

BACK ON TRACK



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

LATE WINTER 2007

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PERSONAL INJURY PRACTICE

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- Trial attorneys

OUR LAWYERS' BLOG!

Excerpts from recent Web-log portions

Unfortunately, hospitals can be deadly

By James C. Lewis, HSCLA Attorney

It may come as a surprise, but 2 million patients residing in hospitals get hospital-acquired infections every year. Infection stalls recovery, sometimes requiring weeks of intravenous antibiotics or a grueling round of surgeries to remove the infected tissue. Approximately 90,000 Americans who acquire these infections actually die as a result.

Nationwide, hospital infections are the eighth-leading cause of death. A growing number of hospitals are working harder to stop infections, but as bugs become resistant to antibiotics, it's an uphill struggle.

There are several fundamental ways you can avoid getting infected. They include the following:

- Wash your hands frequently, and don't be shy about reminding doctors, nurses, and aides to wash theirs;
- People who smoke or are overweight are more susceptible to infection, so try to quit smoking and lose weight before surgery;
- Wash with 4 percent chlorhexidine antibiotic soap for several days before surgery;
- Ask your doctor for a nasal swab test for MRSA (methicillin-resistant staphylococcus aureus);
- Be sure the doctor prescribes an antibiotic for you before surgery;
- Don't allow the doctors to shave the surgical site, if at all possible, as tiny cuts from the razor can get infected; ask if hair clippers can be used instead;
- Ask friends and family to stay away if they are ill, and ask the doctor to limit the number of aides and medical students in your room;
- Call a nurse promptly if IVs or catheters become loose or damaged; the sites should be kept clean and dry.

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A surgeon can be held liable if a nurse carelessly leaves a sponge inside a patient's body

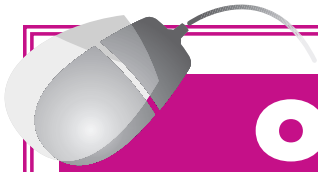
By Rick Shapiro, HSCLA Attorney

There has been an interesting decision of the California Court of Appeals relating to whether a doctor is liable for a nurse's mistake, such as when the nurse leaves a sponge inside the body of a patient, unbeknownst to the doctor. Lawyers with our firm have had several prior cases involving infection and other complications that result from a sponge left inside a body, causing further surgery and complications, so the ruling is of interest to our firm and ultimately affects the public as well. In the California case, the plaintiff had her right leg amputated after gangrene developed because a surgical sponge was left in her leg after a procedure to remove a blood clot. The defendant doctor/physician claimed that he was not liable because doctors routinely rely on nurses to keep track of sponges and that he had relied on the sponge count of the nurse who assisted him in the surgery.

However, the Appeals Court decided that there is a presumption of negligence on the part of the surgeon when a sponge is left in a patient and, therefore, the jury in the case should have been instructed on a legal doctrine called Res ipsa loquitur (meaning "the act speaks for itself"). The doctor's lawyers argued that the physician did not have exclusive control over all aspects of the patient's surgical procedure, but the court ruled that the doctor "was in the operating room with [plaintiff] at all pertinent times, performing the surgery, which included closure of the surgical incision."

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ALL WE DO IS INJURY LAWSM



OUR LAWYERS' BLOG!

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Rail workers hurt on job have several choices as to where a suit may be filed

By Randy Appleton, HSCLA Attorney

The Federal Employers Liability Act (FELA) is unique in that it provides railroad employees with several choices of courts in which to file and try their cases. The FELA gives jurisdiction over cases brought under its provision to **both** state and federal courts. This is commonly known as “concurrent jurisdiction.” In federal court, the timing of the trial and pretrial discovery are largely controlled by the court. This results in cases moving rather efficiently to trial; however, federal courts may be less flexible in scheduling trials or accommodating on other key issues to plaintiffs and their attorneys. On the other hand, state courts typically leave the scheduling of trial and pretrial discovery in the hands of the litigants (within a framework set by the court). This procedure may result in a more flexible trial and “discovery” schedule. In short, counsel and client need to consider each system when deciding in which court to file a FELA claim.

The FELA is also unique in that state court cases filed by the worker plaintiff may not be “**removed**” by the railroad defendant up to federal court. The plaintiff worker typically may file his or her FELA case in the city in which the injury occurred or in a city or town in which the defendant railroad conducts a significant amount of business. The ability to file a suit in a city or town based upon the railroad’s business ties and not the location of the plaintiff’s injury varies greatly from state to state. Various state legislatures have significantly eroded the right to file a FELA case based on where a railroad does business, so this must be analyzed by an experienced FELA attorney.

Visit our Norfolk-Portsmouth Injury Board blog for full article: <http://norfolk.injuryboard.com/>

Train disaster in Kentucky shows bad CSX safety

By John Cooper, HSCLA Attorney

Recently, there was a huge fireball as a CSX freight train crashed south of Louisville, Kentucky. CSX, as one of the two East Coast railroad companies, puts many communities at risk. This freight train derailed with tank cars containing hazardous material, forcing the evacuation of residents in Bullitt County. Our firm has represented victims of railroad train wrecks for years. We are currently representing families injured in the Graniteville, S.C., train wreck in which Norfolk Southern dumped chlorine into a small town. We also are representing railroad workers hurt when two CSX trains ran head-on into each other near Franklin, Va. Freight trains are huge objects, with each car weighing over 400,000 lbs. When trains derail or crash, the impact is incredible. Tragically, we have seen more than a few clients who got killed or brain-injured by crossing accidents or in situations in which trains derail.

