LEGAL Currents

SPRING 2017

INSIDE THIS ISSUE:

Does your closely held business have a buy-sell agreement? (p. 2)

WARD AND SMITH, P.A.
ATTORNEYS AT LAW

Why Do You Need a Buy-Sell Agreement for Your Closely Held Company?

by Merrill Jones
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Why do you need a Buy-Sell Agreement for your closely held company? In a nutshell, your business partner might die, become disagreeable, or just simply lose his or her mind, and you need a set of rules to resolve the matter. Disputes among business owners can be as intense and ugly as the worst divorce case, especially when the owners are family, and a good Buy-Sell Agreement can avoid some of this difficulty.

A Buy-Sell Agreement is an agreement among two or more business owners that establishes rules restricting, and sometime forcing, the transfer of ownership interests in the company or corporation. Buy-Sell Agreements ordinarily appear in shareholder agreements for corporations, operating agreements for limited liability companies, and partnership agreements for partnerships.

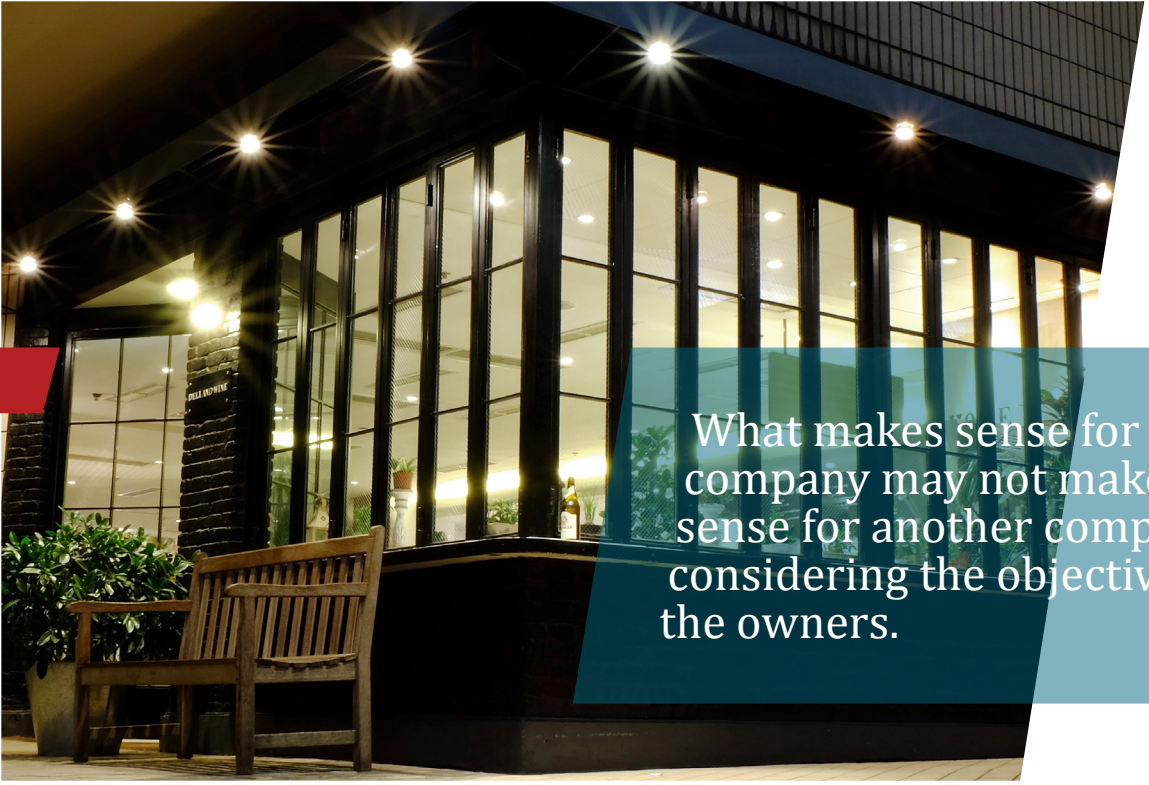
Unfortunately, too often we encounter business owners who failed to enter into appropriate Buy-Sell Agreements before irresolvable disputes arose, but which could have been resolved with a Buy-Sell Agreement. In those situations, the business owners invariably waste a lot of time, suffer through the stress of a long legal fight, and pay lawyers exponentially more than they would have paid for the preparation of a carefully considered and well-drafted Buy-Sell Agreement while the owners were on friendly terms.

Consider the following scenarios illustrating a few of the problems which can be solved with a good Buy-Sell Agreement:

Scenario 1 – You Want Me to Partner with Him?

Leigh and David own 40% and 60%, respectively, of XYZ, Inc. Leigh manages the day-to-day business of XYZ, Inc. and relies upon her salary from the corporation to meet her personal financial needs. David, a passive investor, loses interest in his investment in XYZ, Inc. and sells his shares of the corporation to Rex without first consulting with Leigh. David erroneously thought that Leigh could not afford to buy him out of the business. Rex, having a different philosophy for the direction of XYZ, Inc., uses his majority voting interest in the corporation to install himself as the day-to-day manager, displacing Leigh and severely cutting her salary.

Solution: This situation could have been avoided with a basic Buy-Sell Agreement provision preventing transfers of shares without the consent of the shareholders. Alternatively, a Buy-Sell Agreement could have provided Leigh a first right of refusal, giving her the option to buy David's shares for the same price offered by Rex, before Rex



What makes sense for one company may not make sense for another company considering the objectives of the owners.

has the option to buy. In that case, if Leigh did not exercise her option to buy David's shares, David could then sell them to Rex.

Scenario 2 – Don't Deny Me Those Additional Funds

After three years of operation, ABC, Inc. desperately needs cash to purchase additional equipment to meet the increasing demand for its product. Amy and Bill, owners of two-thirds of the corporation's stock, out-vote Clint, the remaining one-third owner, and adopt a resolution to have the corporation borrow the needed funds from their bank. As a condition to closing the loan, the bank requires personal guaranties from each of the shareholders. Clint refuses to execute his personal guaranty, effectively vetoing the loan transaction.

Solution: One effective way to avoid veto of the loan by Clint would have been a shareholder agreement that required all shareholders to execute personal guaranties, upon the majority vote of the shareholders. When Clint refused to sign the personal guarantee, the shareholder agreement could have given Amy and Bill the option to buy Clint's shares at a price much lower than fair market value.

Scenario 3 – My Partner's Death is Killing Me

Anne and Hugh are 50-50 owners of Acme, LLC. Both are members and managers of the company and work fulltime for the company. Tragically, Anne is killed in an automobile accident on her way to work. In her will, Anne leaves all of her interests in Acme, LLC to her husband, Bob, who has always resented the close relationship Anne had with Hugh. Bob inherited no management rights in Acme, LLC, but did receive Anne's capital and profits and losses interests in the company. Bob refuses to help Hugh with the company's business and takes every opportunity to make things difficult for Hugh, including threatening a lawsuit to challenge the amount of Hugh's salary from the company. Hugh would love to buy Bob's interests in the company for fair market value, but Bob refuses to sell.

Solution: An operating agreement could have given Hugh the option to purchase Anne's interests in the LLC upon her death at a price determined by an agreed-upon valuation method, thereby preventing her surviving spouse from becoming a 50% owner. With additional careful planning, Hugh and Anne could have purchased life insurance to fund the purchase of each other's interests in the LLC upon their respective deaths.

Scenario 4 – Stalemate

Peter and Greg are 50-50 owners of P&G, LLC. Both are members and managers of the company. The company has been quite successful in its internet mail order business and has accumulated a substantial amount of cash. Peter would like to invest the company's excess cash in a retail outlet store immediately. Greg believes that such an investment is unwise and would prefer to invest the cash in certificates of deposit until the economy becomes more stable. Both are adamant in their positions, and their 50-50 voting interests do not provide a way to break the stalemate. Resentment quickly builds between the partners. Each would like to buy out the other's interests in the company, but both refuse to sell.

