



# BACK ON TRACK

SUMMER 2010

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### INJURY PRACTICE

- Free consultation
  - Home appointments available
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## Attorney Emily Mapp Brannon now licensed in Florida

We are very proud to announce that attorney **Emily Mapp Brannon**, who has been working at **Shapiro, Cooper, Lewis & Appleton** since 2008, is now licensed in the state of Florida. Our firm believes multistate licensure is important, since it broadens our legal knowledge and allows us to handle cases in a variety of state courts. Our attorneys hold VA, WV, KY, NC, SC, FL and DC law licenses.



## New Hampton, Va., satellite office is now open

Our firm has expanded its presence in Hampton Roads by opening a new satellite office in Hampton, Va. The office is located in the **Mill Point Center at 101 Eaton Street**. Our goal in opening this office is to better serve existing and new clients residing in the Hampton/Newport News/Williamsburg, Va., areas or anywhere else surrounding the Peninsula area.

## CURRENT CASES WE'RE WORKING ON

### CAR ACCIDENTS:

- Mother, son, and friend hit by car in Chesapeake, Va.; drunk driver refused blood test; punitive damages sought.
- Norfolk man hurt in North Carolina car accident, sustaining shoulder, hip, and facial injuries; unable to return to his job.
- North Carolina woman, a passenger in her uncle's vehicle, hurt in a Virginia accident; knee fracture and surgery-related injuries.
- Virginia Beach man injured in massive T-bone car wreck; multiple leg surgeries; unable to walk for over a year; disabled from prior job.
- Two separate clients with injuries after suffering car accidents caused by drunk drivers, each of whom had repeat offense DUI/DWI driving records.
- Driver suffers brain injury after being struck in an intersection by a medical transport service van. The driver was allegedly distracted using a cell phone—and not on an emergency call—at the time.

### RAILROAD/FELA:

- Railroad bridge worker struck by a massive railroad timber moved by a crane operator; major leg injury, disabled from job.
- Retired Conrail engineer diagnosed with mesothelioma asbestos cancer over 10 years after retirement; suit against railroad and other asbestos companies pending.
- NS carman diagnosed with "diesel fume asthma" lung impairment months after retirement; claim pending.

- CSX conductor contracts blood disease; firm filing suit alleging the cause was long-term benzene/diesel fume and radioactive isotope exposures.

### MEDICAL/SURGICAL MALPRACTICE:

- Nine-year-old child dies after pediatrician's office failed to diagnose and properly treat a strep infection.
- Orthopedic surgeon fails to respond to patient's infection, causing removal of orthopedic surgical hardware and complete fusion of lumbar spine of patient.
- Ob-Gyn physician improperly places a stitch around a ureter during laparoscopic hysterectomy and fails to realize he did so, resulting in complications and substantial additional surgery.

### DANGEROUS DRUGS:

- Nurse diagnosed with complete loss of smell and taste after using zinc-based nasal over-the-counter medication (Zicam), which has been recalled.
- The firm is accepting Yaz and Ocella cases involving dangerous birth-control medications. We have accepted at least 15 cases at this time. Check our Web site about the complications that may arise.

### DEFECTS AT PROPERTIES:

- Portsmouth, Va., tenant falls down stairs in house; orthopedic operation required; caused by unsafe steps and handrail of landlord.
- Child injured leaving school when she stepped off the sidewalk onto a drain pipe, which collapsed under her, causing her to fall and break her arm.
- Client shopping at large retail "club" store; industrial freezer door falls on her, causing significant injuries.

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 LAW<sup>SM</sup>  
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# FELA vs. workers' compensation for railroad employees

*Understanding the difference... by John Cooper*

Many railroad workers who get hurt on the job ask us, "Do I qualify for workers' compensation?" The answer, in most cases, is no. Railroad workers who are injured on the job are usually protected by a federal law, the **Federal Employers' Liability Act (FELA)**, and not state workers' compensation laws.

Whether a worker is protected by the FELA usually depends upon the business of his or her employer. If the employer is a railroad, like CSX or Norfolk Southern, that handles interstate commerce (freight), the FELA is usually applicable to on-the-job injuries and not workers' compensation. There are a few limited exceptions to the scope of FELA coverage, probably the most significant is that of railroad workers employed at facilities engaged in loading ships. In some instances, if a railroad worker is engaged in what courts characterize as maritime employment, courts have decided the Federal Longshoreman and Harbor Workers Act provides protection to employees injured on the job.

There are some significant differences between the FELA and workers' compensation coverage. An employee covered by workers' compensation typically needs to demonstrate that they suffered an injury in the scope of their employment to establish that they are entitled to benefits instituted by the state workers' compensation law. Usually, a worker covered by a state workers' compensation law is entitled to two-thirds of their pay while they are off from work recovering from their injury, with a limit of 500 weeks of pay for a permanent disability.

A railroad employee covered by the FELA must demonstrate that their injury was caused in some form by the negligence of the railroad, a defect in equipment, or the negligence of a fellow worker. The benefits available to an injured worker protected by the FELA are not limited by statute. If an injured railroad employee establishes the negligence of the railroad "played any part, even the slightest, in producing the injury or death for which damages are sought," a jury considers the evidence of the amount of damages the injured worker has suffered and awards what it considers fair damages to the worker.

There are different reporting procedures and statutes of limitations which are applicable to FELA and workers' compensation claims. It is usually a good idea for an injured worker to consult with experienced legal counsel to ensure that everything is done to protect a claim. Our firm has extensive experience handling FELA claims, and we have relationships with firms which handle workers' compensation claims to whom we are happy to direct injured workers not protected by the FELA.

