

LANGDON & EMISON

ATTORNEYS AT LAW

What You Need to Know

Page 1 – Deadly Guardrails
Put Drivers at Risk

Page 2 – \$4 Million Taxi
Crash Judgment Earned for
Florida Couple

Page 3 – \$27 Million Verdict
Against Fast Food Giant
McDonald's

Page 4 – Stryker Settles
Defective Hip Cases

Page 4 – Testosterone
Therapy Lawsuits Mounting
Amid Safety Concerns

Page 8 – St. Louis Offers
Expedient Venue for GM
Ignition Switch Cases

Page 9 – Takata Recall
Explodes into Global Crisis
for Airbag Manufacturer

Page 10 – Settlement Holds
Companies Accountable for
Propane Explosion

Page 10 – Signs of Nursing
Home Abuse

Page 11 – News & Notes



Litigating Trinity Guardrail Cases

Langdon & Emison attorneys lead litigation groups dedicated to the defect

Since 2005, virtually every driver in the United States has been passing a “highway killer” each and every day:

Defective guardrails. These safety devices are supposed to protect motorists in auto crashes; instead, thousands of defective guardrails across the country are injuring and killing the very people they should protect.

The Product

The culprit is the end terminal or “head” of the guardrail. One of the most commonly used end terminals is the Trinity ET-Plus, which is the subject of litigation and safety concerns of highway authorities across the country. End terminals are designed to absorb the energy from a crash and allow the vehicle to “ride down” the crash without the guardrail piercing the vehicle.



Trinity Highway Products, LLC, the manufacturer of the ET-Plus, has been deeply embroiled in controversy and litigation over the guardrail system since a patent dispute in 2012 revealed Trinity had altered the end terminal design without informing federal and state highway safety regulators. Before that time, many attorneys had overlooked auto crash cases involving the ET-Plus.

(Continued, p. 6)

Two of our attorneys have been called to help chair two national litigation groups on this defective guardrail litigation: Kent Emison (AAJ) and Adam Graves (AIEG).



Langdon & Emison Obtains \$4 Million Judgment for Florida Couple Injured in St. Louis Taxi Crash



Mark Emison

Langdon & Emison recently obtained a \$4 million judgment on behalf of a Tampa Bay, Fla., couple that was seriously injured in an auto accident while riding in a St. Louis taxivan. The taxi driver and two cab companies were the named defendants in the case. Mark Emison, Langdon & Emison associate, was the lead attorney on the case.

