

BACK ON TRACK

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

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PERSONAL INJURY PRACTICE

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- Trial attorneys

THE REPORT THE CAR INSURANCE ADJUSTERS HATE "Best Guide to Car Accident Injuries" report by SCLA attorneys

SCLA Attorney **John Cooper**, with input from our firm's attorneys, has written a booklet titled, "Best Guide to Car Accident Injuries," which is a fantastic guide for any client, newsletter recipient, or consumer, whether or not having suffered a car wreck, and whether or not residing in Virginia, where we are based. Excerpts of this booklet/report are provided below, but send us an e-mail (receptionist@HSInjurylaw.com with subject line: *Send Best Guide to Car Accident Injuries*), or call our toll-free number, **800-752-0042**, and request an e-mail and hard copy. Here is an excerpt, and now you know why car insurance adjusters hate this guide:

1. Timely medical care

The first thing to do if you are hurt in a car accident is to get the medical treatment you need. If the injury from the car wreck was a serious one, you likely went to the emergency room of the

closest hospital. The key is to get the appropriate medical care as soon as possible. Not only will you know what is wrong with you more quickly, but you will have created the paper trail proving your case, which is necessary for a successful outcome. Insurance companies, in evaluating injury claims, act as if it did not happen if it is not in writing and medically documented.

If you did not go to the emergency room, then make sure to get into a doctor's office quickly if you are feeling any pain or symptoms from the car wreck. It does not matter if you go to your family doctor, a chiropractor, an urgent-care facility, or an orthopedic specialist. What matters is that you get treated for your injuries. If you do not know who to go see, you can get a name from your doctor, a friend, or family member who has been in an accident or been treated by a good doctor they can recommend. If these sources are not available, look on the Internet or ask your injury attorney.

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NEW RAILROAD SAFETY LEGISLATION MANDATES USE OF CLOSEST AVAILABLE MEDICAL FACILITY

Our law firm has represented railroad workers for many years with regard to on-the-job accidents relating to asbestos, silicosis, cumulative trauma diseases, and all types of railroad injuries and diseases. When a railroad worker suffers an on-the-job accident, most railroads have an existing agreement with a company-approved doctor, facility, or clinic. The supervisors have been directed to take an injured railroad worker to the previously approved or authorized railroad company doctor/clinic/hospital, bypassing a clinic or hospital within 5 minutes, to carry a worker 45 minutes or an hour to a medical facility that was on the contracted list that the railroad directed the supervisor to go to. Newly enacted railroad safety legislation prevents railroads from bypassing nearby medical facilities in favor of a clinic or hospital of their selection or preference. In other

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Recent case settlement: **Pedestrian hit by car driver, serious leg injury (crosswalk)**

Staff: Richard N. Shapiro; Meg Cudden, Legal Assistant; Roz Hughes, Paralegal
Court/Date: Virginia 2008

What happened:

Our client was a Norfolk, Virginia, public school teacher who was crossing a two-lane road near an intersection with a Norfolk highway when he was struck by a 2005 Dodge Magnum. The operator of the Magnum

told the police that he looked down and when he looked up, he suddenly saw our pedestrian client but could not avoid hitting him. Our client was taken to a local emergency room with complaints of cuts to both arms and left foot and left knee pain. He was placed in a leg cast for his left ankle, given crutches, and told to follow up with his doctor. The Virginia Beach, Virginia, orthopedic surgeon eventually diagnosed a left calcaneal fracture. The calcaneus, or left heel, had a displaced fracture, and a CT scan was ordered. The CT scan showed multiple bone fragments and problems at the posterior subtalar joint. The fracture was comminuted and mal-aligned. In the midst of his medical care, our client relocated from Virginia to California and had to have follow-up care with an orthopedic surgeon in California. Corrective surgery was done to his ankle in California, and then our client underwent substantial physical therapy and was forced to wear an orthopedic boot after his surgery. We provided a careful history of digital photographs of our client's injuries, including the appearance of his ankle after the corrective surgery, which were quite impressive to the insurance adjusters. Our client also suffered extensive lost wages from his teaching position. We also obtained verification for the insurance company of all the wage losses.

Outcome: Two insurance companies combined to pay the entire \$100,000 in available insurance coverage.

Key legal strategy: This case was pending in Virginia, so we analyzed Virginia law as it pertained to pedestrians and crosswalks. We

were prepared to show the insurance company that the right-of-way was in favor of the pedestrian and that the driver failed to keep a proper lookout. In Virginia, these are some of the key "jury instructions" that a judge will charge to a jury in these types of cases:

- 1.** A pedestrian has the right-of-way when crossing a highway or street within any clearly marked crosswalk or at any regular pedestrian crossing at the end of a block, and by the most direct route at any intersection where the maximum speed limit is not more than 35 miles per hour.
- 2.** The pedestrian's right-of-way begins on one side of the street and continues until he has completed his crossing in the crosswalk or at the regular pedestrian crossing.
- 3.** When a pedestrian has the right-of-way, the driver of the vehicle has a duty to change course, slow down, or come to a complete stop, if necessary, to permit the pedestrian to cross safely and expeditiously.
- 4.** A pedestrian has a duty to use ordinary care to keep a lookout for motor vehicles.

Note: Our law firm has several prior significant settlements in favor of pedestrian clients injured at crosswalks which are available on our extensive law firm Web site under "Case Results" at www.HSInjurylaw.com.

