



BACK ON TRACK

FALL 2010

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INJURY PRACTICE

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New honors for attorneys Lewis, Cooper, and Shapiro

■ **Rick Shapiro** received an “AV” rating from Martindale-Hubbell, a prominent legal rating service. The “AV” is like the black belt of legal ratings from Martindale-Hubbell and means Rick has attained a reputation among other lawyers and judges as being highly ethical and has a very high to preeminent rating in his legal ability, and joins **John Cooper** and **Jim Lewis** who also are “AV” rated.

■ **John Cooper** was named a Virginia “Super Lawyer” in the 2010 Edition of *Law & Politics Magazine*. Less than

5 percent of all superb lawyers receive this distinction. John joins **Rick Shapiro** and **Jim Lewis** in the firm’s “Super” group.

■ William & Mary Law School invited our law partner, **Jim Lewis**, to become an adjunct professor teaching trial advocacy. Jim, who is an alumnus of William & Mary Law, will begin teaching the course in the evenings during the fall 2010 semester.

CURRENT CASES WE’RE WORKING ON

CAR/VEHICLE ACCIDENTS

UPDATE: Man suffered contusions, infection, and leg injuries after being struck in the leg by a car at a business premises. **Settled days before trial.**

• Hampton University student rear-ended on I-64 on the Peninsula in Virginia with connective-/soft-tissue injuries.

• Young man injured when at-fault driver suffers a diabetic seizure while driving. The client suffered shoulder injuries requiring surgery. Investigating at-fault driver’s knowledge of prior seizures while driving.

• A woman who was seven months pregnant was hit by a car head-on and delivered her baby two months prematurely. The baby was in the neonatal intensive care unit for three weeks.

• Seven-year-old minor boy was hit by a car driver when crossing the street at his apartment complex. Very serious injuries resulting in months in the hospital.

MEDICAL MALPRACTICE

UPDATE: Doctor failed to screen longtime male patient at 50 years old for colorectal/colon cancer; client developed colon cancer before 55 and died as a result. **Settled following mediation during litigation.**

UPDATE: Woman suffered ureter severed/cut by doctor during laparoscopic surgery, requiring several surgeries and causing severe complications. **Settled following mediation during litigation.**

UPDATE: Man with bad gallbladder suffered from surgical sponge left inside body, which wrapped around his bowel, causing a hole/perforation, leading to sepsis and multiple surgeries. **Settled weeks before trial.**

• Woman undergoes cancer surgery hysterectomy; a sponge was left inside her abdomen, eventually causing bowel perforation and sepsis. She died as a result of complications.

• Quadriplegic suffered third-degree burns during routine physical therapy and required extensive hospitalization and multiple surgeries due to complications.

RAILROAD/FELA

UPDATE: Railroad engineer suffers from chemical breathing injuries due to engine explosion. **Settled during litigation.**

• Railroad conductor suffered herniations in his back from negligent vehicle transport on CSX property with ruts and potholes.

• Cumulative/repetitive trauma FELA/railroad case for Virginia train crew member (right shoulder and right knee injuries with surgery).

• Railroad worker suffers from degenerative arthritis of the knees due to excessive bending, kneeling, stooping, lifting, and dismounting moving equipment.

• Railroad engineer injured by failure of defective engineer’s seat on a locomotive.

• Railroad employees suffering pulmonary/breathing injuries caused by diesel fumes or toxic fumes from locomotive engines.

PREMISES AND PRODUCT DEFECTS

UPDATE: Factory worker suffered amputation of right thumb; four past surgeries, future surgeries contemplated. **Settled during court-approved mediation.**

• Child hurt at day-care facility in Chesapeake, Virginia, by negligent staff, resulting in a broken bone.

Three firm attorneys included among “The Best Lawyers in America” (2010 Ed.) and named as “Virginia Super Lawyers” (Law & Politics, 2010 Ed.)

ALL WE DO IS INJURY LAWSM
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HOW WE CARE FOR OUR CLIENTS

A devastating personal injury can quickly overwhelm a victim's and family's personal and financial resources.

Our duty and privilege is to protect each client and help each family feel at ease with our firm's approach and strategy in handling their case, and to restore harmony to everyone's lives.

