

## What You Need to Know

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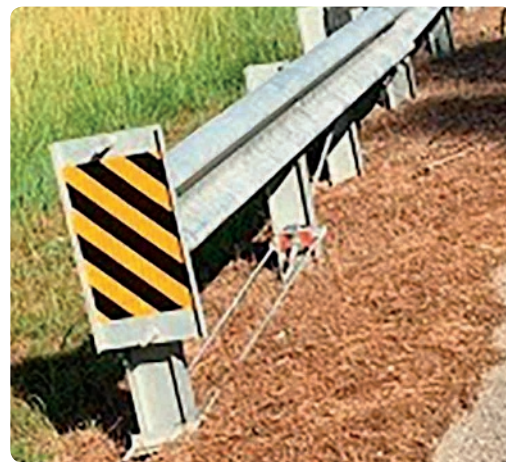
## Guardrails Still Causing Deaths, Serious Injuries Nationwide

Langdon & Emison continues to file cases on defective guardrails, and is currently accepting additional cases. In the late 1980s, energy-absorbing end terminals were developed to absorb the impact from a vehicle and allow it to “ride down” without the guardrail piercing or overturning the vehicle. One of the most popular energy-absorbing end terminals was the ET-2000, manufactured

The appellate court’s 2017 reversal of a \$663 million verdict against Trinity does not affect product defect claims.



*The ET Plus Terminal*

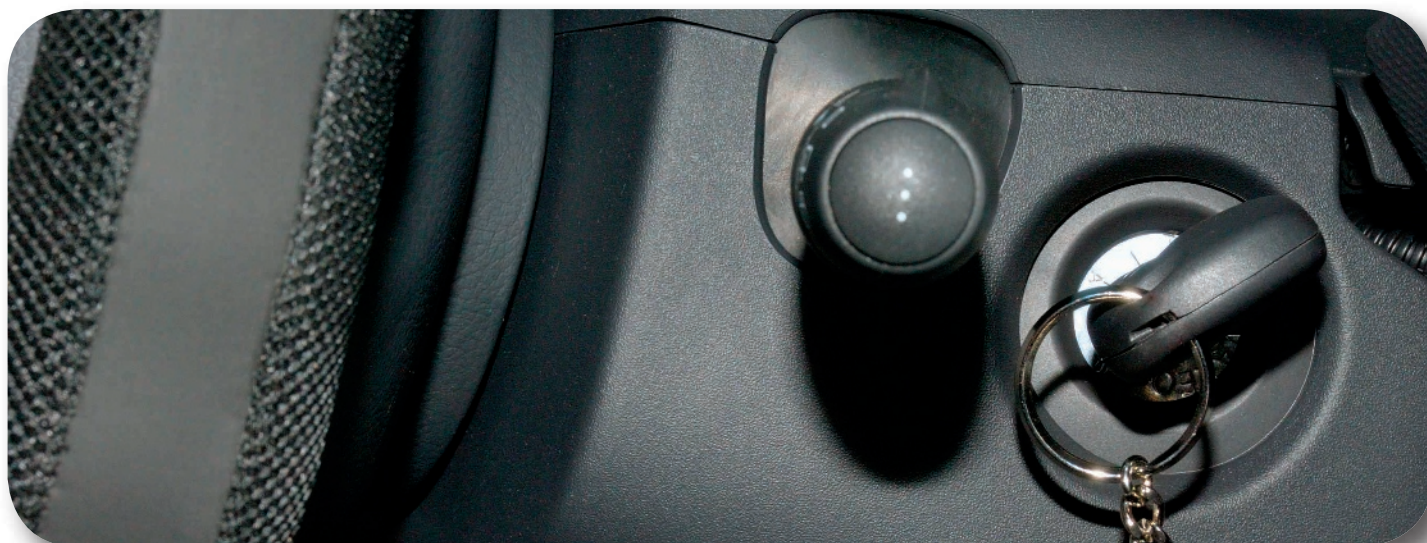


*The Lindsay X-Lite Terminal*

by Trinity Industries. Despite having reasonably good results, Trinity chose to modify the ET-2000 end terminal to increase profits. The modified version — the ET-Plus — has caused drastic and deadly consequences.