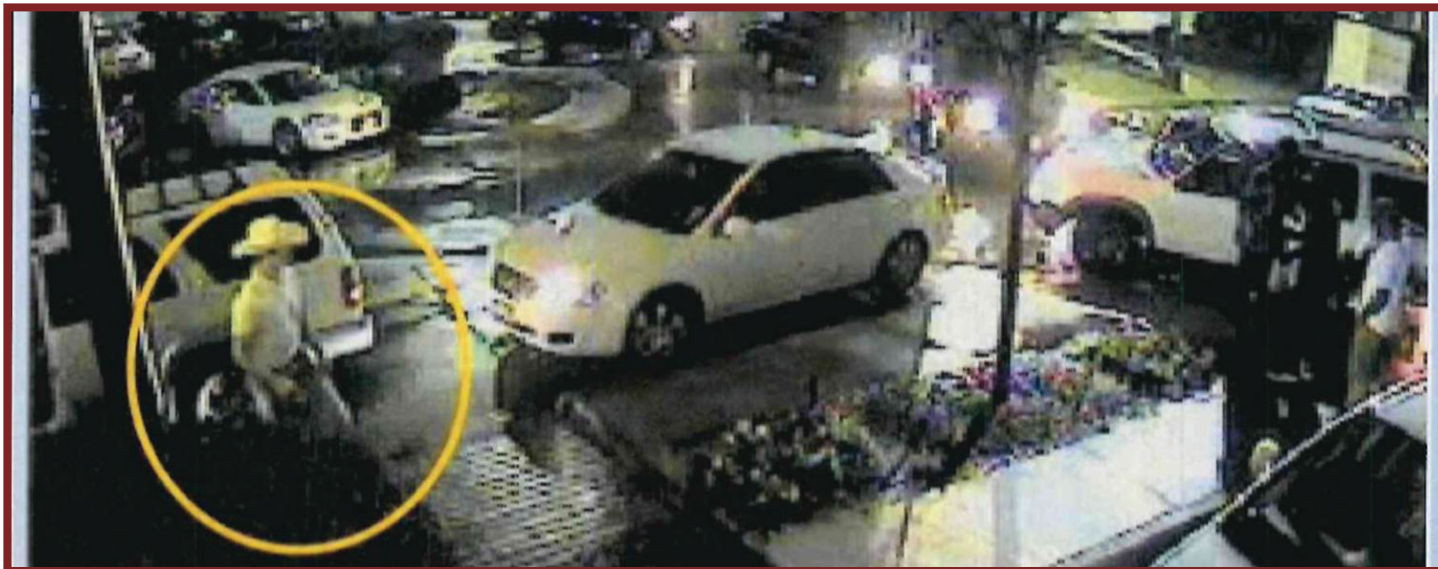
Mark Stillie and Carina Clark-Stillie visited St. Louis in September 2011 to attend a close friend's wedding. After the reception, they hailed a taxivan to transport them to their downtown St. Louis hotel. The taxi driver drove erratically and continually fumbled with a GPS device as he drove. In addition, the taxi did not have working seatbelts for passengers. Concerned with the situation, Mr. Stillie asked to be let out of the taxivan, but the taxi driver would not stop.

Eventually, the taxivan approached a solid green light heading eastbound at the intersection of 4th Street and Washington Avenue. The taxi driver attempted to make a left turn despite continuous, oncoming traffic. During the turn, the taxi driver continued to focus his attention on the GPS device and turned directly in front of oncoming traffic, causing an oncoming SUV to crash into the front right of the taxivan. Another vehicle rear-ended the taxi, and the successive collisions violently threw Mr. and Ms. Stillie from their seats.

Both Mr. and Mrs. Stillie suffered severe and permanent injuries. Mark, owner and founder of a successful advertising company, suffered a traumatic brain injury and continues to live with chronic back and neck pain. At trial, evidence was presented that showed his injuries have had a significant economic impact on his business. Carina, an elementary school teacher, was knocked unconscious during the accident and also sustained permanent back injuries. Medical evidence showed that both will require back surgeries in the future.

Through a MO Sunshine Law request, the legal team obtained critical information about regulations the Metropolitan St. Louis Taxicab Commission required the driver and taxi companies to follow.

"Our clients were told by their doctors to forget about the life they had before, and they are living that reality every day," said Emison. "We are pleased to obtain this judgment on their behalf."



Texas Jury Awards \$27 Million Verdict Against McDonald's



Bob Langdon

Chris Hamilton

In July, a Texas jury awarded a \$27 million verdict against fast food giant McDonald's after finding that lax security at one of the chain's restaurants contributed to the deaths of two Texas teenagers in 2012. Bob Langdon, founding partner of Langdon & Emison, served as counsel on the case alongside his son-in-law, Chris Hamilton, who was the lead lawyer in the suit.



The legal team showed McDonald's was only interested in the profits from its late-night dining and not in the safety of its customers.

Two Blinn College students – Denton James Ward, 18, and Lauren Bailey Crisp, 19 – died in the early morning hours of Feb. 18 after stopping with another couple at a McDonald's location in College Station where police had been called repeatedly to break up fights.

