

BACK ON TRACK



Hajek, Shapiro, Cooper, Lewis & Appleton, P.C., NEWSLETTER

SUMMER 2006

Brought to you by
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Attorney Appleton and staff have joined our law firm Our firm name has changed also

Our law firm is pleased to announce that attorney **Randall E. Appleton** has joined our team, effective July 15, 2006, and we have modified our firm name to underscore the new changes. Randy has over 20 years of injury law experience in railroad/FELA, general injury law, and medical negligence cases, and was most recently in solo private practice in Portsmouth, Virginia, before joining our firm. Also joining our firm are **Becky Wyatt**, Randy's paralegal/assistant, and Randy's full-time investigator, **Herbert Wooten**, a former railroader (conductor) who held numerous rail union positions before becoming an investigator of railroad, rail crossing, motor vehicle, and other injury cases over 15 years ago. Herb Wooten's office is located in Elm City, North Carolina, east of Raleigh; due to Herb's extensive experience, he brings a vast array of contacts to our overall law firm.

Randy Appleton also has extensive injury litigation experience, having handled injury cases in VA, NC, SC, GA, FL, WV, MD, KY, TN, and PA. Wow! He also holds law licenses in VA, NC, WV, KY, and most recently passed the South Carolina bar exam in 2006. In the field of railroad and general injury law, Randy and his staff are super additions to our firm and allow us to continue to serve our clients with excellence in mind. Our firm name is now "Hajek, Shapiro, Cooper, Lewis & Appleton, P.C."



Randall E. Appleton

Surprising study reveals that stop signs make railroad crossings more dangerous

By Rick Shapiro, HSCLA attorney/editor

As current chairman of the Association of Trial Lawyers of America's "Railroad Law Section," I have closely followed the argument by the nation's railroads that adding simple stop signs to highway grade crossings makes them safer, reducing the risk of injuries or deaths. The railroad arguments seemed logical to me—at least initially. Why wouldn't making all drivers stop at all crossings improve safety, reduce collisions, and be very inexpensive? Well, think again! *Adding the stop signs actually makes each rail crossing more dangerous than WITHOUT the stop sign!* So is the finding of a major, unbiased study published in April 2006 discussed below. After reading the study, I had further questions, so I interviewed the author himself.

The study, "Examination of Highway-Rail Grade Crossing Collisions Over 10 years in

Seven Midwestern States," was published in *ITE Journal* in April 2006, and authored by Richard A. Raub. Raub recently retired from Northwestern University Center for Public Safety as a senior research scientist, primarily in traffic safety, was an original member of the Highway Safety Manual Joint Subcommittee, and holds an M.S. in transportation science from Northwestern.

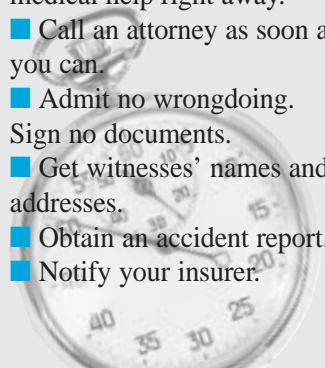
Essentially, Raub studied highway-rail grade-crossing collisions for a ten-year period (1994–2003) in seven midwestern states (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, and Wisconsin), using Federal Railroad Administration injury and property damage data from crossings with 1) crossbucks only; 2) stop signs; 3) flashing lights; and 4) lights and gates. His important findings:

(continued on page 3)

The "Golden Hour"

Drivers have a "Golden Hour" after an automobile accident to protect their rights. After an hour, cars may be moved, the driver may not recall important details, and witnesses may depart.

- If there are injuries, get medical help right away.
- Call an attorney as soon as you can.
- Admit no wrongdoing. Sign no documents.
- Get witnesses' names and addresses.
- Obtain an accident report.
- Notify your insurer.



Juries protect us all

America's civil justice system has stood the test of time. It doesn't put anyone in jail. Instead, it punishes those who act with disregard for the welfare of the rest of us. It also strives to restore the health and well-being of those who have been harmed by others' actions.

Our fundamental constitutional right to a trial by jury is under attack. Special interests, such as the manufacturing, insurance, and drug industries, want to change the system to benefit their own financial and legal interests.

Here are other challenges to our justice system that many of us may not often think about:

- Inadequate juror compensation.
- Juror prejudice from public relations campaigns.



- Delayed or denied justice from court budget cuts.
- Judge shortages backlogging cases.
- Appellate courts reversing jury verdicts.
- Secret settlements hiding justice from the public.
- Refusing media access to investigate court files.
- Legislatures predetermining legal issues.
- A poisoned, partisan political landscape.

