

BACK ON TRACK

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

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Long-term railroad diesel exhaust fume exposure linked to asthma, lung disease, and cancers

By Richard N. Shapiro

There is a growing body of evidence that long-term railroad worker exposure to diesel exhaust fumes can lead to a condition called “diesel asthma,” a form of chronic obstructive pulmonary disease (COPD). Additional evidence shows increased incidence of lung cancer rates among railroad workers/employees. Railroad worker injury claims against their employer-railroads fall under a federal act called the Federal Employers Liability Act.

What is diesel smoke or diesel exhaust fumes?

Diesel exhaust, also called diesel smoke or diesel fumes, is a chemical mixture containing literally hundreds of compounds, including sulfur dioxide, nitrogen oxides, polysystemic hydrocarbons, benzene, and many other compounds. Many of these individual particulates are known carcinogens, and have been known cancer-causing agents for over 30 years. In the railroad industry, diesel fuel runs nearly all locomotives, and has since the 1960s. When diesel fuel is combusted, the chemicals change. They are changed into a gaseous state and carried through the air by what are known as particulates. Particulates are the part of diesel exhaust fumes and diesel smoke that can be seen. But some particulates are so small that they cannot be seen, and some of these get into the tiniest part of the lung tissue, deep in the lungs. Some of these dangerous chemicals can damage, inflame, and destroy lung tissue. Also, the irritation over

time can cause “hypersensitivity” disorders.

There are a number of railroad-worker jobs that can subject workers to repeated and continuous diesel fume exposure, including brakeman, switchman, engineer, conductor, diesel engine and locomotive repair shop worker, and carman/car repair worker, to name the most obvious. This type of work, over many years, can lead to various types of lung diseases and lung disorders,

(continued on page 2)

Railroad worker and family member cancer focus

Does an active or retired railroader (or spouse) family member you know suffer from cancer?

If so, be aware that toxic substances and agents used by railroads have been clearly associated with an increased incidence of cancers:

Asbestos: Historical use of asbestos has a strong association with lung, lung lining, and colon cancers (and other forms). Cigarette smokers have a greatly increased risk of asbestos-induced cancers.

Diesel fumes: Several studies have proved an increased rate of lung cancer in workers long exposed to diesel exhaust fumes. (See main article, this newsletter.)

Radioactive-substance exposures: Railroaders who were involved in train/rail movement of radioactive materials from U.S. nuclear-weapons facilities are believed to be at high risk of developing various types of cancers (lung, thyroid, skin, and others).

Solvents: A number of solvents long used by railroads are linked to brain injuries and cancers.

Welding fumes: Studies have found many of the constituents of welding fumes and welding rods to be carcinogens, and numerous forms of cancers (and brain injuries) are linked to welding processes.

If you or a family member suspects a cancer or serious disease has been contracted by work at a railroad (or by working in an industrial setting), please call one of our attorneys for a free consultation immediately.

including aggravation of COPD and aggravated asthma; in some cases, exposure has been linked to cancer.

Where and how are railroad workers exposed?

With regard to railroad engineers and conductors, many describe exposure to diesel fumes as occurring in locomotive engines, even though this is a place that should not have diesel fumes. Properly functioning railroad locomotive engines should deposit all diesel exhaust fumes outside an engine cab, but over many years it has been shown that the engine exhaust stack location has not prevented the fumes from entering a large number of engine cabs—based on methods of locomotive use and based on exhaust stack height or location. Carmen and other workers who worked around idling engines may have long-term exposure also.

Cancers and prolonged diesel exhaust fumes exposure

In September 2002, under the Bush administration, the EPA added that “long-term exposure to diesel engine exhaust (DE) in the air is linked to lung cancer. The human evidence from occupational studies is considered strongly supportive of a finding that diesel exhaust exposure is causally associated with lung cancer, though the evidence is less than that needed to definitively conclude that diesel exhaust (as a whole) is carcinogenic to humans.” The EPA report also said, “Overall, the evidence for a potential cancer hazard to humans resulting from chronic inhalation exposure to [diesel emissions] is persuasive.” According to Frumkin & Thun’s 2001 medical journal study/article, prolonged diesel exhaust fume exposure has been linked to increased lung cancer rates, per this excerpt:

The major cancer suspected of being linked to diesel exhaust is lung cancer.... A case-control study found that railroad workers with at least 20 years of service were significantly more likely to die from lung cancer than were members of the general population. A cohort study of over 55,000 railroad workers by the same researchers found that lung cancer risk increased with duration of exposure to diesel exhaust; the relative risk was 1.72 among workers with the longest exposure (as much as 22 years).

How long have railroads known of the dangers?

In 1955, a railroad industry attorney gave a formal presentation to the major railroad claims representatives. The presentation was titled “Potential Dangers from Exposure to Diesel Locomotive Exhaust.” Referring to the gases that made up diesel exhaust, Straub stated that “it appears that continuous or prolonged exposure to atmospheres containing any of the above-mentioned gasses in excess of the established maximum could initiate harmful results.”

A review of railroad awareness, and of legal decisions

In 1999, a Georgia appeals court reported on the jury verdict in favor of NS worker Baker against Norfolk Southern Railway Company. Baker had worked as a railroad locomotive engineer for 18 years when he was stricken with nasopharyngeal cancer (a form of cancer inside the mouth) and later died. His widow alleged his fatal cancer was caused by prolonged exposure to diesel exhaust from Norfolk Southern’s diesel-powered locomotives, and that Norfolk Southern failed to provide a safe place to work. The Georgia appeals court agreed that the jury had properly decided the case in Baker’s widow’s favor, but did find a legal error in a jury instruction relating to wrongful death damages, and the jury decision was otherwise upheld on the railroad’s liability for diesel exhaust violations.

