

# BACK ON TRACK

Shapiro, Cooper, Lewis & Appleton, P.C., NEWSLETTER  
Attorneys At Law



## SUMMER 2009

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West Virginia Supreme Court reinstates railroad engineer's mesothelioma wrongful death suit, ruling railroad's release of claims was void

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## CURRENT CASES WE'RE WORKING ON

Our attorneys are helping people on some interesting matters as follows:

**Hydroxycut**—We are accepting cases in which clients have serious symptoms of liver disease, yellowing, and vomiting symptoms. Hydroxycut has been removed from the market after having been sold for years as a safe diet drug.

**Medical malpractice/failure to diagnose cancer**—We are actively handling a medical malpractice case involving colon cancer and the failure of the practitioner to properly follow medical standards: screening our male client at age 50 and ordering a colonoscopy.

**Motorcyclist was seriously injured** when a driver of a car, while texting, cut out right in front of the cyclist. Our client suffered amputation of a portion of his leg.

**Aviation/airplane crash**—Jim Lewis is handling cases involving pilot mistake causing injuries and death.

**Trip/fall injury on hospital stairs**—Our experts will show construction of steps at a hospital violated the building codes, leading to ankle surgeries for our injured client.

**Trucking/tractor trailer secondary collision**—More and more cases are being seen where a first accident occurs, the motorist exits their vehicle, and then a second collision occurs causing serious injury or death. Current case involves wrongful death in foggy conditions when a second tractor trailer collided with the stopped vehicles.

**Slack action railroad injury**—Conductor suffers a fracture in his back from significant and sudden slack action during railroad operations. Train shoving procedures and rules violated.

**Asbestos/mesothelioma cancer**—The firm is handling a case for a railroad engineer's family against a railroad for failing to remove or control asbestos in the workplace.

**Diesel fumes/asbestos lung cancer**—The firm is handling a case for a railroad worker who contracted lung cancer just after retirement, attributable to both diesel fumes and asbestos in the workplace.

**Flight attendant injuries from cockpit doors**—We are representing two flight attendants who suffered shoulder/arm injuries when cockpit doors suddenly detached from the hinges on takeoff.

**Industrial accidents—serious injuries:** One case involves amputation of the thumb of a factory worker due to defective equipment; a second involves serious back injury due to a trench in concrete flooring, causing a trip injury and back surgery.



## LAW FIRM GRANTED NEW TCIU RAIL UNION DESIGNATION

The TCIU, an international rail union representing carman/car inspectors-repair workers, rail car coach cleaners, and clerks, has granted **John Cooper** of our law firm "designated legal counsel" status for its rail union members. Only lawyers (and firm members) who have a solid, verified track record of representing rail workers in trials, and having achieved positive results, may be selected. We are honored to serve the TCIU as designated counsel. A member of our law firm had previously been designated as TCIU counsel as of the late 1990s, and we are pleased to once again be designated counsel for the Transportation Communications International Union.

# West Virginia Supreme Court reinstates railroad engineer's mesothelioma wrongful death suit, ruling railroad's release of claims was void

**Rick Shapiro** of our law firm convinced the West Virginia Supreme Court to reverse a summary judgment ruling in favor of Norfolk Southern Railway Co., and reinstated a Federal Employers Liability Act (FELA) mesothelioma wrongful death claim of his widow, Freda Ratliff, in a 5-0 decision handed down on March 12, 2009 (*Ratliff v. Norfolk Southern Railway Co.*, Civil Action No. 05-C-423). The court ruled that a "separation agreement" release of all claims, known and unknown, that train engineer Ratliff signed 19 years before developing mesothelioma was void under a provision of the Federal Employers Liability Act, section 55, which prohibits railroad efforts to exempt itself from liability. Ratliff attorney **Richard N. Shapiro** offered that "on behalf of the Ratliff estate and family, we are grateful that the Supreme Court agreed with our position, that a separation agreement release could not bar a mesothelioma FELA claim, when the disease was first diagnosed 19 years after Mr. Ratliff's retirement. This terrible asbestos cancer cut short Mr. Ratliff's golden years, and in a horrible way at that."

