

## ADMINISTRATIVE LAW

**Board of Adjustment — Certificate of Appropriateness — denial not based on vistas** — Petitioner’s argument that the Beaufort Historic Preservation Commission’s (BHPC) decision to deny respondent Smith a Certificate of Appropriateness should have been upheld because Smith’s application violated BHPC guidelines protecting the historic district’s “vistas” was overruled. The BHPC did not reach its decision to deny Smith’s application on the basis of any guidelines regulating vistas. **Sanchez v. Town of Beaufort,**

**Board of Adjustment — Certificate of Appropriateness — height requirement — arbitrary and capricious** — The Board of Adjustment did not err by reversing the decision of the Beaufort Historic Preservation Commission (BHPC) and ordering the BHPC to issue respondent Smith a Certificate of Appropriateness for the structure Smith proposed to build. The height requirement imposed by the BHCP was arbitrary and capricious. **Sanchez v. Town of Beaufort,**

## APPEAL AND ERROR

**Constitutional issue — not raised below — not considered** — A confrontation clause issue was not properly before the Court of Appeals where it was not presented to the trial court below. **State v. Cobos,**

**Hearsay — no objection or motion to strike — not considered** — The question of whether an investigator's testimony was hearsay was reviewed only as plain error where defendant never objected to or moved to strike the testimony on hearsay grounds. There was no plain error. **State v. Cobos,**

**Interlocutory order — certified by trial court — immediately reviewable** — Plaintiff’s appeal from the trial court’s order in a medical malpractice case which was only final as to some of the parties was immediately reviewable as the trial court properly certified the appeal pursuant to Rule 54(b). **Stinchcomb v. Presbyterian Med. Care Corp.,**

**Interlocutory order — substantial right — immediately appealable** — Defendants’ appeal from the trial court’s order denying their motion for summary judgment in a defamation *per se* and unfair and deceptive trade practices case affected a substantial right and was immediately appealable. **Boyce & Isley, PLLC v. Cooper,**

**Preservation of issues – failure to raise at trial** – Although defendant contended that plaintiff’s proper cause of action was for rescission of the

parties' contract based on mutual mistake of fact, defendant failed to preserve this issue since he did not raise it at trial as required by N.C. R. App. P. 10(a)(1). **Majewski Enters., Inc. v. The Park at Langston, Inc.**,

**Revocation of driver's license — outside scope of judgment appealed** — Defendant's contention that his driver's license was revoked without due process was not properly before the Court of Appeals because it was outside the scope of the judgment being appealed.

**Violation of North Carolina Rules of Appellate Procedure – denial of sanctions – not substantial or gross violations** – Defendant's motion for sanctions against plaintiff based on numerous violations of the North Carolina Rules of Appellate Procedure was denied because review was not impaired nor had the adversarial process been frustrated when the violations were neither substantial nor gross. **Gentry v. Big Creek Underground Utilities, Inc.**,

## **ARBITRATION AND MEDIATION**

**Personal guarantee — arbitration clause — agreement between plaintiff and corporate defendant** — The trial court did not err by concluding that individual defendants could not compel arbitration of a personal guarantee, made in their individual capacities, based on an arbitration clause in an agreement between corporate defendant and plaintiff. **D.P. Soutions, Inc. v. Xplore-Tech Servs.**,

## **CONSTITUTIONAL LAW**

**Due process — capacity to proceed — hearing after examination — local hearing** — Defendant's due process rights were not violated in a driving while license revoked case because N.C.G.S. § 15A-1002 did not require the court to conduct a hearing *before* ordering an examination of defendant's capacity to proceed and defendant did not request a hearing after his examination was completed. Furthermore, although the trial court erred by ordering defendant, who was charged only with a misdemeanor, committed to a state facility to determine his capacity to proceed before he had a local examination, the issue was moot because the terms of the challenged trial court order had already been carried out. **State v. Leyshon**,

**Motion for speedy trial — motion filed by defendant personally — represented by counsel** — A trial court could consider a speedy trial motion filed by a defendant personally even though the defendant was represented by counsel. **State v. Howell**,

