When it matters, we'll be there.

LANGDON & EMISON

Summer 2021

L&E Obtains Recovery Over Modified Van Defect in Fatal Accident Case

Insurance companies are often quick to deny coverage and not defend their insured despite the premiums paid. This occurs even in cases where the insurance policy in question appears to provide coverage, leaving the insured to bear both the expense of defending the lawsuit as well as paying any adverse judgment that results from it.

Modifications to vans like in this case can lead to defects that leave drivers and passengers at great risk. Arguably no other firm in the U.S. has litigated more cases for plaintiffs over modified vehicles than L&E.

Far too often, the insurance company gets off unscathed. However, when an insurance company breaches its duty to its customer, the insurance company may be responsible for paying not only the policy limit – but even more.

Langdon & Emison was recently able to hold Liberty Insurance responsible for damages to the family of Richard Geiler, a man killed during the operations of Liberty's insured, Sharpe Holding, Inc. In that case, Liberty provided an umbrella insurance company to Sharpe but refused to defend it, leaving Sharpe and its underlying insurer, Starr Indemnity, to face the lawsuit alone.

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Inside

Key to the Case

More often than not, vehicles that have been modified have a defect.

Tips for Identifying Defects in Airbag Non-Deploy Cases

Our law firm has seen an increasing number of airbag non-deploy cases involving catastrophic failures of passenger presence sensor systems that have caused severe injuries and fatalities. When these systems fail to recognize the passenger seat is occupied or misclassify the passenger occupant, the airbags are disabled.

AIRBAG DEPLOYMENT FACTORS

The driver and passenger frontal airbags are designed to inflate only if the impact exceeds a predetermined deployment threshold. Deployment thresholds take into account a variety of desired deployment and non-deployment events and are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants.

Whether frontal airbags will or should deploy is not based solely on how fast the vehicle is traveling; it depends largely on what the vehicle hits, the direction of the impact and how quickly the vehicle slows down.

NON-DEPLOYMENT DEFECTS

- Deployment event occurred, but airbag did not deploy
- Passenger airbag did not deploy, but driver's side did
- GM ignition switch defect caused non-deployment

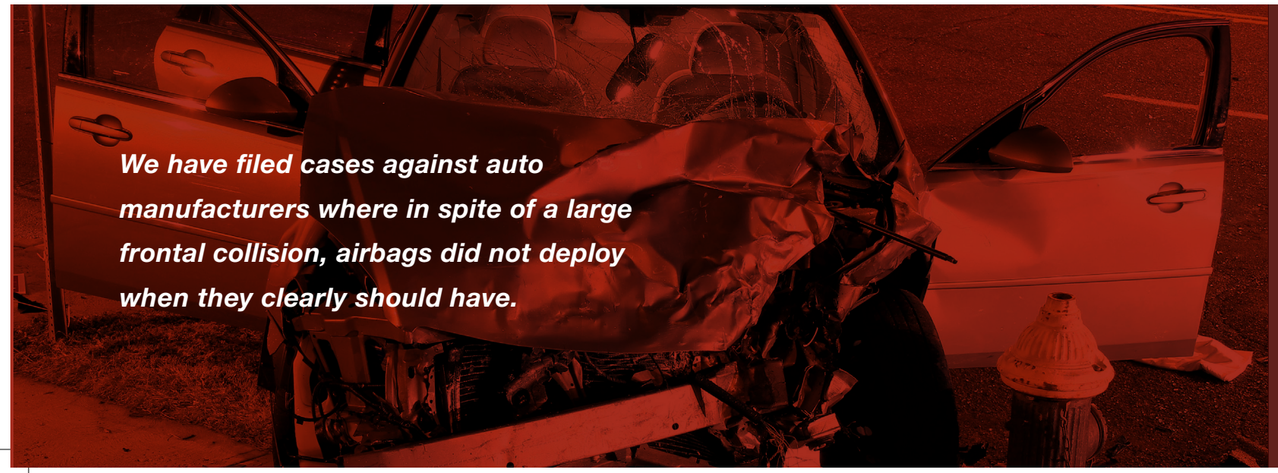
RECALLS

Several car manufacturers have issued recalls on vehicle models that failed to detect or misclassified front passenger occupants and issue commands to deploy the front passenger airbags in collisions. Even in the absence of a recall, issues remain. In addition, several complaints have been filed with NHTSA regarding front passenger airbag sensor malfunctions.