The X-Lite end terminal, manufactured by Barrier Systems, is no longer used by at least nine states, some of which have started replacing them amid safety concerns that arose from death and injury crashes.

A recent federal appeals court decision overturned a 2015 judgment that would have forced Trinity Industries to pay \$663 million for cheating the federal government by selling its ET-Plus system without disclosing changes made to it. This appellate decision does not affect product liability claims against Trinity.



## L&E Portfolio of GM Ignition Switch Cases Mounts

The U.S. Supreme Court ruled that hundreds of GM ignition cases may proceed, despite being previously barred under bankruptcy rules. Millions of vehicles with the defective ignition switch remain on the road and injuries continue to occur. Langdon & Emison continues to accept these cases. Visit our web site at [www.LangdonEmison.com](http://www.LangdonEmison.com) for a list of recalled vehicles or call us toll free at (800) 397-4910 for an evaluation of your case.

Any accident involving a GM vehicle should be screened for a GM ignition switch claim.

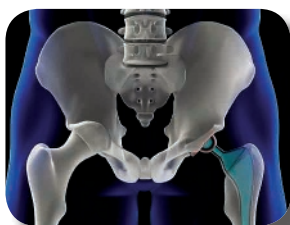
## L&E's Mass Tort Inventory

Langdon & Emison continues to expand its inventory of mass tort claims and evaluation of new torts. Our firm would be pleased to help you with your case or offer a co-counsel arrangement for qualifying cases.



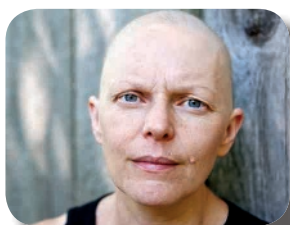
### 3M Bair Hugger Warming Blanket

Patients must have undergone a hip or knee replacement surgery and suffered a deep joint infection within one year after surgery. Since 1987, the Bair Hugger blanket has been used by hospitals more than 200 million times. As this warming blanket is one of the most popular medical products nationwide, the potential number of injuries that it has caused is quite large.



### Metal-on-Metal Hips

Artificial hip implants have been prone to fail early, requiring patients to undergo revision surgery. L&E has successfully resolved a large collection of cases related to defective hips nationwide, with several of the most recognizable brands. Symptoms include chronic, severe pain in the hip, thigh or groin, loosening or dislocation of the hip implant, inflammation, and difficulty walking or standing.



### Taxotere

In the 1960s Sanofi developed an alternative to the cancer drug Taxol; however, the FDA initially said the drug was too toxic and would not approve it. Sanofi went back to the drawing board and later the drug was approved. A 2013 study published by the National Cancer Institute found permanent hair loss as a side effect in 10-15 percent of patients who took Taxotere. Multiple studies also suggest that Taxotere is no more effective than alternative chemotherapy treatments, such as Taxol, that do not cause permanent hair loss.





## Goodyear RV Tire Failures Show Dangers of Tires

Defective Goodyear tires installed on thousands of recreational vehicles (RVs) allegedly caused crashes that injured or killed nearly 100 people in the past two decades.

Lawsuits allege the G159 tires were designed for pickup and delivery trucks in commercial service and not for RVs that travel at highway speeds. When tires carry loads far greater than what they are designed and constructed to carry, the material properties can degrade and cause tread separation, even if the tires have sufficient tread to be operated on the roadway.

The lawsuits and safety advocates also call into question Goodyear's internal testing of the tires and whether the test results—and death and injury claims—were disclosed to RV manufacturers.



### Signs of a defective RV tire:

- The tread tears away from the tire carcass
- Report of a “blowout”
- Sudden changes in the direction of travel
- Tire scuffs on roadway or side of vehicle

The company received notices of G159 failures as early as 1996, the first year it was manufactured and installed on RVs. Goodyear has kept the tire defects secret for years by obtaining confidential settlements and getting judges to seal records.