Mr. Ward and a friend were viciously attacked by a mob while walking through the McDonald's parking lot. The two were loaded into Mr. Ward's vehicle by their girlfriends. As they raced toward a nearby hospital, Ms. Crisp's friend ran a red light and collided with a pickup truck in a crash that resulted in Ms. Crisp's death. The teens' families claimed McDonald's should have provided better security at the restaurant, where police were called more than 20 times to break up fights in the year leading up to the deaths.

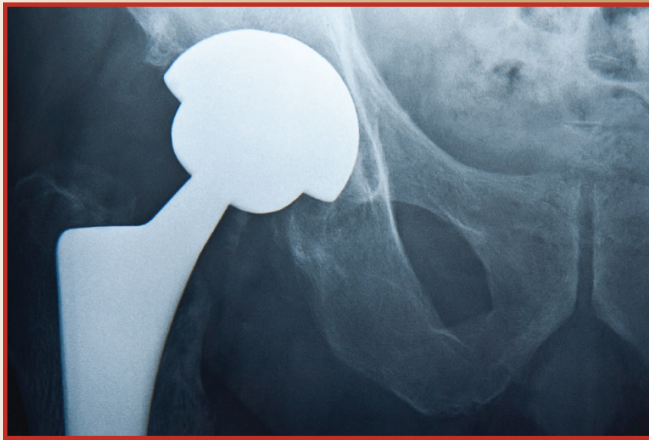


"We hope this verdict sends a powerful message to McDonald's

and other companies that protecting customers is more important than late-night revenue," attorney Chris Hamilton told the media afterwards. "The night these two kids died, this was a dangerous location, and McDonald's knew it. Yet they did nothing to prevent their senseless deaths."

Stryker Settles Cases Tied to Rejuvenate and ABG II Hip Replacement Recall

Plaintiffs have until March 2 to file claims



Langdon & Emison is involved in dozens of lawsuits against metal-on-metal hip manufacturers whose products have resulted in premature failure and severe injury to thousands of patients in the United States. Among those brands of defective hips is Stryker, who announced a global settlement last month of cases tied to their Rejuvenate and ABG II models, both of which were recalled. Stryker will provide a base payment of \$300,000 to patients that received

Claims against hip manufacturers:

- Biomet M2A Magnum
- DePuy Pinnacle
- Smith & Nephew R3 Acetabular System
- Smith & Nephew BHR (Birmingham Total Hip)
- Stryker Rejuvenate System
- Stryker ABG II Modular Neck System
- Wright Conserve System
- Wright Profemur System
- Zimmer (Durom Cup)

the Rejuvenate or ABG II hip systems and underwent revision surgery by November 3, 2014, to remove and replace the devices.

The deadline for eligible patients to submit their claims for payment under the settlement is March 2, 2015. The base award may be adjusted upward depending on certain factors. Payments can be increased for extraordinary medical injuries, such as multiple surgeries or infections and other medical complications suffered as a result of revision surgery.

Testosterone Therapy Lawsuits on the Rise

Testosterone therapy lawsuits are on the rise as thousands of men are reporting injuries within a short amount of time after beginning treatment. Pharmaceutical companies Abbot Laboratories and AbbVie Inc. are facing lawsuits consolidated in a Chicago federal court over claims they hid the risks of using the testosterone-replacement drug

AndroGel. The decision to consolidate the cases was made due to a “significant number” of cases that are already pending against the Chicago-based companies. According to the panel that made the decision, the consolidation will include all lawsuits against makers of testosterone-replacement pills. Langdon & Emison is currently representing clients who have been impacted by testosterone therapy treatments and will continue to review and accept potential cases.

Brand name testosterone treatments include:

- AndroGel
- Androderm
- Axirom
- Bio-T-Gel
- Delatestryl
- Depo-Testosterone
- Fortesta
- Striant
- Testim
- Testopel

According to one source, the market for testosterone replacement drugs, such as AndroGel and Axiron, is worth \$1.6 billion annually. A panel of experts recently urged the FDA to tighten the language on testosterone-replacement drug labels in order to limit the medicines from being overprescribed and rein in the aggressive marketing by drug-makers. Studies published in 2013 and 2014 have shown that testosterone gels can double – or even triple – the risk of heart attack for some men. Langdon & Emison partner Brett Emison’s book, *Testosterone Therapy’s Link to Heart Attack, Stroke, and Death: What You Need to Know* is available as a free download on iTunes.

