

# BACK ON TRACK

Hajek, Shapiro, Cooper & Lewis NEWSLETTER



SUMMER 2005

Brought to you by  
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## Amtrak's plight is uncertain Advantages of commuter transport versus the fiction of profitability

By Richard N. Shapiro, HSCL attorney

On March 16, 2005, the *Wall Street Journal* ran a story on the Bush administration's efforts to end federal subsidies for Amtrak passenger lines. The article, and many others since, scream the proposition that Amtrak has been awash in a sea of red ink ever since its creation in 1971 as a majority-owned, government-run passenger line.

How does one value the "profitability" of a public rail transportation system that theoretically removes a definable number of vehicles from our nation's highways, reduces pollution, and provides an alternative means of short- and long-distance transportation? No statistics, studies, or government rhetoric can set the true "value" of these services.

Stated another way, when has a regional airport ever been profitable? Indeed, how could an airport that serves as a "terminal" for the nation's privately owned airlines ever pay for itself? Why in budgets of regional, state, or federal systems don't we require airports to become "profitable" in the rents or leases under which they earn revenue? The answer is obvious: An airport is a publicly operated institution which the public recognizes could never be profitable.

You and I and every other reader of this newsletter use the interstate highways, and, gosh, we sure pay our taxes for the construction companies that make these highways smooth and convenient! I sure wonder why it takes the contractors years to complete an interstate highway, and I ponder my tax dollars paying the late charges and overrun fees paid

to the contractors. Should the state and federal governments establish tolls for all of the cars that run over these highways?

There are no answers to the Amtrak debate, only questions and potential solutions in which all citizens must compromise. For example, it appears that Amtrak's highest revenue sources are on the longer-distance train operations, not on the northeastern corridor of the United States. By regionalizing Amtrak, or creating more regional public/private enterprises, will public transportation become more efficient but still operate essentially as before with more competition? No one really has any of those answers right now, and fragmenting public rail transportation creates new problems.

Doug Riddell, a veteran Amtrak engineer notes: "Amtrak was created to keep the Penn Central out of bankruptcy court by relieving it of its passenger-carrying expenses. Since the other railroads could not be left out, Amtrak was to be a blotter to absorb the passenger-operating debt of all of American's railroads in 1971. It inherited a fleet of aging locomotives and equipment, yet it is expected to operate a national system of clean, modern, on-time trains, using the tracks of railroads that don't want passenger trains on their tracks, and is expected to do so profitably when no one else could." Riddell continues, "If the Bush administration used the same logic to "reform" the U.S. Post Office that it wants to

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## Bumpy ride for maglev research

By Francis P. Hajek, HSCL attorney

In 1999, Old Dominion University in Norfolk, Virginia, announced the nation's first passenger-carrying maglev train research project, which was a private/public research project billed as promising a "magic carpet ride" via magnetic levitation of modern-style passenger trains on a specially designed track structure.

However, six years later, the maglev project

apparently needs an infusion of cash, and its engineers are still trying to work out the passenger train's bumpy ride. The research goal was to move a maglev train at 40 miles an hour for 1,100 feet during calendar year 2005. While progress has been made, Jeremiah F. Creedon, ODU's Director of Transportation Research, says further work is needed

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Don't get legally outmatched. Call us.

# What's wrong with "tort reform"?

## The real meaning of "tort reform": taking away the legal rights of American families

Some federal and state lawmakers want to pass "tort reform," or litigation-limiting, legislation to give insurance companies and corporations more power to overturn the rights that the average citizen has to seek redress for harm through our court system.

If elected officials legislate away our citizens' right to trial by a jury of their peers in a courtroom, the new power that big insurers and companies will acquire will affect us all.

### Lawbreaker protection

By limiting victims' rights, "tort reform" protects negligent drivers, greedy corporate managers, and polluters by bypassing the effective, centuries-old approach of using citizen juries to hold wrongdoers accountable for the harm they cause to others.

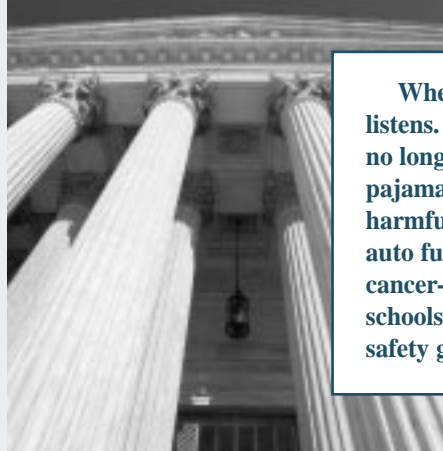
### Wrongdoer defense

"Tort reform" will provide a trump-card defense for pharmaceutical companies that market drugs which injure or kill people. It will give manufacturers who sell unsafe products an automatic shield against liability. Reform will

even give nursing homes that negligently cause our elderly to suffer a "free pass" from legal action.