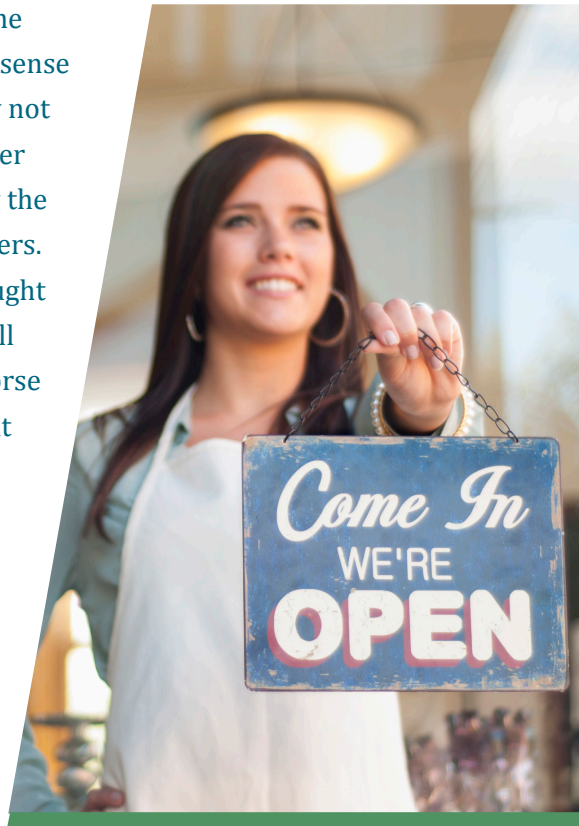
Solution: The stalemate could have been broken by a compulsory buy-sell mechanism in an operating agreement, which could be triggered by either member, requiring the sale of a member's interests to the other member or the purchase of the other member's interests in the LLC. Such a provision, for example, will allow Greg to offer to either buy Peter's interests in the LLC for $1,000,000, or sell Greg's interests in the LLC to Peter for the same price. Peter will then have to make the decision whether to buy or sell within a given time period. If Peter fails to act, Greg will have the right to buy Peter's interests in the LLC. This is a fair way to force a transfer of the interests to one of the members at a fair price. This provision also insures that Greg will not set the price too high, because he may have to pay that price, and that he will not set the price too low, because he will not want to be forced to sell for the low price.

Scenario 5 – Unintended Consequences

Deana and Joe own an equal number of shares of DJ, Inc., a corporation with a properly filed Subchapter S election. Following the advice of his brother, who has no legal or accounting background, Joe makes a gift of 10% of his shares of DJ, Inc. to a trust that was created for the benefit of Joe's children. Unfortunately, Joe's children's trust was not drafted well, and could not qualify as a proper owner of stock in a Subchapter S corporation. Joe's uninformed attempt at estate planning causes DJ, Inc. to lose its Subchapter S status and costs the corporation thousands of dollars in taxes. Deana, being familiar with the types of shareholders permitted to own stock in a Subchapter S Corporation, wishes Joe had been required to inform her before the transfer.

Solution: A shareholder agreement could have prohibited and voided any transfer of shares that would cause the corporation to lose its Subchapter S status. Further, a shareholder agreement could have required Joe to indemnify DJ, Inc. and Deana from any additional taxes they are required to pay as a result of the forfeited Subchapter S election, and could have given Deana the right to purchase Joe's shares at discounted price. Such harsh provisions could have also helped make Joe aware of the issue before he acted and served as a deterrent.

Each of the problems described above could have been prevented or resolved with a good Buy-Sell Agreement. However, it is important to note that there is no "one-size-fits-all" solution for Buy-Sell Agreements and they need to be tailored to the needs and expectations of the owners. What makes sense for one company may not make sense for another company considering the objectives of the owners. Further, a poorly thought out or drafted Buy-Sell Agreement can be worse than not having one at all. Business owners should take the time to think through the circumstances that could happen and the outcomes they desire. The time commitment and legal costs of obtaining a carefully-considered and well-drafted Buy-Sell Agreement are minimal when compared to the time and cost of resolving problems when no agreement exists. The best time to consider and execute a shareholder or operating agreement is at the beginning of the business relationship before any conflict arises. However, it is never too late for willing business owners to enter into shareholder or operating agreements.



"Do I really need a lawyer? The nice government investigators just want to ask a couple of questions."

by Wes Camden
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So, the quick answer is "yes." But why? If you haven't done anything wrong, then you're fine. If you have, there's nothing a lawyer can do to save you. So why fork over a chunk of your hard-earned savings to hire an attorney? Also, won't it make people think you're guilty? These are questions I get all the time.

My youth can be most charitably characterized as misspent. If I could go back and do it all over again, I would spend my summers as a whitewater rafting guide. The dangers of whitewater rapids are (relatively) obvious, and inspire genuine and understandable fear. So, I'm betting that I probably wouldn't have run into a lot of people asking "Do I really need a paddle?" or "I don't really think that I need a life jacket, right?" Honestly, I'd think long and hard before getting in a raft with anyone who asked that kind of question.

The dangers of failing to properly respond to a government investigation are no less real. Granted, the likelihood of drowning-in-onrushing-water-while-being-crushed-against-rocks is lower, but you could easily lose all of your assets and spend months, if not years, in prison (to say nothing of the toll on your family, your health, and your sanity). Having said that, in my experience, these dangers rarely seem to produce the same visceral fight or flight response.

But here's the thing…I bet the average person intuitively knows a heck of a lot more about how to successfully navigate a set of rapids than they do about how to successfully navigate a government investigation.

If that's true, how can we explain the fact that no one is asking whether they should have a paddle or life jacket on a whitewater rafting tour, while people routinely question whether they need counsel in the face of a team of government investigators? There are doubtless several excellent answers to this question, but a few jump to the top of my mind:

- **I'm not a criminal, so I don't need a criminal lawyer** – It's an understandable view. No one likes to think of themselves as a criminal. But in a day and time where the federal government has over 4,500 criminal laws on the books (to say nothing of the several states), the reality is you probably are a criminal (spoiler alert: I'm almost certainly one too). Moreover, you probably have no idea of the several crimes you may have committed because many of them are not obvious. Don't

(continued on page 9)

Joint Trusts: A Useful Tool for Some Married Couples

by Zac Lamb
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In appropriate circumstances, a Joint Revocable Living Trust ("Joint Trust") can provide a married couple with significant benefits, and simplify the administration of assets upon death or incapacity.

The Probate and Estate Administration Process

In order to illustrate the benefits that can be achieved with a Joint Trust, it's helpful to first understand the typical probate and estate administration process that occurs when a person dies. When a person dies with a Will, the designated Executor in the Will typically submits the original Will for probate in the Estates Division of the Clerk of Superior Court in the county where the decedent resided at the time of death. "Probate" is the legal process by which the court validates the submitted document as the legal Will of the decedent. When offering the Will for probate, the designated Executor typically also files an application with the court to be appointed as Executor of the estate and granted Letters Testamentary, which is the legal document confirming the Executor's authority to act for the decedent's estate.

If a person dies without a Will, the decedent's spouse or nearest relative typically files an application with the court in the county where the decedent resided at the time of death seeking to be appointed as Administrator of the estate and granted Letters of Administration which is the legal document confirming the Administrator's authority to act for the decedent's estate.

