Spring 2019

LANGDON & EMISON ATTORNEYS AT LAW

What You Need to Know

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Defective Airbag Shut-off Timer Leads to Serious Injuries and Fatalities

Firm sees increase in number of non-deploy airbag cases

General Motors' trucks and SUVs manufactured from approximately 2000 until 2012, contain a dangerous and deadly defect in their airbag system that can prevent the front airbags from deploying in certain frontal impacts. During this timeframe, General Motors installed a time limit calibration in the airbag system that depowers the frontal airbags after 45 milliseconds into a collision.

However, during many frontal collisions, the impact is not severe enough to need the deployment of airbags until 45 milliseconds. These types of collisions are commonly referred to as "soft onset" frontal collisions because the initial change in velocity is not severe enough to trigger airbag deployment. Following this initial soft onset, the collision becomes much more severe and seat belts alone cannot protect the occupants. (continued p. 14)



We have recently filed a large number of lawsuits against manufacturers in instances where the airbag did not deploy. In this instance, you can see that in spite of significant frontal damage during a big collision, the airbags did not deploy, and should have.



Defective Guardrails: The Life-Threatening ET-Plus

Though intended to reduce the severity and injury potential of accidents involving vehicles that leave the road, today's guardrails that have been installed on America's roadways are themselves hazardous. In particular the ever-present Trinity ET-Plus end terminal has proven to be capable of spearing errant vehicles that are unlucky enough to make impact at the end of the guardrail.

There are several different models of guardrail end terminals on the market today – including the ET-Plus– that contain serious design defects, which result in horrible injuries and fatalities to the occupants of errant vehicles in off-the-

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

roadway accidents. The ET-Plus guardrail system routinely malfunctions when struck by oncoming traffic. Instead of ribboning out and absorbing the impact as designed, the extrusion forces inside the ET-Plus head cause the guardrail to lock up, which buckles the guardrail. Often times, vehicles – and their drivers and occupants – are impaled, causing serious and even fatal injuries to travelers.

In the late 1990s, Trinity started pushing unnecessary and dangerous design modifications to the ET-2000 end terminal system. It is universally known in the highway safety community that the development of a highway safety device is a long and arduous process. However, in the case of the ET-Plus, engineers redesigned the ET-2000



end terminal during a single meeting, lasting no more than a couple hours.

Particularly dangerous was how Trinity removed approximately 100 pounds of steel from the end terminal by reducing the number of internal stiffeners and narrowing the impact faceplate. Trinity also reduced the end terminal's overall length and shortened the extruder section of the head. Most importantly, Trinity's changes resulted in the ET-Plus having an asymmetrical head design. The asymmetry increased rotation during the extrusion process, which substantially increases the potential for lockup and exposes the vehicle to the blunt end of the guardrail.



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. Since our handling of *Baker v. GM*, which went to the U.S. Supreme Court more than 20 years ago and resulted in a victory for our client, our firm has litigated auto product defect cases coast to coast. Consider these factors when evaluating your potential GM ignition switch case:

30 Million: Number of GM vehicles in the U.S. affected by the recall

- Many states allow for tolling of the statute of limitations and have discovery rules that may save certain claims.
- Airbag nondeployment in frontal crashes is critical to these claims.

In 2018 alone Langdon & Emison signed up hundreds of GM ignition cases. In 2018 alone Langdon & Emison signed up hundreds of GM ignition cases. This ignition switch defect impacts many popular models like the Chevrolet Cobalt. GM allegedly further investigated the cause of the accidents and the defects in the ignition switches and airbags in the models, but despite a large number of incidents, GM didn't recall their Cobalt and G5 vehicles until February 2014. This initial recall included 2005-2007 Chevrolet Cobalt and 2007 Pontiac G5 vehicles. The recall was later expanded to include 2006-2007 Chevrolet HHR, 2006-2007

Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Saturn Sky.

The ignition switch defect causes the vehicle engines to turn off when the ignition switches off unexpectedly. The ignition switch defect could be caused by merely bumping the keys or having a heavy keychain on the key.

When the ignition switch fails, it can shut down the vehicle's power-dependent safety features, including the airbags. The airbags may then fail to deploy in an accident. This failure has been reported by many consumers in accidents where the airbags didn't deploy. In this series of cases we have observed that GM purposefully concealed the defects in their vehicles and failed to recall the vehicles in a timely fashion, which caused drivers to assume their vehicles were safe.