Stryker Hip Lawsuits Settle

**\$1.43
Billion**

Amount dedicated to settle these lawsuits over Stryker's Rejuvenate and ABG II modular-neck hip implant

\$300,000

Base award for plaintiffs as part of the global settlement

30,000

Number of Stryker hip products in the marketplace

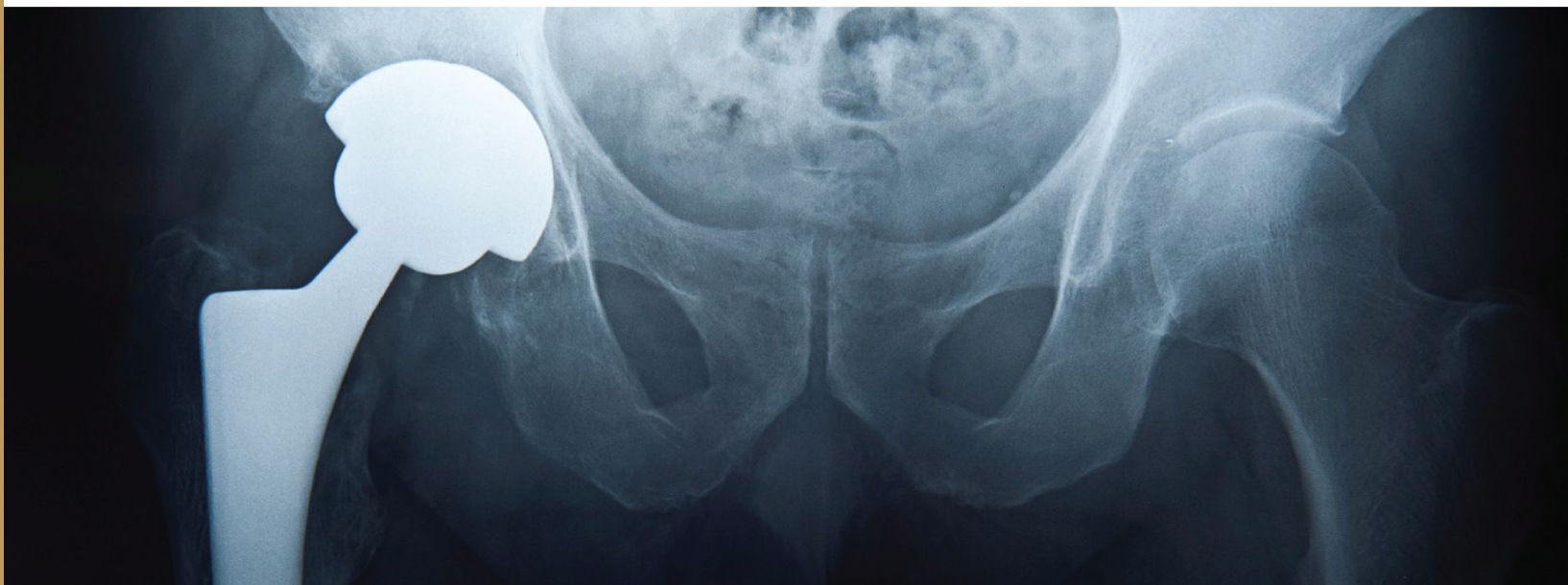
20,000+

Number of Stryker hips implanted in the U.S.

Patients who have received Stryker's Rejuvenate and ABG II modular-neck hip implant products are filing lawsuits to seek compensation for damages related to their hip implant problems. These artificial hip models fret, corrode and fail prematurely, leading to metal toxicity in the blood.