Once the court appoints an Executor or Administrator of the estate, as the case may be, that person is referred to as the "Personal Representative" of the estate and is charged with several duties and obligations. Actions required of the Personal Representative include:

- Taking control of the decedent's assets;
- Filing an inventory with the court identifying the value of all of the decedent's assets to the penny;
- Publishing a notice to creditors giving them three months to file claims with the estate;
- Satisfying any creditors' claims;
- Distributing all remaining assets to the decedent's beneficiaries; and,
- Filing an accounting with the court to report to the penny what occurred with all of the assets.

The court supervises the process at every step along the way and must ultimately approve all actions taken in the course of the estate administration before the Personal Representative will be relieved of their appointment.

A couple who meets the right criteria could establish a Joint Trust and retain full control over the trust assets and can change the trust document at any time.

Movement Away from Probate

Over the last few decades, a trend has developed in the estate planning community to attempt to structure a person's affairs so that no assets will pass through a probate estate supervised by the court. That trend has developed in response to a public perception that the court supervised process is not only unnecessary but also yields additional costs. For instance, additional fees must be paid to attorneys and other advisors to prepare the inventory, accountings, and other documentation necessary to satisfy a court that the estate was properly administered. Also, in North Carolina, the court charges a fee of $4 per $1,000 of value that passes through the estate, excluding the value of any real estate. Currently, there is a cap on this fee in the amount of $6,000, which is reached when the value of the estate assets equals $1,500,000.

Additionally, all reporting made to the court about the administration of an estate is public record, meaning that anyone can access the information. The public nature of the process is why news organizations are often able to publish articles soon after a celebrity's death detailing what assets the celebrity owned and who received them. Such publicity causes concern for many people, because they fear that their heirs will become targets for gold-diggers. This has further strengthened the trend away from court supervised estate administration.

Several techniques are available to avoid the court supervised estate administration process. These include:

- Registering financial accounts as joint with rights of survivorship;
- Adding beneficiary designations to life insurance or retirement accounts; and,
- Adding pay-on-death or transfer-on-death designations on financial accounts.

However, because it is rarely possible to utilize those techniques to fully exempt a person's assets from the court supervised estate administration process, the most commonly used avoidance device is the Revocable Living Trust.

The Revocable Living Trust

A Revocable Living Trust is essentially a substitute for a Will. To create a Revocable Living Trust, a person typically transfers the person's assets to himself or herself as trustee and signs a written trust document that contains instructions as to what the trustee is to do with those assets while the person is alive as well as upon death. The trust document also identifies who should take over as successor trustee when the person is no longer able to serve due to death or incapacity.

During life, the person's assets in the trust may be used in any way the person, as trustee, directs, and the person may change the instructions in the trust document in a similar manner as one can change a Will. If the person becomes incapacitated, the successor trustee is instructed to use the trust assets for the person's care.

At death, the successor trustee wraps up the person's affairs by

utilizing the trust assets to satisfy all of the person's liabilities and distributes the remaining assets to the beneficiaries identified in the trust document. No court supervises the process, so no court fees are incurred.

Moreover, advisors' fees related to preparing court filings are avoided. Also, the administration of the trust is a private matter with nothing becoming public record. This process often results in a much better outcome for the person's beneficiaries as compared to having the assets pass through the court supervised estate administration process.

The Joint Trust

Typically, when a married couple utilizes a Revocable Living Trust based estate plan, each spouse creates and funds his or her own separate Revocable Living Trust. This results in two trusts. However, in the right circumstances, a married couple may be better served by creating a single Joint Trust.

A Joint Trust tends to work best when a couple has the following characteristics:

- The couple has a long, stable relationship;
- Divorce is not a concern for either spouse;
- The couple is willing to identify all assets as being owned one-half by each of them;
- No creditors' claims exist, whether current or contingent, for which the creditor could seek to collect from only one spouse and not the other;
- Neither spouse has children from a prior relationship;
- Each spouse is comfortable with the surviving spouse having full control over all of the assets after the death of one of the spouses; and,
- The value of the couple's assets is less than the federal estate tax exemption amount. For deaths occurring in 2017, this amount is $5.49 million (or $10.98 million per couple) reduced by any taxable gifts made during life.

A couple who meets these criteria could establish a Joint Trust by transferring their assets to themselves as co-trustees and signing a trust document to provide instructions as to what the co-trustees are to do with the assets. Typically, while both spouses are alive and competent, they retain full control over the trust assets and can change the trust document at any time. If one of the spouses becomes incapacitated, the other spouse continues to control the trust and can use the trust assets for the couple's care.

After the death of one of the spouses, the Joint Trust will continue. The surviving spouse would continue serving as trustee and have full control over the trust assets. No transfers of assets are required at the first death because all assets are already in the Joint Trust.

Upon the death of the surviving spouse, the designated successor trustee wraps up the surviving spouse's affairs by utilizing the Joint Trust assets to satisfy any liabilities and distributes the remaining assets as directed in the trust document.

The following are some of the benefits afforded by a Joint Trust:

- Throughout this entire process, there is no court involvement. This minimizes costs and promotes privacy.
- The couple no longer has to worry about whether a particular asset is owned by one of the spouses or by one of the spouses' separate Revocable Living Trusts. All assets are simply owned by the Joint Trust.
- Since only one trust is ever created, no transfers need to be made after the death of the first spouse to die. This simplification in the administration process minimizes advisors' fees and other costs and is a key advantage of using a Joint Trust.

A Joint Trust can possibly yield even more benefits in certain situations. For instance, it may be possible to characterize some or all of the assets in a Joint Trust as community property. The benefit of having assets characterized as community property is that such property will receive a full basis adjustment for income tax purposes (commonly referred to as a "step-up" in basis) at the death of the first spouse to die as opposed to only one-half of the property receiving such a basis step-up.

Additionally, it may be possible to include asset protection features in the Joint Trust so that any real property owned by the trust would be afforded the same protection as real property owned by a married couple as tenants by the entireties. Such protection prevents a creditor of just one spouse from enforcing the liability against the real property owned by the couple. Though the details of these benefits are beyond the scope of this article, they demonstrate that a Joint Trust potentially can provide additional advantages beyond those listed above. ▮

In the right circumstances, utilizing an estate plan that involves a Joint Trust can simplify a married couple's affairs and, as a result, make the administration process easier after death and ultimately lower costs. Any couple interested in a Joint Trust should contact competent counsel to assist them in evaluating whether the technique is appropriate for them.

"Do I really need a lawyer?"

cont. from page 5

believe me? I encourage you to peruse the offerings of the good folks @CrimeADay on Twitter. The point is, you likely don't know if you've committed a crime or not. But the fact that investigators are asking to speak with you is a pretty good sign that they think you have. This should alarm you.