Every accident involving a GM vehicle should be screened for a potential ignition switch defect.





Establishing Liability Against Rental Property Owners

There are a variety of inexpensive resources available to work up a case against rental property owners such as the owner of an apartment complex or other housing units. Below are just a few tips to keep in mind.

Public records and media reports

In a negligent security case against such a property, attorneys can establish a pattern of violent crime by requesting calls for service and other reports from law enforcement for an apartment complex, hotel, or other commercial property. A request for such records can be made 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. Media reports are often publicly available and show prior instances and crime

statistics. Such records can then be used to prove notice of danger and the property owner's failure to address it.

Regulations and Ordinances

In both negligent security and premise liability cases, one should review the federal and state regulations that govern the property. These can include 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 your

A critical investigation is necessary to maximize recovery in a premises liability claim

Our firm has successfully represented clients in a series of premises liability cases, against a wide range of defendants. client being harmed. Also examine local ordinances to determine whether the condition of the property complies with applicable building codes.

Other sources for rules and standards are the trade organizations or voluntary crime prevention groups that many property owners belong to. Look at the safety guidelines and training materials for each such organization to see whether the property owner is

following the rules as outlined in these documents. If not, during the deposition of the owner, ask about the standards and guidelines being important safety rules to follow and then get admissions about how they are not following them.

ROADS THAT ARE DESIGNED INADEQUATELY OR MAINTAINED INCORRECTLY CAN LEAD TO BAD ACCIDENTS.

Though road damage can occur as the result of inclement weather or regular wear and tear on the road, this damage or faulty design should be addressed and repaired in a timely manner. We have held numerous types of defendants accountable in road design cases, across the country.

ROADWAY DEFECTS

SHOULDER DROP-OFF

Highways often are not constructed up to standards for safe shoulder drop-offs. When the edge is not gradual enough, even professional

drivers find it almost impossible to get back on the highway.



POTHOLES

Potholes can be severe enough that they cause drivers to lose control of their vehicle; figuring out which agency was responsible is important not only for suing the proper party.

UNEVEN PAVEMENT

Proving an argument that the roadway is paved unevenly means showing that the agency should have repaired the road but chose not to do so, or built it in a dangerously faulty manner.

LACK OF SIGNS /

LACK OF GUARDRAILS 🔤



OUR FIRM HAS LITIGATED SEVERAL ROAD DESIGN CASES.

In one, we found a newspaper article in which an engineer for the defendant transportation department acknowledged the danger presented by the lack of a left turn lane at the intersection where our client's brother would later be rearended and killed while slowing to turn left. This evidence was critical in obtaining the maximum recovery possible.



L&E Files Bair Hugger Cases in Missouri

Rather than confine itself to the MDL in Minnesota, firm moves forward with defective warming blanket cases outside of the MDL.

Langdon & Emison has filed a lawsuit in the state of Missouri against consumer products giant 3M, for its defective "Bair Hugger" warming blanket. While the great majority of the cases filed on behalf of patients who were harmed by this device are pending in the multi-district litigation in federal court in Minnesota, L&E has filed a case in the separate venue of Missouri.

These lawsuits allege the 3M Bair Hugger warming blanket – used in hospitals across the country – exposed patients to contaminated

L&E is reviewing potential lawsuits on behalf of patients who suffered serious infections after a knee, hip or other joint replacement surgery.

air from the operating room, causing MRSA, sepsis and other serious infections. L&E is actively reviewing potential lawsuits on behalf of patients who suffered serious infections after a knee, hip or other joint replacement surgery.

How the 3M Bair Hugger warming blanket is harming patients

3M says the device is used in more than 80 percent of all U.S. hospitals, including nine of the top 10 orthopedic centers, a *Minneapolis Star-Tribune* December report stated. Arizant Healthcare and 3M Company have been named in a growing number of lawsuits over these popular warming blankets, with over 4,900 filed in the MDL as of December 17, 2018, with patients charging that they suffered severe and debilitating deep joint infections after the device was used during surgery. The lawsuits claim the manufacturer knew about the infection risk since at least 2009.

Patients treated with the 3M Bair Hugger may be exposed to contaminated air during surgery. The system allows warm air to accumulate and escape below the surgical table and can cause contaminants, such as bacteria, to become airborne. It can also create a current that deposits bacteria from the operating floor back into the blanket and the surgical site.