Last year, federal safety officials began investigating whether Goodyear's use of G159 tires are unsafe. The investigation covers about 40,000 tires made from 1996-2003. The tires have not been recalled, despite the allegations of defects.





## Pre-trial Investigation Key in Recent Settlement in Trucking Crash

Pre-trial investigation was key in Langdon & Emison's recent confidential settlement in a trucking case pending in the U.S. District Court for the Eastern District of Missouri in St. Louis. Partners Kent Emison and Mark Emison handled the litigation.

On June 5, 2016, Bruce and Sharon George drove a Budget® moving truck to move their son from Utah to Florida. As the Georges drove on I-64 near St. Charles County, Mo., Bruce slowed for heavy traffic ahead. Moments later, a CNS Transpro tractor-trailer crashed into the back of the George vehicle. The impact caused the George vehicle to violently roll over. Sharon suffered a fractured vertebra in her neck, which required fusion surgery.

Initially, there were allegations that the George vehicle contributed to the crash by stopping suddenly, however, pre-trial investigation proved that the CNS tractor-trailer was the sole cause of the crash.



- Immediately send preservation letters to all potential parties
- Download all available data from defendant tractor-trailers
- Request dash cam footage and audio recordings from law enforcement

After the crash,

Langdon & Emison immediately sent preservation letters and requested to download data from the CNS Transpro tractor-trailer involved in the crash. The data showed that the defendant's impact speed was over 50 mph. In addition, police dash cam footage from a nearby patrol car captured the crash sequence and proved that the George vehicle appropriately slowed down for traffic ahead when the defendant trucking company's driver crashed into them at highway speeds. Due to the pretrial investigation, the George's comparative fault was never an issue after filing. The case resolved a month before trial.

# BEHIND THE MASSIVE TAKATA AIRBAG RECALL

There are still many millions of vehicles in the U.S. from nearly two dozen brands in which defective Takata airbags are installed.

## MOST COMMON INJURIES:



LACERATIONS  
DEATH  
BLINDNESS  
BURNS

## WHEN A DEFECTIVE TAKATA AIRBAG DEPLOYS, THE INFLATOR CAN RUPTURE.



This sends metal shrapnel flying throughout the cabin, severely injuring drivers and passengers.

As part of ongoing bankruptcy negotiations, Takata will pay

**\$125 MILLION**

to victims or their families who have been injured or killed.

## VEHICLE BRANDS:

(TOTAL U.S.-MARKET NUMBER OF AFFECTED VEHICLES IN PARENTHESES, IF KNOWN)

Acura  
Audi (more than 387,000)  
BMW (more than 1.97 million)  
Buick  
Cadillac  
Chevrolet (more than 1.91 million, including Buick, Cadillac, GMC, Saab, and Saturn)  
Chrysler  
Daimler  
Dodge/Ram (more than 5.64 million)  
Ferrari (more than 2820)

Fisker  
Ford (3.1 million, including Lincoln and Mercury)  
GMC  
Honda (11.4 million, including Acura)  
Infiniti  
Jaguar  
Jeep  
Land Rover (more than 68,000)  
Lexus  
Lincoln

Mazda (more than 733,000)  
McLaren  
Mercedes-Benz (1,044,602)  
Mercury  
Mitsubishi (more than 105,000)  
Nissan (4.4 million)  
Pontiac (more than 300,000)  
Saab  
Saturn  
Scion  
Subaru (more than 380,000)  
Tesla