Practice Tips

In cases involving frontal airbag nondeployment:

- Determine the size of the passenger.
- Review the CDR to determine whether the:
  - Vehicle's speed at the time of the collision was above the threshold for deployment.
  - CDR recorded the subject collision as a deployment event.
  - Vehicle's passenger presence system failed to identify the front passenger seat occupant and therefore failed to issue a command to deploy the front passenger airbag.



We have filed cases against auto manufacturers where in spite of a large frontal collision, airbags did not deploy when they clearly should have.

Common Airbag Injuries

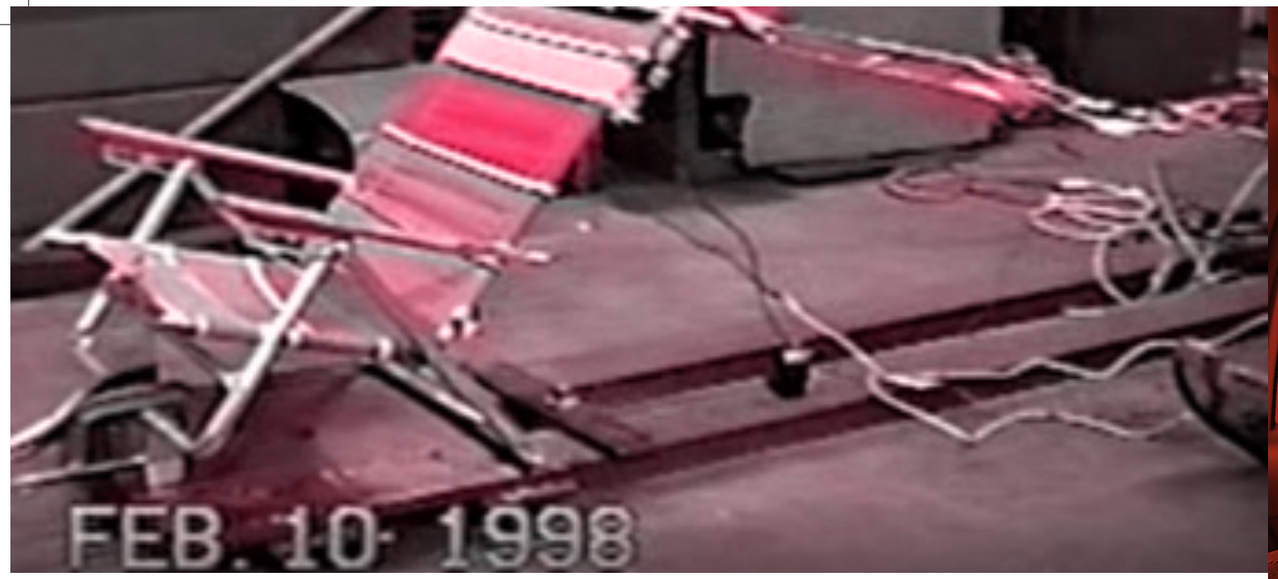
- Traumatic brain injury
- Vision/eye loss
- Facial, neck and chest lacerations
- Spinal injury
- Internal bleeding