**Right to counsel — no waiver — forfeiture** — The trial court in a driving while license revoked case did not err by appointing counsel against defendant's wishes and then proceeding without defendant's appointed counsel. Defendant had not clearly and unequivocally waived his right to counsel before the appointment and defendant then forfeited his right to counsel by his behavior. **State v. Leyshon,**

**Right to speedy trial — any delay caused by defendant** — The trial court did not violate defendant's constitutional right to a speedy trial in a driving while license revoked case. Any delay in defendant's trial was caused by defendant's failure to state whether he asserted or waived his right to counsel. **State v. Leyshon,**

**Speedy trial — constitutional or statutory basis uncertain** — A trial court order dismissing charges against a defendant for speedy trial violations was remanded where the grounds for the dismissal could not be determined from the record. While it seemed evident that the trial court based its ruling at least in part on a violation of defendant's constitutional right to a speedy trial, it was not evident whether the court also based its decision in part on potential statutory violations. It was noted that N.C.G.S. § 15A-711 does not guarantee a right to trial within a specific time and that a violation of the statute is not a violation of the Sixth Amendment right to a speedy trial. **State v. Howell,**

**Speedy trial — time of denial impossible to determine — analysis of all Barker factors required** — The trial court relied upon an incorrect standard in ruling on defendant's motion to dismiss for violation of his constitutional speedy trial rights where the trial court believed that dismissal was the only possible remedy when it was impossible to determine precisely when the right had been denied. In order to conclude that there has been a Sixth Amendment violation of a defendant's right to a speedy trial, the court must examine and consider all of the factors in *Barker v. Wingo*, 407 U.S. 514. Reliance on headnotes rather than holdings is cautioned against. **State v. Howell,**

## **CREDITORS AND DEBTORS**

**Foreclosure — challenge — dismissed without prejudice** — Plaintiffs' challenge to a foreclosure proceeding pursuant to N.C.G.S. § 45-21.34 was effectively dismissed without prejudice by virtue of a consent order. N.C.G.S. § 45-21.34 could not, therefore, be a basis for reversing the trial court's grant of summary judgment to defendants. **Harty v. Underhill,**

**Objection to claim for exempt property — merits not addressed — remanded to trial court** — The Court of Appeals declined to rule on the merits of plaintiff's argument that the trial court erred by allowing defendant to claim exempt property in excess of that allowed by N.C.G.S. § 1C-1601. The matter was remanded to the trial court for consideration. **Stewart v. Hodge,**

**Objection to claim for exempt property — timely** — The trial court erred in an action arising from an unpaid debt by determining that plaintiff did not object to defendant's claim for exempt property in a timely manner. Given the issuance of a written notice of hearing within the specified time period, plaintiff adequately complied with N.C.G.S. § 1C-1603(e)(5). **Stewart v. Hodge,**

## **DAMAGES AND REMEDIES**

**Amount and certainty – enforceable oral contract – excessive water and sewer credits** – The trial court did not err by finding that plaintiff had an enforceable oral contract with its builders such that damages based on defendant's receipt of excessive water and sewer credits could be properly awarded. However, the case was remanded for further findings specifically determining the damages plaintiff had suffered thus far, for findings related to the certainty of damages that may later arise, and for entry of judgment for the amount of damages which had been established with reasonable certainty. **Majewski Enters., Inc. v. The Park at Langston, Inc.,**

## **DRUGS**

**Cocaine trafficking — admission of unidentified white powder — not prejudicial — other evidence** — Defendant could not show that the admission of a white plastic bag containing an unidentified white powder was prejudicial in a cocaine prosecution where another bag of cocaine, weighing eighty-three grams, was properly admitted into evidence. **State v. Cobos,**

## **EVIDENCE**

**Cocaine — lay identification — not prejudicial** — Where an eighty-three gram bag of cocaine was properly admitted, there was no plain error in the admission of an investigator's lay identification of a white powder in another bag as cocaine. **State v. Cobos,**

**First-degree kidnapping – robbery with a firearm – admission of witness's prior statement – failure to show prejudice** — The trial court did not err in a first-degree murder, first-degree kidnapping, robbery with a

firearm, and conspiracy to commit robbery with a firearm case by allowing a witness to read to the jury a portion of her prior statement to police. Assuming *arguendo* that it was error for the trial court to admit the statement, defendant failed to satisfy his burden in showing that he was prejudiced by the alleged error. **State v. Stevenson,**