### Unprotected victims

The most insidious effects of "tort reform" are that our civil justice system will no longer protect those who have been seriously injured or killed by careless medical errors or defective products or drugs...and no one will have the right to hold wrongdoers accountable.



When juries speak, corporate America listens. That's why...defectively designed cribs no longer strangle infants; flammable children's pajamas have been taken off the market; once-harmful medical devices have been redesigned; auto fuel systems have been strengthened; cancer-causing asbestos no longer poisons homes, schools, and workplaces; and farm machinery has safety guards.

## Bumpy ride for Maglev research

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to produce a working prototype that will produce a smooth ride. Creedon hopes that the team can move the magnetically levitated train about 200 feet at a speed lower than 40 miles an hour by September 2005. ODU's primary private partners are American Maglev Technology, Inc., and Lockheed Martin. Creedon said that ODU students as well as Lockheed Martin engineers have designed computer control systems to make the ride smooth, as it was originally billed. New controls have worked when the train is levitated over a solid column. However, when the train was moved to a section of track between such columns, the train maintained a stable levitation, but the guideway itself then vibrated excessively. Further adjustments are being made, but Creedon says that the train may require a "secondary suspension system," sort of like the shock absorbers on a car.

There is another passenger-carrying maglev train in China. It is a high-speed passenger train and costs billions of dollars to develop.

Creedon says that one of his team's goals is to build a much more affordable maglev system that can be constructed for reasonable amounts of money.

## FDA and disclosure

The Food and Drug Administration urged antidepressant makers not to disclose to physicians and the public that some clinical trials found the drugs no better than sugar-coated pills.

## Faulty knee replacement alert

One medical knee replacement product manufacturer, Smith & Nephew, has voluntarily recalled the "cementless" version of its Oxinium Genesis II and Profix II knee replacement implants. The reason for the recall is that the knee replacement implant becomes loose and then there must be another operation or revision of the implant. The revision surgery carries with it the risk of reinfection. In addition, patients may experience further damage to the knee joint and the muscles involved in that area. Of course, there are also the additional costs involved and the extra rehabilitation, which can be quite painful. Initially, this manufacturer predicted a failure rate of less than one percent for the knee replacement implants, but the actual rate of failure has been dramatically higher.

Our firm is aggressively pursuing those cases in which the Smith & Nephew knee replacement implant has failed to bond properly and then requires a revision. Our affiliated legal team is experienced in such work, having successfully handled prior defective implant cases. These particular versions of the Smith & Nephew knee implant systems were recalled in September 2003. Most "recalled" cementless knee implants were implanted between June 2002 and the fall of 2003. It is important to protect your rights within the appropriate legal time frame. If you have received a knee replacement of the Smith & Nephew Oxinium Genesis II or Profix II ("cementless") device, we will be happy to review your case. Call us immediately.

# The folly of frivolous lawsuits

The next time you hear anyone claim that there are too many “frivolous lawsuits,” think of these professional medical-negligence cases.

## Nursing home



A resident’s spouse settled an elder-abuse and wrongful-death lawsuit. A nurse at a skilled nursing facility inserted a feeding tube into the victim’s lung instead of her stomach. Food was pumped into

the lung for seven hours. When the error was discovered, the patient was transferred to a hospital, where she died six days later. Her life was not frivolous.

## Premature infant

A physician prescribed phenobarbital to prevent seizures in an infant who was born prematurely. Her mother purchased



the prescription at a pharmacy, which misfilled the preemie’s prescription with a medication used to treat adult-onset diabetes. The baby suffered prolonged hypo-

glycemic seizures, sustained brain damage, and was hospitalized several times. The parents sued the pharmacy for negligence, and a jury awarded damages for lifelong care. The child, who is now six years old, requires a wheelchair and cannot feed herself, among other problems. That child’s life is not frivolous.

## FOR YOUR SAFETY Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

✓ **Philips PC Peripherals** has recalled 15,000 Hewlett-Packard (HP) L2035 Flat Panel Monitors. Incorrectly installed back-panel ground clips can electrically shock users.

✓ **Wal-Mart Stores, Inc.**, has asked buyers to return 600,000 **GE Oval and Double Dish Slow Cookers**, which have handles on bases that may break, spill hot food, and burn consumers.