## Background:

In April 2005, 19 years after his voluntary separation from Norfolk Southern as an engineer, Mr. Ratliff was diagnosed with mesothelioma. He died in July 2005. The FELA wrongful death action was filed by Mrs. Ratliff in her capacity as executrix of Mr. Ratliff's estate around October, 2005. Several months before trial, Norfolk Southern filed a motion for summary judgment asserting that the action was barred by virtue of a release that had been executed by Mr. Ratliff in connection with a reduction in force/voluntary separation program NS (then N & W) offered in 1986 to qualified locomotive engineers. Ratliff's estate filed a cross motion for summary judgment, asserting the 1987 release was void, as violative of 45 USC sec. 55, a provision of the FELA that prohibits writings the exempt railroads from liability.

Ratliff, a Virginia resident who worked in Virginia and West Virginia, signed the separation papers, which included a release of all claims, known and unknown, in 1987, when he had no pending claim against N & W, and while unrepresented by counsel.



## MMI? What's that?

You were the victim of an auto, slip-and-fall, or other accident.

You're recovering. The pain has diminished, muscle flexibility is back, and you want to return to work. The responsible party's insurer makes a tempting offer, so you think about settling your injury claim.

That may be a mistake. Maximum Medical Improvement (MMI) is a recovery stage each injured person reaches during healing. For some, MMI means full recovery. For others,

MMI plateaus at incomplete mending, meaning that no additional medical treatment or rehabilitation will restore normalcy.

An experienced personal injury attorney will recommend resolving an injury claim only after a victim's injuries and MMI are fully documented and when all past and future medical expenses, lost wages and future earnings, and other recovery needs can be calculated.

An attorney who understands an injured party's MMI can put him or her in the best legal position to obtain fair and comprehensive results from a claim.

## Recreational boating accidents

In 2007, nearly 700 Americans died and just over 5,000 were injured in pleasure-boating accidents in motorcraft, sailboats, houseboats, and inflatables.

Accidents were caused by intoxicated, inexperienced, or reckless boaters; defective steering, engines, or other mechanisms; and failure of boaters or owners to maintain watercraft or obey boating regulations.

If you or a loved one has suffered severe injury from others' negligence in a boating accident, an experienced attorney can help hold responsible parties accountable.

### Impaired driver

An intoxicated speedboat driver crashed into the stern of a cabin cruiser, immediately killing its owners. The victims' family sued and reached settlement with the out-of-control, speeding boat driver after he pleaded guilty to two counts of manslaughter due to intoxication.



# Top-ten worst U.S. insurers

## Insurance industry uses “Deny, Delay, Defend” strategies and puts profits over policyholders

Following a comprehensive investigation involving thousands of insurance company legal documents and financial filings, the American Association for Justice (AAJ) ranked the top-ten worst American insurance companies for consumers.

*The Ten Worst Insurance Companies in America: How They Raise Premiums, Deny Claims, and Refuse Insurance to Those Who Need It Most* outlines highly aggressive tactics these companies use against consumers to increase profits.

Allstate tops the “worst” list.

AAJ CEO Jon Haber said, “While Allstate publicly touts its ‘good hands’ approach, it has instead employed a hidden ‘boxing gloves’ strategy against its policyholders. Allstate ducks, bobs, and weaves to avoid paying claims to increase its profits.”

According to AAJ’s study, Allstate set new benchmarks for insurance company greed. In the 1990s, the insurer contracted with consulting leviathan McKinsey & Co. to design tactics to systematically force consumers to accept lowball settlement offers or face its “boxing gloves,” an aggressive strategy designed to deny claims at any cost.

While Allstate ranked worst, the report also revealed a clear-cut pattern of misconduct among all ten ranked industry insurers that regularly deny paying fair and just claims, use hard-line tactics against policyholders, compensate corporate executives with extravagant salaries, and boost customer premiums while amassing excessive profits.

