

BACK ON TRACK

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

SPRING 2009

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Goin' to Carolina...

We are proud to be selected...

...as editors of the Northeast North Carolina Injuryboard law blog, which is part of the largest coordinated injury law blog network in the United States.

Visit us at <http://northeast-nc.injuryboard.com>.

The firm also recently opened a Northeast North Carolina law office in Elizabeth City to better serve our North Carolina clients. Our firm includes four licensed North Carolina lawyers and an investigator based in North Carolina as well.



Why waiting too long to hire a railroad injury attorney can kill your case

The top five reasons

By Rick Shapiro

As experienced railroad injury lawyers, railroad worker clients sometimes call us, or talk to our law firm investigators, and think that they might want to wait several months before deciding on hiring a railroad injury lawyer. While a short delay may not seem to make a difference, more times than not it will make a *big* difference; sometimes the delay can kill your railroad injury case. Here is why:

1. Private investigators and surveillance: The railroads are notorious for either hiring private investigators or using their own special police to spy on railroad workers who have been injured. Do not be surprised; this occurs routinely. The point really is not whether you are hurt; the point is that the railroad is hoping to see you doing any physical activities that they could later argue were inconsistent with someone who had injuries like yours. The idea for the railroad is to create unfair photos or videos of your activities.

2. Manipulating your medical care: What many potential clients don't realize is that they have usually given a medical-records release to the railroad if they have talked to the railroad claim agent/adjuster very soon after their injury or accident. This seems to be fairly innocent, but many times the railroad will manipulate your medical care by calling and contacting your doctor

or your physical therapist—acting through a nurse assigned to your case. The railroad may verbally talk to the therapist or doctor and influence a decision to get you back to work even if you are still physically and medically unable to do your job. Many times, our clients have no idea that these phone call contacts have taken place behind their backs. They assume that the records release is just so that the railroad medical department can get the records at the appropriate time, but what can happen relating to your medical care goes way beyond that. When we notify a railroad that we are acting as your lawyer, we stop the railroad from calling or writing your doctors. We will provide the railroad with your medical records—in writing—on appropriate request.

3. Disappearing/destroyed evidence: A railroad injury lawyer will write a letter notifying the railroad of legal representation. The letter we write will normally demand that the railroad preserve any and all evidence, photographs, statements, tape recordings, event-recorder records, and similar. We have many cases in which the railroad and its lawyers have argued in court that they innocently did not retain items that were real evidence. They will assert that this was just routine destruction, as

(continued on page 2)



8 FACTS ABOUT MEDICAL MALPRACTICE

You may have heard a number of myths about doctors, medical malpractice, and the civil justice system.

HERE ARE THE FACTS:

FACT 1—*Medical negligence is a SERIOUS national problem:* Up to 195,000 patients die each year from preventable medical errors in hospitals.

FACT 2—*According to the American Medical Association, the number of doctors has INCREASED in every state over the last several years:* Some claim the number of physicians is decreasing due to malpractice liability insurance premiums. It's simply not the case.

FACT 3—*Malpractice claims are NOT driving up doctors' insurance premiums:* Premiums rise and fall with the state of the economy. Inflation and other insurance-industry forces drove up doctors' insurance premiums more than lawsuits. In fact, insurers raise rates even when their casualty payouts decrease.

FACT 4—*Malpractice claims do NOT drive health-care costs up:* Malpractice costs

amount to less than two percent of overall health-care spending and have remained so for years.

FACT 5—*Caps on claims awards do NOT lower doctors' malpractice insurance premiums:* Insurance premiums in states with caps are nearly ten percent higher than in states without caps.

FACT 6—*Insurance reform does NOT lower medical malpractice insurance rates:* Premiums in California rose 450 percent between the passage of a cap law in 1975 and meaningful insurance reform in 1988.

FACT 7—*High premiums are the direct RESULT of bad insurance-industry conduct:* A coalition of public-interest organizations found that malpractice premiums increase when investment values decrease.

FACT 8—*The insurance industry makes annual windfall PROFITS:* Insurers earned an estimated \$65 billion in 2007.

