

LANGDON & EMISON

ATTORNEYS AT LAW

What You Need to Know

Page 1 – \$5.3M Verdict
in Chicago Railroad Case

Page 2 – Complex Tire Shredder
Case Yields \$17M Judgment

Page 3 – Proving Damages
in TBI Cases

Page 4 – How Focus Groups
Inform Settlement Negotiations

Page 6 – Litigating Adverse
Claims to Maximize Recovery

Page 7 – Overcoming
Insufficient Insurance Obstacles
in Trucking Cases

Page 8 – Signs of Seat Back
Failures, Defects

Page 9 – Enhancing Recovery
in Tire Defect Claims

Page 10 – Finding What Fails
in Vehicles

Page 11 – Checklist: Screening
for Auto Defects

Page 12 – Firm Accepting Bair
Hugger, GM Ignition Switch
Claims

Page 13 – New Case: Safety
Hazards of Used Takata Airbags

Page 15 – News and Notes



Focus on Rules Leads to \$5.3M Verdict in Chicago FELA Claim for Slip & Fall Injuries



A Cook County, Ill., jury unanimously awarded Christopher Cravatta \$5.3 million for injuries he suffered while working for the Metra railroad. Brett Emison, partner at Langdon & Emison, led the team during the nearly six-week trial.

Cravatta was stepping between the locomotive and coach car when he slipped and fell on a combination of snow, ice, water and oil. The following day, he saw a doctor who initially diagnosed a back strain. Cravatta was unable

Brett Emison to return to work. Several months later, an orthopedic specialist diagnosed an annular tear in the disc at L4-L5. Surgery did not relieve his pain and eventually Cravatta was medically disqualified from returning to work as an engineer for Metra.

Trial Strategies and Themes

Our client was the only witness to his fall. At trial, we focused on two rules Metra violated that led to the injuries.

The **Locomotive Inspection Act** governed the conditions of the locomotive (or engine) and required that floors of cabs, passageways and compartments be kept free from oil, water or any obstruction that creates a slipping or tripping hazard. (*cont. p. 14*)



Our trial team created a theme for the case by pointing out where Metra broke the rules and overreached in attempting to blame the victim.



Enhancing Recovery in Complex Products Cases Involving Multiple Defendants

Firm Obtains \$17M Judgment for Double Amputee in Defective Tire Shredder Case

Langdon & Emison secured a \$17 million judgment for Marco Jaimes-Carmona and his family after he lost both legs when he was pulled into an industrial tire shredder. L&E partner Brett Emison led the legal team.

A co-worker activated the shredder while Jaimes-Carmona was inside the cutting chamber cleaning the cutting knives as part of routine maintenance. He was pulled into the shredder and lost both legs above the knee.

The Defect

The tire shredder was originally manufactured by Columbus McKinnon in 1995. After several changes in ownership, the shredder was rebuilt by Steve Robinson and his company, Predator Systems, LLC. Eventually, the shredder was purchased by ABC Tire, a tire recycling company in Kansas City, Mo.

The design of the tire shredder required maintenance workers to physically enter the cutting box and stand on the cutting knives. Critical protections that were supposed to prevent the shredder from operating while workers performed maintenance inside the cutting box failed.

After obtaining settlements with Columbus McKinnon and co-workers responsible for activating the tire shredder, the case proceeded to trial against Robinson for modifications to the shredder and lack of process and oversight in rebuilding it.

Robinson oversaw the rebuild of the tire shredder, even though he was not an engineer and had no formal training in tire shredder design. No one at Predator even reviewed blue prints or design drawings for the tire shredder. An engineering and design expert testified that Predator should have conducted a design review analysis and should have equipped the shredder with a start-up warning alarm to alert workers that the cutting blades were about to engage.

“Marco Jaimes-Carmona and his wife, Rosalva, are tremendous people. Marco was an incredibly hard worker who supported his family with his muscle and sweat. Rosalva has been forced not only to be caregiver, but also breadwinner,” said Emison. “This judgment will allow Marco and Rosalva to provide for their family and ensure Marco can obtain the quality medical care he needs.”



Identifying all potential defendants was critical because of substantial modifications that had been made to the original tire shredder.



Despite the complexities of the tire shredder and substantial modifications, the injuries could have been completely avoided with a cheap, easy fix: a start-up warning alarm, like the buzzer of an airport baggage carousel. This simple device would have provided opportunity to escape impending danger.