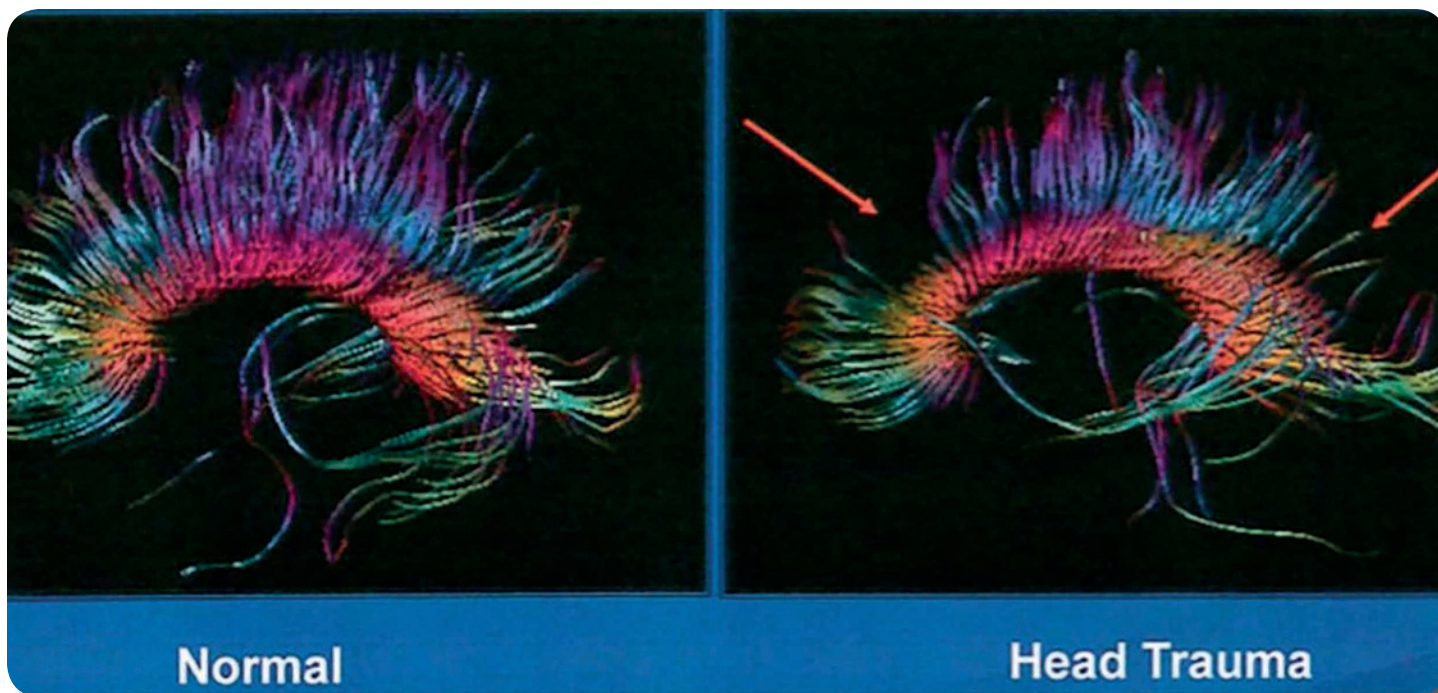
Toyota (more than 6.6 million, including Lexus and Scion)  
Volkswagen (more than 680,000)

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## Combatting Defenses in Brain Injury Cases

*Study: Majority of Concussion Victims Suffer Long-Term Impairment*

In cases involving brain injury victims, the defense often cites the myth that nearly all traumatic brain injuries resolve in three to six months without any long-term consequences. Research has repeatedly debunked this myth. A recent 2017 study is illustrative of what we've seen over decades of representing brain injury victims – a single concussion often leads to lifelong challenges and impairments.

### Findings from a Recent Study

Researchers reviewed data from 45 studies that behaviorally assessed short- and long-term cognitive function in individuals with a single traumatic brain injury classified as "mild." The goal of the study was to identify the impact of a single concussion on cognitive function in the chronic stage—more than three months—post-injury.

### TBI Cases: What to Look For

- Changes observed by friends and family
- Cuts or bruises on head
- Rapid acceleration or deceleration forces

This study found that the majority of individuals with a single mTBI demonstrate long-term cognitive impairment.

The study, published in PLoS One as "*Mild Traumatic Brain Injury and Chronic Cognitive Impairment, a Scoping Review*" in April 2017, found that despite the widely cited myth that most concussion symptoms resolve within three months post-injury, the majority of individuals with a single mTBI demonstrate long-term cognitive impairment. In other words, a single concussion can have a long-term impact on cognitive function.