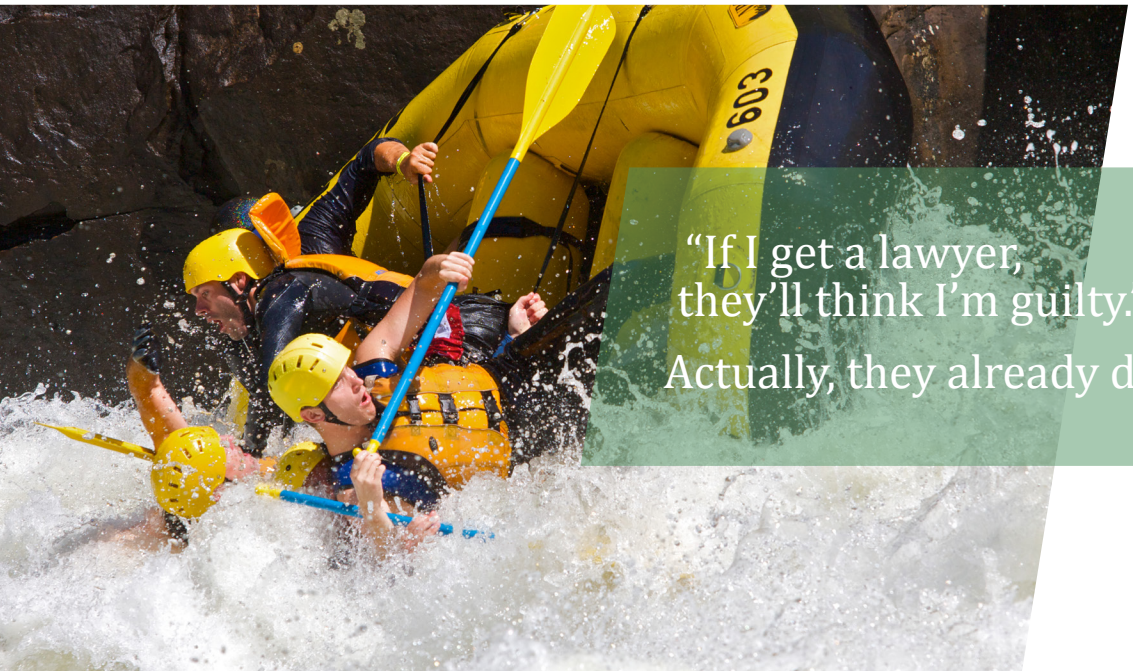
- **If I get a lawyer, they'll think I'm guilty** – Another spoiler alert—the investigators already think you're guilty, that's why they're here. They are busy people. They don't just open the phone book every morning and pick out a random set of 20 people to go visit. The investigators standing in front of you are there for a reason. That reason is almost certainly not good news for you.

- **They just want to ask a few questions, and they seem so polite** – Investigators receive extensive training on how to get you to talk with them. If they sense that you respond to fear or authority, then they may try to make you feel like you have no choice but to speak with them. More often, though, they will try to disarm you by being friendly and leaving you with the impression that the investigation is not that big of a deal. If you're like most folks, you have zero training in how to respond to questioning by government agents. Hiring a lawyer is the easiest and most effective way to level the playing field, or tip it in your favor. You want the field tipped in your favor.

Like I said, there are surely dozens of other reasons why people routinely respond to government investigations without the aid of counsel. My point is, doing so is no less dangerous than braving rushing rapids without a paddle or life jacket. And, sadly, the consequences of both are grave.

I used to work as a federal prosecutor. Agents would bring me cases on a weekly basis to review and consider for prosecution. One of the first things I would look for is a statement from the target. If the soon-to-be defendant all but confessed to the crime in his or her statement, the case was more attractive to me. You do not want to be attractive in the eyes of a prosecutor. But every moment you spend communicating with government agents, every document you provide them, every statement you make, you are becoming a more attractive target to the prosecutor.

So, don't go it alone. If you are contacted by government investigators, hire a lawyer before you do anything else. You don't have to hire me (though that would be nice), but you do need to hire someone. Competent legal counsel can and will help you navigate the treacherous waters of an investigation and, with any luck, may be able to get you back to shore safely.



"If I get a lawyer, they'll think I'm guilty."

Actually, they already do.

Deana Labriola Named 2017 "Women in Business" Award Winner

Corporate attorney Deana Labriola has been recognized as a 2017 Women in Business Award winner by the Triangle Business Journal. She and the other winners were honored at a luncheon last month.

Deana serves as the firm's market leader for the Triangle. She also leads the firm's Technology practice, and represents a number of local technology and biotechnology companies in venture and seed capital transactions, stock option and non-cash compensation plans, and other business structuring for investment. She holds several leadership roles in civic and nonprofit organizations, including serving on the Go Red Executive Leadership Team for the American Heart Association, the Durham YMCA's Executive Committee, Housing for New Hope's Board of Directors, and also is an involved member of the Downtown Durham Rotary Club.

Leadership Changes

We recently announced several changes in firm leadership. The changes were implemented to address opportunities identified by internal succession planning, and support attorneys who are interested in taking on new leadership and management positions, in addition to their full-time law practice.

Greenville personal injury attorney **Lynwood Evans** will become the firm's Litigation Practice Section Leader. Lynwood represents the interests of people who are injured, or families who have experienced the injury or death of a loved one. Asheville commercial litigator Bill Durr was the previous litigation Practice Section Leader, and successfully guided one of the firm's largest sections for 12 years. Bill was recently elected to serve on the Board of Directors of Asheville's Downtown Association.

Wilmington litigator **Jeremy Wilson** succeeds Lynwood Evans as leader of the Personal Injury Practice Group. He has extensive experience litigating claims for wrongful death, serious personal injury, and a broad range of civil litigation before state and federal courts, including cases involving vehicle accidents, professional malpractice, premises liability, products liability, and class actions, among other areas.

Raleigh business and creditors' rights attorney **Tyler Russell** will lead the firm's Financial Institutions Practice Group. Tyler's creditors' rights practice encompasses bankruptcy, collections, and lender liability issues and he has worked with a variety of financial institutions in that capacity. He also advises companies on a broad range of business matters, from drafting and negotiating corporate agreements and documents to managing all aspects of mergers, acquisitions, and other transactions for a variety of companies.

Real Estate attorney **Drake Brinkley** will serve as the Greenville office Team Leader. Drake works with entities and individuals in transactions involving commercial real property. He also represents developers and investors in all aspects of the land development process, including obtaining land use and zoning entitlements. Drake's civil engineering background provides practical assistance to clients throughout real estate transactions. He is an accredited Leadership in Energy and Environmental Design associate (LEED AP).

Wilmington trusts and estates attorney **Matt Thompson** will join the firm's "Libby Ward" Committee, which helps the firm maintain continuity of professional relationships in order to better serve our clients. He is certified by the North Carolina State Bar as a Board Certified Specialist in Estate Planning and Probate Law.

Wilmington litigator **Allen Trask** will serve as the leader of the firm's Agribusiness Practice Group. He focuses his practice on the resolution of a broad range of business, commercial, real estate, and community associations disputes.

View from the State House

This year's Long Session will feature Republican super majorities in both chambers for the seventh consecutive year and an Executive Branch power shift with Roy Cooper, a Democrat, in the Governor's mansion.

Republican priorities and the natural power struggle between the Legislative and Executive Branches will dominate the Long Session. We expect to see the Governor's budget priorities overridden by the General Assembly. The Governor will probably veto the General Assembly's budget and the legislature's subsequent veto override is all but a *fait accompli*.

However, we believe the Governor will secure at least a few of his key budget priorities in the final plan, particularly with regard to education spending and teacher pay, if the two branches can reach across the divide. Governor Cooper may just yet sign a budget penned by House and Senate Republicans into law.

Governor Cooper is expected to benefit from his experience serving in both chambers of the General Assembly during budget negotiations with the House and Senate. Regardless of whether the final budget wins Cooper's approval, an enacted budget is possible with or without the Governor's veto if sixty percent of each chamber votes to override it.

The release of the Governor's budget signaled the formal beginning of this biennium's appropriations process. The House and Senate will now take their turns at crafting budget proposals, likely after revenue projections become more concrete. In the last weeks of session, the two chambers will appoint budget conferees to negotiate differences between the budget proposals and produce a compromise spending plan for the state.

At the fiscal half-year mark on January 1, the state's revenue collections outpaced the current budget's expectations by $322 million, or 3 percent, increasing the likelihood that lawmakers will have a surplus to allocate during the upcoming session. A revenue surplus is a strong indicator of economic health and pragmatic budgeting, but can also complicate negotiations between the House, Senate and Governor and could extend the length of session. In recent biennia, surplus dollars have been directed to pay raises and bonuses for state employees and teachers as well as padding the General Fund's reserve account.