Litigating the Invisible Injury: Common Themes in TBI Cases

Langdon & Emison Obtains \$1M Settlement in MO Brain Injury Case



Mark Emison

Traumatic brain injury (TBI) research and studies have destroyed the myth that brain injuries resolve in three to six months. Science shows that most brain injuries cause life-long deficiencies and hurdles. Common themes of TBI victims include:

- Anger, isolation and change in personality.
- Loss of identity and reputation.
- Fear, anxiety and uncertainty.

It is our job as advocates to discover our client's story and present evidence of TBI in a way the jury understands.

A Recent Case

Our firm recently obtained a \$1 million settlement, the maximum available policy limits, on behalf of a 26-year-old man who suffered a TBI while working on a Missouri farm.

Our client was aiding in the repair of a spring-loaded tarp roller on Graves Farm in Corning, Mo., when a piece of the machinery struck him in the head. He lost consciousness and was rushed by ambulance to Mosaic Life Care Hospital in St. Joseph, Mo., where it was determined he suffered a fractured skull and traumatic brain injury.



Clinical research has shown that the consequences of TBI are serious and cause lasting problems. While not instantly thought of as the result of a TBI, symptoms such as poor memory, slowed thinking, and poor impulse and anger control do indeed come with what is referred to as "the invisible injury."

From the beginning of the case, through negotiation to settlement, our legal team used many of the above themes to prove damages and "make visible" the lasting effects of TBI. We were pleased the litigation resulted in a settlement that gives our client options for a better future.

Keys to Litigating a TBI Case

- Interview your client's friends, family and co-workers early in the case
- Identify stories that illustrate your client's changes and deficits
- Identify themes through these stories



Using Focus Groups to Maximize Your Client's Recovery

Recent Case Illustrates How Focus Groups Inform Strategy, Settlement Negotiations



You may recognize the benefit of focus groups, but are you taking full advantage of them? Langdon & Emison recently resolved a case involving both a product liability claim and an impaired driver claim. Our legal team used three focus groups to evaluate and “value” each of these claims to maximize our client’s recovery.

The Case

Kent Emison Brennan Delaney An individual, who was impaired by alcohol, was operating a tractor on a public roadway. The tractor had a serious defect that affected the ability of the driver to steer and brake. The tractor crossed the centerline of a two-lane road and crushed our client’s husband’s vehicle. He died instantly.

Focus groups were used to:

- Evaluate the percentage of fault the jury would assess against each of the defendants.
- Determine the amount a jury would award for the wrongful death of our client’s husband.
- Obtain a profile for the most favorable juror (i.e., background with farm implements, city vs. country jurors, mechanical backgrounds).
- Assess the order in which facts were presented and how that impacted the fault assigned to each defendant.
- Derive safety rules from participants’ comments and questions, which were then utilized in each defendant’s deposition and in trial preparation.



The focus groups provided a more complete picture of the total value of the case and a jury’s likely assessment of each defendant’s fault, which helped maximize the recovery.



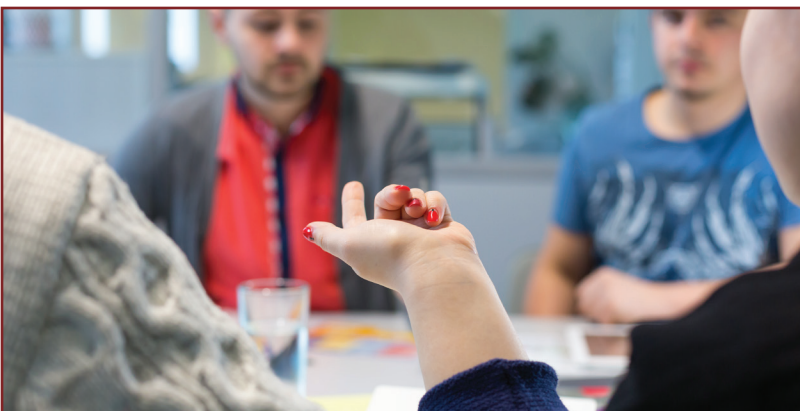
The focus groups gave us invaluable insight into what kind of people we wanted on the jury. Surprisingly, jurors with mechanical backgrounds and more experience with tractors placed more fault on the impaired tractor driver. Urban jurors and those without mechanical backgrounds assessed more fault to the manufacturer of the defective tractor.