Cases Rec

As 2018 came to a close, we were busy with new personal injury filings from coast



Missouri: Major railroad failed to properly remove trees and other foliage that obscured traffic.



Iowa: We are suing a manufacturer of defective tractors in a case where the subject tractor would inadvertently release from a parked position and could roll freely downhill, and the braking system would fail during the ordinary course of operation.



California: In this case recently filed, a vehicle fire in San Bernardino killed our 43-year old client, a construction worker who was hit from behind by a distracted driver. The heat from the flames that engulfed the car prevented anyone on the scene from rescuing him from the fuel-fed fire.



New Mexico: In this case, our client was fatally injured in a collision with a truck's side underride guard, where no guard was equipped. Underride guards are commonly defective in tractor-trailers, and L&E has litigated many matters related to this issue all over the country. In this case the underride guard could have prevented our client's death.



Arkansas: We are representing a family who was driving home from a family reunion when their tire blew out, causing a vehicle rollover. L&E has handled vehicle rollover and tire defect cases from coast to coast.

ently Filed

to coast. Here's an example of some of the cases that we are currently working on.



Illinois: We recently earned a \$5.3 million unanimous jury verdict in Chicago on behalf of an injured Metra engineer after a nearly six-week trial in Cook County. Our client was a Metra engineer who slipped on a combination of ice and oil.



New York: We are representing a family in a wrongful death action arising from a motor vehicle crash.



West Virginia: Truck accident victims are often lucky to be alive, given the size and speed of most tractor-trailers. We are experienced in litigating matters against trucking companies across the majority of the U.S.



Florida: We have recently sued a company that leases and rents construction equipment; while utilizing that company's scaffolding, our client sustained severe injuries from a fall, when one of the metal support bars unexpectedly popped loose.



Florida: The firm is arguing that a medical transportation company's negligence led to a wreck that caused permanent injuries to our client.



L&E Files Lawsuits Against Negligent Waste Companies

According to a pedestrian safety group called "Right of Way", dump trucks are responsible for more pedestrian and cyclist fatalities per 100 million miles than any other type of vehicle. Accidents involving waste management companies number in the thousands every year, and given the size of these trucks they can result in serious injury and even death. We have recently filed a few of these cases against waste management companies; here are a few keys to litigating this type of case.

Common Reasons for Garbage Truck Crashes

Even though they are large vehicles, dump trucks often operate in confined areas like narrow residential streets and alleys, providing them little room to maneuver. As such, the odds that they will collide with another vehicle are much greater. In addition, the design of these vehicles often results in blind spots. Some garbage truck accidents result from failing to follow the law, including:

- Excessive speed
- Distracted driving
- Improper lane changes
- Running a red light
- Failure to yield the rightof-way

Dangerous lane changes make garbage trucks especially susceptible to hitting bicyclists and pedestrians.

Recent Cases and Negligence

A lot of times drivers feel unduly comfortable being on their phones or engaging in non-work activity while they're moving, because they're only moving a few yards at a time and at comparatively low speeds.

We've seen in our practice that large dumpsters are often placed by these companies in locations that make their servicing inherently dangerous. Thus, although an accident may happen on a given day as a matter of chance, the likelihood of an accident is created by the lack of or failure to implement adequate container placement policies.

We have also seen claims related to negligent hiring, training, and supervision. Recently we had one case involving negligent hiring of an independent contractor. And in late 2018 we filed a case against a company who had the truck driver on the left side only without a 2nd crew member. The truck struck and killed a young child.

In that case, the defendant routinelv company sends out their fleet of drivers into a dangerous situation. A solo driver should not be sent into situations where he or she is navigating narrow where avenues sight lines are compromised, everything thus not immediately around the vehicle can be seen. In this case, unfortunately it was a young child that could not be seen.

Pressured Schedules, Common Injuries

Being short a driver can increase another one's workload, making it more likely that he or she will make careless mistakes due to excess pressure.

Most contractors make every effort to collect trash

Keys to the Case

- Preserve physical evidence
- Track down the vehicle for downloads and photographic documentation
- Preservation letters of drivers' files, hiring documents, and employment file
- FOIA request regarding the company's safety history
- Background check on the defendant driver for driving and criminal history

only during daylight hours, but sometimes they are forced to operate late at night or early in the morning. Operating during these dark hours provides limited visibility, making what is already a very dangerous task even riskier.



