

BACK ON TRACK

Shapiro, Cooper & Lewis NEWSLETTER



WINTER 2005/06

Brought to you by
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PERSONAL INJURY PRACTICE

- Free consultation
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- Trial attorneys

Season's Greetings!

We'd like to take this time to extend our very best wishes to you and your loved ones. We hope your home will be filled with joy, warmth, and goodwill during this holiday season. May you and your family enjoy peace, happiness, and good health throughout the coming year.

Please find our 2006 calendar card as a token of our appreciation.

Shapiro, Cooper & Lewis

SPOTLIGHT ON VEHICLE INJURY CASES

by Jim Lewis, HSCL attorney

"BLACK BOXES" FINDING THE COURTROOM

"Black boxes," which have provided invaluable information in determining what has caused airliners to crash for years, are increasingly finding their way into vehicle injury litigation. An estimated 25 million automobiles in the United States now have so-called event data recorders, a scaled-down version of the devices that monitor cockpit activity in airplanes. The boxes are usually silver, not black, and about the size of a pack of cigarettes. Recordings are made in five-second spans and can provide valuable information on what occurred during the five seconds preceding an automobile crash. Nearly two-thirds of the people surveyed by an insurance industry group knew nothing about whether their cars had black boxes.

The device's primary function is to monitor various sensors and decide whether to fire air bags. Though capabilities vary widely among car makers, most recorders store limited information on speed, seat-belt use, physical forces, brakes, and other factors. Voices are not recorded.

Until very recently, no one could access the data found in these "black boxes" except the vehicle manufacturer. General Motors and, more recently, Ford Motor Company now allow outsiders to access the data by buying a \$2,500 reader built by a Santa Barbara, California, technology company. The company says its primary customers are accident reconstructionists, law enforcement, and insurance companies. So far, about 1,000 of the devices have been sold, primarily in the United States and Canada. The company hopes to reach deals to cover data from other auto manufacturers in the near future. It is clear that these "black boxes" are having increasing importance in contested vehicle injury cases. If you or a family member is in a serious vehicle wreck, contact our office for advice; we also can discuss whether your vehicle is equipped with a data recorder.

AIR BAGS: FRIEND OR FOE?

For years, the automobile manufacturers of the world have touted air bags as soft pillows that will greatly reduce injuries and deaths on our nation's highways. While it is true that air bags have reduced deaths and injuries, these achievements have come at a high cost. Due to the manufacturer's decision to rush air bags into our cars when first required by the National Highway Transportation Safety Administration in 1994, these manufacturers installed dangerously defective air bags into many of the vehicles on the road today. In particular, these air bags are extremely dangerous to children and small adults who happen to be sitting in front of them when they deploy.

In theory, an air bag is supposed to be fully inflated before the passenger contacts it during a crash. Serious injuries occur when air bags, which can travel at speeds up to 200 miles per hour, hit occupants prior to full inflation. Some air bags "push out" of their storage compartments with such great force that they can throw a child into the rear seat of a car. Air bags have also been known to deploy late in low-speed accidents, permitting front-seat occupants to move into the zone of deployment before the bag fully deploys, thereby resulting in very serious injuries or death. In addition, poorly designed crash-sensor placement can result in the air bag failing to deploy at all.

Air-bag manufacturers have themselves to blame for the potential hazards of air bags. Typically, manufacturers have been content to install an air bag if it met the minimum government regulation, known as Federal Motor Vehicle Safety Standard 208. The standard required that manufacturers certified that their air bags would not inflict injuries to a crash dummy that was 5' 9" inches tall upon a collision with a fixed object at the rate of 30 miles per hour. The problem with this approach has been that it does not address air-bag performance in individuals who are small, short, or very large. Accordingly, these groups of automobile passengers are at greater risk for air-bag-deployment injuries.

It is important that you always wear your seat belt while operating a motor vehicle equipped with an air bag (and ones that are not so equipped, for that matter). It is also important that children and other smaller individuals ride in the back seat of an automobile when possible. Finally, if you or a family member is injured by an air-bag deployment or by the failure of your air bag to deploy, you must preserve the automobile and the air-bag system so that it can be properly evaluated and tested by a qualified expert witness.

