conduct and the unpaid *ad valorem* tax amounts. **Bogovich v. Embassy Club of Sedgefield, Inc.,**

**Negligence – calculation of property's value – fair market value** – The Industrial Commission erred in a negligence action, arising from defendant's issuance of a septic permit and then its later determination that the lot was unsuitable for a septic system, by using fair market values of the pertinent property from 2007 rather than 2001 for calculating damages. The injury to plaintiff's real property was completed as of 14 February 2001, and there was not a continuing wrong or intermittent or recurring damages. **Feierstein v. N.C. Dep't of Env't & Natural Res.,**

**Punitive damages – constructive fraud** – The trial court did not err by submitting to the jury the issue of whether plaintiff was entitled to recover punitive damages from defendant individuals. Punitive damages are justified in cases of constructive fraud. **Bogovich v. Embassy Club of Sedgefield, Inc.,**

## **DECLARATORY JUDGMENTS**

**Rightful owner of common stock – expiration of statute of limitations – laches** – The trial court did not err by granting defendant RBC's motion for summary judgment in a suit seeking declarative and compensatory relief claiming that plaintiff was the rightful owner of at least 14,486 shares of RBC common stock. The applicable statute of limitations and the doctrine of laches barred plaintiff's claims. **Stratton v. Royal Bank of Canada,**

## **DIVORCE**

**Equitable distribution – classification – marital property – insurance check to repair roof – bank account** – The trial court did not err in an equitable distribution case by failing to classify and distribute as marital property a check for \$2,288.26 from an insurance company to repair the roof of the marital home. The money was part of the value assigned to the house and land. However, the case was remanded for findings related to plaintiff's Piedmont Aviation Credit Union account and for amending the equitable distribution order if necessary solely on the basis of those findings. **Cheek v. Cheek,**

**Equitable distribution – retirement accounts – diminution in value – insufficient findings on active or passive forces** – The trial court erred in an equitable distribution case by its distribution of the parties' retirement accounts. The case was remanded for entry of findings of fact as to whether the decreases in property were due to the actions of defendant wife or passive forces, and for any adjustments of the award consistent with those findings. **Cheek v. Cheek,**

**Equitable distribution – retirement accounts – tax – consequences** – The trial court did not abuse its discretion in an equitable distribution case by failing to award an in-kind distribution of the marital and divisible property for plaintiff's retirement accounts. The trial court was not required to consider tax consequences when no such evidence was placed before it. **Cheek v. Cheek,**

## **EMPLOYER AND EMPLOYEE**

**Retaliatory Employment Discrimination Act – reason for termination – summary judgment improper** – The trial court erred by granting defendant employer's motion for summary judgment in a case alleging termination in violation of the Retaliatory Employment Discrimination Act. There was a genuine issue of material fact as to why plaintiff was terminated after he exercised his right to file a workers' compensation claim. **McDowell v. Cent. Station Original Interiors, Inc.,**

## **FRAUD**

**Constructive fraud – breach of fiduciary duty** – The trial court did not err by granting summary judgment in favor of plaintiff with respect to the constructive fraud claim based on a breach of fiduciary duty by defendant individuals. The execution and recordation of the notes and deeds of trust

without prior approval, in amounts that greatly exceeded the value of their claimed loans, constituted a breach of fiduciary duty by defendants. Further, the evidence supported a reasonable inference that defendants' actions caused the corporation's property to remain unsold during the years that plaintiff paid the *ad valorem* taxes. **Bogovich v. Embassy Club of Sedgefield, Inc.,**

**Negligent misrepresentation – erroneous grant of directed verdict and JNOV** – The trial court erred by granting the town's motions for directed verdict and JNOV because plaintiff offered substantial evidence to support the jury's negligent misrepresentation verdict. By inquiring with proper town officials, plaintiff exercised reasonable diligence in attempting to determine how he could return to work with the town without jeopardizing his retirement benefits. Further, plaintiff presented substantial evidence that he justifiably relied on the town's representations. **Walker v. Town of Stoneville,**

**Sale of real estate – future adjacent development not disclosed** – The trial court properly granted summary judgment for a real estate broker on a claim for fraud where the broker sold plaintiffs a coastal property with an unimpeded view of the ocean across a property that was about to be developed by the owners of the real estate agency. Plaintiffs pointed to no evidence that the broker was aware of the agency owner's actions and did not explain how the broker's actions constituted fraud rather than negligence. **Sutton v. Driver,**

**Highways and Streets — cartway — final judgment by clerk — exceptions after jury of view report — not reviewed** — A judgment entered by the clerk ordering that a permanent cartway be established across respondents' land and appointing a jury of view became final when neither party filed exceptions or an appeal. A request for a trial *de novo* after the report of the jury of view and a request that an additional party be added were correctly denied.