These lawsuits argue that the manufacturer:

- *Failed to properly test the device*
- *Marketed the device as a "perfect fit" for younger patients*
- *Failed to properly warn doctors and patients about its dangers*
- *Marketed the product without informing consumers about the risks*



Trinity Guardrails *(Continued from p. 1)*

Know the Defect

In 2005, Trinity secretly began working on significant modifications to the ET-Plus by:

- Reducing the guide rail/feeder chute's width from 5 inches to 4 inches.
- Decreasing the weight of the end terminal by 8.1 pounds.
- Reducing the guide rail/feeder chute's vertical height from 15.375 inches to as narrow as 14.5 inches.



These dimensional changes interfere with the ability of the guardrail to feed through the end terminal, deforming the guardrail and changing its characteristic from a rigid barrier to absorb the impact. Instead of the guardrail ribboning away from the striking vehicle, the rail gets caught in the end terminal and turns the beam into a deadly projectile that will slice right through a car or truck. The resulting injuries to occupants are horrendous.

A recent study conducted by the University of Alabama-Birmingham (UAB) compared the performance of the ET-Plus end terminal to five other end terminals, using eight years of data for injury and death crashes in Missouri and Ohio. The study found:

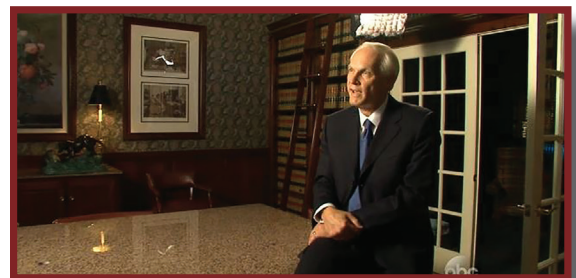
- About 75 percent of the fatal crashes involved the defective ET-Plus end terminal.
- The ET-Plus is 1.45 times more likely to be involved in a severe injury than the ET-2000.
- The ET-Plus is 3.95 times more likely to be involved in a fatal crash than the ET-2000.

The American Association for Justice has approved a new sub-group dedicated to guardrails, naming Kent Emison as its co-chair. The group will have its first meeting at the AAJ Winter Convention in Palm Springs, Feb. 21-25.

When evaluating a potential ET-Plus case, first look for evidence of the W beam or some part of the guardrail piercing the vehicle. The guardrail can also fail to feed through, causing it to kink, which can force a vehicle to roll or be redirected into traffic. If there is any evidence that the W beam punctured the vehicle, investigate the case to determine if the occupants were injured by the defective end terminal of the guardrail. It is also important to retain the appropriate expert witnesses such as a biomechanic expert, accident reconstructionist and design expert. Other similar incidents involving the ET-Plus end terminals may reveal critical evidence as well.

Leverage Government Investigations

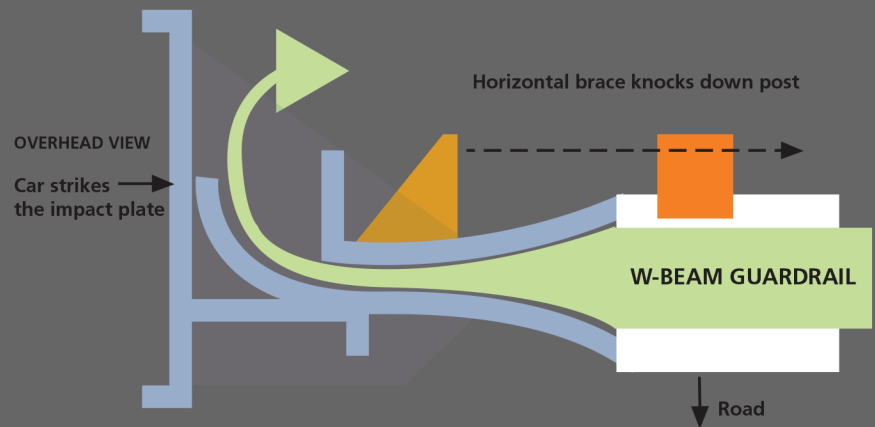
After the patent infringement suit resolved, a competitor to Trinity, Joshua Harman, filed a qui tam whistleblower suit against the guardrail maker alleging False Claim Act violations. In October 2014, a Texas jury slapped Trinity with a \$175 million verdict for defrauding the federal government by failing to report the design changes to federal and state safety regulators. As a result, numerous states have banned further installation of the ET-Plus until further testing of the system is complete. In addition, a growing number of civil lawsuits against Trinity have been filed alleging the ET-Plus failed to protect motorists as intended.



