



# BACK ON TRACK

WINTER 2009/10

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## MEDICAL MALPRACTICE/DOCTOR MISTAKES

### Medical malpractice caps save no money, cost injured patients

By James C. Lewis, Attorney

Calls for capping medical malpractice awards have grown louder and more frequent as the debate over how to reform the nation's health-care system has raged over the past year. Ignored or drowned out in the debate has been solid evidence that malpractice insurance and suits account for a minimal percentage of the annual tab Americans pay for the services of doctors, surgeons, pharmacists, nurses, and even insurers.

Speaking at Georgetown University, medical malpractice expert, doctor, and lawyer Gregg Bloche cited data that show malpractice cost health-care providers and insurers \$55 billion in 2007. The total spending for health

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## CURRENT CASES WE'RE WORKING ON

### CAR ACCIDENTS

- Serious leg injuries to a worker in a car accident in which the responsible driver failed to yield, even though he had a stop sign controlling his entry to the highway. Interviews and investigation are ongoing.
- Infant injured when car runs over him, causing damage to his ear with permanent scarring. Driver was not paying attention.
- Young man on a motorcycle was struck by a car and suffered fractured bones, surgery, and hospitalization.

### RAILROAD/FELA

- Child caught on railroad tracks on trestle loses her leg after being hit by a train.
- Railroad car repairman (FELA case) is permanently disabled and had a hip-replacement operation as a result of cumulative trauma and repetitive-stress injury during his long career.
- Railroad worker engineer employed with Conrail for over three decades is diagnosed with mesothelioma cancer, years after retiring otherwise healthy. We are investigating his

asbestos exposures to prove the railroad's liability.

### DANGEROUS DRUGS/PRODUCTS LIABILITY

- Thirty-year-old woman requires gallbladder removal after taking Yaz birth-control pills. Class-action lawsuits are being filed against the manufacturer of this dangerous drug.

### MEDICAL MALPRACTICE

- Client goes to the hospital to have a hysterectomy. The surgery is performed using a robotic arm. The client suffered a perforated bowel and a severed ureter due to what we believe are several mistakes made by the operating surgeon.
- Client goes to the hospital to have his gallbladder removed. During the surgery, the doctor misidentified the client's anatomy and mistakenly put surgical clips on the client's common bile duct. This resulted in the need for extensive intestinal reconstructive surgery.

## IN MEMORIAM

### Charles H. Cunningham, 1930-2009

The firm and our friends mourn the recent passing of Charlie Cunningham, who served as an investigator for our law firm for about 20 years after retiring as a BLE locomotive engineer. Charlie also had 36 years of train-service experience prior to joining our firm. While at N&W, he served as a fireman and engineer. He also held local and state legislative positions with the BLE and remained active in the BLE, and as an investigator with our firm, until his health prevented him from doing so. Charlie was a dear friend to so many of us and a great asset on our team; his optimism and spirit will remain with us forever.

Two firm attorneys included among "The Best Lawyers in America" (2010 Ed.) and named as "Virginia Super Lawyers" (Law & Politics, 2009 Ed.)

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## MEDICAL MALPRACTICE/DOCTOR MISTAKES

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care in that year topped \$2.2 trillion. This means that eliminating every single cent spent on malpractice two years ago would have reduced health spending by just 2.5 percent.

Stating the obvious, University of Illinois law professor David Hyman told the same audience, “Tort reform is not a magical solution to the problems with our health-care system.” Virginia and West Virginia are among the 32 states that cap malpractice awards.

Far beyond the economic issues of medical malpractice, however, are considerations of how limiting patients’ ability to receive compensation for injuries they have suffered as a result of medical errors, surgical errors, and medication dispensing or administration errors further hurts those patients. I have written about this before, but I can’t stress enough that patients harmed by medical malpractice should not be denied the right to receive justice for the harm they have suffered.

The current federal administration under President Barack Obama is showing some signs of agreement with me and others on this, offering grants to states to explore ways other than damage-award caps to lower the direct costs of malpractice. While I hope such projects succeed and take discussion of so-called “tort reform” out of the health-care debate, I would also like to see states with existing caps do away with them.