Here is how we strive to do that:

- Listen very carefully to get all the facts and understand needs.
- Apply the full range of our experience and talent to the case.
- Gather the best evidence needed to substantiate a client's situation.
- Refer or obtain medical care.
- Document losses thoroughly.
- Negotiate with insurance companies.
- Retain expert witnesses to support the case.
- Recover fair and complete compensation.
- Argue a client's case in court if necessary.

We welcome every opportunity to be of service to you.



The ONLY thing personal injury lawyers and insurance companies agree on

Insurance companies and personal injury victim lawyers rarely agree on issues, with one exception: It's best not to have a minimum limits, bare bones insurance policy coverage, because it will not cover catastrophic or serious injuries in the modern world. Why? Because medical and hospital expenses are skyrocketing and it doesn't take too much hospitalization or medical care in a personal injury case to mean that a minimum limit/coverage car insurance policy will not provide enough coverage to compensate a victim.

You say you have "full coverage"? Think again. That is a meaningless phrase.

Most states, such as Virginia and the Carolinas, mandate a certain amount of minimum car insurance coverage for insurance companies issuing policies in those states. For example, in Virginia, every insurance company must offer at least \$25,000 of insurance for liability coverage for the insured. That means if you are at fault, your insurance company will pay up to \$25,000 to the other injured person. Flipped the other way, if you are the person hurt, and the other careless driver has only that \$25,000 in minimum insurance required, and if you incur \$15,000 of hospital bills in the first week, then you can see immediately that \$25,000 in insurance will not really be enough coverage if you suffer some permanent injuries from the accident.

So this is the one area that personal injury attorneys and insurance companies/agents agree on: Don't get the bare bones minimum insurance policy. It simply isn't enough coverage, and state legislators do not increase minimum coverages until years go by and inflation makes the current minimum coverage limits ridiculously low.

Also, don't be fooled by the phrase "full coverage." It means your policy includes liability and underinsured

motorist coverage, but it still can mean you only carry minimum insurance, which may be totally inadequate.

What is enough car insurance coverage?

I discuss this with some of our clients after they have been in a car accident. As most consumers realize, you can't raise your rates after an accident and get the additional coverage to apply to what happened before. It is the coverage that you had on the date of the accident that applies.

I recommend not less than \$300,000 worth of liability insurance and equal uninsured/underinsured motorist insurance coverage as well. What this means is that if you are momentarily careless and cause a terrible accident, you will have up to \$300,000 of coverage that the insurance company will cover you for (this is liability coverage). On the other hand, if you are in an accident and the other, at-fault, driver has no insurance or not enough insurance, then your own uninsured/underinsured motorist car insurance kicks in and you have up to \$300,000 of coverage that basically applies to the accident to help you.

I don't agree with insurance companies on much, but I do agree that you really need an adequate amount of insurance in the modern world, given skyrocketing health and medical expenses. One week in a hospital involving intensive-care treatment could easily run \$20,000 or more, depending upon the level of testing and analytical and diagnostic tests. Talk to your insurance agent if you're not sure what your coverage is, and take care of this business before an unforeseen accident occurs.



Vibrating car seat could help cut down on car accidents

By Emily Mapp Brannon

A mechanical engineer at Yale University invented a vibrating seat, the purpose of which is to help reduce the number of car wrecks that occur every day in the United States. The device would start vibrating if a vehicle enters your blind spot. This could reduce car crashes caused by a loss of situational awareness or distraction, according to MSNBC.com.

The system is designed to use vibrating cell phone motors and other actuators embedded in the seat, which would vibrate very lightly for the entire trip. When a car, truck, motorcycle, or other vehicle moves behind or beside your vehicle, sensors send a message to the seat that increases the vibrating on that side of the seat. For example, if another vehicle pulls alongside the rear-right side, the lower-right of the seat will vibrate.

This is an interesting invention that has the potential to combat distracted and careless driving. There have been a myriad of technological innovations aimed at cutting down on preventable car wrecks. For example, Illume Software recently produced an iPhone application that blocks texting, calling, and Web browsing while driving, according to Technewsdaily.com.

