

AFTER A TRACK RECORD OF  
TAKING ON HMOs AND WINNING  
**MARK HIEPLER**  
ADVOCATES FOR THE VICTIMS  
OF THE DEADLIEST ACCIDENT  
IN METROLINK'S HISTORY.

by Emily DiFrisco

# FIGHTING GIANTS

**ON SEPTEMBER 12, 2008,** Metrolink train No. 1111 rammed head-on into a Union Pacific freight train in Chatsworth, California. Twenty-five people were killed and more than 135 were injured. The official investigation showed that the train engineer, who had failed to stop at a red signal, was sending and receiving text messages at the time of the tragic crash.

Fifteen-year-old Mackenzie Souser was one of the many who lost loved ones in the accident. "I am simply not a normal teenager anymore without my dad," she said at a congressional subcommittee hearing in March. The Sousers are among the 14 plaintiffs in the Metrolink case represented by Mark (JD '88) and Michelle Hiepler (JD '89).

The Hieplers were contacted by many of the victims of the crash and quickly decided to take on their cases. After being elected to serve on the steering committee for those bringing claims in the case, the Hieplers

took several of their clients to Washington, D.C., to testify before Congress. They asked Congress to raise the amount of damages that train crash victims are allowed to receive under federal law. Liability payouts for a single train crash are capped at \$200 million currently.

"Many people don't understand large damages," says Mark. "The judge is going to put what he believes the real number is on the cases. Added up, it's going to exceed the cap on the case. Someone who needs three brain surgeries is only going to get the money for one. The family who faces lost



Earnings from dad over the next 16 years may only get a portion."

Despite having 20 cosponsors, the bill is still pending in Congress and faces an uncertain future because of its regional nature. Congressman Elton Gallegly of Ventura and

Mark points to "systemic flaws" in the way Veolia ran operations. When the National Transportation Safety Board investigated, they found that the engineer was a habitual rule violator and texter. "There are accidents, and then there are things that are so preventable and foreseeable. You think of all these lives that would be back to normal if this engineer had been disciplined appropriately or followed up on appropriately."

The Hieplers' personal history makes them uniquely qualified to take on these cases. Their jury verdicts have been record-setting, beginning with the \$89.3 million dollar bad faith verdict on behalf of Mark's late sister, Nelene, who was denied a bone marrow transplant by her HMO. "I think a lot of people identify with us when they know the history," Mark observes. "Other than a child or a spouse, I lost one of the closest people in my life. I lived with her during law school, and she was my biggest supporter and cheerleader. We took on something that was more than a case and we tried to make it a cause."

Bob Cochran, who taught torts to Mark, attended the event and commented, "This award is given 'To recognize outstanding contributions made by a lawyer to his or her community by means of community, charitable, or other public service activities.' Mark is all about public service. His practice, representing people who have had difficulty getting medical coverage, is a public service in itself. His practice has changed the way that health insurance companies do business. I am confident that many people in the United States receive better health care because of Mark's cases."

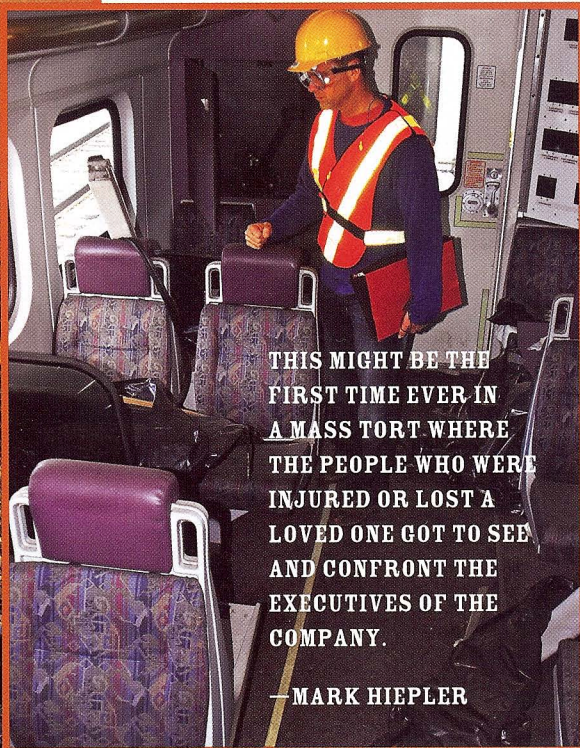
"I owe the privilege of practicing law to Pepperdine," says Mark, who currently serves on the school's Board of Visitors. "I'm blessed to be practicing because so many individuals took an interest in a young struggling law student."

Mark and Michelle met at Pepperdine, where both made lasting friendships with members of the faculty and galvanized their commitment to serving the community. After graduation, Mark went to work for an insurance defense firm doing the opposite of what he does now, and Michelle became in-house counsel at Pepperdine.

Michelle, who currently serves on Pepperdine's Board of Regents, remembers the advice of then-president David Davenport. "He talked about the importance of impacting the next 100 years," she says. "At first glance that seemed nearly impossible, but he really challenged me to think about leaving a thumbprint. That inspired me towards that give back philosophy."

In 1994 after the verdict in Nelene's case, they formed Hiepler and Hiepler. As they field the new case calls the firm receives, Mark and Michelle try to keep the big picture in mind—finding the causes within the case.

"Whether it's the HMO industry or the transportation industry, we learn how it works, why it failed, and then ultimately how to prevent it from happening again," Mark concludes. "It might just be through one case or verdict, but a lot of times there is a legislative connection to it, and we try to change things so the tragedy doesn't happen again." ■



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Santa Barbara Counties met with the clients and invited the heads of Veolia Transportation,

the French company that supplied the engineers for Metrolink, to join the meeting.

"This might be the first time ever in a mass tort where the people who were injured or lost a loved one got to see and confront the executives of the company," says Mark. "It's a moving, dramatic moment to see a 14-year old confronting the CEO of the company that caused her dad's death. And then there are those who were tragically injured. We have one client who was near retirement who has a severe brain injury. Her life was changed in a moment in what was such a preventable accident."

Nelene's case was a massive undertaking for Mark and Michelle, and the jury verdict opened the door to legislative change. "I was invited to and testified in front of the Senate Judiciary Committee, House committees, and state committees, and her case caused 10 or 12 state and federal laws to be changed," Mark explains. "The real joy we receive is trying to make a long-term change either legislatively or through the company changing the way that they do business. That is the ultimate goal in any of these cases."

Mark's work for clients is only one way he seeks to bring about positive change. Because of his impressive record of service to the community, Mark received the 2010 Ben E. Nordman Award from the Ventura County Bar Association. Professor