### Gulf War veteran injuries

A new report claims that in addition to suffering from combat stress, some Gulf War veteran injuries may be the result of exposure to neurotoxic chemicals used in the war.

## TRUCKING ACCIDENTS

*For all of the safety advances that have been made in cars over the past few years, the sheer size and weight of a tractor-trailer or large truck may as well render them useless. **Trucking accidents have a tendency to be catastrophic, with severe injuries or fatalities being the rule rather than the exception.***

When the drivers of two cars have a collision, sorting out insurance concerns is usually a straightforward affair. This is not the case when a tractor-trailer/trucking company is involved in a wreck. Due to the many **liability, underinsurance, and separate insurance policies involved in any trucking business**, tracking down the insurance sources or proper trucking company that may be responsible can be an overwhelming burden. *The tractor, the trailer, and the truck operator may all have separate available insurance policies*, and often we must also analyze our own clients’ other insurance sources as well. Attempting to do so while caring for a critically injured loved one can seem impossible.

### **Trucking companies don’t make it easy**

They often don’t provide the actual operator’s name or what company has the primary insurance. ***Established trucking companies often send an investigator to the scene immediately to gather evidence, interview witnesses, and to be sure that the trucking company drivers “clam up” fast, and they do this in order to effectively minimize their liability.*** The commercial nature of trucking means that those who are hurt in accidents with truck drivers are not simply dealing with a driver and his insurance company. They are dealing with a profit-minded business that wants to minimize any loss of revenue, and if that means making the claims process as difficult as possible, then so be it.

Facing a case of this magnitude can be an uphill battle unless you have legal counsel that understands the difference between car accidents and wrecks that involve commercial trucks. Retaining a



**For more on trucking accidents and safety, visit our blog exclusively on these issues: [VirginiaTruckingAccidents.com](http://VirginiaTruckingAccidents.com)**

good lawyer and analyzing all evidence early on in the process can be the difference between a fair and just settlement and having your needs utterly unmet. There are many actions that must be taken almost immediately, with the first step being the collection of any and all forensic evidence. Skid marks, debris, vehicle or tire damage, and data systems on the truck are the physical evidence of the accident, and can be used to great effect by forensic experts who are knowledgeable about big-rig accidents and accident reconstruction. An equally important step is getting through the web of liability insurers and locating all available responsible parties and relevant insurance that may be available to you or a family member.

It is also crucial to obtain an attorney who has a thorough and complete understanding of state and federal regulations that apply to trucking companies. It’s important to understand that tractor-trailers can be considered moving, portable businesses, and there are commercial regulations that demand that they be operated responsibly and safely. Attorneys with experience in trucking accidents can determine whether or not these regulations were being followed, and can apply that information to your case.

Please call us if you have any questions about a trucking accident.

# Jurors in the Internet era

Trial judges are adding new instructions to empanelled jurors.

Judges have always instructed sitting jurors to avoid newspapers or not talk to friends about a trial to avoid bias or partiality. Jurors should reach verdicts solely on a judge's instructions as well as facts and evidence presented by plaintiff and defense attorneys.

For today's "wired" jurors, judges are adding cautions about blogging, e-mailing, twittering, or posting trial comments on Facebook or personal Web pages.

Some jurors, equipped with wireless PDAs or cell phones, have done their own online research and shared information with jurors and others about trial plaintiffs, defendants, or witnesses.

Others, violating the bench's instructions, have issued up to 60 outgoing opinionated "tweets" about individuals or companies on trial. One juror's online communications led to litigation. Owners of a building-materials company appealed a \$12.6 million jury verdict, noting a juror posted messages on Twitter during deliberations and alleging the posts demonstrated improper bias.

The status of facts, data, and outside opinions that may be introduced at trial is undergoing thoughtful consideration. Evolving case law will help courts resolve how technology can help or hinder trials. Until then, jurors should comply with the judge's instructions.