While Short Sessions are subject to restrictions that govern which types of bills may be filed, Long Sessions are far more permissive. When pressed for details on what they plan to propose, the Republican leadership has expressed interest in familiar topics.

Reform of the regulations that govern businesses, simplification of the state tax code and income tax cuts have been staples of the Republican majorities that we should expect to see more of in 2017. The 2016 Short Session was the first year since winning control of both chambers that Republicans did not enact a piece of omnibus regulatory reform legislation, indicating that there is probably a backlog of regulations that legislators would like to see modified or rescinded in 2017.

Whitney Campbell Christensen and Jamie Norment are members of the Ward and Smith Government Relations team. They help clients connect with government at the local, state, and national level. Contact Whitney at wcchristensen@wardandsmith.com or Jamie at jwn@wardandsmith.com

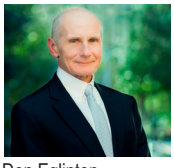
Kudos and Congratulations

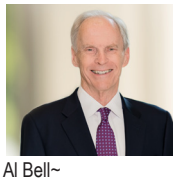
to our attorneys recognized in Busines
2017 Legal Elite and 2017 Super Lawy


Lauren Arnette+~


Angela Doughty~

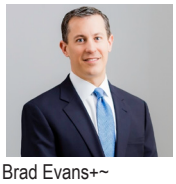

Tom Babel~

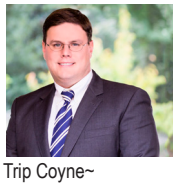

Don Eglinton~


Al Bell~


Charles Ellis~


Wes Camden+~


Brad Evans+~


Trip Coyne~


Lynwood Evans~


Jim Creekman+


Paul Fanning+~


Ken Gray+

We're pleased to announce the inclusion of ten of our attorneys in Business North Carolina's Legal Elite 2017*. Less than three percent of the state's attorneys were selected for this distinction.

- **Lauren Arnette**, Family Law
- **Wes Camden**, Criminal Defense
- **Brad Evans**, Antitrust Law
- **Paul Fanning**, Bankruptcy Law
- **Ken Gray**, Employment Law
- **Will Oden**, Employment Law
- **Grant Osborne**, Employment Law
- **Jake Parrott,** Real Estate
- **Caitlin Poe**, Young Guns
- **Jason Strickland**, Construction

In addition, **Jim Creekman** and **David Ward** are included in the Legal Elite Hall of Fame in the category of Corporate Counsel.

Twenty-six Ward and Smith attorneys have been recognized as "Super Lawyers" or "Rising Stars" in the 2017 edition of North Carolina Super Lawyers Magazine*. Attorneys are chosen as "Super Lawyers" or "Rising Stars" through a statewide nomination process, peer review by practice area, and independent research on candidates. Only five percent of North Carolina attorneys are selected to the Super Lawyers list. Selections are made on an annual, state-by-state basis.

- **Tom Babel,** Business Litigation
- **Al Bell**, Employment & Labor
- **Wes Camden**, Criminal Defense: White Collar
- **Don Eglinton**, Business Litigation
- **Charles Ellis**, Personal Injury General: Plaintiff
- **Brad Evans**, Business Litigation
- **Lynwood Evans**, Personal Medical Malpractice: Plaintiff
- **Paul Fanning**, Creditor Debtor Rights
- **John Martin**, Business Litigation
- **Lance Martin**, Creditor Debtor Rights
- **Michael Miller**, Employee Benefits
- **Greg Peacock**, Estate Planning & Probate
- **Gary Rickner**, Business Litigation
- **Troy Smith**, Business/ Corporate
- **Ryal Tayloe**, Construction Litigation
- **Ken Wooten**, Business Litigation

Ward and Smith attorneys recognized as 2017 Rising Stars® include:

- **Lauren Arnette**, Family Law
- **Trip Coyne**, Business Litigation
- **Angela Doughty**, Intellectual Property
- **Zac Lamb**, Estate & Probate
- **Caroline McLean**, Business Litigation
- **Will Oden**, Employment & Labor
- **Michael Parrish**, Business Litigation
- **Allen Trask**, Business Litigation
- **Hayley Wells**, Employment & Labor
- **Jeremy Wilson**, Personal Injury General: Plaintiff

s North Carolina's ers and Rising Stars


Zac Lamb~


Michael Parrish~


Jason Strickland+


Jeremy Wilson~


John Martin~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Ryal Tayloe~


Ken Wooten~


Lance Martin~


Greg Peacock~


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Caitlin Poe+


David Ward+


Michael Miller~


Gary Rickner~


Hayley Wells~


Will Oden+~


Troy Smith~


Grant Osborne+

+ Legal Elite
~ Super Lawyers

* Please see the following websites for an explanation of the membership standards for the following recognitions: businessnc.com/special-sections/legal-elite and www.superlawyers.com/north-carolina.

Ward and Smith Process Improvement Team Receives Yellow Belt Certification

A cross-functional team of Ward and Smith attorneys and staff earned their Yellow Belt certifications in Legal Lean Sigma® and Project Management from the Legal Lean Sigma Institute. **Tom Babel, Charles Collins, Angela Doughty, Laura Hudson, Sara Jones,** and **Jennifer Sutton** recently completed the two-day, hands-on training in Washington, D.C. as part of the on-going Ward and Smith 2017 Legal Lean Initiative to improve efficiency, provide cost predictability, and streamline processes to enhance client service.

Tom and Angela earned their White Belt certifications through the Institute. This second, more rigorous, Yellow Belt training also included members from the firm's IT, marketing, finance, and operations departments. The team is now tasked with reimagining and refining firm-wide processes to reflect the firm's commitment to high-quality client service delivered efficiently, and with cost-predictability.

Notable News

Charles Collins has been promoted to Director of Information Technology. He leads the firm's evaluation and implementation of all technology platforms. He leverages his extensive knowledge and all available technology to ensure the firm provides innovative and secure solutions to clients. Charles has more than 15 years of experience in information technology and application development in the legal industry. He is an active member of the International Legal Technology Association (ILTA) and also serves on the Advisory Board for the Havelock Boys & Girls Club of Coastal Carolina.

Vicki Spillane has been promoted to the position of E-Discovery and Litigation Support Manager. She will continue managing support of litigation and trial preparation, employee training, and special projects. She is a Certified e-Discovery Specialist, a Trial Director Certified Trainer, a Microsoft Certified Trainer, and a certified Litigation Support Professional.

Four Experienced Intellectual Property Attorneys Join Ward and Smith

We have a newly expanded Intellectual Property practice with the addition of four patent attorneys. Bob Crouse, Shawna Lemon, Ph.D., Bob Meeks, and Liz Stanek joined the firm from an intellectual property boutique in Raleigh.

Bob Crouse

Bob focuses on patent protection in areas including semiconductor devices, biomedical devices, LED lighting, power devices and systems, consumer electronics, and "smart grid" systems. He also has experience performing due diligence analyses, counseling clients in the acquisition of third party patents, and negotiating disputes over patent license agreements. He has helped numerous clients develop a robust patent portfolio.