In 2003, an Ohio appeals court affirmed a jury verdict in favor of a Norfolk Southern fireman/engineer by the name of Mr. Cutlip, who alleged diesel exhaust fume disease against Norfolk Southern, his employer. He was well represented by one of the BLET-designated lawyers. The jury verdict in Mr. Cutlip’s favor was upheld by the appeals court in Ohio.

In December 2006, a different Ohio appeals court considered yet another jury verdict against Norfolk Southern for Eugene Hager, who had a long career with Norfolk Southern and its earlier railroads, mainly as a brakeman/conductor. Hager claimed that he was exposed to many workplace toxic dusts, including diesel exhaust fumes. The railroad appealed a \$250,000 verdict in favor of Hager, but the railroad lost the appeal.

There have been dozens upon dozens of railroad worker FELA claims filed since 1995 asserting adverse lung disorders caused by diesel exhaust fumes, with many settlements, and there are other claims winding their way through the nation’s courts.

As information grows about the harmful and carcinogenic agents hitching a ride on the particulates that comprise diesel exhaust fumes, workers and physicians may begin taking a much closer look at the impact of diesel fumes on COPD and decreased lung function arising after decades of such workplace exposures.



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Jury duty and TELEPHONE FRAUD

The Federal Bureau of Investigation (FBI) has warned the public against an ongoing scam involving jury duty.

Unscrupulous individuals identifying themselves as court employees have been phoning victims, telling them they have been selected for jury duty. Callers then ask for verification of social security numbers, credit-card numbers, and passwords. When those who are called hesitate, callers allegedly threaten with civil fines, or worse.

Members of our judicial system never phone and ask for compromising financial information that can be used to defraud consumers.

Anyone who has been contacted or who gave out confidential information should contact local law enforcement, the local FBI office, banks, credit-card issuers, and other financial services.



OUR FREE REPORTS BY E-MAIL OR MAIL

Just call us toll-free at 800-752-0042 (ask for our receptionist) to receive your copy of these new specially drafted reports for our clients and newsletter recipients:

- Basics about auto and car accidents—frequently asked questions by our clients
- Keeping Our Kids Safe: A Practical Parents' Guide for Safe Use of Child Safety Seats (CSS)
- What Norfolk Southern Does Not Want Injured Railroad Workers To Know About Their Rights if Injured on the Job
- Why It Pays for Railroaders and Their Families to Employ Our Firm for Their Automobile Accident Cases



- How the Federal Employers Liability Act (FELA) Protects Railroad Workers

Simply provide us your mailing address (or at night, leave a voice message slowly and clearly with your name and address), or provide us an e-mail address if you prefer e-mail.

WELCOME NEW FIRM ATTORNEY



EMILY MAPP BRANNON

*Former insurance defense work
proves helpful*

We are pleased to announce that **Emily Mapp Brannon** has joined our law firm as the newest lawyer on the personal injury team. Emily most recently worked as an insurance defense attorney. Her insight and experience with learning how insurers defend injury cases is proving invaluable in her representation of clients suffering personal injuries. “When I first conduct the initial interview with a new client, I have a series of questions I cover relating to certain ‘defenses’ that the insurance company will raise. I prefer to address these issues before presenting a claim to the insurance adjuster,” notes Emily. This is one example of how working on the “dark side” has helped her in her new role.

Emily graduated from George Mason University in 2001 and from Florida Coastal School of Law in 2006. Emily is licensed to practice law in all Virginia courts, including the United States District Court for the Eastern District of Virginia. She is also an active member of the American Association for Justice, the Virginia Bar Association, the Virginia Trial Lawyers Association, the Virginia Beach Bar Association, and the Norfolk Portsmouth Bar Association.

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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

Choose Your Personal Injury Attorney Wisely

If you are involved in an accident in Norfolk, Virginia Beach, Chesapeake, or anywhere else, choose your lawyer wisely.

A lawsuit is a stressful experience by anyone's account. As the client, you should find comfort in knowing that your case is in good hands. Far too often, clients tell me that they meet with an attorney initially and then never see that attorney again until it becomes time for trial or depositions. This won't happen at our firm. We want you to put a face with a name. We feel it is very important to be available to our clients any time they need us.

In choosing a lawyer, take the time to compare law firms and attorneys in your area. Web sites such as the *International Society Of Primerus Law Firms* (<http://www.primerus.com>) and *Martindale-Hubbell* (<http://www.martindale.com>) are great resources to use to research attorneys and their areas of practice. Generally speaking, you want someone with enough experience under their belt to overcome any issues that might arise while handling your case.

If you choose our firm, you will meet with the attorney handling your case as soon as you are available. We will discuss, in detail, how you came to be injured. We will also discuss the areas of concern you might have about your case. You should always ask questions. After all, this is your case and these are your injuries. We will do all we can to make sure you are justly compensated for your injuries or loss. At our firm, all we handle is injury law, and this includes every staff person and investigator.

MAGAZINE CONTEST

The SCLA "Win a Magazine Subscription" continues! Answer the trivia question below by the deadline receipt date of July 15, 2008 (must be received by this date), and win a one-year subscription to one of many popular magazines!

The previous winner was **Earnest G. Jones**. *Congratulations!*

QUESTION:

What year did the English Channel Tunnel open for rail service?

E-mail your answer to
jtilton@hsinjurylaw.com.
Include in subject line:
Magazine Contest.