**First-degree murder – first-degree kidnapping – robbery with a firearm – admission of evidence of guns – no plain error** — The trial court did not commit plain error in a first-degree murder, first-degree kidnapping, robbery with a firearm, and conspiracy to commit robbery with a firearm case by admitting evidence of guns found by law enforcement officers during the search of defendant’s family residence. Even assuming the admission of the evidence of the guns was error, defendant fell far short of convincing the Court of Appeals that a different outcome would have resulted absent the alleged error. **State v. Stevenson,**

**First-degree murder – first-degree kidnapping – robbery with a firearm – admission of photograph – illustrative of witness’s testimony – no unfair prejudice** — The trial court did not err in a first-degree murder, first-degree kidnapping, robbery with a firearm, and conspiracy to commit robbery with a firearm case by admitting into evidence a picture of defendant holding a firearm. The photograph clearly illustrated the witness’s testimony, and the trial court appropriately allowed the photograph into evidence for that purpose. Furthermore, the relevance of the picture was not substantially outweighed by the unfair prejudice to defendant. **State v. Stevenson,**

**Judicial notice — Federal Register — regulations cited not relevant** — The trial court did not err in a driving while license revoked case by not taking judicial notice of the Federal Register because the federal regulations defendant cited had no relevance to the North Carolina crime of driving while license revoked. **State v. Leyshon,**

**Possession of incestuous pornography book – motive and intent** – The trial court did not err in an indecent liberties with a child and first-degree rape case by allowing into evidence under N.C.G.S. § 8C-1, Rule 404(b) defendant father’s “Family Letters” book to show both motive and intent in committing the acts underlying the charged offenses. It was reasonable to infer incestuous desire from possession of incestuous pornography, and the admission of this evidence did not unfairly prejudice defendant. To the extent the admission of evidence regarding defendant’s alleged sexual encounter with the younger daughter exceeded the scope of permissible corroboration, it did not amount to plain error. **State v. Brown,**

## HOMICIDE

**Second-degree murder – erroneous failure to instruct on lesser-included offense – involuntary manslaughter** – The trial court erred in a second-degree murder case by failing to instruct the jury on the lesser-included offense of involuntary manslaughter, and defendant was entitled to a new trial. There was a reasonable possibility that the jury might have concluded that defendant acted without intent to kill or inflict serious bodily injury. **State v. Debiase,**

## HOSPITALS AND OTHER MEDICAL FACILITIES

**Certificate of need — ALJ findings — sufficient** — The Department of Health and Human Services sufficiently complied with N.C.G.S. § 150B-34(c) in its decision regarding a certificate of need for a mobile MRI. The Department clearly indicated which of the administrative law judge's findings it adopted and which it rejected before it stated that the rejected findings were unsupported by the clear preponderance of the evidence. The statute did not require the Department to state its reasons for rejecting each finding separately. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — application — criteria not satisfied — denied rather than approved conditionally** — The Department of Health and Human Services did not err by concluding that a certificate of need (CON) application must satisfy all of the review criteria in N.C.G.S. § 131E-183(a) and that an applicant was not entitled to a CON as a matter of law if the application did not conform with any one of the criteria. In this case, many deficiencies were found in the application and the record contained no indication that the Department acted unreasonably by simply denying the application rather than approving it subject to a condition. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — burden of proving error — presumption that agency performed duties** — The Department of Health and Human Services when considering a certificate of need (CON) for a mobile MRI did not presume that the CON Section acted in accord with applicable law when it noted that there was a presumption that an administrative agency has properly performed its official duties. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — denial not arbitrary and capricious** — The Department of Health and Human Services did not arbitrarily and capriciously deny an application for a certificate of need where a careful