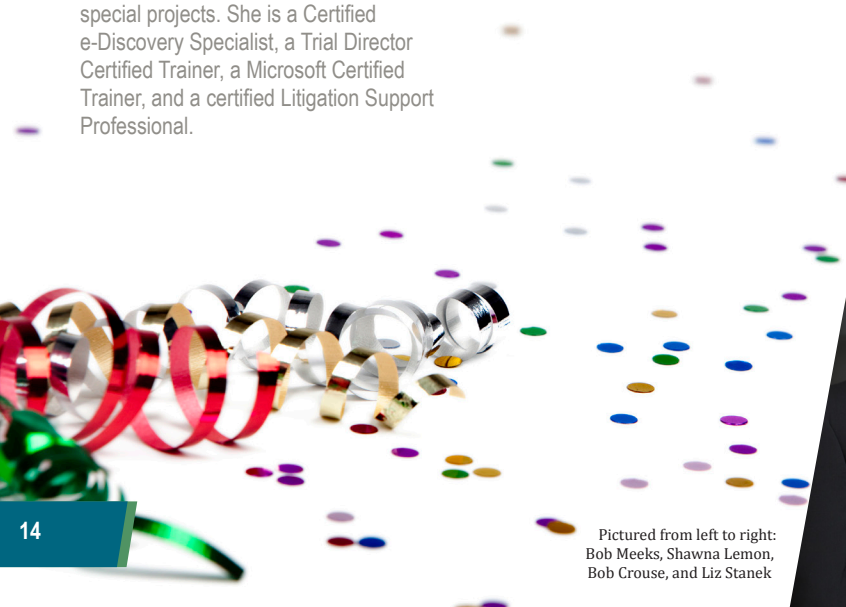
Bob is responsible for the management of patent matters for a wide range of clients including one of the world's leading semiconductor and consumer electronics manufacturers.

Shawna Lemon, Ph.D.

Shawna serves as outside patent counsel to pharmaceutical and biotechnology management teams and universities where she engages in the formulation and implementation of global patent strategies. She assists clients with intellectual property due diligence, partnering negotiations, and trademark protection. She has co-authored publications in scientific journals and is a frequent speaker on patent law topics. Prior to her legal career, Shawna worked in pharmaceutical market development at Merck & Co.

Bob Meeks

Bob has extensive experience in the preparation and prosecution of patent applications for electronic, telecommunications, software, semiconductor, and electromechanical inventions, with special emphasis on electric power technologies, such as data center power distribution, microgrid control, distributed generation, uninterruptible power supplies, electrical switchgear and motor controls. His practice also includes patent prosecution support for licensing campaigns, counseling on infringement matters, and IP landscape analysis for new products and emerging companies. Prior to his legal career, Bob served as a senior design engineer with the Electronic Systems Group of the Westinghouse Electric Corporation in the area of design and integration of advanced controls for airborne radar and electro-optic systems.



Pictured from left to right: Bob Meeks, Shawna Lemon, Bob Crouse, and Liz Stanek

Liz Stanek

Liz serves as outside patent counsel for companies as small as startups to world leaders in their field. In addition to client counseling and portfolio management, Liz focuses her practice on preparing, filing, and prosecuting domestic and foreign patent applications in the electrical arts including telecommunications, semiconductors, power devices, LEDs, medical devices, HVAC systems, microscope systems and design, "smart grid" related technology, imaging, and software.

On the Move in Raleigh

Ward and Smith will become the marquee tenant in the latest Highwoods Properties building project located at 751 Corporate Center, occupying the top floor of the new 90,000 square foot building located near PNC Arena. The Ward and Smith building will be the third in Corporate Center Park.

We've engaged Alliance Architects to design a progressive space that will accommodate 50 attorneys and 50 support staff in anticipation of the firm's continued growth in the Triangle.

The new space will include many features unique to the firm's culture. All offices are the same size to reflect a sense of equality. Corner spaces are not reserved for large partner offices, but instead will be used for conference rooms or common space open to all to demonstrate the importance of teamwork and collegiality. On-site amenities include a café, fitness center, and a conference facility.

The move is necessitated by our growth. In 2016, we enjoyed continued expansion in the Triangle, hiring lateral real estate, white collar defense and litigation, and trusts and estates attorneys. The firm grew to 97 attorneys by the close of the year, and we will continue to attract lateral attorneys and recruit new talent via the firm's long-running summer associate program.

Welcome…

Charles Yang, Ph.D.
Patent Agent

Charlie is experienced in many aspects of patent preparation and prosecution, with a focus primarily on the biotech and chemical arts, and has been registered to practice before the U.S. Patent and Trademark Office since 2013.

Prior to joining the firm, Charlie worked at a boutique intellectual property law practice. He was a Postdoctoral Fellow in The Lineberger Cancer Center and the Human Gene Therapy Center at the University of North Carolina at Chapel Hill, and a research scientist for a start-up biotechnology company in the Research Triangle Park. Charlie is the primary and co-author of several publications in the fields of bio-organic chemistry, biochemistry, molecular biology, and molecular virology.

Amber Jordan
Litigation Attorney

Amber's practice experience encompasses various areas of complex civil litigation with a focus on family law and appellate matters. She is licensed to practice law in New York and Texas.

Activity Tracker Data: Can Your Step Count Be the Key to Winning or Losing a Lawsuit?

by Marla Bowman
msbowman@wardandsmith.com

Activity trackers such as Fitbit®, Jawbone®, Garmin®, and the Apple Watch® are becoming more ubiquitous on the wrists of people everywhere with some driven by the competition to "get their steps in," and others hoping to improve their health and wellness. While the increasing popularity of activity trackers is unquestionable, the legal consequences of wearing them are just starting to develop.

How can the information collected and stored by activity trackers be used if a wearer is involved in civil litigation or a criminal prosecution? This Article attempts to answer that question.

Activity trackers are designed to, and do track, a wearer's steps and hours of sleep per day, heart rate, and general activity patterns and perhaps even store information about the wearer's location during activity. Indeed, activity trackers are frequently worn 24/7 making them a constant source of a wearer's personal, and once thought to be private, information. The collection of this data presents a whole new realm of evidence that may be used in court. Consider the following four scenarios:

Scenario 1: Jane purchased a Fitbit® six months before she is involved in a car accident. She sues the driver of the other car for neck and back injuries that she claims have caused her to be less active due to constant pain. Jane has worn her Fitbit® ever since she purchased it, including after the accident. Jane could use data from the Fitbit® to show the change in her activity levels post-accident.

Scenario 2: Joe is a criminal defendant charged with armed robbery. Joe's alibi is that he was at home napping when the robbery occurred. However, data from Joe's Apple Watch® indicates that he experienced an abnormally elevated heart rate at the same time of the robbery.

Scenario 3: Jim is suing his former employer for age discrimination which he claims led to his termination. The employer's defense is that Jim was fired because he was a bad employee. In fact, data from Jim's Garmin® watch shows that most afternoons when Jim was supposed to be out of the office meeting with prospective clients, he was actually going for long jogs in the park.

Scenario 4: Jake is bringing a wrongful death lawsuit for the death of his forty year-old wife, who was a school teacher and who wore a Fitbit®. When calculating damages, Jake could hire an expert who could determine her average expected earnings based on her job and also her average life

The collection of data such as the wearer's hours of sleep per day, heart rate, and general activity patterns presents a whole new realm of evidence that may be used in court.

expectancy based on the health patterns recorded by her Fitbit®.

As these scenarios demonstrate, the data collected by activity trackers presents a whole new world of opportunity for supporting, or undermining, claims and defenses in a lawsuit. Yet two very important issues remain: (1) the discoverability, and (2) the admissibility of this information.

Discovering Data from Activity Trackers

In any lawsuit, a frequently contested procedural issue is how much information one party is allowed to "discover" or obtain from the opposing party. For lawsuits in federal court, the rules regarding discoverability are contained in the Federal Rules of Civil Procedure, and courts are often called upon to decide issues related to discoverability and information.

While there is at least one known incident of Fitbit® data being used in a Canadian court in a case similar to the personal injury suit described above in Scenario 1, the use of activity tracker data in U.S. courts still has an uncertain status.