What is the Primerus Society of Law Firms? Why does it matter?

Being selected by *Primerus* as the only plaintiff/victim injury law firm in Virginia is significant, assuming you care whether your lawyer is viewed in high regard by our peers and by the courts, and based on a careful selection process. Candidates for membership must have the maximum AV rating from *Martindale-Hubbell*, the peer-review rating source that lawyers use to find other lawyers. Firms must also attest to their commitment to the exacting standards of the Six Pillars of Primerus Quality: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility, and Community Service.

"A good way to pick the good (lawyers) from the bad, a sort of Good Housekeeping seal of approval."

—The Wall Street Journal

Why waiting too long to hire a railroad injury attorney can kill your case The top five reasons *(continued from front page)*

"they can't keep everything." If a letter has not been written demanding retention of all such materials, judges are hesitant to sanction or penalize the railroad later. So, many times the railroads only produce a few pictures, and, mysteriously, the main pictures have disappeared and cannot be located. If we are retained too late after an accident, we have less chance of getting the relevant evidence. Also, there is the further chance that the equipment or area will be repaired, maintained, or completely changed. Essentially, we start in a hole—the more time that has passed, the bigger the hole.

4. Selection of medical providers: Many times, the railroad or a nurse that it has retained actually contacted one of your doctors and recommended that the doctor or provider refer you to yet another provider that the railroad "trusts." The railroad or its nurses often select these providers because they think that that doctor or medical provider will help the railroad. We assure you, it is not because they think that this provider will be best for the railroad worker. The railroad is opposed to your basic interests.

5. Failure to address the law and any regulations: While you are being assured the claim agent is "taking care of you," he or she is talking behind your back with the railroad's own lawyers and other

railroad officials. These talks are not about figuring out how to pay you full and maximum compensation for your claim; they are talking about any way to deny or beat your injury claim! The railroad is studying ways to avoid being tagged with a regulation violation or with negligence, but if you retain our railroad injury law firm early, we will attempt to prove any statute or regulation violated, and will gather the evidence we need to prove your railroad injury case as soon as possible. We will review our hundreds of prior court depositions, railroad research files, photos and videos of inspections, and will discuss the facts of your case with our contacts working at the railroad, and retired from that employment also.

This is simply a short list outlining things that can change and improve your railroad case, rather than keep your evidence on ice while important evidence begins to dissolve away. We have authored a complete rebuttal report on what a railroad claim agent knows that he will not tell you, and we are national union-designated legal counsel. On the medical and damages side of your case, we also gather the necessary evidence to prove the full extent of your losses and damages, particularly the effect on you over your future years.

CONSUMERS SUFFERING PEANUT BUTTER SALMONELLA POISONING OR DEATH STILL HAVE CLAIMS DESPITE BANKRUPTCY

Consumers and/or persons suffering peanut butter-related illness or wrongful death still have personal injury claims despite the bankruptcy filing of the Peanut Corporation of America. Most companies like this have liability insurance to protect them from liability claims for food poisoning (or wrongful death from food contamination), such as peanut butter-related salmonella poisoning, which is involved in the recent outbreak. Usually, a liability insurance policy applies to all claims that arise any time during which the policy was in effect. Therefore, since the policy was in effect well before the filing of the bankruptcy, when these claims arose, the company's liability insurance company will likely be required to defend the company against personal injury claims for food poisoning or wrongful death. How does the filing of a Chapter 7 bankruptcy by this company affect personal injury claims?

It is possible that the bankruptcy court where the company filed its Chapter 7 petition must approve personal injury claims to go forward in court. This is normally called a lifting of the bankruptcy stay. However, the bankruptcy filing should not have an adverse effect on a valid insurance policy that protected the company, prior to the filing of the Chapter 7 petition.