Our personal injury practice is dedicated to clients who have suffered catastrophic injuries, including a wide range of traumatic brain injury severity. This study supports what our firm has seen for years – that one traumatic brain injury of any classification may cause devastating, long-term consequences for traumatic brain injury victims. Maintaining a depository of peer-reviewed literature that supports the reality of the long-term consequences of brain injuries is key in attaining justice for your clients.



## Overcoming Common Defenses in Dram Shop Claims

Dram shop cases are difficult cases to pursue and obtain a significant recovery for your client. Below are tips to deal with issues that commonly arise in a dram shop case and specific examples of how we overcame them.

### Potential for a large amount of fault on drunk driver

Do not immediately settle for the drunk driver's policy limits. Instead, keep the driver in the case while you gather information by conducting focus groups to see the impact on both the participant's distribution of fault as well as the damages of having the drunk driver as a defendant at trial. This allows you to make an informed decision on whether to have them in the case or not at trial. In a recent dram shop case, we found that leaving the drunk driver in the case not only increased damages assessed for our client but surprisingly increased the amount of fault that was placed on the defendant dram shop.



Leave the drunk driver in the case while gathering information and conducting focus groups.

### Lack of eye witness testimony of signs of intoxication at purchase

When eye witness testimony of intoxication is not available, an expert toxicologist can calculate the drunk driver's blood alcohol content (BAC) at the time he purchased the alcohol beverages. Combine the expert testimony with signs of intoxication at other times throughout the night to paint the picture of visible signs of intoxication.

### Other drug intoxication

You must gain an understanding of how any additional drug in the defendant driver's system interacts with alcohol and retain an expert to testify that the amount of the drug alone would not have caused the drunk driver's conduct. Through our experts in a recent case, we were able to argue convincingly that Xanax increased drunk driver's alcohol intoxication in the same way that gasoline would increase a fire. Importantly, we also got the defendants' toxicologist to admit he could not separate the Xanax from the alcohol as the cause of the crash.

BLOOD ALCOHOL CONTENT (BAC) Table for Male (M) / Female (F)									
Number of Drinks	Body Weight in Pounds								Driving Condition
	100	120	140	160	180	200	220	240	
0	M .00	.00	.00	.00	.00	.00	.00	.00	Only Safe Driving Limit
	F .00	.00	.00	.00	.00	.00	.00	.00	
1	M .06	.05	.04	.04	.03	.03	.03	.02	Driving Skills Impaired
	F .07	.06	.05	.04	.04	.03	.03	.03	
2	M .12	.10	.09	.07	.07	.06	.05	.05	
	F .13	.11	.09	.08	.07	.07	.06	.06	
3	M .18	.15	.13	.11	.10	.09	.08	.07	Legally Intoxicated
	F .20	.17	.14	.12	.11	.10	.09	.08	
4	M .24	.20	.17	.15	.13	.12	.11	.10	
	F .26	.22	.19	.17	.15	.13	.12	.11	
5	M .30	.25	.21	.19	.17	.15	.14	.12	
	F .33	.28	.24	.21	.18	.17	.15	.14	

Subtract .01% for each 40 minutes of drinking.  
1 drink = 1.5 oz. 80 proof liquor, 12 oz. 5% beer, or 5 oz. 12% wine.

Fewer than 5 persons out of 100 will exceed these values.

(Chart from [www.dmv.ca.gov](http://www.dmv.ca.gov))





## How to Spot a Product Defect Claim in a Truck Accident

Semi trucks are much larger and more complicated than passenger vehicles. They can weigh more than 80,000 lbs. and measure as much as eight and a half feet wide, 65 feet long and 14 feet high (or more, with special permits). Because of this size and complexity, product defects in the truck itself may have caused the accident or worsened the injuries to your client.

### Defective truck tires

Failure of a steering axle tire can result in total loss of vehicle control, especially when the driver has little time or space to react. Oftentimes, heavy truck tires are design similar to tires used on passenger vehicles despite being operated under much different conditions and heavier loads.