✓ **Royal Appliance** has recalled 20,000 Dirt Devil® Sweeper Vac™ vacuum cleaners. The vacuum’s rotors can lock and overheat, causing smoke and fire hazards.

✓ **Swing-N-Slide® Corp.** asked consumers to return 72,000 extra-duty and heavy-duty swing seats with defective seat-attachment grommets, which can break and injure users.

✓ **American Suzuki Motor Corp.** recalled 27,000 2004-2005 Eiger and Vinson ATVs. Incorrectly mounted fuel tanks can leak and burn riders.

## Tire safety

We all trust our families’ safety and security to our autos’ tires.

To operate a car safely, a driver can take several tire-safety measures:

1. Inflate tires to the pressure recommended by the manufacturer, including the spare tire.
2. Avoid overloading the vehicle or making it top-heavy.
3. Drive safely and maintain adequate braking distances.
4. Have tires safety-checked during maintenance visits for balance, alignment, and rotation.



## Tire shop negligence

When auto repair shops are negligent, juries can fairly address the injuries of those harmed. When four individuals died in a rollover truck crash after one of the tires failed—a tire that a technician allegedly never inspected, but advised did not need replacement—a wife, children, and estate sued. The plaintiffs agreed to a postverdict settlement with a major tire retailer after a jury awarded compensation as well as significant punitive damages.

## Referrals

We want you to think of us as your law firm. If you have legal matters that need attention, please let us know. If we cannot handle the matter, we will refer you to a competent firm that can.

Please feel free to refer us to your family, friends, and neighbors for their legal needs. We welcome the opportunity to help.



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## RAILROAD STATION

### New York state forces \$1.5 million settlement with CSX

New York Attorney General Eliot Spitzer forced CSX to spend \$1.5 million in safety measures for hundreds of railroad highway grade crossings across New York state. Spitzer attacked the Jacksonville, Florida, company for failing to repair a railroad-crossing safety device for eight days last year, until two persons were killed in a crash in a Rochester suburb. This began an investigation by Spitzer's office of other CSX crossings, which found more than 300 crossing malfunctions in total.

Under the settlement agreement, CSX will perform safety monitoring and reporting changes, and pay for a \$500,000 program that will reimburse local police for their costs in protecting railroad crossings that have malfunctioning safety equipment. The other \$1 million under the settlement was mainly for the state's investigation.



## Amtrak's plight is uncertain *(continued from front page)*

apply to Amtrak, there will be one company to sell stamps, another to deliver the mail, and a third that will own and maintain the Post Office buildings, further fracturing the responsibility and decision-making process for running America's passenger trains."

According to Andrew Selden, of the United Passenger Alliance in Minnesota, "We must redirect a much larger share of available federal investment capital towards the markets that have sold out trains and a much higher capital leverage ratio to the long-distance markets. The short corridors perhaps warrant investment from a social benefit perspective, to the extent that they provide consumer choice and possibly some [reduction] of urban congestion, but they are...capital intensive and financially hopeless." Bipartisan legislation that would authorize annual funding of \$2 billion over the next three years to finance Amtrak's capital and operating expenses was introduced in the U.S. House of Representatives on April 14, 2005. "Although serious disagreements still exist about Amtrak's long-term management strategy and structure, there is a common understanding of the need for near-term funding," said Transportation Committee Chairman Don Young. "This bill, at its requested level of \$2 billion per year, will allow Amtrak to continue with critical work under its current five-year plan." H.R. 1630 would authorize \$2 billion per year for each of the fiscal years 2006 through 2008 to the Secretary of Transportation for the benefit of Amtrak capital and operating expenses, and Amtrak excess railroad retirement expense. According to Amtrak, this level of funding would be sufficient to begin to address critical needs outlined in its five year capital plan, which is geared to restoring the Amtrak system, including the Northeast Corridor, to a good state of repair. The bill's fate was uncertain as of the date this article went to press.

## MAGAZINE CONTEST

The "HSCL Win A Magazine Subscription" contest rolls on! Answer the trivia question below by the deadline receipt date of **May 25, 2005** (must be received by this date), and win a one-year subscription to one of many popular magazines.

Our Winter 2005 trivia question winner was **Geneva Hines**. Congratulations, Geneva!

### QUESTION: *The first steam locomotive built in the United States was...?*

- A. Locomotion    B. Catch me who can    C. Puffing Billy    D. Novelty  
E. Tom Thumb    F. Best friend of Charleston

E-mail answers to [bgray@hsinjurylaw.com](mailto:bgray@hsinjurylaw.com) no later than **May 25, 2005**.  
The winner will be drawn from correct entries and announced in the next newsletter.