Our Virginia-Carolina personal injury law firm is based in southeastern Virginia, and the Peanut Corporation of America Chapter 7 bankruptcy filing was filed in Virginia's federal bankruptcy court. The Peanut Corporation of America was based in Lynchburg, Virginia, although it had plants in several other states, including Georgia and Texas. The company is currently under criminal investigation by the United States government because inspectors found roaches, mold, and other food contamination at the company's Georgia plant. In addition, the company's Texas plant was shut down because of potential contamination with salmonella. According to news reports, more than 600 people have suffered peanut butter salmonella food

poisoning, and there are nine deaths as a result of the peanut butter contamination, much or all of it alleged to arise from Peanut Corporation of America products.

Also, for consumers suffering food poisoning or death as a result of salmonella, there will be a determination of where to file any potential lawsuits. Normally, a company that distributes a dangerous product or food may be sued in the state in which it has a registered agent or a business headquarters, such as in Virginia. Also, a company normally can be sued in a place where it knowingly distributes food products. With regard to the peanut butter salmonella poisoning situation, the Peanut Corporation of America provided its peanut products to a number of other larger food distributors and sellers in the United States. Each party involved in the distribution or sale of a contaminated food product may have liability and be sued.

In Virginia, as well as many states, sellers of food products must provide a warranty, implied in the law, that its food products are safe for human consumption. This is called an implied warranty of wholesomeness. Any time a Virginia company breaches its warranty to provide food products that are safe for human consumption, it may be sued under this food warranty and, in addition, under negligence law. There also may be federal or state regulations that are breached if a company distributes contaminated food based on improper manufacturing practices, or known contamination that originates at its plant.

It is of obvious importance that the United States food supply be safe and that consumers be able to rely on the general safety of food products sold in marketplaces and supermarkets. Food-poisoning claims have some issues relating to proof, but in a case like the peanut butter salmonella outbreak, there is already abundant evidence of knowing distribution of food products that may have been contaminated prior to distribution, and that the company knew of the contamination at its plants.

AS WE SEE IT

Some politicians or media commentators complain one-sidedly about our civil justice system and trial attorneys. Often, they phrase the issues as they appear in the left-hand box of the chart below.

We have had the benefit of helping people who have been harmed by others' carelessness, such as people injured by drunk and reckless

drivers, negligent property owners, or by the actions of uncaring corporations.

We think the way we view our civil justice system and trial attorneys is more accurately stated in the right-hand box.

HOW SOME PEOPLE SEE IT.	HOW WE SEE IT.
Insurance companies vs. trial lawyers	HMOs vs. patients needing care
Pharmaceutical manufacturers vs. trial lawyers	Drug makers vs. patients requiring safe medications
Car makers vs. trial lawyers	Car makers vs. driver and passenger safety
Doctors vs. trial lawyers	Physicians vs. health insurers
Nursing homes vs. trial lawyers	Nursing homes vs. elderly residents and their families
Manufacturers vs. trial lawyers	Manufacturers vs. injured consumers
Railroads vs. trial lawyers	Railroads vs. drivers injured at crossings
Corporations vs. trial lawyers	Unsafe products vs. harmed consumers
Small businesses vs. trial lawyers	Small businesses vs. injured employees



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MAGAZINE CONTEST

The SCLA "Win a FREE Magazine Subscription" continues! Answer the trivia question below by the deadline receipt date of May 15, 2009 (must be received by this date), and win a FREE one-year subscription to one of many popular magazines!

QUESTION:

Which state had the longest water crossing by a railroad?

- A. Florida B. Texas
C. Utah D. Michigan

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

Stop-sign accidents

According to Insurance Institute for Highway Safety 1999-2000 research estimates, nearly 700,000 vehicle accidents occurred at stop signs. About a third involved personal injuries.

Drivers who failed to stop at stop signs or who stopped at stop signs but failed to see oncoming traffic accounted for approximately 70 percent of all automobile accidents.

Broadsided

After being broadsided by another vehicle that ran a stop sign, a driver suffered multiple serious injuries that required her being placed in a drug-induced coma for several months, followed by six months of rehabilitation and physical therapy. Unable to ever work again, she enlisted the services of an attorney who filed suit against the responsible driver. A jury awarded significant damages.