## Increasing results of railroading careers: Hip/knee replacements and other joint surgeries

FELA cases for CSX, Norfolk Southern (NS), and Conrail brakemen and conductors have been growing in number from cumulative trauma or repetitive stresses on train crews' bodies after years of service. One of the main railroad work activities that caused excessive stress on the hips, knees, legs, ankles, and feet of yard conductors and ground crews in the time before the early 1990s was getting on and off moving equipment.

In the early 1990s, most railroads changed the long-time practice of having workers get on and off moving equipment. The mounting and dismounting in this manner involved running in large, loose ballast rock and climbing onto a bottom rung of a metal ladder system.

The first step up onto the railcar or engine can be a large one, much further than a regular ladder. The railroad industry stopped forcing workers to do this dangerous practice in part because of all the people who fell or tripped, landing under the train and losing a leg, an arm, or their life. One of the other consequences of this unsafe practice was just the pounding that these workers took on the job, which was literally eating up their bodies.

We are currently handling a number of cases for railroad workers who started their railroad careers back when getting on and off moving equipment was a daily practice. If workers have had hip, knee, or back surgery or been permanently disqualified from doing their previous jobs on the railroad because of "aggravated arthritis" or "cumulative trauma" pain problems, we will carefully evaluate and consider such claims. Please contact us today for a free, confidential consultation.

## DANGEROUS DRUGS: Cautions and warnings!

Please be aware of four very dangerous drugs listed below:

- 1. Yaz, Yasmin, and Ocella—birth-control pills.** Millions of young women are at risk of serious side effects, including stroke, heart attack, blood clots, deep-vein thrombosis, pulmonary embolism, and even death. A recent study published by the *British Medical Journal* demonstrated that birth-control products containing the active ingredient found in Yaz, Yasmin, and Ocella—drospirenone—carried a risk of blood clots nearly double that of other birth-control medications.
- 2. Paxil—antidepressant.** This drug has been known to cause birth defects. Unfortunately, many doctors were told they could prescribe the medication to pregnant women and women of childbearing age. On June 28, 2007, the *New England Journal of Medicine* published two studies providing further evidence linking Paxil to birth defects, including heart defects, skull defects, brain defects, and abdominal defects.
- 3. Avandia—diabetes medication.** This medication is part of a class of thiazolidinediones. This class of diabetes drug has been linked to congestive heart failure and even the possibility of heart attacks. Thiazolidinediones increase the risk of congestive heart failure, heart attack, and death by 60 percent, 40 percent, and 29 percent, respectively. These statistics are not acceptable for any person living with diabetes.
- 4. Fentanyl/Duragesic—pain-patch overdoses/deaths.** Fentanyl (also called Duragesic) is a powerful pain medication prescribed in various-strength pain patches and is only to be prescribed for serious, chronic pain. Since fentanyl is 81 times stronger than morphine, drop for drop, why is this potent drug prescribed for a patient to handle at home, given that there have been numerous overdose deaths either from defects or malfunctions of the fentanyl patches? The product should only be prescribed as a last resort, but in the meantime, patients around the nation are dying from accidental overdoses. Our firm has accepted two such overdose-death cases.

If you or a family member has a question about your rights or whether serious health effects are related to these dangerous drugs, contact one of the firm's attorneys.

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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.

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

### 42-inch TV winner:

**Curtis M.**  
**Norfolk, VA**

### iPod Touch winners:

**Chuck C.**  
**Columbia, SC**

**Mathew P.**  
**Tazewell, VA**

Curtis, our grand-prize TV winner, was so excited, he immediately drove to our law office and picked up his TV (he happened to live fairly close to our office).

**Flat-screen winner  
Curtis M. of Norfolk  
accepts his prize in person  
from Rick Shapiro of the firm.**



**The next contest drawing will be Feb. 1, 2010, for another  
42-inch HDTV flat-screen TV and another 2 iPod Touches!**

**To qualify, go to [HSInjuryLaw.com](http://HSInjuryLaw.com), then  
click on "Web Site Visit Contest" and enter to win!**

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