Common Issues with Dump Trucks

Blind Spots

Because of their size and construction, garbage trucks have peripheral visibility limitations, which result in sizable blind areas, particularly when backing up. Mirrors, microwave blind spot sensor systems, wireless backup sensors, and ultrasonic echo location backup sensors are critical tools.

Vehicle Visibility

Round-the-truck camera systems can now provide the kind of 360-degree visibility required for unprecedented insights into and all around a refuse vehicle. Many new cameras can take pictures and capture real-time video footage of all internal and external activities from all angles.

Irregular Maintenance

A comprehensive safety program needs an effective preventative maintenance plan. Onboard computing (OBC) devices and software analytics can ensure an immediate communication and diagnosis of the vehicle's condition for both preventative and ongoing maintenance.

Technology

Safety dashboards are typically Web portals that provide live video feed, archived video and picture views into fleet, driver and collection services activity. Fleet managers, taking advantage of DVR functionalities, can benefit from an intuitive back-office view into what is going on for each route, truck and driver.



The Download on Black Box Data

An EDR download can yield pre-crash data and Delta-V, or change in velocity to determine crash forces. Commonly referred to as the "black box," a vehicle's event data recorder (EDR) is a device that collects, records and stores technical vehicle and occupant information immediately before and during a collision. While not mandatory, the vast majority of vehicles sold by major automotive manufacturers in the Unites States are equipped with EDRs. Manufacturers have assigned many different names to these devices (GM – Sensing and Diagnostic Module and Ford – Restraint Control Module) but NHTSA refers to them generically as EDRs.

In a typical vehicle, the critical data recording is handled by the Airbag Control Module; however, certain vehicles may record similar data in other modules such as the Engine Control Module and Powertrain Control Module. Accident reconstructionists and police can often retrieve crash and/or pre-crash data with a Bosch Crash Data Retrieval System or other manufacturer-specific software and hardware.

Event Data

The data from an EDR download will vary across vehicle makes and models. Common types of data include:

- Pre-crash data, which provides insight on the status of vehicle safety systems as well as vehicle speed, throttle application and brake use leading up to the crash.
- Vehicle forces, such as steering wheel angle; lateral and longitudinal acceleration/velocity change; the rate at which the vehicle "yaws" or changes its degree of rotation; and roll rate.
- Delta-V, or change in velocity to determine crash forces.

If you have questions about black box downloads, we would be pleased to speak with you or steer you toward the right experts. You can reach our attorneys at 800-397-4910 or at lelaw.com.



TRUCKING A HAZARDS

TRUCK ACCIDENT FATALITIES BY THE NUMBERS

4,564 LIVES LOST IN 4,079 CRASHES INVOLVING LARGE TRUCKS OR BUSES IN 2016;

FATALITIES INCREASED 5% FROM THE PREVIOUS YEAR, AND FATAL CRASHES INCREASED 6%.

Large truck occupants comprised

16% of all large truck

and bus fatalities, a 4% increase from 2015 Speed was a factor in

11%

of truck crashes with at least one large truck occupant fatality **61%**

of fatal crashes involving a large truck occurred in rural areas 27%

of fatal crashes in work zones involved a large truck

6% INVOLVED LARGE TRUCK DRIVER DISTRACTION AS A FACTOR, OF WHICH 16% WAS RELATED TO CELL PHONE USE

TEN STATES WITH THE HIGHEST AVERAGE OF FATAL LARGE TRUCK AND BUS CRASHES

California, Texas, llinois, Indiana, Ohio, Pennsylvania, New York, Florida, Georgia, North Carolina

THESE TEN STATES REPRESENT, FROM 2014-2016:

- 51 % of fatal crashes involving at least one large truck or bus
- 50% of fatalities resulting from a crash involving at least one large truck or bus
- 51% of all FARS fatal crashes



Defective Airbags Lead to Serious Injuries and Fatalities

(*Cont. from p. 1*)

General Motors designs its airbags to deploy in a dual stage system. In frontal collisions between 12 to 18 mph, only the first stage airbag is designed to deploy. This depowered airbag is inflated with approximately 60 percent total pressure. In more severe collisions, approximately 18 to 24 mph, the second-stage airbag is deployed, resulting in the fully powered/inflated airbag.

