

BACK ON TRACK

Shapiro, Cooper & Lewis NEWSLETTER



WINTER 2005

Brought to you by
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Lewis, P.C.

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South Carolina chlorine gas disaster shows risks to public

by HSCL's attorneys

A Norfolk Southern Railway Company train disaster killed 9 people and injured 240 when one Norfolk Southern Railway Company train mistakenly ran into a second one in a siding in Graniteville, South Carolina, on January 6, 2005. Three of the Norfolk Southern Railway Company tank cars carried 90 tons each of deadly chlorine gas. The wreck leaked the chlorine gas, killing the engineer and local mill workers and residents in Aiken County, South Carolina. Five thousand people were evacuated from the area surrounding the disaster.

Governor Mark Sanford declared a state of emergency for Aiken County. Days afterward, Norfolk Southern Railway Company still had not been able to control the leaking chlorine gas. This disaster highlights the risks to towns through which the railroad passes. Recently, five workers from the same mill in Graniteville were killed in a collision with a Norfolk Southern Railway Company train. The town's leaders have complained to Norfolk Southern Railway Company about the over 45 mph speeds at which trains run through the village, right next to the mill and homes.

Chlorine gas is so deadly that it was used in World War I as a chemical weapon, before such use was banned. Chlorine gas forms yellow-green clouds with the distinct smell of pineapple mixed with pepper. The gas is heavier than air and sinks to the ground. Unfortunately, some of the victims at Graniteville dropped down to the ground to get air as you might in a smoky fire. This mistake cost them their lives. The gas causes pain and burning in the chest and throat. Eventually, chlorine destroys the respiratory organs and leads to a slow death by asphyxia-

tion. There is no antidote for this poison, so decontamination is the only treatment.

Train wrecks leaking dangerous chemicals are not infrequent. In San Antonio, Texas, a Burlington North train collision leaked chlorine gas on January 8, 2005, following a similar incident in the same town on June 28, 2004. Another Norfolk Southern Railway Company train derailed, spilling sulfuric acid in September 2002, in Tennessee, injuring 20 people.

Immediately after the disaster in Graniteville, South Carolina, Norfolk Southern Railway Company had teams of claim agents on the scene. The claim agents are part of the risk-management department of the railroad, whose job is to minimize the cost to Norfolk Southern Railway Company of such train wrecks. Norfolk Southern Railway Company wants the victims and their families to resolve their claims against the company as soon and as cheaply as possible. The families hurt should not make any agreement to release the railroad until they know their legal rights and understand the full extent of their losses.

Our lawyers have decades of experience in railroad-related cases. In fact, the misaligned switch that caused the disaster in Graniteville, South Carolina, is similar to the case of *French v. Norfolk Southern Railway Company*, as reported in the "Real Cases Section" of our Web site (click "Trailblazer"), in which a train wreck occurred when the Norfolk Southern Railway Company train derailed and severely injured a local resident. Our firm and affiliated lawyers have already filed one suit, and we have been retained by dozens of residents. Please contact our office for more information.



Don't get legally outmatched. Call us.

Civil justice in America

Here are some truths our firm lives by:

- ★ Trial lawyers stand up for people harmed through no fault of their own so that the average American can get a fair shake in court.
- ★ We champion the legal needs of individual consumers and working families who have been injured physically and financially.
- ★ Trial lawyers promote public safety and the public good by compelling corporations and businesses to make safer products, improve workplace safety and fairness, clean the environment, and improve the safety and quality of health care.
- ★ When it comes to assessing the “economic impact” of individual consumers and working families who have been injured, the truth is that those who create the costs of the legal system are those who cause the injuries, not the victims who are injured through no fault of their own or the lawyers who represent them.

The civil justice system and the right to trial by jury, with the help of trial lawyers, have done all these things.

Motorcycle safety

Motorcycling has grown in popularity over the past several years. Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Rider safety depends on five guidelines:

1. Read the vehicle’s manual to fully understand operations and all safety features.
2. Take a safe-rider’s course to hone mental and motor skills for safe street and highway motorcycling. Become proficient at shifting, braking, turning, and responding to emergencies.
3. Wear high-visibility protective clothing, concentrating on protective helmets, eyewear, gloves, boots that cover the ankles, sturdy pants, and a jacket.
4. Always have a valid driver’s license and adequate insurance coverage.
5. Conduct good pre-ride checkups and routine maintenance.

Driver negligence

Cars rank among motorcyclists’ most serious risks. No matter how diligent a rider may be about safety, problems can always crop up. When two cars collided in front of an experienced rider, he struck the rear of one, suffering leg injuries that required surgery. He also missed ten months of work and will experience future lost income. He sued the driver of one car as well as the driver’s employer for negligent vehicle operation. The parties settled prior to trial.

Jury waivers

Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

We’re encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.



Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Preemptive justice

What's that?

It's giving away one's rights to trial by jury. Anticonsumer lobbyists and lawmakers have proposed legislation to prevent consumers from using the civil justice system, thus depriving consumers of their right to a day in court.

Preemptive justice is essentially very unfair in that it does not derive from intellectual debate by committees or research by learned scholars. Instead, it is based on insidious half-truths, supported by urban legend-type anecdotes and outright lies—all nurturing a political agenda to destroy citizens' rights.

What are some examples of existing or proposed preemptive legislation?