### Cargo retention

Cargo can shake loose during transport; when a trailer, or the components being used to secure the load are not designed to withstand the load that it is carrying. Such failure can lead to cargo shifting onto the roadway, or to an overturn of the trailer itself.



### Blind spot technology

This technology is designed to aid in detecting vehicles that may have entered a vehicle's blind spot, of which there are many on large trucks. Although commonplace on passenger vehicles, truck manufacturers have been slow to implement this technology. This technology can alert the driver if vehicles are in danger zones, preventing a wreck in the first place.





### Underride guards

One design flaw that can be potentially fatal is the truck's underride guard. Since the 1950s, federal law has required semi-truck trailers to be fitted with metal structures called "underride guards" on their rears to prevent underride crashes.

Underride crashes occur when a car collides into the rear or side of a semi-truck trailer. More than 400 drivers and passengers are killed each year due to underride crashes. Around 5,000 additional people are injured.

Studies analyzing both real world collisions and crash tests indicate federal minimum requirements for underride guards are not sufficient to protect motorists. Underride guards that comply with the minimum federal standards often fail, even at low speeds. Worse, no requirements exist for side underride and trailer manufacturers have allowed this danger to go unsolved for decades.

### Conspicuity

Drivers can only react to what they see, and cannot avoid lurking dangers in the dark. If a tractor-trailer is not designed so as to be properly illuminated, even vigilant drivers may not realize they are coming upon a tractor-trailer until it is too late.

"Conspicuity" refers to a motorist's ability to perceive, identify and appreciate a truck's position and speed in the roadway, particularly at night. Conspicuity-related collisions are especially deadly because rear and side collisions into tractor-trailers often result in underride. The trailer can act like a guillotine and shear the car's roof off, frequently leading to devastating head and upper torso injuries.





## Establishing Liability in a Negligent Security Case

Proving the defendant had notice of the dangerous condition that injured your client is essential in a negligent security case. There are a number of resources to obtain this critical evidence. There are a variety of inexpensive resources available to the capable attorney who wishes to verify that “notice evidence” exists before taking on a negligent security case.



A critical investigation is key to maximizing recovery in a premises liability claim.

### Public records

Attorneys can establish a pattern of violent crime by requesting calls for service and other reports from law enforcement for apartment complex, hotel, or other commercial property. Submit a request for records under the Freedom of Information Act and/or your state’s Sunshine Law to all administrative agencies and governmental subdivisions with supervisory authority over the defendant.

### Regulations and ordinances

Review federal and state regulations that govern the defendant property owner, such as U.S. Department of Housing and Urban Development (HUD) regulations that apply to Section 8 housing. In Section 8 housing cases, identify similar violations or occurrences that provided notice of danger to the housing’s owner, manager or employees prior to the plaintiff being harmed. Also examine local ordinances to determine whether the condition of the property complies with applicable building codes.

### Media reports

Local media reports frequently identify eyewitnesses who observed your client’s injury, or other witnesses who can speak to the safety and security of the defendant’s premises. Media reports typically provide other helpful information, such as prior instances of injuries and crime statistics.

### Trade associations and crime prevention organizations

Industry trade associations often adopt or suggest best practices that promote public safety and security. Additionally, many property owners publicize their membership in voluntary crime prevention organizations which have adopted safety policies and training criteria as a condition of membership.





# RECREATIONAL VEHICLE DEFECTS



**Aftermarket RV manufacturers often operate without engineering or testing, and have no quality control. Just some of the defects that can result are included below.**

- Inherent Instability
- Lack of Electronic Stability Control (ESC)
- Fuel System Defects
- Bad Tires
- Improper Wiring
- Improper Routing of Copper Tubing for Propane

Other vehicles with similar defects include:

- Limousines
- Campers
- Custom Vans
- Trailers
- Ambulances
- Other "modified vehicles"

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## How to Make the Most Out of Your Focus Group



### **Paralegal Spotlight**

*Alesia Emison*

A focus group is a critical part of any case, no matter the complexity or budget. Focus groups may have different goals and purposes, depending on the stage of the case and the issues in the case.