examination of the Department's decision revealed that it thoroughly considered and analyzed the record evidence, and adequately explained the reasons that caused it to conclude that petitioner had failed to satisfy all of the relevant criteria. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — failure to credit petitioner's evidence — no error** — The Department of Health and Human Services did not err by failing to credit and act upon the evidence that petitioner offered in a certificate of need proceeding in an attempt to establish a need for a proposed mobile MRI scanner. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — findings — form of review — not de novo** — A petitioner for a certificate of need (CON) for a mobile MRI was not entitled to relief based solely on the form of the Department of Health and Human Services findings. The statutorily authorized administrative review of a CON Section decision is intended to consist of an examination of the correctness of the decision rather than a *de novo* examination of the merits of the original application. Moreover, the Department clearly adopted the CON Section's findings as its own and was not simply reciting the determinations made by the CON Section in the challenged findings. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — need not shown** — A careful examination of the record demonstrated that the Department of Health and Human Services had an adequate basis for its conclusion that a petitioner seeking a certificate of need had not made the requisite showing of need. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — projection of need — methodology** — The Department of Health and Human Services did not err by concluding that petitioner's certificate of need application did not conform with 10 N.C.A.C. 14C.2703(a)(2) and (3). The Department rejected petitioner's projection of the procedures that would be performed on the purposed scanner in the third year because petitioner did not adequately explain the methodology used to develop the projection. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — review by CON Section** — The Department of Health and Human Services did not err when considering a certificate of need (CON) for a mobile MRI by focusing on the ways in which the decision of the CON Section was alleged to be unlawful rather than systematically asking whether the CON Section's decision exceeded its authority and then moving

through each of the other grounds for reversal set out by statute. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — standard of review — not arbitrary and capricious** — The Department of Health and Human Services did not err by reviewing a certificate of need (CON) Section decision by an arbitrary and capricious standard instead of considering all of the grounds for error outlined in N.C.G.S. § 150B-23(a). **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

**Certificate of need — whole record test** — The whole record test applied to review of a Department of Health and Human Services decision on a petition for a certificate of need for a mobile MRI scanner to the extent that petitioner's argument rested on a contention that the Department's findings lacked adequate evidentiary support or that it failed to make findings in accord with the undisputed evidence. **Eastern Carolina Internal Med., P.A. v. N.C. Dep't of Health and Human Servs.,**

## IMMUNITY

**Governmental – proprietary function – operation of party facilities at public park** – The trial court did not err in a negligence case by denying defendant county's limited motion for summary judgment based on governmental immunity because defendant was involved in a proprietary function in the operation of the party facilities at a public park. **Estate of Williams v. Pasquotank Cnty. Parks & Recreation Dep't,**

## INDICTMENT AND INFORMATION

**Cocaine trafficking — amount omitted — added by amendment – no subject matter jurisdiction** — The trial court lacked subject matter jurisdiction to try defendant for conspiracy to traffic in cocaine where the initial indictment did not specify the amount of cocaine involved, an essential element. An indictment may not be amended to substantially alter the charge in the indictment, and a party may not consent to subject matter jurisdiction. **State v. Cobos,**

## JURISDICTION

**Subject matter — juvenile delinquent — Department of Juvenile Justice and Delinquency Prevention** — The district court had subject matter jurisdiction in a juvenile delinquency case to order that defendant have no home or overnight visits and that defendant be allowed to work off campus only on the condition that he not be around anyone twenty-five years

of age or younger. The court retained jurisdiction even though the juvenile had been committed to the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center. **In re J.S.W.**,

**Subject matter — objection to claim for exempt property — superior court** — Plaintiff's argument that the trial court lacked jurisdiction over his objection to defendant's claim for exempt property in an action arising from an unpaid debt was overruled. The relevant statutory language in N.C.G.S. § 1C-1603(e)(7) neither deprives the superior court of jurisdiction nor renders a superior court order ruling on such an objection void for lack of jurisdiction. **Stewart v. Hodge**,

## **JURY**

**Request for transcript – trial court's denial – no abuse of discretion** — The trial court did not err in a first-degree murder, first-degree kidnapping, robbery with a firearm, and conspiracy to commit robbery with a firearm case by failing to meaningfully evaluate and exercise its discretion with respect to the jury's request for a transcript of a witness's trial testimony. By summoning the jurors and exercising its discretion regarding the jury's request, the trial court in this case complied with the requirements of section 15A-1233. **State v. Stevenson**,

## **JUVENILES**

**Delinquency — district court order — exercised discretion in accordance with statute** — The district court did not abuse its discretion in a juvenile delinquency case by entering an order that defendant have no home or overnight visits and that defendant be allowed to work off campus only on the condition that he not be around anyone twenty-five years of age or younger. Taken as a whole, the district court's statements and decision demonstrated that it exercised its discretion in accordance with the criteria set forth in N.C.G.S. § 7B-2501(c). **In re J.S.W.**,