We obtained information on the percentage of fault that would be assessed against each of the defendants and the value of our claim. This information allowed us to give very specific recommendations to our client as to what each of the defendants should pay to settle the case.

The Focus Groups

Our legal team used three focus groups — two in-person and one online. The two in-person focus groups had between 12 to 15 participants each. They were conducted in a discussion-type format, led by our jury consultant, which yielded very specific and valuable information on the issues we wanted to test.

The online focus group involved 160 people and yielded critical information as to the value of our claim and other specific issues. Our sample size of almost 200 people gave us good information at a reasonable cost. We are convinced this allowed us to maximize the recovery for our client by the high confidence level we had in the likely verdict and fault to each defendant. The information was also used to inform and educate the mediator and defense counsel on these issues.



Focus Group Tips

Schedule focus groups throughout your case to:

- Test safety “rules” to use with fact witnesses, corporate rep depositions and experts.
- Determine the relative fault of defendants and the plaintiff, if applicable.
- Determine the “value” of your case, both settlement value and likely verdict.
- Determine the type of juror you want on the jury.
- Evaluate the most effective evidence to present to the jury.

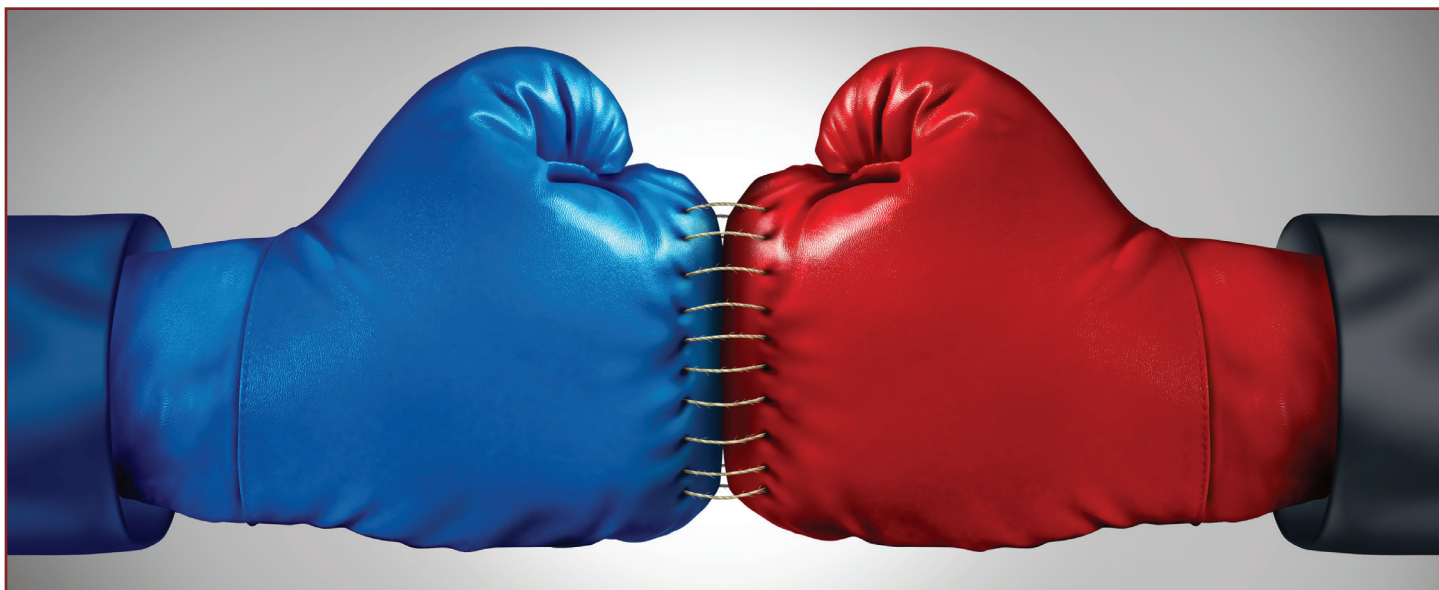
Online focus groups are an effective complement to in-person focus groups, which are much more limited in size and scope.

For smaller cases, do it yourself to hold the costs down. Our firm can do most in-house focus groups for \$1,000-\$1,500 depending on how many people participate.

- For larger cases, have a jury consultant help lead the focus group.

Consider discussion-based focus groups vs. adversarial (plaintiff and defense presentations). Both can be productive, but your case may dictate which is best.