Faulty medical devices

In 2004, Joshua Oukrup, a college student who had a Guidant Prizm 2 defibrillator implanted, died when his device short-circuited. Guidant and the FDA knew the device was faulty. They issued a "voluntary recall," knowing that a newspaper article would be published the next day linking the device's performance to Joshua's death.

As early as 2002, corporate executives at Guidant Corporation, the nation's second-largest maker of heart defibrillators, knew their implantable heart defibrillators were short-circuiting.

Four months after Joshua's funeral, the U.S. House passed a medical malpractice bill that granted sweeping liability protection to Guidant and other device manufacturers.

Legislation made manufacturers immune from punitive damages and limited liability for ending lives of Americans like Joshua to \$250,000.



Joshua Oukrup

Lawsuits improve protection for American workers

When corporations put the bottom line ahead of worker health and safety, our civil justice system provides accountability.

Supervisors at Phelps Dodge in New Mexico knew that safely retrieving a ten-foot-tall vessel of molten metal would mean shutting down operations for several hours. Instead, they ordered 33-year-old Reynaldo "Junior" Delgado to drive a flammable vehicle into a pool of molten slag to retrieve the container.

Delgado was burned alive trying to accomplish the totally unnecessary task. Although the company's actions were negligent enough to meet the state's test of second-degree murder, supervisors' management actions did not permit Delgado's wife, Michelle, to sue outside the state's workers' compensation system.

Michelle's attorney fought her case all the way to New Mexico's Supreme Court, winning compensation for her family. New Mexico's workers also can now hold the state's employers accountable for transgressions outside the state's workers' compensation system.



Reynaldo Delgado

Lawsuits can save lives

Police body armor

A lawsuit filed by the widow of a police officer killed in the line of duty because his Second Chance® Body Armor failed to protect him has saved the lives of countless other law-enforcement officers.

California Officer Tony Zeppetella died when a criminal's bullet penetrated his bulletproof vest. His widow sued the manufacturer. A lawsuit by another officer and a class action filed by other police departments all showed that the manufacturer marketed a vest it knew had fundamental safety flaws. As a result, the manufacturer recalled 100,000 defective Zylon vests.

These lawsuits have potentially saved the lives of thousands of police personnel. Even President George W. Bush and his wife, Laura, who had worn the defective vests at public events until they were recalled in 2005, have benefitted.

Congress should learn from these cases and reject or repeal legislation that provides immunity to corporations who sell or even donate defective products.

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Mr. and Mrs.
Tony Zeppetella

Surprising study reveals... *(continued from front page)*

“Overall, the analysis shows that the highest collision rates using any basis occurred at locations where the warning device was a stop sign. The push to upgrade crossings from crossbucks only to stop signs may be creating a false sense of improved safety.

“Thirty-six percent of the collisions [analyzed] occurred at crossings with only crossbucks as a warning device. Next highest were crossings with flashing lights, representing 28 percent of the collisions. Crossings with gates and STOP signs represented 23 percent and 13 percent, respectively.

“Approximately 57 percent of crossings had only crossbucks. An additional 22 percent had flashing lights. These two devices accounted for almost 80 percent of all crossings in the seven states. Only 13 percent of all crossings had gates installed, and, with few exceptions, they were two-quadrant. Eight percent had STOP signs.

“What is surprising about the findings is the extremely high collision rates for crossings with STOP signs. Even for Michigan, which had the lowest STOP-sign crash rate, it was 21 percent higher than the rate for crossbucks only in that state.... It is also important that even when STOP signs were installed at crossings that previously had only crossbucks, collision rates increased. This finding, although based on a small sample because of the very low likelihood of a collision at any passive crossing, further suggests STOP signs may not provide the assumed level of enhanced safety.”

Raub explains that it is not clear WHY stop-sign-controlled crossings have higher collision rates. One theory is that motorists regard stop signs at crossings to “have less meaning” than the law intends. Motorists may misjudge the speed of trains or the time needed to cross after stopping at the stop sign. Raub also did not analyze “yield” signs compared to stop signs, which one study showed may have more safety promise than stop signs.

Shapiro: It seems from the tenor of your study that you may have been surprised by the Wisconsin statistics, and that this caused you to expand the analysis. Is that what happened?

Raub: I did not expect the crash rates (based on ADT) for Wisconsin crossings to be as high as they were. Because of that finding, I decided to expand the study to the seven Midwestern states. The expanded analysis suggested that the initial findings were not an anomaly. For each state, when based on ADT, but also daily trains, which is another measure of potential hazard, the crash rates were higher than for other warning systems (gates, flashing lights, and crossbucks only).