Let us hope these safe driving inventions catch on. Early estimates show that 33,963 people were killed in car wrecks in 2009, according to the National Highway Traffic Safety Administration. This number needs to go down. That is far too many lives lost on our roads and highways.

Medicare insurance liens and your personal injury claim— Does Medicare get paid back?

By Richard Shapiro

The short answer to the question in the title is “yes,” if you have a claim against a negligent party. By federal law, if Medicare pays medical expenses that arise from a personal injury for which a third person is to blame, Medicare is normally entitled to be repaid back a substantial sum of the benefits paid to the recipient that are incurred due to the claim.

Medicare is fairly aggressive these days in writing letters to Medicare recipients inquiring as to whether there is a tort involved (a tort is a civil wrong caused by a third party). Medicare will write you, whether you have an attorney or not, asking about whether your expenses may arise from this type of situation.

The way that federal regulation is worded, the government does not get back 100 percent of the expenses that are paid and related to your claim, but at the time of settlement an arm of Medicare must obtain a settlement statement and compute the exact amount due.

I have had many injury clients upset with the bureaucracy involved in forwarding papers to Medicare’s Recovery Division because there are no set deadlines for Medicare to turn around requests for how much they must be repaid, to cite one example. It is for this reason that there is pending federal legislation, H.R. 4796, the Medicare Secondary Payer Enhancement Act, supported by the American Association for Justice (AAJ) that would reverse the complete unchecked bureaucracy that results in months of waiting and delay in recoveries in civil injury cases while Medicare sits on requests for simple computation of a lien.

In what is a very strange case of “strange bedfellows,” the U.S. Chamber of Commerce, which usually opposes civil justice legislation endorsed by the AAJ, actually supports an amendment to the Medicare regulations. Importantly, one of the key provisions of the new legislation would require Medicare to act on a demand for a statement of its lien claim within a set time. Some other inequities in the current law would be corrected.

The ultimate nightmare in dealing with Medicare is if an injured person incurs future medical expenses that arise after the date of a settlement. Right now, unless new legislation is enacted, there are absolutely no regulations that guide what exactly must be repaid to the government’s Medicare recovery agent. It’s a complete nightmare for injured persons and their injury attorneys, particularly those that may have definite future medical expenses that are contemplated at the time of settlement of a case. The delays are incredible, and this is one reason that new legislation is necessary. Let’s hope that Congress acts to amend the current Medicare legislation. The point here is not to deny the U.S. government reimbursement, but the problems with the system must be fixed.



In early 2010, the U.S. Department of Transportation (DOT) banned drivers of large commercial trucks from texting while driving. DOT fines could reach up to \$2,750 per incident.

But Americans continue to suffer injuries and deaths about every 15 minutes in commercial truck accidents on major thoroughfares.

Large commercial truck accidents may result from driver fatigue or negligence, employee-hiring negligence, equipment failure, inadequate maintenance, vehicle-design problems, and bad weather. Other accident contributors are hazardous, overweight, and shifting loads.

An overloaded truck

Two vehicle occupants were killed and another sustained life-threatening trauma to her face, neck, and back when an overloaded tractor-trailer careened into their car after striking an overpass. The family’s attorney won them a verdict of more than \$28 million in damages, including \$1 million for emotional suffering.

If you are a victim of an auto accident with a commercial truck or tractor-trailer, contact an experienced attorney to protect your rights.

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Our contest continues...

Announcing the winners of our Web Site Visit Contest!

WE PICKED OUR AUGUST 2010 CONTEST WINNERS, BY RANDOM DRAWING, AND NO PERSONS EMPLOYED WITH OUR LAW FIRM ARE QUALIFIED. THE WINNERS, WHO HAVE BEEN NOTIFIED, ARE (to maintain their privacy, their last names have been omitted):

- DVD Player winner:***
Shaun P.
- iPod Touch winners (two):***
James N.
Nina N.

NEW CONTEST PRIZES:

3 contest winners will each receive an 8GB iPod nano with video camera



Congratulations! Those of you who have NOT entered before, please check us out!

All you need to do is visit our Web site and enter your contact information.

Drawing date: November 15, 2010