- Dividing focus group members into groups of around eight can help foster discussion by allowing everyone a chance to voice his or her opinion.



Tips for Litigating Competing Claims

Competing Claims Present Opportunities to Maximize Your Client's Recovery



Michael Serra

The goal of any personal injury attorney is to maximize your client's recovery. To achieve this goal, you must identify all potential defendants — even those with competing or adverse negligent acts.

In a recent wrongful death case, we identified the following competing claims involving the failure of a critical emergency brake component in a delivery

truck: (1) defective design of the emergency brake; and (2) negligent maintenance of the vehicle. While it would have been difficult to present both claims at trial, we utilized the adverse claims to achieve recoveries for our clients. When litigating adverse claims, follow these guidelines:

Conduct an early focus group to assess the strength of competing claims.

- Don't worry about competing claims. Identify all potential avenues for recovery.
- Early fact investigation is key. Utilize a quality investigator to lock fact witnesses into statements and determine if your competing claims are viable.
- Identify and retain experts that can work together in building a narrative of negligence between defendants. Pay attention to discovery rules in your jurisdiction, especially regarding email communication between experts and draft reports.
- Secure testimony/admissions from each defendant to utilize against other defendants. We have successfully secured this testimony as a condition of settlement.
- Be aware of the bad faith law in your jurisdiction and utilize it to advance your claims. Serve interrogatories and requests for production to determine if any defendants are being defended under a reservation of rights or have received a coverage denial letter.
- Determine whether you can withdraw an expert without his or her testimony and file being discoverable or admissible at trial.
- Take one defendant to trial. Settle with the remaining defendant and use part of the settlement to fund the remaining case.

If your case involves competing claims against multiple defendants, we would be pleased to talk with you about your case.



Maximizing Victims' Recoveries in Trucking Cases

Major corporations often hire “fly by night” carriers who employ bad drivers, use unsafe trucks and carry minimum amounts of insurance. Many large corporations that hire small truck companies hide behind an alleged independent contractor relationship and other predictable defenses.

When suing a trucking company or driver with insufficient insurance, several theories of liability can be asserted to recover more than the meager policy limits held by the small carrier or individual driver. Three of these theories are discussed below.

Look for Kent Emison's article on maximizing trucking accident recoveries in the Spring 2017 Trucking issue of *AIEG Voice*.

Negligent Hiring of the Alleged Independent Contractor — Restatement (Second) of Torts, Section 411. Companies have a duty to select competent contractors. An adequate investigation of the contractor's competence is necessary to discover prior acts of negligence; quality of drivers; experience or lack thereof; financial condition; proper licensure and certification; and the ability to perform a job safely given the compensation.

Gratuitous Undertaking — Restatement (Second) of Torts, Section 324A. Any company, whether an insurance company, safety compliance company, shipper or cargo broker that undertakes to direct, monitor, supervise and train drivers or an alleged “contractor” may be liable under the gratuitous undertaking theory.

Inadequate Cargo Loading or Securement — 49 C.F.R. Sections 393.9 and 393.100. Federal Motor Carrier Safety Regulations govern who is responsible for compliance and set safety standards for how cargo should be properly loaded and secured. These regulations are a critical resource for identifying the parties responsible for regulatory compliance.

There are many avenues for successfully litigating trucking accident claims to maximize recovery for your clients. Do not settle for the small insurance limits of “contract” carriers without thoroughly exploring options to recover from the large corporation who hired them and other parties who may be responsible.





Seat Back Claims: An Avenue for Increasing Recovery Potential

Factors to Consider When Screening Cases for Seat Back Defects, Failures

Common Injuries in Seat Back Failure Cases

- Brain injury
- Paralysis
- Vision loss
- Death

The performance of a vehicle's seat in rear impact accidents is a commonly overlooked product defect claim. The current standard for regulating the strength of seat backs is set forth in Federal Motor Vehicle Safety Standard (FMVSS) 207. This static seat strength requirement is woefully outdated and fails to predict the performance of seats under impact conditions.

In fact, a lawn chair purchased at a discount retailer can easily pass the load requirements within FMVSS 207. Many seats manufactured today – even on 5-star rated vehicles – experience gross deformation and failures during rear impacts. Identifying these claims will increase the recovery potential for your clients and add significant value to your case.