Shapiro: To safety experts who want to add stop signs at highway-rail grade crossings, rather than consider lights and/or gates, how do you respond and how do you frame the issue?

Raub: While gates are “obviously” the safest choice, they also are very costly. Flashing lights, as specified by the Manual on Uniform Traffic Control Devices and the FRA, while less complex than gates, also are costly. Both forms of active crossing warning systems cannot be supported from a cost-benefit perspective.

Currently there is under way a National Highway Cooperative Research Project (NHCRP), 3-76B, under the Transportation Research Board, that is examining the potential benefits of other forms of low-cost warning systems to be used at passive crossings (crossbucks only) denoting the presence of a train. I was part of the bidding, but unsuccessful, team for this project. These low-cost systems may be beneficial.

From both a traffic-engineering-safety and human-factors perspective, I always have had reservations about the use of stop signs at any intersection with little or no cross-traffic. The highway literature has suggested that a yield sign appears to have much greater effectiveness. Fortunately, a recently completed NHCRP, Report 470, provides guidelines for use of yield signs at highway-rail crossings. To me, what now needs to be done is a well-constructed study of motorist behavior at these crossings under three conditions: crossbucks only, yield, and stop signs.

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The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

Nurse blows whistle on doctor's malpractice Sawed-down screwdriver inserted in patient's back

By Rick Shapiro, HSCLA attorney/editor

It is whispered that the nurses who really "care" about their patients will only go so far to protect a negligent doctor or hospital from "whistleblowing" when they know malpractice has occurred. Will a nurse "whistleblow" even when they worry that they could be fired or disciplined for notifying someone of the truth? Here's a true story that you won't believe:

A 73-year-old reverend was in the operating room for back surgery in Hawaii. His surgeon, Dr. Ricketson, realized once he had begun the surgery that the two titanium rods he needed for the procedure were nowhere to be found. He would need to wait two hours to get the rods from the medical supply company, but he noticed that the shaft of the screwdriver he was using was "about" the right size. He testified that the patient would have lost a lot of blood if he hadn't acted quickly.

Dr. Ricketson decided to use the screwdriver, cut it to size with a surgical saw, and carried on with the procedure, inserting surgical screws through the makeshift screwdriver shaft.

Unfortunately, the steel shaft snapped in the reverend's back several days after the surgery, causing several more surgeries, and he died two years later from surgical complications. His family hired an injury lawyer to look into the medical care.

Based on the testimony of a whistleblower nurse, several nurses tried to first talk the doctor out of using the screwdriver shaft, and then later one nurse argued that the family needed to be TOLD of the substitution of the screwdriver part, but the nurse said she was told to NOT tell the family anything.

The nurse was morally outraged. She had the courage to bring the truth out.

Then all the parties blamed each other. The medical supply company said it had delivered the rods, and the hospital blamed

the supply company. Also, the hospital claimed it was not responsible for the unusual decision of the doctor, but the family's lawyers proved that the hospital had allowed the doctor in question to stay on the hospital staff despite several disciplinary actions against him, including his known prior addiction to narcotics.

Also, evidence was introduced at the jury trial that stainless steel has not been approved for implantation, though titanium has.

In March 2006, the Hawaii jury arrived at a \$2.2 million verdict for compensatory damages, and a \$3.4 million verdict in punitive damages. The case name was *Iturralde v. Ricketson*.

In many states, insurers and doctors are seeking arbitrary caps on damages in medical negligence cases, or outright immunity against various types of claims. Injury attorneys argue that "caps" on damages will only protect insurance companies and will certainly not help injured consumers and patients. As for helping doctors, the best way to keep the medical system safe and functioning well is to allow suits against terrible doctors like this one, who "freelanced" on a trusting, victimized reverend. And let's not forget to thank a nurse who had courage and a conscience.

Magazine contest

The HSCLA "Win a Magazine Subscription" continues! Answer the trivia question below by the deadline receipt date of September 15, 2006 (must be received by this date), and win a one-year subscription to one of many popular magazines!

Our Spring 2006 HSCLA client newsfeed contest winners were **Jeff Wood** and **Philip Henry**. They have each won an iPod NANO. Congratulations, Jeff and Philip!

QUESTION: The British "sleeper" is equivalent to what in the United States?

ANSWERS: A) Pullman B) Crosstie C) Fireman D) Budd car

E-mail your answer to jtilton@hsinjurylaw.com.