Out and about



Investigator Herb Wooten and attorney Randy Appleton visit with retired BLET engineers Billy and Lacy Ray and their wives at the Hamlet/Rockingham BLET Local 435 banquet.

“Best Guide to Car Accident Injuries” report...

(continued from front page)

If you do not get the treatment you need, the insurance company will argue that you must not really have been hurt. The insurer will claim that any gaps in treatment show that you were not really trying to get better, if you were even hurt in the first place. No amount of explanation for the lack of treatment will work. It will not be very effective to say, “I do not like to go to doctors,” “I just toughed it out,” or “I did not know where to go.”

Get the required medical care!

10. Insurance-company tricks

The insurance company for the at-fault driver will do everything in its power to keep you from hiring a competent personal injury lawyer. If you fall for this, they will lead you along, promising that they will pay your medical bills and lost wages, only to force you to take a low and unfair settlement amount after you have lost some of your rights by not getting an attorney early on. They expect that if they can get you to delay hiring an attorney for long enough, problems will develop in your case and no attorney will want to take your matter on.

The insurance claim representative will sometimes try to get you to settle immediately, before you seek counsel. You do not ever want to settle your personal injury case before you know

exactly what is wrong with you and that you are 100 percent well or as good as you are going to get. If your case results in a permanent injury, you need to know that before you sign a release with an insurance company. Once you sign a release, you are saying that you will never sue them or the at-fault driver ever again about the incident. If the insurance company can fool you into giving up your rights before you finish your medical treatment, then they have done themselves a big favor, so they will often dangle some quick money before you to try to get you to close the case before an appropriate time.

The recorded statement is another common ploy used by insurers before the person hurt in a car wreck has an attorney. The idea is to get a statement from you where you admit something that they will later use against you. You do not want to ever give a recorded statement without first talking with an attorney and thinking through what exactly the facts and legalities are in your case.

Our lawyers, with over 100 years of combined legal experience, explain what you need to know and the mistakes that car accident victims frequently make when dealing with insurance adjusters. Order your free copy today.

NEW RAILROAD SAFETY LEGISLATION...

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words, the 2008 Rail Safety law requires that railroads carry injured workers to the nearest available medical facility rather than the one that is most favorable to their corporate or railroad interest.

The key provision of the new law reads:

(c) Prompt Medical Attention

(1) PROHIBITION—A railroad carrier or person covered under this section may not deny, delay, or interfere with the medical or first-aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

Also, discipline may be enforced against the offending supervisor. For more information about railroad issues and railroad safety articles that we have published, go to www.HSinjurylaw.com or our law blogs listed on this newsletter.

Nursing home injuries

Residential care for elderly nursing home residents is not always delivered as promised, and accidents sometimes occur.

To be sure that staff will safeguard their loved ones' safety and health, adults who help parents enter assisted-living or nursing homes should investigate residences carefully.

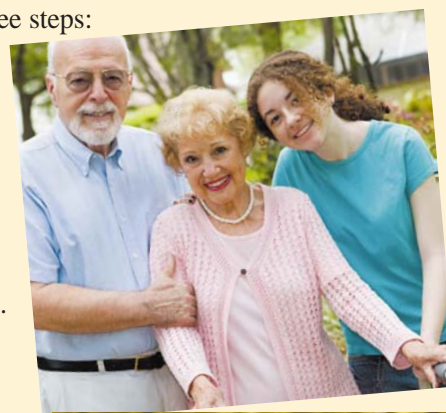
Should a safety or injury problem arise, it may not always be easy to determine causes of safety or health problems. Staffs are reticent to talk, and the elderly may be unwilling or unable to explain problems.

Responsible adults who suspect that nursing home care is insufficient or has resulted in an injury should take three steps:

1. Get medical care for the loved one.
2. Notify residence management of concerns.
3. Seek legal counsel. Attorneys familiar with nursing homes can help elderly loved ones receive a high level of care or determine the bases of injuries and hold the responsible parties accountable.

Common concerns

- Decubitus ulcers
- Dehydration
- Falls, dislocations, and broken bones
- Inappropriate physical-restraint use
- Infections
- Physical, emotional, or psychological abuse
- Malnutrition
- Pressure sores



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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 January 15, 2009 (must be received by this date), and win a FREE one-year subscription to one of many popular magazines! CONGRATULATIONS to our Fall 2008 newsletter contest winner, Wm. Jason Odom of Summerville, S.C.!

QUESTION:

The first self-contained diesel-electric passenger locomotive in the United States was sold to what railroad?

E-mail your answer to
mcudden@hsinjurylaw.com.

Include in subject line:
Magazine Contest.

Txt msgng & drvng dangr

Please avoid the distraction of using high-tech devices while driving. Text-messaging, sending e-mails, checking global positioning, tuning satellite radios, scrolling MP3 players, and taking camera-phone pictures may all contribute to reduced attention to road conditions and lead to accidents.

A text-messaging driver looks away from the road up to 14 times every 30 seconds.

Instead, follow these safety suggestions:

- Concentrate on driving.
- If you must talk and drive, use hands-free devices.
- Pull to the roadside when using complicated electronic devices.
- Take calls on voice mail.
- Avoid emotional or stressful phone conversations while driving.



If you are in an accident and suspect the other driver was distracted, obtain legal help. An accident-specialist attorney can investigate other drivers' vehicles for evidence of electronic-device use, phone and e-mail records, and other sources to show a driver lost focus while driving.