Characteristics of Seat Back Defects/Failures

When evaluating a case for a potential seat back defect or failure:

- Assess the rear impact condition. Download the vehicle's event data recorder to identify the Delta V and crash pulse (length of time the two vehicles impact each other).
- Determine occupant seating position and safety belt usage.
- Identify failure of the seat back support system to maintain an upright position during the crash, resulting in deformation of the seat back frame. Routinely seats are moved and/or removed by first responders, so utilize an investigator to determine seat location prior to alteration.
- Look for occupant injuries to the head and neck, resulting in brain injury, paralysis, vision loss and death.

Far too often we have seen severe injuries to rear passengers, often kids, because a front seat back collapses or flings backward. When a seat back fails, the seatbelts and airbags are rendered ineffective, leaving occupants with little or no protection.





Because So Much is Riding on Your Tire Claim

Enhancing Your Client's Recovery in Defective Tire Cases



David Brose

When evaluating an auto accident case, it's important to look for tire defects as a potential cause of the accident and additional source of recovery. Tire defect claims offer ample opportunity to enhance your client's recovery by bringing action against these potential defendants:

- **Tire manufacturer.** Poor design and construction of critical tire components can lead to tread separations or cause tires to fail long before a tire is worn out.
- **Tire retailer.** Far too often, tire retailers will sell aged or damaged tires to innocent consumers who don't know they are dangerous. All tires deteriorate with age, and older tires have a much higher risk of failure than newer tires with similar wear and tread depth.
- **Maintenance shops/tire servicers.** Many of these companies claim to provide safety inspections that are supposed to include inspection of your tires. Yet, these inspections often do not occur, and when they do, they are cursory. As a result, consumers are not advised that tires should be removed because of their age or dangerous conditions that may exist.

For help screening a case for tire defects, contact Langdon & Emison at 800-397-4910 or LangdonEmison.com. We have more than three decades of experience and a proven track record of success in defective tire cases nationwide.

In 2015, tire problems accounted for 35% of accidents where the condition of the vehicle was the reason for the crash.

Every vehicle crash involving catastrophic injury or death should be screened for tire defects.

Screening for an Auto Product Defect

Any time there is a serious injury or death in an auto accident, first determine if there is an auto product defect. For help, contact Langdon & Emison at **800-397-4910** and we will be happy to review your case for a potential defect. Below are a few of the most common defects we have seen in more than 30 years of practice.

Car seat: During a crash, seat backs can collapse inward, or seats can collapse backward, or cargo can hurl from the trunk/hatch area.

In 2013, the firm obtained a \$43.1 million verdict on behalf of a Vermont woman who was paralyzed due to a defective seat back.

Roof crush: Roof crushes can lead to catastrophic injury or death.

Airbags: Takata airbags, for example, have injured and killed hundreds of people.

Gas tanks/fuel systems: Fuel systems should not fail in otherwise survivable crashes.

Seat belts: Defective seatbelts can injure or kill people even when worn properly.

Rollover/stability: Rollover crashes cause more injuries and deaths than any other type of crash.

Tires: Defective tires can cause tire blowouts and tread separation. If you have a tire failure, you have a potential case.

During the past three years, our firm has paid out nearly \$25 million in co-counsel fees to referring firms that trust our work and the integrity with which we do it.

EVALUATING AUTO ACCIDENT CASES FOR PRODUCT DEFECT CLAIMS

SCREENING CHECKLIST

Every auto accident involving serious or fatal injuries should be screened for an auto defect that may have caused the accident or made the injuries worse. When evaluating a case for an auto defect referral, consider the following:

INJURIES

Did the accident victim(s) suffer any of the following?

- Paralysis
- Brain injury
- Burns
- Loss of limb(s)/bodily function(s)
- Death

POTENTIAL CAUSE OF INJURIES

Is there evidence or indication that any of the following occurred during or immediately after the accident?

- Vehicle fire
- No airbag deployment
- Door opening
- Occupant ejection
- Roof crush
- Tire failure
- Other type of product or safety failure

If you answered yes to any of these questions, you may have a potential product defect claim. Should you need help evaluating auto accident cases for product defect claims, we welcome the opportunity to work with you, be it simply providing advice, or on a referral or co-counsel basis.

LET US HELP YOU WITH YOUR CASE

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3M Bair Hugger Warming Blanket Remains in Use Despite Mounting Lawsuits

Langdon & Emison continues to review potential lawsuits on behalf of patients who suffered serious infections after hip or knee replacement surgery. More than 1,100 lawsuits have been filed nationwide alleging the 3M Bair Hugger warming blanket exposed patients to contaminated air from the operating room, causing MRSA, sepsis and other infections.