Even though there are no reported opinions in U.S. courts precisely addressing the discoverability of activity tracker information, the Federal Rules of Civil Procedure likely would support the discoverability of this data. Specifically, the Committee Notes from the 2006 Amendments to Rule 34 state that electronically stored information ("ESI") "may exist in dynamic databases and other forms far different from fixed expression on paper" and "electronically stored information stands on equal footing with discovery of paper documents." Thus, Rule 34's definition of ESI is not limited to just emails. Indeed, the Committee Notes specify that ESI should be given a "broad" meaning, and thus it likely includes data from wearable activity trackers. Accordingly, parties would have a duty to produce this data under Rule 34, and a duty to preserve this data or face potential sanctions under Rule 37(e).

Assuming this data is discoverable, from whom should it be requested? There is still uncertainty about who owns the data stored by activity trackers. While this data can be requested from a device wearer, it also can be requested from the provider of the activity tracking service. The terms of use and privacy policies that accompany most activity trackers likely will determine whether it is best to request this data from an opposing party who owns the device or subpoena the information from the third party provider. At least in the criminal context, a recent ruling from the United States Court of Appeals for the Fourth Circuit, which has jurisdiction over federal cases in North Carolina, suggests that activity tracker data can be requested from third party providers without the requirement of a search warrant.

Recently, in United States v. Graham, the Fourth Circuit determined that cell-site location information ("CSLI") could be obtained from a criminal defendant's cell phone provider through a subpoena, without the requirement of a search warrant. The court determined that the defendant's CSLI did not invoke

Fourth Amendment search and seizure protections because the information was voluntarily provided to the third party—the cell phone provider. Three of the Fourth Circuit judges, in their partial dissent and concurrence in judgment, noted that the court's decision creates no reasonable "expect[ation of] privacy in data transmitted by networked devices such as the 'Fitbit®' bracelet."

Based on Graham, wearers of activity trackers should expect minimal protections if their data is requested from a third party provider, and activity tracker providers should prepare to receive subpoenas requesting this information.

The party requesting discovery of activity tracking data should also anticipate that wearers and third party providers will push back. They are likely to claim that the request is overbroad and that there is a lack of proportionality under Rule 26(b)(1), especially since the collected and stored data is often very personal and private in nature. Parties are unlikely to hand over years' worth of their sleep and activity records without putting up a fight. Therefore, requesting parties should be prepared to show the court how this data may lead to information that is relevant to their case. Furthermore, parties requesting this data should consider narrowing the scope of any request so as to avoid a long and tenuous review of years' worth of irrelevant information.

Using Activity Tracker Data in Court

Even if this data can be discovered and analyzed in preparation for litigation, its admissibility into evidence during trial remains unclear because the data reliability is still questionable.

Notably, Fitbit, Inc. ("Fitbit") already has been subject to at least two lawsuits challenging the accuracy of its devices and marketing related to the functionality of its devices. In a 2015 case filed in federal court in Northern California, plaintiffs challenged the accuracy of the Fitbit® sleep tracker function because it tracks movement, not sleep. The claims against Fitbit include unfair competition, false advertising, breach of implied warranty, unfair and deceptive trade practices, common law fraud, and negligent misrepresentation. All of the claims were based on the plaintiffs' allegation that tracking movement is not necessarily a good indicator of sleep quality. Fitbit's motion to dismiss the lawsuit was denied, and the matter is still in litigation.

In January 2016, another lawsuit was filed against Fitbit in federal court in Northern California. This lawsuit included a class of consumer plaintiffs from California, Colorado, and Wisconsin who challenged the accuracy of Fitbit's heartrate monitor. The plaintiffs amended their lawsuit in May 2016 to include allegations based on a university study that compared the Fitbit® heart rate monitor to electrocardiogram ("ECG") heartrate monitoring. The study concluded that the Fitbit® heartrate monitor was inaccurate by an average of about 25 beats per minute when compared to the ECG, and that the Fitbit® often stopped recording wearers' heartrates when they rose above 110 beats per minute.

Thus, the reliability of this type of data may need to be proven, or disproven, at trial through expert testimony. For example, an expert in activity tracker technology could provide testimony explaining the means through which such trackers collect and store data. A judge could then determine if the data is reliable enough to be presented to the jury who would then weigh the credibility of the data based on the expert's analysis. Additionally, an expert could test the accuracy of an activity tracker by, for example, manually counting steps and then comparing that to the number reported by the tracker. Such testing could allow the expert to evaluate the margin of error in a particular tracker's recordings and then testify about the findings.

Tracker device data also may be subject to objections for hearsay, but these objections likely can be overcome through two means. First, if the data is considered hearsay, it may be admissible under the hearsay exception in Federal Rule of Evidence 803(6) for "Records of Regularly Conducted Activity." Second, the data may not necessarily qualify as hearsay under Rule 801 because it may not be offered to "prove the truth of the matter asserted." That is, the data is not offered to prove, for example, that the wearer walked exactly 2,557 steps during a relevant time period, but to prove that the wearer was not asleep or watching a movie as claimed.

Consider Joe from Scenario 2 above. The prosecutor would not be submitting evidence from Joe's Apple Watch® to prove that his heart rate was exactly 170 beats per minute during the time when the robbery occurred—that would be the truth of the matter asserted. The prosecutor just needs to show that Joe's heart rate inexplicably increased during the time of the robbery, which might be unlikely if he were at home napping. If Joe's Apple Watch® on average only tracked 80% of his heart beats per minute, or on average tracked 10% more heart beats per minute than actually occurred, this level of inaccuracy would likely remain constant at all times. Therefore, this consistent, but inexact, measurement would still allow the device to show a significant change in Joe's heart rate, and it could be used to undermine Joe's alibi that he was napping at the time of the robbery.

Much remains unknown about how activity trackers will impact litigation. An increasing number of individuals are purchasing and using these devices each year, and as technology advances, the accuracy of these devices is only likely to improve. With more wearers will come more data collection and, as a result, a greater opportunity for this data to be used in court. Perhaps one day, use of activity tracker data in the courtroom may be as ubiquitous as emails.

Litigation attorney **Tom Babel** has been elected to serve on the Wilmington Chamber of Commerce 2017 Board of Directors.

Business attorney **Merrill Jones** was appointed by the Pitt County Board of Commissioners to serve a three-year term on the Pitt County Development Commission Board.

Litigation attorney **Bill Durr** was elected to the Asheville Downtown Association Board of Directors for a three-year term.

Communications Manager **Shannon Lanier** has been elected to the Legal Marketing Association Southeastern Region Board of Directors.

Jeremy Wilson was selected by the North Carolina Bar Association for participation in its 2017 Leadership Academy. This annual statewide program is capped at 16 participants, thus making admission competitive. Jeremy joins previous Leadership Academy graduates Lauren Arnette, Sam Franck, Will Oden, and Hayley Wells as representatives of Ward and Smith in this prestigious program.

Elections and Accomplishments

Insurance and Liability: What You Need to Know if You Are Injured in an Automobile Accident

by Jeremy Wilson
jw@wardandsmith.com

It's an unfortunate fact, but each year over 100,000 people are injured in automobile accidents in North Carolina, and statistics suggest that nearly every driver will be involved in at least one automobile accident during their lifetime. When an accident happens, injured individuals must understand their legal rights. The goal of this article is to provide a basic overview of the legal process for those who are injured in an automobile accident due to someone else's fault.

The Role of Automobile Insurance

North Carolina law requires that the owner of a registered motor vehicle maintain basic levels of liability insurance coverage. The purpose of liability coverage is to pay for claims when the owner or driver of the vehicle is "liable" for an accident—i.e., when an accident is that owner's or driver's fault. The minimum requirements for coverage in North Carolina are $30,000 for bodily injury to one person, $60,000 for bodily injury to two or more people, and $25,000 for property damage.