## **MEDICAL MALPRACTICE**

**Motion to stay proceedings — not addressed** — Plaintiff's contention that the trial court erred in a medical malpractice action by denying his motion to stay proceedings against the nurse defendants was not addressed in light of the Court of Appeals' determination that plaintiff's appeal from the dismissal of other defendants lacked merit. **Stinchcomb v. Presbyterian Med. Care Corp.**,

## **PRETRIAL PROCEEDINGS**

**Motion to amend summonses — motion to enlarge time to issue summonses — material prejudice — denial not abuse of discretion —** The trial court did not abuse its discretion in a medical malpractice action by denying plaintiff's Motion to Amend Summonses and/or in the Alternative to Enlarge Time to Issue Summonses. Defendants would have suffered material prejudice had the trial court granted plaintiff's motion or motions. **Stinchcomb v. Presbyterian Med. Care Corp.,**

## **PROCESS AND SERVICE**

**Florida law – improper service – lack of personal jurisdiction – no res judicata or collateral estoppel effect on North Carolina action –** The trial court erred by granting defendant's motion for judgment on the pleadings because a Florida court lacked personal jurisdiction over plaintiff in the Florida action. Defendant never properly served plaintiff with process, and therefore, the Florida court's judgment had no *res judicata* or collateral estoppel effect on plaintiff's North Carolina action. **B. Kelley Enters., Inc. v. Vitacost.com, Inc.,**

## **REAL PROPERTY**

**Foreclosure — debt — evidence of rescission — properly excluded —** The trial court did not err in a foreclosure case by refusing to consider respondents' defense that the debt petitioner sought to foreclose was not a valid debt. The trial court properly refused to consider respondents' evidence of rescission because rescission is an equitable remedy which is not properly raised in a hearing held pursuant to N.C.G.S. § 45-21.16. **In re Foreclosure of Gilbert,**

**Foreclosure — petitioner not holder of note —** The trial court erred in ordering the foreclosure of respondents' house to proceed as petitioner did not prove that it was the holder of the note with the right to foreclose under the instrument as required by N.C.G.S. § 45-21.16(d)(i) and (iii). **In re Foreclosure of Gilbert,**

## **SATELLITE-BASED MONITORING**

**Highest level of supervision – sufficiency of additional findings –** The Court of Appeals granted defendant's petition for writ of *certiorari* under N.C. R. App. P. 21 and concluded that the trial court did not err by enrolling defendant in the satellite-based program for a period of five years. The trial court's additional findings that defendant had not received treatment and that the victims were very young were proper findings to support the trial

court's determination that defendant required the highest possible level of supervision. **State v. Green,**

**Lifetime enrollment – aggravated offense – rape of child under thirteen** – The trial court did not err in an indecent liberties with a child and first-degree rape case by ordering defendant to enroll in lifetime satellite-based monitoring. Rape of a child under the age of thirteen was an aggravated offense since it necessarily involved the use of force or threat of serious violence. **State v. Brown,**

## SENTENCING

**Vacated death sentences – resentenced to consecutive life sentences** – The trial court did not err in a first-degree murder case by imposing consecutive rather than concurrent sentences for life imprisonment after defendant's two death sentences for first-degree murder were vacated and he was resentenced. **State v. Goode,**

## SEXUAL OFFENSES

**Crime against nature — mentally disabled victim — evidence not sufficient** — The trial court erred by denying defendant's motion to dismiss the charge of crime against nature where the State's theory was that defendant committed the offense against a mentally disabled person who was incapable of consenting to any sexual acts. There was insufficient evidence that she was incapable of consenting. **State v. Hunt,**

**Second-degree — mentally disabled victim – evidence not sufficient** — The trial court erred by denying defendant's motion to dismiss a charge of second-degree sex offense where defendant contended that there was insufficient evidence that the victim was mentally disabled. The first element of mental disability under N.C.G.S. § 14-27.1(1) is "mental retardation;" however, there is a wide range of abilities among those with such a diagnosis and the evidence must also show that the victim was substantially incapable of appraising the nature of his or her conduct, of resisting a sexual act, or of communicating unwillingness to submit to a sexual act. The State's evidence did not satisfy the latter requirement. **State v. Hunt,**