Anyone with a serious infection after hip or knee replacement should be evaluated for a Bair Hugger claim.

The 3M Bair Hugger helps maintain patients' normal body temperature during surgery by forcing warm air through a hose into a special blanket that is draped over the patient. Lawsuits allege warm air forced through the blanket disturbs contaminants on the floor and deposits them in the surgical site, where they can infect the patient.

Multiple studies have shown that the internal filtration system of Bair Hugger is insufficient to prevent the emission of contaminants into the operating room. Case filings allege 3M represented Bair Hugger's filtration system as meeting High Efficiency Particulate Air (HEPA) standards (capable of removing 99.97% of particles), but research shows it is only capable of removing 63.8% of particles. These findings support plaintiffs' claims that Bair Hugger contributes to operating room contamination and a higher risk of patient infection.

Supreme Court Rejects General Motors' Attempts to Limit Ignition Switch Litigation



Bob Langdon

During the last few years, General Motors has paid billions in fines and settlements because of its defective ignition switches. Langdon & Emison struck a major blow to the automaker by obtaining numerous substantial settlements for our clients that were killed or injured by these defective switches. Due to the recent U.S. Supreme Court ruling, GM will now face years of additional litigation.

On Monday, April 24, 2017, the Supreme Court declined to review a second circuit ruling that General Motors was liable for personal injury claims arising before it filed for bankruptcy in 2009. The Supreme Court's denial opens the door for hundreds of previously barred wrongful death and personal injury claims against GM.

The automaker still faces numerous lawsuits and new cases continue to be filed, especially in the aftermath of the recent Supreme Court ruling. If you need help screening a case for a GM ignition switch defect, please contact Langdon & Emison.



Takata Airbags Continue to Maim and Injure

Despite Takata Corp.'s guilty plea and penalty agreement to settle criminal charges, our firm continues to receive Takata airbag claims from referring attorneys and clients across the country. At least 16 deaths and hundreds of injuries in the United States have been linked to the defective airbags manufactured by Japan-based Takata.

Ammonium nitrate, the chemical used to fuel what is supposed to be a controlled explosion to inflate the bag, is housed in a metal canister designed to contain the explosion. The chemical can deteriorate and become unstable, which causes the propellant to burn too fast, blow apart the metal canister and shoot shrapnel into the occupant compartment.

A major safety hazard is the use of discarded or used airbags. Takata, and auto manufacturers alike, have failed to track the millions of dangerous airbags recalled and replaced. As a result, bad airbags end up in salvage yards all over the United States.

Signs of a Takata Airbag Case

- Overly aggressive airbag
- Evidence of shrapnel in the airbag and vehicle
- Injuries to occupants likely caused by something other than the accident



Used car dealers and some body shops will “resurrect” these used bags and put them in other cars. We recently filed a case involving a resurrected airbag that severely injured an 18-year-old girl. Abandoned or used airbags are a big problem largely ignored by Takata and auto manufacturers.

About 70 million Takata airbags installed in U.S. vehicles have been recalled but only 13 million have been replaced, which means, unfortunately, more injuries are likely to occur. For help evaluating an auto accident for a Takata airbag claim, contact Langdon & Emison.

Focus on Rules Leads to \$5.3M Verdict in Chicago FELA Claim for Slip & Fall Injuries *(continued from p.1)*



The **Passenger Equipment Safety Standards** governed the conditions of the passenger car and similarly required that floors be kept free from slipping or tripping hazards.

Because Metra was strictly liable for any injuries that resulted from violating either of these safety rules, we elected to submit the case solely on negligence per se claims. This strategy changed the posture of the case significantly and removed many of the defenses the railroad had foreshadowed. Focus on the rules violations removed the issue of the railroad's negligence as well as the question of a "reasonably safe workplace." The jury needed only to find a violation of these rules that played a part in causing the injury.

Contesting Metra's Defense

Metra defended the case aggressively. The railroad claimed Cravatta faked his injury and retained a biomechanical expert who told the jury that the science of physics would not permit Mr. Cravatta to fall as he had described. Metra brought in supervisors who testified that Cravatta violated Metra safety rules in the way he stepped between the locomotive

and passenger car. Metra also hired an expert witness who testified that Mr. Cravatta suffered only a minor back strain and did not suffer any severe or significant injury during his fall.