## Truck tire smashes into minivan, killing driver, in Henrico County *by Richard Shapiro*

If there was any doubt about the level of risk we all face while sharing the highway with big rigs and other large commercial trucks, the recent accident in Henrico County, Virginia, illustrates what can happen when something goes wrong with a large commercial truck.

A big rig traveling down Interstate 64 (I-64) suddenly had a wheel base break off, causing the massive truck tire to bounce across the highway, eventually slamming into a minivan driven by Stephanie Bender, a resident of Colonial Heights, Va. She died at the scene on May 14, 2010, as a result, according to wtkr.com. The truck was owned by J.E. Liesfeld Contractor Inc. of Rockville, Md., State Police spokesman Sgt. Thomas J. Molnar said. A company spokesman said the wreck was "very tragic" and that the cause appeared to be equipment failure—a tire seal ruptured, and friction caused the 200-pound tire set to come off the axle. Under Department of Transportation (DOT) regulations governing commercial trucks, there are inspections required of such vehicles. It is unclear at this time whether any failure of maintenance or inspection duties applies here.

"The company is very upset this happened, it's a tragic accident, and the company will do everything it can to assist the family in its time of need," said Charles Ayers, corporate counsel to Liesfeld. As a trucking injury attorney often working against trucking companies, it is unclear to me what the attorney's

comment means in the context of any civil injury lawsuit that may be brought by her family members.

The disparity in size and weight between a commercial truck and compact cars, SUVs, and minivans is so great that even when the slightest error or malfunction occurs with a big rig or 18-wheeler, the damage can be catastrophic, especially for the driver and/or passenger(s) in those compact vehicles.

The Virginia Commercial Motor Vehicle Inspection Team is investigating what caused the tire to break off from the big rig, according to wtvr.com. They will determine if traffic/criminal charges should be filed against the truck driver, since there's a chance the big rig may have had mechanical defects that were overlooked or neglected, leading to a death. This is completely separate from any "wrongful death" civil lawsuit that may be available to the surviving family members.

It was reported that over 200,000 trucks violate federal safety regulations but are still operating on roads and highways all across the country. We'll have to wait and see what the Inspection Team reports.

Regardless of the cause, I want to send my deepest sympathies to the Bender family. The pain of losing someone you love is always gut-wrenching, but it has to be even worse when the loss is so sudden. Mrs. Bender was only 36 years old.

# Hospitals held responsible for medical negligence through “vicarious liability”

Let’s say you’re in the hospital receiving treatment for a medical condition such as diabetes or asthma, or you’re just there to get an annual checkup. The nurse who is treating you makes a medical mistake like injecting you with the wrong medication. This error results in you suffering a serious injury or even a permanent disability.

When this situation occurs, some people hesitate to take legal action because they think the nurse doesn’t have the resources to fully cover medical bills, lost wages, and the pain and suffering you have endured. This is simply not the case; don’t let this prevent you from pursuing justice from what is clearly a medical malpractice incident.

The hospital is held responsible by “vicarious liability.” This means that an employer is liable for the negligent actions of their employee, even if the employer was not directly responsible for the injury.

To learn more, check out the full article on [va-nc-medical-surgery-malpractice-attorneys.com](http://va-nc-medical-surgery-malpractice-attorneys.com).



## INJURED while on vacation?

Every year, thousands of vacationers suffer injuries from auto accidents, criminal assaults, property owner negligence, and security failures. Travelers suffer serious injuries while at airports, amusement parks, theme parks, and water parks, or while on boat rides, cruise ships, and tours.

If you’re injured, take steps:

- Get immediate medical attention.
- Notify the auto rental company, hotel manager, law enforcement, park manager, or ship’s captain to establish an incident record.
- Because laws in holiday locations may differ from your home state laws or those of the United States, contact an experienced personal injury lawyer for counsel on local statutes or regulations, judges, and juries potentially affecting your claim. **Shapiro, Cooper, Lewis & Appleton** will be your local legal counsel for the following states: Virginia, West Virginia, North Carolina, South Carolina, Kentucky, Florida, and the District of Columbia.
- Contact our office, too. We will help the lawyer handling your vacation injury investigate the incident, identify negligent parties, handle medical and legal issues, and try your case if necessary.

If an accident ruins your vacation, protect your rights to as full a physical and financial recovery as possible.

Call us at **800-752-0042**.

## Vehicle accident Q & A “Totaled vehicle”

**Q: I was in an accident. I wasn’t injured, but my insurer said my older pickup was “totaled.” What does that mean?**

A: “Totaled” means an insurer determines that a vehicle’s repair costs exceed its retail value.

**Q: How does my insurance company calculate this?**

A: Your insurer should document that it obtained its “totaled” estimate from averaged retail sales of comparable trucks according to the NADA Used Car Guide, compiled by the National Automobile Dealers Association.

**Q: If I accept the “totaled” value, who keeps the truck?**

A: Your insurer will probably keep it and transfer it to a recycler for “salvage” value.

**Q: I’m thrifty. Can I keep my “totaled” truck and get it repaired?**

A: Yes, it’s still your property. However, the insurer will probably pay you only its “salvage” value. So, in addition to paying repair costs, you may have to deal with other issues such as remaining vehicle payments, liens against the vehicle from the accident, and reinsuring a vehicle with only a “totaled” value.

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***Our contest continues...***

***Announcing the winners of our Web Site Visit Contest!***

**WE PICKED OUR MAY 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:**
- Jeff W., Sandston, VA**
- iPod Touch winners (two):**
- R.K., Virginia Beach, VA**
- Chris K., Aydlett, NC**

**NEW CONTEST PRIZES:**

- One portable travel DVD player (with carry case, headset, and charger)**
- Two iPod Touch units**



***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: August 18, 2010**



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