The scare of train crashes is even worse when they are carrying tanks loaded with hazardous materials. The chemical fire during the Kentucky train derailment was so bad that air traffic had to be diverted around the area. My heart goes out to the residents in the zone of danger and to the crew members who were exposed to this horrific train wreck.

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We're always here for you

When a person or a family is seriously injured in a seemingly larger-than-life situation, we offer them the hope and promise of fair treatment and compensation for harm.

Victims of a person's or a business's negligence may be so injured, upset, confused, or traumatized that they cannot speak out for themselves. That's when we become their voice.

We will bring our experience, resources, and, most importantly, our passion and heartfelt concern to bear for those harmed by insensitive wrongdoers to compensate them for the harm they have suffered.

In consultation with our clients, we may recommend several alternate paths to injury-case resolution. However, when circumstances call for it, we will represent our clients in court, presenting evidence in the cases to judges and jurors in a convincing manner to help them perceive victims' plights as the victims themselves feel them.



Defective tire claims another victim

Tire missed in 2000 recall

Anthony Scudera, 20, replaced a leaking tire on his mother's 1993 Ford Explorer with an older, but never-used, spare that was overlooked during recall announcements.

Several days later, the spare blew out on a Florida interstate while Anthony was driving to work, sending the SUV careening out of control, rolling over, and killing him.

The tire that Anthony placed on the Explorer was one of as many as 200,000 Firestone ATX and Wilderness tires stored on vehicle undercarriages believed missed in a massive recall of as many as six million tires that began in 2000.

Anthony's mother has initiated a lawsuit to hold Firestone accountable for her son's death.

Firestone chronology

1997—Firestone executives discuss concerns about potentially defective ATX and Wilderness tires.

2000—Firestone announces the recall of more than 6.5 million tires.

2006—More than 270 Americans are killed in accidents involving ATX and Wilderness tires.

FOR YOUR SAFETY Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Target Stores** is voluntarily recalling 185,000 Firestreet Scooters. The handlebars, wheels, and brakes can break and detach, causing rider injuries.
- ✓ **Acuity Specialty Products Group, Inc.**, asks consumers to return 6,800 five-gallon pails of "Zep Industrial Purple Cleaner & Degreaser" and "Zep Heavy-Duty Floor Stripper" cleaning products, which can crack, leak corrosive products, and harm users.
- ✓ **Atico International USA, Inc.**, has recalled 209,000 folding picnic tables with legs that can unexpectedly buckle, break, fold, or collapse, injuring users.
- ✓ **Fun Express, Inc.**, has called back 340,000 bendable toys given away at libraries. The toys are decorated with paint containing excessive levels of lead, which is banned under federal law. Lead is toxic and, when ingested by children, can cause adverse health effects.
- ✓ **Black & Decker** has requested buyers to return 160,000 cordless electric mowers. An electrical component in the lawn mower can overheat, catch fire, and burn users.

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Slips and falls

When someone slips, falls, and is injured because of a property owner's negligence, an attorney familiar with premises-liability accidents can help a victim obtain compensation for medical bills, lost wages, pain and suffering, and other damages.

An experienced personal injury lawyer can assess an incident, communicate with property owners, negotiate with insurers, locate experts to testify on a plaintiff's behalf, if necessary, and present the case at trial.

A shampooed carpet

When a woman stepped from a freshly shampooed carpet onto a marble floor at an office, she slipped and fell. She suffered severe disk protrusions and back injuries, requiring surgery involving a spinal-cord-stimulator implant. When her attorney sued for failure to warn of danger, the parties settled for a substantial amount.

Product liability

Any product a consumer purchases at retail is considered to be designed, manufactured, and marketed with a built-in assurance that it is not defective and that the buyer should not be harmed by it if he or she uses it as intended.

An attorney experienced in products liability law can help a person harmed by a product by evaluating the injury or damage done by a defectively designed, negligently manufactured, or improperly marketed product; calculate a compensatory value; and file a claim against the manufacturer and other responsible parties.

An attic pull-down ladder

When a woman attempted to unfold a pull-down ladder in her attic, she suffered head lacerations, a herniated disk, and nerve-damage injuries when the ladder unexpectedly struck her very hard. She sued the ladder manufacturer, alleging the product was defectively designed. Her attorney argued that adding a low-cost stop mechanism could have prevented the injury and that the ladder instructions should have included safety warnings. The parties settled before trial.



MAGAZINE CONTEST

The HSCLA "Win a Magazine Subscription" continues! We did not have any winners from the last issue's trivia question. Can you believe that of 4,000 recipients, no one submitted the correct answer!

Answer the trivia question below by the deadline receipt date of April 15, 2007 (must be received by this date), and win a one-year subscription to one of many popular magazines!

QUESTION: What was the name of the famous locomotive that raced a horse and lost?

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