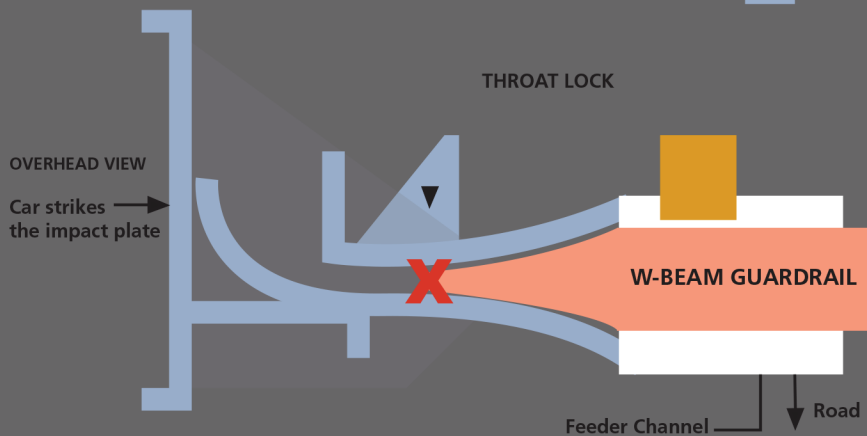
Kent Emison was part of an ABC News 20/20 program on the danger of guardrail collisions in roadway accidents. The investigative report aired September 19, 2014.

THE Problems WITH THE ET-Plus Guardrail

The ET-Plus guardrail end terminal was originally designed with a guardrail head width of five inches.



In 2005, the width of the head was reduced to four inches. Around the same time, the height of the feeder channel was changed from 15 3/8 inches to 14 7/8 inches.



These changes have caused the guardrail to pull up — ramming through the front of vehicles and into their cabins — resulting in deaths and serious injuries.

50

Number of states with the defective guardrail.

\$175 Million

Jury verdict amount against Trinity Industries last October for violating the False Claims Act when it made money-saving changes to its guardrail product.

\$2

According to *The NY Times*, the amount that Trinity expected to save on each guardrail head.



Missouri Law Favorable for Filing GM Ignition Switch Cases

Permissive joinder allows for expedient resolution of cases filed in St. Louis

With cases related to General Motors' faulty ignition switches being filed all over the country, there are many arguments for how these cases can be handled. GM will use a \$1 million starting point to calculate its payouts for families of those who died or those who suffered serious injuries as a result of the ignition switch defect, attorney Kenneth Feinberg said when announcing the uncapped settlement fund.

The Advantage of Filing GM Defects Cases in St. Louis

In states like Missouri that allow for the expedient resolution of claims, these cases are consolidated to make the process more efficient for all involved. Relevant state law for those GM cases filed in Missouri is Rule 52.05(a), which is "liberally construed to allow for a more expedient resolution of the case." *State ex rel. Kinsey v. Wilkins*, 394 S.W.3d 446, 449 (Mo. App. E.D. 2013).

It is conceivable that these isolated GM cases filed in Missouri will be much closer to the actual damages caused by the accidents instigated by defective GM vehicles, as compared to those that try their luck filing claims under the Feinberg plan. States with permissive joinder, and Missouri in particular, will also benefit from the expedient manner in which these consolidated claims can be reviewed.