## STANDING

**Challenge — Certificate of Appropriateness — special damages shown** — Petitioner established the special damages necessary to confer standing to challenge the Board of Adjustment's order requiring the Beaufort

Historic Preservation Commission to issue a Certificate of Appropriateness to respondent Smith for the structure Smith proposed to build. **Sanchez v. Town of Beaufort,**

## STATUTES OF LIMITATIONS AND REPOSE

**Medical malpractice — complaint filed after expiration of statute of limitations — summonses not timely issued** — The trial court did not err in a medical malpractice action by granting defendants' motions to dismiss for plaintiff's failure to comply with the statute of limitations. Because the statute of limitations expired the day after plaintiff filed his complaint, and plaintiff failed to issue timely summonses to defendants, plaintiff failed to commence his action against the defendants within the statute of limitations. **Stinchomb v. Presbyterian Med. Care Corp.,**

## TRIALS

**Law of the case — same issues — questions settled** — The trial court did not err in a defamation *per se* and unfair and deceptive trade practices case by treating *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25 (*Boyce I*), as controlling law of the case. Because many of the same issues from *Boyce I* arose on review in this case, the questions settled in the Court of Appeals' prior opinion were controlling here. **Boyce & Isley, PLLC v. Cooper,**

## UNFAIR TRADE PRACTICES

**Defamation — genuine issue of material fact — actual malice** — The trial court did not erroneously fail to grant defendants' motion for summary judgment in a defamation *per se* and unfair and deceptive trade practices case. There were genuine issues of material fact as to whether defendants acted with actual malice as to plaintiff Daniel Boyce in the airing of a political advertisement. As for the remaining plaintiffs, there was a genuine issue of material fact as to whether the actual malice standard was applicable. **Boyce & Isley, PLLC v. Cooper,**

**Defamation — genuine issue of material fact — false statements — denial of summary judgment** — The trial court did not err in a defamation *per se* and unfair and deceptive trade practices case by denying defendants' motion for summary judgment. There was, at the very least, a genuine issue of material fact as to whether the statements made in defendants' political advertisement were false. **Boyce & Isley, PLLC v. Cooper,**

**Defamation — statements of or concerning plaintiffs — determination controlling** — The trial court did not err by denying

defendants' motion for summary judgment as to all plaintiffs other than Dan Boyce in a defamation *per se* and unfair and deceptive trade practices case. In *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, (*Boyce I*) the Court of Appeals determined that statements in the political advertisement were "of or concerning" plaintiffs and that determination was controlling in this case. **Boyce & Isley, PLLC v. Cooper,**

**Genuine issue of material fact — defamation — sufficient evidence —** The trial court did not erroneously fail to find that there was no genuine issue of material fact with respect to plaintiffs' unfair and deceptive trade practices cause of action because plaintiffs were able to forecast sufficient evidence to support a defamation cause of action. **Boyce & Isley, PLLC v. Cooper,**

## **UNFAIR TRADE PRACTICES**

**Tortious interference with contract — summary judgment proper —** The trial court did not err by granting defendants' motion for summary judgment on the actions for unfair and deceptive trade practices and tortious interference with contract. There were no genuine issues of material fact on these claims and defendants were entitled to judgments as a matter of law. **Harty v. Underhill,**

## **WORKERS' COMPENSATION**

**Calculation of accrued interest – date of initial hearing –** The Industrial Commission erred by denying plaintiff's motion to have the accrued interest related to his workers' compensation benefits calculated from 1 March 2004 instead of 1 May 2006. The initial hearing concerning plaintiff's claim for purposes of N.C.G.S. § 97-86.2 was held on 1 March 2004. The case was remanded to the Commission for further proceedings. **Puckett v. Norandal USA, Inc.,**

## **WRONGFUL DEATH**

**Woodson claim – inapplicable to any party other than employer –** The trial court did not err in a wrongful death case by granting summary judgment in favor of defendant insurance carrier and dismissing plaintiff's complaint. Defendant was never the employer and thus plaintiff could not state a *Woodson* claim against this defendant. **Gentry v. Big Creek Underground Utilities, Inc.,**