#### **Purpose of the focus group**

- Determining whether to take a case at all
- Theming the case
- Finding landmines and problems in the case
- Identifying issues to focus on in discovery and depositions of fact and expert witnesses
- Determining if lay people understand the facts and the main arguments
- Deciding which defendants to keep in the case at trial
- Managing client expectations.

#### **Format**

In a narrative format, one attorney presents a short, neutral narrative of the case facts. Although “neutral,” our firm makes an effort to “stack the deck” against the plaintiff’s case so we find out as much as we can about the issues in the case. The attorney presents a simple PowerPoint presentation that includes important photographs, video, and any other important facts known at the time. Narrative focus groups are beneficial early in cases to learn what issues to focus on in discovery, and to learn what landmines and problems must be addressed in fact witness depositions and expert depositions. Narrative focus groups can be done on a low budget and generally take less time than adversarial presentations. Several cases can be focused in a half day.







In an adversarial format, one attorney presents the plaintiff's case and then another attorney presents the defendant's case. Again, our firm presents all of the bad and potentially harmful facts of the case. Adversarial focus groups generally take longer than narrative focus groups, but they present more detail and are closer to the adversarial nature of the real trial. These can be done at any stage of a case.

Narrative focus groups can be done on a low budget and generally take less time than adversarial presentations.

It's important to focus the opening statement to make sure jurors understand the issues and the case themes are coming across as intended. Case teams can get so wrapped up in a case over the course of months and years that it is difficult to step outside the bubble of the case to understand the point of view of a lay person who knows nothing about the case.

When the focus group jurors arrive, they fill out a confidentiality form and an additional form with general background information. Next, the moderator (at our firm, paralegals often moderate) explains the process of the focus group. Sometimes the moderator will give a short, neutral statement of facts so the jurors know generally what the case is about. The moderator then introduces the attorney or attorneys.

After the presentations, our firm asks the jurors to fill out individual, pre-deliberation questionnaires before they speak with one another as a group. Our firm finds this to be one of the most fruitful pieces of information because the individual forms contain the untainted, individual perspectives of all of the jurors.





## Developments & Deficiencies in Self-Driving Technology

*Automated vehicles create new risks for motorists and new liability for auto companies*

The past several years have seen a tremendous proliferation of automated vehicle capabilities. In this short time, self-driving technology has advanced from the ability to direct certain discrete tasks (such as parallel parking) to controlling virtually every function involved in the operation of a car. Auto companies have invested billions of dollars in researching and developing self-driving technology, and have poured hundreds of millions into equipping factories for the mass production of autonomous vehicles.

Tech companies and auto manufacturers have been testing their self-driving technology on public roads across the United States. However, recent collisions involving vehicles equipped with the most advanced automated driving technology prove that truly self-driving cars are not yet a reality. Autopilot programs currently require a human driver to supervise operation of the vehicle and intervene when conditions are too complicated for the technology. Until that changes, several known defects in driver-assist technology will continue to cause crashes, including:

- Operator tendency to over-rely on automation;
- Autopilot features that are not programed to operate only in appropriate locations and conditions;
- Automation systems that cannot detect or respond to common traffic conditions; and,
- Deficient systems used to monitor and confirm operator supervision.

In March 2018, Uber made headlines when one of its vehicles struck and killed a pedestrian in Tempe, Arizona while the car was in autonomous mode and a human “safety driver” was behind the wheel. And the National Transportation Safety Board recently released its findings from a May 2016 fatal collision involving a Tesla Model S 70D, which crashed into the back of a tractor-trailer while several of its autopilot features were enabled. Although the Uber and Tesla cases both settled out of court, the NTSB’s report highlights deficiencies—actionable defects—that will persist until self-driving technology is perfected and human supervision is no longer required.

Some questions that will arise with automated vehicles:

- Is an outdated self-driving algorithm a defect?
- How will fault be accessed in a crash between an automated- and a human-operated vehicle?
- Did a human occupant intervene and cause the crash? How can that be proved/disproved?