### Top-ten worst U.S. insurers

The AAJ study identified the worst companies in rank order:

1. Allstate
2. Unum
3. AIG
4. State Farm
5. Conoco
6. WellPoint
7. Farmers
8. UnitedHealth
9. Torchmark
10. Liberty Mutual



## Red-light cameras being installed at Virginia Beach, Virginia (VA) intersections

A news item about Virginia Beach injury law and red-light cameras was recently added to our law firm Web site under “Firm News.” Injury attorney **John Cooper** wrote the piece, addressing how the City of Virginia Beach has just installed red-light cameras that will be able to electronically photograph and ticket people who don’t obey the red-light signals at major intersections in the city.

Red-light cameras have been proven to reduce drivers running the red lights by half and reduced car crashes at the intersections by about 40 percent. These are staggering numbers and will definitely promote public safety on the roads in Virginia Beach.

The main focus of our law firm practice is promoting safety by holding negligent drivers and their insurance companies responsible when they harm someone else on the road. We applaud the City of Virginia Beach for taking this strong step to add about eight intersections that will have these red-light cameras to prevent wrecks in the future.

To read the full AAJ report and learn how you can hold the insurance industry more accountable to your needs, go to <http://www.justice.org/docs/TenWorstInsuranceCompanies.pdf>.

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## How railroads try to pay workers less on railroad injury verdicts by claiming an offset for Railroad Retirement Board (RRB) disability benefits

The new strategy for railroads in railroad worker personal injury cases (FELA cases) is to try to reduce the sums juries are requiring them to pay by filing legal motions that ask judges to give them a “setoff” or “credit” for the amount of money the railroad has paid to the Railroad Retirement Board (RRB) for the employer’s portion of RRB Tier II benefits (paid in the past by the railroad to the RRB). Since early in the 20th century, Social Security and RRB benefits have been what is known as “collateral sources” of income/benefits that courts have felt were earned by the employee and paid to the employee for reasons unrelated to any personal injury lawsuits—where the worker sues the railroad for a personal injury at work (FELA/Federal Employers Liability Act suits). Since the worker earned the RRB benefits through years of faithful service to the railroad company, and also contributed to a portion of the RRB benefits personally through payroll deductions, and since the worker would then qualify for the benefits based upon his or her age and physical condition, regardless of whether a lawsuit had been filed, courts felt it would be unfair for juries to consider the worker’s RRB benefits due to a work-related injury.

Despite over 60 years of court decisions holding that the amount of money a jury awarded an injured railroad worker should not be reduced by the worker’s receipt of (or even qualification for) RRB benefits, the railroads are currently trying to get courts to ignore this precedent and reduce railroad worker jury verdicts by the amount of money the railroad contributed to the railroad worker’s RRB pension.

**Randy Appleton** of our law firm recently won a case for a 60-year-old maintenance of way rail worker in North Carolina. After the jury returned the verdict in our favor, CSX filed a motion asking the judge to reduce the jury verdict by over \$7,000, which was the sum our client received in RRB Tier II benefits while he was receiving an occupational disability (due to the same accident). After both sides submitted briefs to the judge and appeared at a hearing, the judge granted CSX’s motion and reduced our client’s jury verdict/recovery as the railroad had asked.

Needless to say, we quickly appealed to the North Carolina (NC) Court of Appeals, and after numerous briefs and oral argument, the North Carolina Court of Appeals reversed the trial court judge, deciding that our client’s verdict had been inappropriately reduced by the trial judge.

### MAGAZINE CONTEST

The SCLA “Win a FREE Magazine Subscription” continues! Answer the trivia question below by the deadline receipt date of July 31, 2009 (must be received by this date), and win a FREE one-year subscription to one of many popular magazines!

#### QUESTION:

What was the name of the first locomotive to break the 100-miles-per-hour barrier?

E-mail your answer to  
[mcudden@hsinjurylaw.com](mailto:mcudden@hsinjurylaw.com).

Include in subject line: **Magazine Contest**.

The answer to last month’s contest was Utah, and the winner is **Preston Fahnestock**. When there is more than one correct entry, we blind-pick the winner.