The Shortcomings of the Settlement Fund

Victims of less serious injuries are eligible for \$20,000 for one night spent in the hospital and \$500,000 for a stay of more than a month, with a sliding scale in between. Compensation for those who only received outpatient treatment is capped at \$20,000. In our experience litigating product liability cases, juries regularly award these amounts to victims of similar accidents.

GM ignition cases from across the country can be consolidated in St. Louis.

When GM recalled thousands of its small cars last February for faulty ignition switches, the media firestorm that grew around these cases was substantial. Defective ignition switches had been in cars for over a decade and were linked to numerous road accidents and 13 deaths. But in addition to not adequately accounting for the true extent of damages in these cases, the list of eligible vehicles included as part of this settlement protocol is shorter than one would expect. Not all cars with faulty ignition switches or key rotation problems qualify for the Feinberg fund. Only the roughly 2.5 million cars involved in the initial ignition switch recalls will be eligible for the compensation protocol.



Call 800.397.4910 for a free evaluation of your potential ignition switch case to be consolidated with ours.



Massive Airbag Recall Adds to Mounting Auto Recall Crisis

In what is being called one of the largest recalls in history, federal safety regulators have urged automakers to conduct a nationwide recall of vehicles that contain the driver's side airbags made by Japanese supplier Takata Corp. The airbags have been known to explode with excessive force during deployment and shoot shrapnel through the vehicle compartment, causing severe injuries and deaths.

The move, prompted by the National Highway Traffic Safety Administration, would expand a recall that has been primarily regional and limited to a few states and U.S. territories with high humidity. The airbag defect is claimed to be climate-related and triggered by extended exposure to high humidity that causes the airbags to deteriorate and malfunction.

If automakers do not comply and expand the Takata airbag recall nationwide, NHTSA has said it will "use the full extent of its statutory powers" to compel automakers to do so

NHTSA's most recent call to action comes after learning that recent airbag incidents did not occur in any of the locations where the initial recall was made. The expanded recall would affect millions of vehicles made by Ford, Honda, Chrysler, Mazda and BMW, mostly from model years 2008 or earlier, according to NHTSA. Vehicles made by at least 10 different automakers were included in the initial recall.

The manufacturing defect dates back to at least April 2000. Recent lawsuits filed in the United States allege Takata knew about the flaws as early as 2001 when it issued a recall notice related to exploding airbags in Isuzu vehicles.

Over the last 20 years, Langdon & Emison has successfully litigated defective airbag cases from coast to coast.

Several investigations are under way, including a U.S. criminal investigation over the defective airbags that have been linked to at least five deaths. Takata has been ordered to turn over documents related to the company's knowledge of the airbag defects.

Langdon & Emison is currently accepting potential cases involving the defective Takata airbags. A number of claims have been filed against Takata and several automakers whose vehicles allegedly contain the airbags; additional complaints are expected.

Langdon & Emison Fights for Victim of Propane Explosion

\$2 million settlement holds responsible parties accountable

Langdon & Emison successfully obtained a \$2 million aggregate settlement in a personal injury lawsuit stemming from a propane-leak house explosion in a rural Missouri town. The defendants included a confidential water heater manufacturer and a confidential HVAC service company.

The HVAC company worked in and around propane pipes leading into the family's HVAC unit on two separate occasions on a hot spring day in 2012. The following morning, less than 24 hours after the HVAC service, a violent explosion erupted.



Aggressive pre-trial work-up allowed L&E to settle this case months before trial.

The water heater manufacturer defended the case vigorously, claiming that Flammable Vapor Ignition Resistant (FVIR) technology was not yet industry standard when the subject water heater was manufactured and, even if the technology was available, it was designed to prevent gasoline – not liquid propane gas – explosions. “However, we were able to identify industry documents identifying propane and butane gas as appropriate ‘test vapors’ in the development and testing of FVIR devices. These documents were critical in showing that FVIR technology

would have prevented this explosion,” Brett Emison told reporters after the settlement was finalized.