## News and Notes

### L&E Attorneys, Staff Help “Trial Lawyers Care” Project in Missouri



Attorneys and staff from the firm were able to take part in a service project this March, under the aegis of Missouri Trial Lawyers Care (Mo-TLC), the charitable arm of the Missouri Association of Trial Attorneys (MATA). Folks from law firms throughout western Missouri were able to volunteer for a day at Harvesters Food Bank in Kansas City. The focus of Mo-TLC is to improve the quality of life in communities where MATA members live and work across the state, collaborating with 501(c)3 educational, cultural, civic and health and welfare organizations.

### Connor Curran Joins Langdon & Emison



Connor Curran

Langdon & Emison is pleased to announce the addition of associate attorney Connor Curran to its staff. Connor joins the firm after practicing law nearly two years with a civil defense firm in Jefferson City, Mo. Connor is a licensed member of the Missouri Bar and is admitted to practice in the Courts of Appeals for the Eastern and Western districts of Missouri. In 2016, he earned his Juris Doctor from the University of Missouri-Columbia School of Law.

### L&E Attorney Installed as Associate Circuit Court Judge



Cory Atkins

L&E associate Cory L. Atkins was appointed by Missouri Governor Eric Greitens this spring as Associate Circuit Court Judge for the 16th Judicial Circuit. He is replacing Judge Jalilah Otto. In his career Cory has helped try numerous cases to jury, and has extensive trial and appellate experience. Cory received his law degree from the University of Missouri-Kansas City and his undergraduate degree from Rockhurst University. His colleagues at Langdon & Emison sent him off with best wishes upon his departure from the firm, and we expect him to represent the judiciary well in this next chapter in his career.

### Brennan Delaney Presents at State Bar Conference



Brennan Delaney

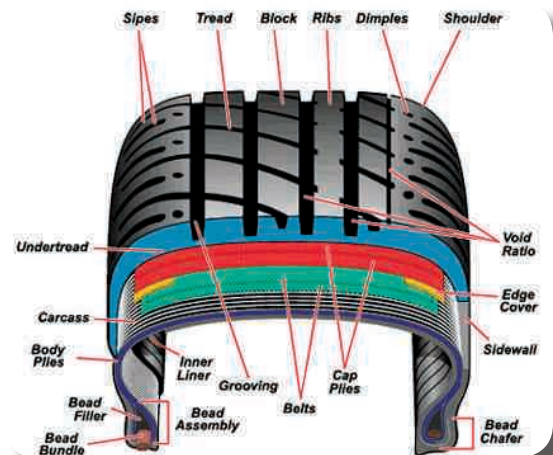
Brennan Delaney will deliver a CLE presentation with attorneys Kelly McCambridge and Heather Hardinger at the 2018 Missouri Bar Solo-Small Firm Conference. “*Lawyer’s Guide to the Ethics of Low Cost/No Cost Marketing*” will be presented on June 8, 2018 in Branson, Mo. In recent years L&E attorneys have also lectured on ethics topics before conferences of the Missouri Association of Trial Attorneys, the American Association for Justice, the Attorneys Information Exchange Group, and various law schools.

## Factors to Watch for in Tire Failure

All tires deteriorate with age; older tires have a much higher risk of failure than newer tires with similar wear and tread depth. Poor design and construction of the inner liner in tires can lead to oxidation across the belt plies, ultimately resulting in tread separation. This can cause vehicles ranging in size from a compact automobile to a commercial truck to overturn.

Tire failures are a major cause of motor vehicle accidents, but the defects that cause the tire to fail may not always be apparent. Four common types of tire defect include:

1. Insufficient inner liner
2. Defects in manufacture, such as misplacement of the belts
3. Tire made without components to resist failure, e.g., nylon overlap
4. Foreign material baked into the rubber when it was manufactured



Open this edition of our quarterly newsletter to find out the wide variety of ways in which our firm has successfully resolved recent personal injury cases.



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\*By appointment only.

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