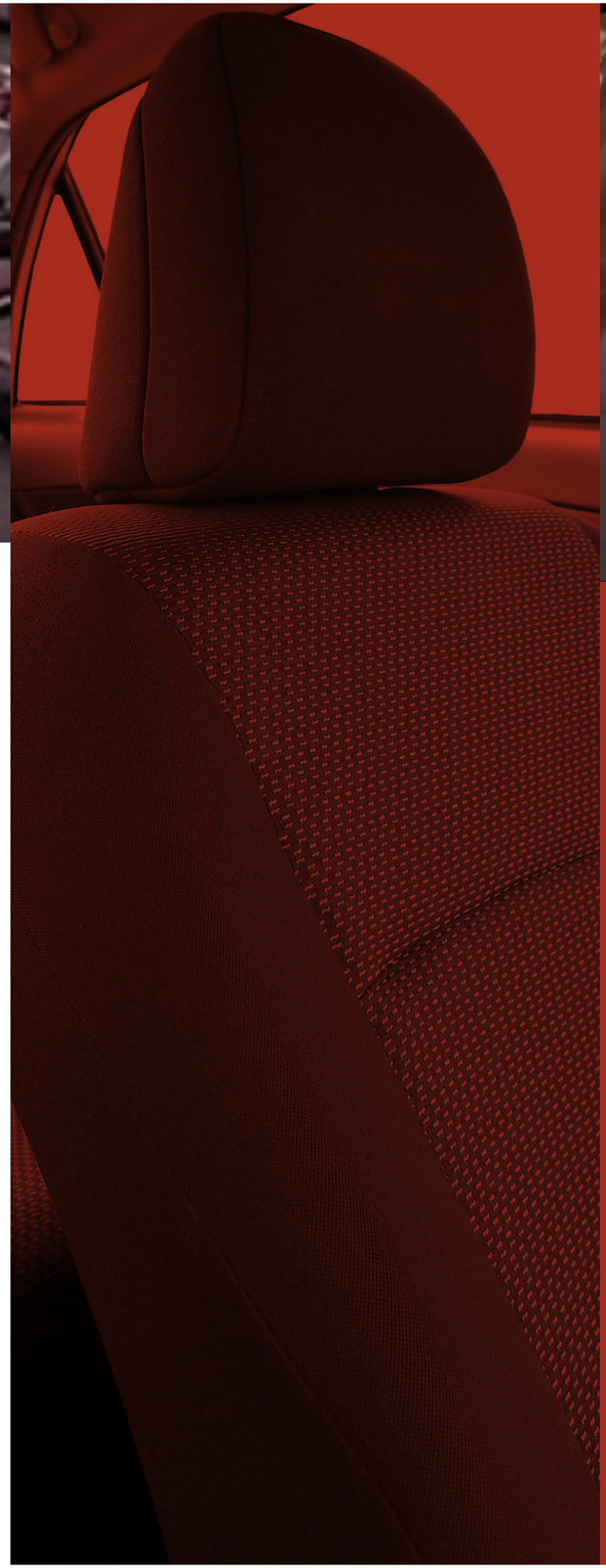
Takata Air Bag Defects and Recalls

Defective car products have been in the national spotlight for the past few years thanks to a recall of more than 100 million Takata airbags. A defect caused some Takata air bags to explode, sending pieces of metal into cars, as well as their drivers and passengers. Aluminum nitrate is a chemical compound used to inflate air bags. When exposed to moisture, drastic temperature changes, or age, aluminum nitrate can break down and become unstable, leading air bags to explode. Some of the injuries suffered have been fatal.

Our firm has successfully litigated Takata airbag cases all over the U.S. Vehicles manufactured by more than a dozen automotive giants between the years of 2002 and 2015 were subject to the recall, including:

- **Chrysler**
- **General Motors**
- **Ford**
- **Honda**
- **Mazda**
- **Nissan**
- **Subaru**
- **Toyota**





Car Manufacturers Continue to Install Defective Front Seats

Front seats collapse in rear-end crashes and cause catastrophic injuries.

Front occupant seatbacks are vital safety components in rear-end crashes – no different than the safety roles of airbags and seatbelts in frontal impacts. Weak, defective seatbacks collapse and fail in rear-end crashes, and cause catastrophic injuries. Commonly, seatback failures jettison front passengers to the rear, or the seat collapses onto rear passengers and causes spinal or brain injuries.

Manufacturers have known about the dangers of defective seatbacks for decades. NHTSA's FMVSS 207 provides federal standards for seatback strength in rear-end crashes, however, these standards are grossly inadequate. Crashes at residential speeds can cause seatbacks that pass federal standards to collapse and fail. Independent testing has shown that lawn chairs sold at Wal-Mart pass federal standards for automotive seatbacks.

If your client has suffered serious injuries in a rear-end crash, look for evidence that the seat was in a recline position after the crash. Talk to emergency responders and scene witnesses to confirm whether the seatback was repositioned upright after the crash. If rear passengers – commonly children – in backseat suffer facial fractures, brain injuries, or spinal injuries, then there is potential for a seatback failure case. Likewise, front passengers typically have severe brain and spinal injuries.

SCREEN FOR SEATBACK FAILURE CASES

- Clients with spinal and/or severe TBIs
- Collapsed front seats
- Seatback position may be moved after the crash
- Talk to scene witnesses about seat position

Safety standards are woefully low for car seats – examples like the lawn chair above left would actually pass.

Product Defects and Non-Traditional Cases in Today's Commercial Trucks

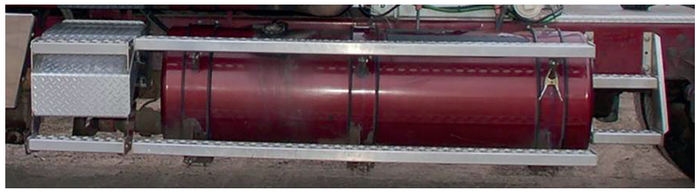
When attorneys are retained on a trucking case, the focus of the preliminary investigation is typically directed to negligence of the driver or bad conduct of the trucking company in maintaining the truck, training the driver, hiring the driver, etc. This attention on the driver and the truck company is absolutely warranted. However, other theories of liability are often overlooked completely or delayed until the evidence is gone.