Of course, many individuals carry additional coverage beyond these limits, or for additional types of situations. Many automobile liability insurance policies also include Underinsured Motorist Coverage ("UIM") or Uninsured Motorist Coverage ("UM"). UIM coverage applies when the insured owner or driver is injured by the driver of another motor vehicle without insurance coverage sufficient to fully compensate for all resulting injuries. UM coverage applies if the insured owner or driver is injured by a driver who was driving (illegally) without any insurance coverage at all. Thus, in these situations, the injured party is compensated under their own personal insurance policy in addition to, or in lieu of, the insufficient or the nonexistent policy of the person at fault.

In addition, when there is no coverage, or insufficient insurance coverage, the at-fault driver can then be held personally liable for all or the remaining amount of damages resulting from the injuries. Or, if the driver was driving within the scope of the driver's employment, the driver's employer could also be held liable.

Is the Other Party Liable for Your Injuries?

In order for the other owner or driver (or their insurance company) to be responsible to pay you for your injuries, they must be legally liable for those injuries. Simply put, the accident must have

Although it can seem distasteful, the payment of money is how the law compensates for bodily injury and death.

been their fault, and the injuries in question must have been caused by the accident. In legal terms, this means that the at-fault driver was at least "negligent" and the negligence "proximately caused" your injuries.

Sometimes an accident can be more than one driver's fault. North Carolina is one of only a few states that continue to recognize the doctrine of "contributory negligence." That means that if you negligently contribute to an accident in North Carolina to the slightest extent—even 1%—you cannot recover at all from the other driver—even if that other driver was 99% at fault. There are exceptions to this rule, such as the doctrine of "last clear chance," or possibly where the other driver is "grossly negligent," but those exceptions are somewhat rare.

The Elements of Damages

As the injured driver, you will be able to recover all damages "proximately caused" by the at-fault driver's negligence. Proximate cause is a legal term which means "a cause which in a natural and continuous sequence produces a person's injury."

The aim of awarding damages is to make you "whole" under the law. When dealing with serious personal injuries or death, this, of course, is a legal fiction. No amount of money can ever compensate someone for injury or death. Still, the only mechanism the civil legal system has to compensate an injured party is through the payment of money. So, although it can sometimes even seem distasteful, the payment of money is how the law compensates for bodily injury and death and seeks to "balance the harm" incurred. The negligent driver (or the owner of the car driven by the at-fault driver) is the one responsible for paying your damages. If the owner or driver of the other car has liability insurance, that insurance company will pay. If they do not have sufficient coverage (or lack insurance coverage altogether), your own UIM or UM coverage will pay your damages.

The at-fault driver will also be liable for any property damage to your vehicle or its contents. This includes repair costs if your vehicle can be fixed and, in some cases, compensation for "diminution in value." If the vehicle or other property (say, a valuable heirloom that you were carrying in your trunk) cannot be repaired (i.e., is "totaled"), you will be entitled to its replacement value limited to its fair market value at the time it was destroyed.

Regarding personal injuries, you may be entitled to multiple types of damages. First, you will be entitled to any medical costs. Your total recoverable medical costs are any amounts that were actually paid by you or someone on your behalf (including your health insurance), as well as any medical bills that are still outstanding. Do not believe that you can't recover amounts your health insurance paid on your behalf—you can; however, your health insurance carrier may be able to recover from you some of what it paid on your behalf.

You will also be entitled to any future medical costs you can prove will be associated with your care. If you will require medical treatment in the future, a

reasonable estimate of these costs is an element of your damages you will be required to prove.

There are several other types of damages that may be available to you. For instance, you may be entitled to lost wages from not being able to work and a claim for diminished future earning capacity due to ongoing health problems.

There also are non-economic damages meant to compensate you for your pain and suffering, scarring or disfigurement, loss of use of part of your body, or the permanency associated with any continuing injuries. Again, money cannot fix these situations. Still, it is up to the parties, a judge, or a jury to determine a reasonable amount of compensation for these damages based on the specific facts of your case.

Obtaining Compensation

A large number of auto injury claims settle out of court. Many individuals seek out an attorney in order to investigate their case and pursue their claim against the applicable insurance company or at-fault party. If the parties reach an acceptable settlement, the matter can be resolved without any lawsuit being filed.

If you and the other owner or driver cannot reach a resolution, however, the next step will be to file a lawsuit. Any lawsuit must be filed against the liable driver—not against their insurance company. Even though an insurance company may ultimately be responsible for the payment of the damages awarded to you in a lawsuit, North Carolina evidentiary rules prevent you from introducing evidence of insurance coverage at trial because it is thought that such evidence would distract a jury by causing it to focus on how much money might be available instead of the real legal issue—the extent to which you have been injured.

If it becomes necessary for you to file a lawsuit, the parties will engage in a discovery process during which each side investigates the specifics of the claim, any alleged defenses, and the scope of your injuries. If you still cannot settle the matter with the other side—either through informal settlement negotiations or through mediation—there will be a trial whereby a jury or a judge (typically a jury) decides your case.

This process can be incredibly complicated, involving everything from legal research and case strategy, to seeking out and utilizing medical experts. Therefore, it is advisable for anyone pursuing such a claim to consult with an experienced attorney.

Automobile accidents happen every minute of every day and come out of nowhere. Hopefully, when they occur, they are minor. But sadly, they sometimes involve serious personal injuries. While the involvement of "trial lawyers" in automobile accident cases can sometimes raise negative connotations, the fact is that reaching out to an attorney to assist with these claims is typically the best approach. Involving an experienced, committed attorney will ensure that you protect your rights and also receive guidance through a challenging, and often complex, situation.

*Trademark Attorney Angela Doughty Listed in World Trademark Review 1000**

Intellectual property attorney Angela Doughty has been listed in the World Trademark Review ("WTR") 1000. Now in its seventh year, the WTR 1000 shines a spotlight on the firms and individuals that are considered outstanding in this area of practice.

The 2017 WTR publication features more than 80 country and U.S. state-specific chapters analyzing local trademark legal services markets and profiling the firms and individuals singled out as leaders in their respective fields. Individual practitioners, law firms, and trademark attorney practices qualify for inclusion in the WTR 1000 upon receiving sufficient positive feedback from market sources.

Angela leads Ward and Smith's Intellectual Property practice and is a North Carolina State Bar Board Certified Specialist in Trademark Law. She routinely counsels and assists clients with identifying, protecting, and enforcing their U.S. and international intellectual property rights; anti-counterfeiting and U.S. Customs matters; Internet and domain law issues, including proceedings before the National Arbitration Forum and World Intellectual Property Organization; website terms of use and privacy policies; branding and franchising agreements; software development and licensing transactions; managing domestic and international property portfolios; and negotiating the acquisition, licensing, and transfer of intellectual property rights.

Angela is rated by her peers as "preeminent" in her respective areas of law and serves on the executive board of the 600+ member Intellectual Property Law Section of the North Carolina Bar Association and on the North Carolina State Bar Board of Specialization Trademark Law Committee.

* Please see the following website for an explanation of the membership standards for the WTR recognition: http://www.worldtrademarkreview.com/wtr1000/info/Methodology.aspx

Brad Evans Named Co-Managing Director

We're pleased to announce that Greenville litigator Brad Evans is the firm's Co-Managing Director effective May 1, 2017. Brad will serve alongside New Bern litigator Ken Wooten, who was elected to the position in 2005, and succeeds Charles Ellis, who served the firm in the co-managing director role since 2006.

Brad previously led the Agribusiness practice and his experience encompasses various areas of civil litigation in both the federal and state courts. He has experience in all aspects of civil litigation, including depositions, hearings, mediations, arbitrations, jury trials, and appeals. Brad advises clients and litigates cases involving all forms of commercial, business, estate, and intellectual property disputes. He regularly represents contractors, subcontractors, and suppliers in construction litigation in state and federal courts. He has litigated numerous matters concerning trade secret misappropriation and intellectual property infringement.

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