"Vioxx Dodgeball"

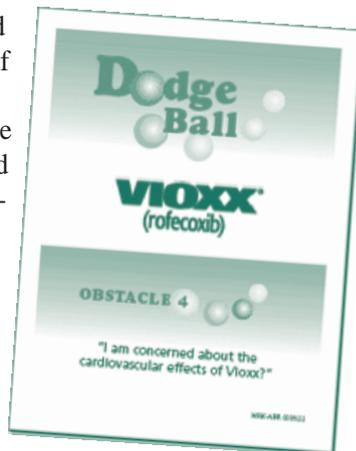
In August, a dozen Texas jurors found that Merck's aggressive marketing of its Vioxx® painkiller caused a patient's death. The victim's attorney claimed the drug manufacturer knowingly promoted the dangerous and deadly arthritis-pain-relieving drug and deceived physicians about Vioxx's risks. Merck's attorneys claimed the company had been truthful.

However, on the trial's first day, Merck witnesses struggled to defend a training "game" for marketing executives called "Vioxx Dodgeball," which seemed to encourage pharmaceutical sales representatives to evade physicians' potential concerns about Vioxx's safety.

Printed among cartoon dodgeballs, objections included comments such as, "I am concerned with the cardiovascular effects of Vioxx" and "I'm concerned about the safety profile of Vioxx."

Jurors understood that these observations treated serious physician unease as playful "obstacles." Following each question were a number of pages with the word "DODGE" plastered across the middle.

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Use your cell phone for emergency contacts

Paramedics will turn to a victim's cell phone for clues to that person's identity. You can make their job much easier with a simple idea that they're trying to get everyone to adopt: ICE. ICE stands for "In Case of Emergency." If you add an entry in the contacts list in your cell phone under ICE, with the name and phone number of the person that the emergency services should call on your behalf, you can save them a lot of time and have your loved ones contacted quickly. It only takes a few moments of your time to do this.

Paramedics know what ICE means, and they look for it immediately. ICE your cell phone NOW!

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Shapiro elected chair of National Railroad Trial Lawyer Group

The firm is pleased to report that HSCL attorney **Richard N. Shapiro** has been elected the 2005-2006 chairman of the Railroad Section of the Association of Trial Lawyers of America (ATLA), a specialty section within the largest trial lawyers association worldwide, with over 56,000 members. Rick has participated in plaintiff's railroad injury litigation throughout the eastern United States and is board certified in civil trials by the National Board of Trial Advocacy. He has announced several new goals for the plaintiff's railroad injury lawyers, such as increased networking between the lawyers and rail union legislative representatives, as well as a new monthly bulletin for the injury lawyers tracking current trials and depositions in railroad litigation nationwide.



Hurricane Katrina victims Trial Lawyers Care

Trial Lawyers Care (TLC) was originally created by the Association of Trial Lawyers of America (ATLA) to provide free legal help to victims and families of the victims of the September 11, 2001, terrorist attacks.

Now, ATLA and Trial Lawyers Care are again reaching out, asking the 60,000 members of ATLA to collect and distribute aid to relief organizations responding to Hurricane Katrina's devastation in Louisiana, Mississippi, and Alabama.

Send tax-deductible contributions to the Trial Lawyers Care Hurricane Katrina Relief Fund to: **Trial Lawyers Care, c/o Association of Trial Lawyers of America, 1050 31st Street, NW, Washington, D.C. 20007, Attn: Donna Shannon.**

NEW CASE BULLETINS

Recent pending cases and case reports in 2005:

Railroad cases:

- Portsmouth, Virginia, jury verdict—\$650,000 for a rail conductor hurt in a train-truck-crossing collision.
- Graniteville, South Carolina, train derailment with chlorine gas leakage—firm has settled many cases for residents suffering property damage; personal injury claims still pending.
- \$900,000 settlement—railroad conductor with multiple spinal injuries, hurt while walking along ballast when foot fell in a ballast rock depression.
- Confidential settlement for a railroad conductor injured in a railroad-arranged taxi service vehicular accident.
- \$333,000 settlement for a rail worker who injured his back while moving a railroad derail device.
- \$370,000 settlement for a rail worker injured when a train derailed due to an improperly maintained switch.



Medical negligence

- \$200,000 settlement for a client against a pharmacy that committed a prescription error, causing massive client hemorrhaging and hospitalization.
- Pending medical negligence claim against physicians for clipping common bile duct during gall bladder surgery.
- Physician failed to diagnose appendicitis, resulting in abdominal abscess and major surgery.

Motor vehicle injuries

- \$19,000 settlement for a client with \$3,000 in medical bills; the at-fault driver had an elevated blood-alcohol level.
- \$600,000 settlement for a client who required neck surgery with fusion; the client had significant wage and lost-earning-capacity losses.
- Pending wrongful-death action involving a rail maintenance worker killed in a tractor-trailer wreck.