Emison and co-counsel Ken Barnes cross-examined the witnesses very effectively to expose biases, false assumptions and incomplete information. For example, Metra's biomechanic expert was forced to admit she had not considered the variable distance between the locomotive and passenger car (called "slack action"); and its medical expert was forced to admit he never once examined

Mr. Cravatta and merely skimmed much of the medical record. In addition, Metra's corporate designee was forced to admit its company doctors diagnosed a significant injury and recommended Mr. Cravatta proceed with back surgery.

"It was a difficult, hard-fought case, and we are thankful that justice was done with this unanimous verdict," Emison said. "The jury heard all of the evidence and held Metra responsible for these rules violations that substantially altered Mr. Cravatta's ability to provide for his family."



Submitting the case on only negligence per se claims removed the question of "reasonably safe place" to work and permitted the jury to hold Metra accountable solely based on its violation of the rules.



A thorough jury selection is critical to identify jurors who have strongly held opinions or beliefs that prevent them from considering all of the evidence fairly. Jury selection in this case lasted five days, in which more than 150 potential jurors were examined to seat a panel of 12 jurors and 1 alternate.

News and Notes

Langdon & Emison Promotes Mark Emison to Partner



Mark Emison

Langdon & Emison has announced the promotion of trial attorney Mark Emison to partner. Since joining the firm in 2011, Mark has represented clients in personal injury litigation throughout the United States, with a focus on complex claims involving trucking accidents, defective products and traumatic brain injuries. Mark has served as lead counsel in a substantial number of cases resulting in seven-figure verdicts and settlements for his clients, including two Missouri trials that resulted in jury verdicts of \$4.5 million and \$1 million. In 2016, he was recognized as one of Missouri's top lawyers under 40 for his work in personal injury litigation and pro bono cases.

L&E Attorneys Present at National Brain Injury Conference



Langdon & Emison attorneys Kent Emison and Mark Emison presented on the topic of ethics in traumatic brain injury cases at the 30th Annual Conference on Legal Issues in Brain Injury, March 29-31 in New Orleans. Mark also served as a panel member during a pre-conference workshop, "Trial Strategies for TBI Cases," where he offered practical tips for working with experts on trial presentation and using demonstrative exhibits. Kent moderated the panel discussion. The conference was hosted by the North American Brain Injury Society.

Langdon & Emison Sponsors AAJ Leaders Forum Event in KC



Langdon & Emison was pleased to be a presenting sponsor of the American Association of Justice Leaders Forum dinner on May 3 in Kansas City, Mo. More than 30 attorneys from the greater Kansas City metropolitan area were in attendance. The AAJ Leaders Forum is composed of a dynamic group of member firms that support the organization's work to protect the civil justice system by providing the resources necessary to inform the public and educate members of Congress on critical issues.

L&E Supports Local Emergency Response Efforts

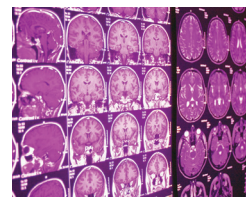


Langdon & Emison was proud to support the efforts of The Missouri Association of Trial Attorneys Emergency Response Program in helping victims affected by the tornado that devastated the community of Oak Grove, Mo. L&E attorney Brennan Delaney was one of the volunteer lawyers on-hand to provide free legal advice to victims in regard to disaster-related issues such as insurance claims, landlord/tenant issues and other legal matters. Langdon & Emison is pleased to support MATA volunteer programs and local community service initiatives that benefit people in need.



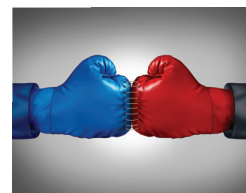
\$5.3M Verdict in Chicago Metra Slip & Fall Case

Common Themes in TBI Litigation



Using Focus Groups to Maximize Recovery

Practice Tips for Litigating Adverse Claims



Enhancing Recovery in Tire Defect Cases



LANGDON
& EMISON
ATTORNEYS AT LAW

Let us help maximize compensation for your clients.

1828 Swift, Suite 303
N. Kansas City, MO 64116
816-421-8080

911 Main Street
Lexington, MO 64067
660-259-6175

*110 E. Lockwood, Suite 150
St. Louis, MO 63119
314-638-1500

*55 W. Monroe Street, Suite 3700
Chicago, IL 60603
312-855-0700

1-800-397-4910

*By appointment only.

LangdonEmison.com