Nursing Home Abuse: Know the Signs



The National Center on Elder Abuse estimates that between two and five million Americans suffer from some form of elder abuse or neglect in nursing homes and other long-term care settings. Unfortunately, it can be difficult for family members and loved ones to identify the signs of nursing home abuse, and often residents are unable or unwilling to report mistreatment.

Common forms of nursing home abuse include physical, sexual, emotional and psychological abuse, abandonment, neglect or financial exploitation. Older adults can suffer assault, battery or even rape,

or can be humiliated, threatened, ignored or isolated against their will. Forms of neglect can include withholding food, water and medication or failing to take care of a resident's hygiene needs such as changing the bedding.

Langdon & Emison is currently accepting potential nursing home abuse cases. For a free case evaluation call 1-800-397-4910.

According to the Nursing Home Abuse Center, signs of abuse to look for include:

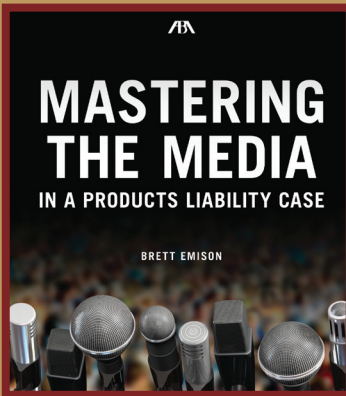
- Unusual bruising or bleeding
- Open wounds, bed sores or cuts
- Burns or abrasions
- Sudden weight change
- Infections, loss of hair
- Torn, stained or bloody clothing or bedding

News and Notes



Best Law Firms in the U.S. Selects Langdon & Emison as a Tier One Firm

In its annual review of the leading law firms in the nation, *U.S. News & World Report* and Best Lawyers has recognized Langdon & Emison among its top ranking of personal injury firms. The firm earned "Tier One" status in the category of Personal Injury Litigation – Plaintiffs. The listing will be part of the 2015 edition of "The Best Law Firms in the U.S."



American Bar Association Publishes Emison's Book on Media in a Products Case

Defective products can create high-profile cases. Brett Emison has authored "*Mastering the Media in a Products Liability Case*," just published by ABA Books. The book looks at how new media affects the coverage of products cases in American journalism outlets, as well as how blogging and interactive technology can be a tool in the products liability practice. The book is available through the ABA's website at shop.americanbar.org, or Amazon and other online booksellers.



Langdon & Emison Helps AIEG Host First Annual Truck Symposium

The Attorneys Information Exchange Group held a truck litigation symposium and mock trial on June 5 and June 6. Held in Kansas City, Mo., the event used Kent Emison's verdict in *Reagan v. Dunaway Timber Co.* as its case to be tried before a mock jury. Langdon & Emison partner Mike Manners served as judge of the proceedings. More than 100 trial attorneys from across the nation came to partake in the event. The 2nd annual trucking conference will be held August 20-21, 2015, in Chicago. For more information, visit www.aieg.com.



Bob Langdon, Kent Emison Honored by Best Lawyers in America

Attorneys Bob Langdon and Kent Emison have again been included in the annual roster for the Best Lawyers in America. Kent was named the 2014-15 "Lawyer of the Year" for the Kansas City metro area, for the category of personal injury litigation for plaintiffs. Bob was recognized as a Best Lawyer in two categories — railroad law and personal injury litigation for plaintiffs.

WHAT'S INSIDE



PROPANE EXPLOSION LEADS TO FAVORABLE SETTLEMENT

TAKATA AIRBAG DEFECTS EXPOSED



NURSING HOME ABUSE

FIRM SUES MANUFACTURERS OF DEFECTIVE GUARDRAILS



THE GM IGNITION SWITCH DEBACLE



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.

www.LangdonEmison.com