Law firm selected by prestigious Primerus Group— FIRST PLAINTIFF'S INJURY FIRM FROM VA

Our law firm is pleased to announce it was selected to, and then accepted membership in, the prestigious "Primerus" society of international law firms. The firm is the first plaintiff's injury practice selected in the state of Virginia. Primerus screens law firms before offering membership and then carefully further screens the firm with colleague attorneys and judges before membership is confirmed.

In an article about Primerus, the *Wall Street Journal* reported, "[Primerus] wants to offer consumers a way to pick the good from the bad by establishing a sort of 'Good Housekeeping' seal of approval for attorneys."

New railroad close-call reporting begins— with confidentiality assured

The Federal Railroad Administration has launched its Confidential Close Reporting System (C3RS) Web site. The Web site is supposed to be a resource for confidentially reporting railroad safety risks and "close calls."

The Confidential Close Call Reporting System is an improvement over the status quo because close calls often precede serious train accidents. There are many more close calls than accidents, so patterns are easier to discern. The C3RS Web site defines a close call as opportunity for improving safety practices in a situation with a potential for more serious consequences. Examples it lists include safety concerns that could lead to hazards; conditions that could endanger employees, the public, equipment, or the environment; or job-safety issues.

Whistleblowers can receive protection from their employers or the FRA if they report a dangerous event within 48 hours. The reports will be sent to the Bureau of Transportation Statistics. The Confidential Close Call Reporting System Web site is at <http://closecallsrail.org>, and information on reporting will be on the Web site.

Falls on ice and snow

It's every courteous community neighbor's duty to remove snow, sleet, or ice from sidewalks near homes or businesses. Where winter snows customarily cover walks and roads, local ordinances usually require removal within hours.

A fatal slip on ice

A woman broke her ankle when she slipped and fell on ice in an apartment complex parking lot. She died two months later from a blood clot resulting from the fractured ankle. She was survived by three minor and three grown children. Her estate's lawyer successfully sued the property's owners for failure to clear the snow—which turned to ice—from the parking lot.

If you fall

If you are injured by slipping and falling *anywhere*, get medical help. Then call us. We can determine if hazardous or dangerous conditions contributed to your injury. We'll also help you deal with property owners and insurers to recover medical, lost wages, and other damages from the incident.

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Highlights from the Amtrak legislative debates

Rep. Corrine Brown (D-Fla.) pulled no punches when the House Railroad Subcommittee heard testimony on Amtrak.

"Last year, Amtrak achieved record ridership of 25 million passengers nationwide—the equivalent of 125,000 fully loaded Boeing 757 airliners. That is a substantial increase in ridership, which tells me that support for Amtrak is growing.

"Recent polls show that 66 percent of the American people support Amtrak—not 66 percent from the "red states" or "blue states," but 66 percent of the American people.

"We've spent \$18 billion on aviation security since 9/11, but nothing to secure Amtrak's passengers. The airlines are looking for another handout from Congress because of fuel prices—about \$600 million in tax relief. I don't see any relief for Amtrak.

"We spend \$4 billion a month in Iraq, but we can't find \$3 billion to get the Northeast Corridor to a state of good repair.

"Haliburton spent \$10,000 per day to house their employees in Kuwait at a five-star hotel, instead of moving them to air-conditioned tent facilities—as requested by the Army, for under \$600 per day—and we complain about the cost of Amtrak sleeper cars."

CONTEST ROLLS ON

The "HSCL Win a Magazine Subscription" contest continues! Answer the trivia question below by the deadline receipt date of December 28, 2005 (must be received by this date), and win a one-year subscription to one of many popular magazines.

Our Fall 2005 trivia question winner was **Jeff Wood**. Congratulations, Jeff!

Question: In Great Britain, the caboose is called the _____.

- | | |
|-----------------------|----------------------|
| A. Tail tram | C. Brake tram |
| B. Tail loader | D. Brake van |

E-mail answers to bgray@hsinjurylaw.com no later than December 28, 2005. The winner will be drawn from correct entries and announced in the next newsletter.

Old injury—new accident

On occasion, clients call us with this kind of question: "I was in an accident yesterday and hurt my neck. I already suffer neck pain from an accident several years ago. Can I even report this new injury to the insurance company and my doctor?"

Many live with injuries and illnesses ranging from healed broken bones to long-term arthritis pain. But when they suffer new injuries in auto or other accidents that worsen their preexisting conditions, they should report them. For one thing, the medical profession recognizes that new accidents can worsen many orthopedic and neurological injuries. For another, legal cases in most states acknowledge that an at-fault driver may be held accountable for exacerbating an older injury and that such injuries are compensable.

However, proving an accident worsened an existing injury may be challenging, and various state laws figure into assigning accountability to drivers who may be at fault. If you suspect an injury has been aggravated by an accident, seek legal counsel.