Based on this design, General Motors is aware that occupants require full deployment of frontal airbags in collisions at 18 mph. However, during a significant portion of frontal collisions the change in velocity does not reach the threshold for deployment until after 45 milliseconds. In these collisions, the shut-off timer has depowered the airbags, preventing their deployment, resulting in serious and fatal injuries to the front seat occupants.

Types of Airbag Defects

Airbag defects can come in various forms, such as (but not limited to):

- Failure to deploy
- Late or accidental deployments
- Malfunctioning inflators
- Failure to fully inflate or to maintain inflation for the required period of time.

Common Reasons for Airbag Failure

Though by no means limited to GM model cars, airbags sometimes fail to deploy in the collision. When the GM ignition switch fails, it can shut down the vehicle's power-dependent safety features, including the airbags.

Here are four common reasons that airbags fail to deploy during significant auto wrecks:

- 1. Defective sensors If the impact of a collision should have triggered an airbag to deploy, but it did not, it may be possible that the sensors failed to correctly detect the impact or deploy the airbag. This could be the result of manufacturers that improperly design, test, or install sensors.
- 2. Faulty electrical components When airbag sensors operate as they should and an impact should have triggered deployment, airbag failures could have been caused by defective electrical components or wiring designed to communicate impact signals to the airbags.
- 3. Severed wiring Researchers have found that airbag failures can occur when manufacturers choose to route wires through areas that make them susceptible to being severed during a crash. When wiring installed in vulnerable areas is damaged or severed, it will prevent impact signals from reaching the airbag module.
- 4. Module defects Defects in the airbag module itself could very well prevent an airbag from firing when it should. There have been cases in which it was determined that impact signals correctly identified a collision and commanded an airbag to deploy, but the airbag module did not respond.

News and Notes



New Attorneys Join Langdon & Emison

Nicole Smith, Kaeanna Wood and Alex Thrasher all joined Langdon & Emison as associate attorneys this fall. They will practice in the firm's Lexington, Mo., office and will help the firm's representation across a full spectrum of personal injury cases.



Tricia Campbell

Tricia Campbell Receives the Women's Justice Award

Langdon & Emison attorney Tricia Campbell was honored with the Women's Justice Litigation Practitioner Award at a ceremony hosted by *Missouri Lawyers Weekly* at the Four Seasons Hotel in St. Louis. The Women's Justice Awards celebrate and recognize women in all facets of the law who exhibit the core principles of leadership, professionalism, accomplishment and passion for making a difference.

American Board of Trial Advocates Welcomes Brett Emison as Member of 2019 Class



Brett Emison

Langdon & Emison Partner Brett Emison was accepted in January into the ranks of the American Board of Trial Advocates (ABOTA), an organization that selects only the most seasoned trial attorneys from the U.S. ABOTA has created opportunities for educators nationwide to grow their knowledge of the Constitution, and has organized a public education campaign aimed at informing citizens about the Seventh Amendment right. Brett's practice focuses on victims of catastrophic injuries, and in his young career has been a first chair of or an active member of several jury trials in high-stakes personal injury matters. He has served on numerous AAJ committees, including Marketing and Communications, Publications, and the National Finance Committee.

"Influential Appellate Advocate Award" for 2018



Goes to Mike Manners

L&E Partner Michael W. Manners was honored on January 25 with the "Influential Appellate Advocate" award from *Missouri Lawyers Weekly*. This award was given for a career of significant appellate wins, including a ruling last year affirming a \$20 million plaintiff's verdict. Mike has helped many plaintiff's firms in the state of Missouri with their appellate matters since joining the firm after a 14-year career as a judge. He is an honoree of "Best Lawyers in America" for 2019, in the categories of product liability litigation and personal injury litigation for plaintiffs.

Michael Manners



What Might Have Really Happened in Your **Single-Vehicle Accident**

If you have a potential single-vehicle accident with catastrophic injuries, it's possible that this accident was caused by an auto product defect that led to the wreck. Here are just a few of the causes that we've seen for accidents where only one vehicle was involved:

- Tires: 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.
- Stability cases and roof crush/rollover: Common defects include lack of roof strength, susceptibility to rollover and failure to contain occupants. Look for excessive roof crush, single-roll crashes, door openings, low-speed accidents and passenger ejection.
- Roadway defects: Roads that are designed inadequately or maintained incorrectly can lead to bad • accidents. Edge drop-offs, potholes, and signs that behave in unintended ways on impact can all lead to catastrophic injuries. See page 6 of this brochure for a detailed info-graphic with more examples.

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



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