- Limits on compensation juries may provide for harm done by HMOs, hospitals, and physicians.
- The Federal Asbestos Trust Fund, which prevents initiation of liability lawsuits in state courts.
- Gun manufacturer liability eradication.
- The "Class-Action Fairness" bill to federalize and impede virtually all individual and mass-action tort cases.
- "Obesity" lawsuit protection for food manufacturers.

What do all preemptive-justice initiatives have in common? They reduce the accountability of insurers, drug manufacturers, physicians, and others for the welfare of customers and patients. Preemptive-justice measures will also save insurers, drug manufacturers, physicians, and others a lot of money by shifting the financial burden of their errors to the victims and other taxpayers. Some call these ideas tort "reform," but is it reform to take away people's rights?

Asbestos UPDATE

Even though manufacturers knew of the deadly dangers of asbestos products 70 years ago, they concealed health hazards from workers and the public. In the 1970s, asbestos use was limited but not prohibited, but corporations continue to wage legal and public relations battles to avoid accepting responsibility. The following are some recent developments.

Painter

A commercial painter working since the 1950s and now suffering from terminal mesothelioma sued manufacturers of asbestos-laden, joint-compound products to which he had been exposed during his career. Following a settlement, a jury reached a verdict of compensatory and punitive damages against the manufacturer for failure to warn of danger to the worker.



Pipe fitter

A pipe fitter and plumber serviced and installed boilers for more than 40 years. He died at age 71 from lung disease after inhaling asbestos dust for 40 years.

His wife and estate brought a wrongful-death suit against boiler manufacturers and asbestos suppliers for failure to warn her husband about the dangers of working with their products. The manufacturers settled and a jury found the defendants 100 percent guilty, awarding the estate compensatory damages. Our firm has significant experience with asbestos-caused cancer and mesothelioma cases. Call us for legal information.



BURN SAFETY ON THE JOB

Unfortunately, many American workers are burned in fires at offices, factories, retail establishments, and other workplaces.

Office fire safety measures should include monitoring and training employees in the use of heat-producing electrical appliances, such as microwave ovens, hot-water dispensers, and coffee makers. Training also may include guidelines for burning candles or potpourri and smoking.

Factory or plant personnel training is usually comprehensive and should include orientation on handling and using combustibles, flammable liquids or gases, electrical equipment, and flammable metals.

All training should emphasize understanding how fires start, notifying fire departments, extinguishing fires, evacuating in emergencies, and helping coworkers who may be on fire or who have suffered burns.

Poor fire training

When a fire started in an auto aftermarket-supply company, its sales manager drove a burning truck out of the building and returned to help others evacuate. He suffered first-, second-, and third-degree burns over 20 percent of his body. He subsequently sued his employer, alleging negligent fire training and management in failing to comply with local fire regulations and operating without a permit. A jury found his employer and its parent company each 50 percent liable for his injuries and awarded the sales manager compensatory damages.

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RAILROAD STATION

New manual switch rules proposed by FRA

The Federal Railroad

Administration

(FRA) is urging railroads to adopt new rules to ensure that manual switches on rail lines are properly set, or risk another disaster with toxic chlorine gases or similar toxic chemicals. The FRA notes that about 40 percent of the nation's railroads have manual switches, though most heavily traveled main line track, such as in major cities or urban areas, generally use automated switches that can be set and monitored remotely. The *Charlotte Observer* conducted a review of federal accident records and found that misaligned switches are among the most common causes of train wrecks. From an evaluation of years 2000 through October 2004, switch problems accounted for about 2-3% of train accidents, which is the single most common cause, according to the *Observer*. The new FRA advisory told railroads to assure that their written rules require crews to report to their dispatchers after they've reset manual throw switches, and to fill out a written form logging in the changes. The FRA said that it would check and assure that railroads had implemented new procedures.

Class actions filed in Graniteville, South Carolina, chlorine leak disaster

HSCL and its affiliated lawyers have filed a suit seeking class-action status for residents with property damage, disaster-related losses, and medical monitoring. The firm also has taken on dozens of cases of injured residents and their family members. At least two such suits have been filed in Aiken County State Court, and one case was removed to the Federal Court by Norfolk Southern's attorneys; that action will be acted on in the future. It will be up to the courts to determine whether the residents' injuries or claims are a subject of proper class-action status. In the meantime, HSCL is gathering evidence from fire, rescue, and hazardous-material responders, and from witnesses. Also, since our firm employs investigators who formerly

worked for Norfolk Southern, and we have such a comprehensive network of contacts still working with Norfolk Southern, the firm has developed excellent evidence relating to the cause of the disaster.

If our firm can assist you or if you know any person who is looking for legal advice or information, please contact our law firm.

AETNA Healthcare carrier information on Web

One of our clients brought to our attention that persons who are covered by Aetna/United Healthcare may obtain current information about the status of their insurance claims online. The system allows the patient to review claims, the status of the claims, the amount paid, etc. The Web address is <http://www.aetna.com>.

MAGAZINE CONTEST UPDATE

The "HSCL Win A Magazine Subscription" contest continues! Answer the trivia question below by the deadline receipt date of **March 15, 2005** (must be received by this date), and win a one-year subscription to one of many popular magazines.

Our Winter 2004 trivia question winner was **Wayne Fuller** of Hamlet, North Carolina. Congratulations, Wayne!

QUESTION: *What is the wheel arrangement of a Challenger?*

- A. 4-8-8-4 B. 2-6-6-2 C. 4-6-6-2 D. 4-6-6-4

E-mail answers to bgray@hsinjurylaw.com no later than **March 15, 2005**.

The winner will be drawn from correct entries and announced in the next newsletter.