## **JURY**

**Verdict sheet – properly reflected material controversies involved** – The trial court did not improperly submit an insufficient verdict sheet to the jury in a negligent misrepresentation case. The issues submitted properly reflected the material controversies involved. **Walker v. Town of Stoneville,**

## **PUBLIC OFFICERS AND EMPLOYEES**

**Wrongful discharge – regular employee – payroll method** – The trial court erred by directing verdict against plaintiff on his wrongful discharge claim. Plaintiff offered substantial evidence that the town regularly employed 15 or more employees based on the payroll method as required by N.C.G.S. § 143-422.2. **Walker v. Town of Stoneville,**

## **REAL ESTATE**

**Dual brokerage – planned adjacent development – duty to disclose** – In a coastal real estate sale involving a dual brokerage, the broker had a duty to make a full and truthful disclosure to plaintiffs of all material facts known to the broker or discoverable by the broker with reasonable diligence, with a non-disclosed fact being material when it would have influenced the parties' decision in entering the contract. The property in this case had an unobstructed view of the ocean over an undeveloped tract that would soon be developed by the owners of the real estate agency and others. **Sutton v. Driver,**

**Fraud and negligent misrepresentation – development of adjacent tract** – Summary judgment should not have been granted for a real estate brokerage and its owners on fraud and negligent misrepresentation claims where the brokerage sold coastal property with a view of the ocean over an adjacent tract without disclosing that the brokerage owners and others were planning the development of the adjacent tract. **Sutton v. Driver,**

**Negligent misrepresentation – failure to disclose planned adjacent development** – The trial court should not have granted summary judgment for a real estate broker on a negligent misrepresentation claim arising from the sale of coastal property with a view of the ocean that was about to be obstructed by a development in which the real estate agency's owners were participating. The broker did not speak to the owner of the agency about the possible development of the adjacent property; it was for the jury to decide why he did not do so and whether he failed to act with reasonable diligence. **Sutton v. Driver,**

**Undisclosed information – liability of sellers** – Summary judgment against the sellers of coastal property was reversed on claims of fraud and negligent misrepresentation because the principal is liable for the fraudulent acts of his real estate agent. However, summary judgment for the sellers was affirmed on a claim of unfair and deceptive trade practice because they did not become realtors engaged in trade or commerce simply by selling their property. **Sutton v. Driver,**

## **SATELLITE-BASED MONITORING**

**Aggravated offense – first-degree rape of child under thirteen** – The trial court did not err by ordering defendant to enroll in satellite-based monitoring for the rest of his natural life after he was convicted of the first-degree rape of a child. Although the trial court's determination of an aggravated offense could not be upheld based on the "child victim" prong of N.C.G.S. § 14-208.6(1a) and the underlying factual scenario could not be considered, the elements of first-degree rape as defined in N.C.G.S. § 14-27.2(a)(1) gave the trial court ample basis for determining that defendant committed an act involving vaginal penetration. Since a child under the age of thirteen is inherently incapable of consenting to sexual intercourse, the rape of such a victim necessarily involves the use of force or the threat of serious violence and the definition of aggravated offense was satisfied by the "violent conduct" prong of N.C.G.S. § 14-208.6(1a). **State v. Clark,**

## **STATUTES OF LIMITATION AND REPOSE**

**Reimbursement for business expenses – no tolling of statute** – The trial court did not err by concluding that defendant individuals' reimbursement claims for alleged monies advanced and other obligations related to the corporation that allegedly arose in the 1970s and 1980s were barred by the statute of limitations under N.C.G.S. § 1-52(1). Even if the applicable statute of limitations had been tolled until 1998, defendants never asserted a reimbursement claim. **Bogovich v. Embassy Club of Sedgefield, Inc.,**

## **TORT CLAIMS ACT**

**University medical school – medical negligence – collateral estoppel – jurisdiction** – The Industrial Commission did not err by granting summary judgment in favor of defendant for a medical negligence claim that plaintiff brought pursuant to the State Tort Claims Act under N.C.G.S. §§ 143-291 to 300.1A based on the doctrine of collateral estoppel. Plaintiff's challenges to the Commission's order based on the nature of the proceedings leading up to the entry of the summary judgment order and the contents of that order lacked merit. Further, plaintiff's "absence of jurisdiction" argument also lacked merit. **Urquhart v. East Carolina Sch. of Med.,**

## **UNFAIR TRADE PRACTICES**

**Real estate sale – undisclosed information** – Summary judgment for the owners of a real estate brokerage and a broker on an unfair and deceptive practices claim arising from the sale of coastal land with an ocean view was reversed where the owners of the brokerage were involved in a project to

develop adjacent land that would block the ocean view. A claim of unfair and deceptive trade practice can be established against realtors by proving either fraud or negligent misrepresentation in a commercial setting. **Sutton v. Driver,**

**Summary judgment – constructive fraud** – The trial court did not err by granting summary judgment in favor of plaintiff with respect to the unfair and deceptive trade practices claim given the upholding of summary judgment in favor of plaintiff for the constructive fraud claim. **Bogovich v. Embassy Club of Sedgefield, Inc.,**

## WATERS AND ADJOINING LANDS

**Riparian rights – eminent domain – just compensation** – The trial court did not err by determining that defendant had taken plaintiffs' riparian rights and that plaintiffs were entitled to compensation from defendant for the taking. Although the impoundment statutes and NC Environmental Management Commission (EMC) certificate authorized defendant to exercise its power of eminent domain by diverting the water flow in a river in order to develop a public water supply, defendant was obligated to pay just compensation. Further, plaintiffs introduced the necessary evidence to determine the rate of water flow. **L&S Water Power, Inc. v. Piedmont Triad Reg'l Water Auth.,**

## WORKERS' COMPENSATION

**Temporary total disability – incurred and future medical treatment** – The Industrial Commission did not err in a workers' compensation case by awarding ongoing temporary total disability benefits and all incurred and future medical treatment. The evidence supported a doctor's opinion that plaintiff's condition necessitating her surgery and causing her disability was the direct result of her 26 February injury and the three subsequent work-related aggravations. **Cawthorn v. Mission Hosp., Inc.,**