Semi-trucks are mammoth-sized vehicles with many moving parts that could be defective or malfunction causing a catastrophic accident. Also, safety features available for trucks or trailers are often omitted to save money for the truck companies or manufacturers.

Appropriate defendants to sue in products cases involving trucks may include the following: the manufacturer of the tractor or trailer, the manufacturer of component parts on the truck or trailer, the trucking company, or the owner of the trailer. Below are some of the product liability theories that should be considered in every case.

DEFECTIVE TRUCK TIRES

It is common for a collision to be caused "where the rubber meets the road," i.e. the tire. Tire failure in trucks can be the result of manufacturing defects or design



defects. A tire failure can cause a horrific accident. Failure of a steering axle tire can result in total loss of vehicle control, especially with older trucks that do not have power steering. If one of the tires on a dual tire drive axle or trailer axle fails, then the other tires will have to do more work, and support more weight, creating an untenable situation for the truck and truck driver. It is easy for a driver to lose control of a truck that has had a tire failure.

COLLISION AVOIDANCE TECHNOLOGY (CAT)

Most trucks on the road today should have advanced CAT to assist the driver in avoiding crashes. This includes automatic emergency braking, forward collision warning, lane assist warnings, adaptive cruise control and many other safety systems. If your crash involves a situation where an automated safety system could have warned or assisted the driver in avoiding the crash, there is a potential claim against the manufacturer of the vehicle or the owner of the vehicle for failing to have the safety feature.

FUEL SYSTEM DEFECTS

All major manufacturers place diesel fuel tanks outboard of the frame rails of the tractor. These are commonly referred to as "side-saddle" tanks. Over the past 20-25 years side saddle tanks have been phased out of passenger vehicles because of recognized danger in hauling up to 40 gallons of highly flammable fuel in tanks that are not protected by frame rails. While it took auto manufacturers over 30 years to correct this horrible design, semi-truck manufacturers still locate the diesel fuel tanks in one of the most dangerous locations - unguarded and outside the frame rails of the tractor. While diesel fuel is less volatile than gasoline, when it is vaporized – for example by piercing the fuel tanks in a side-swipe collision

UNDERRIDE CRASHES CAUSE MORE THAN 5,000 INJURIES AND APPROXIMATELY 400 DEATHS EACH YEAR.

– diesel fuel can easily ignite and cause catastrophic burn injuries or death. In addition to the dangerous location of the fuel tanks, often the tanks will have components added that have the potential to puncture the tank in a collision. Most side saddle tanks on tractors are constructed of aluminum and are very susceptible to rupturing in a collision.

UNDERRIDE GUARDS

One design flaw that can be potentially fatal is the truck's "underride guard." For many years, federal law has required semi-truck trailers to be fitted with "underride guards" to prevent underride crashes. However, 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. Trucking accidents often are catastrophic to occupants because of the tremendous size and speed of the semi-trucks, but underride crashes are particularly lethal. More than 400 drivers and passengers are killed each year due to underride crashes. Around 5,000 additional people are injured. As a car collides with the rear or side of the semi-truck's trailer, the trailer can act like a guillotine as the car submarines underneath the trailer. The force of the impact combined with the weight of the semi-truck trailer can crush or sheer off the car's roof. Attorneys must investigate both

Key to the Case

Attorneys must investigate both design and manufacturing defects in the truck itself.

design and manufacturing defects in the underride guard itself. Testing should be performed to determine the strength and effectiveness of the underride guard as designed. A thorough metallurgical analysis should also be performed to determine manufacturing defects that may include inferior metal or poor welds.

ESCAPE WORTHINESS/ CRASHWORTHINESS CLAIMS

A defective semi-truck is not only dangerous to occupants of cars, but also to the truck driver. One defect specific to truck drivers are tractors that do not have an emergency exit to allow a truck driver to escape if the tractor is deformed such that the driver cannot exit one of the doors. Typically the emergency exits are located in the sleeper cab area. There is often a fire in a truck crash. The truck driver must have an emergency exit available if the doors of the truck are jammed. Tractor cabs are usually constructed from light-weight aluminum and are prone to crush and deform in an accident. They usually do not have air bags (Volvo tractors are one exception). There are no Federal safety standards (FMVSS) for tractor cabs pertaining to occupant protection in a collision. Many truck drivers have been severely injured or killed as a result of roof crush, lack of an air bag, or failure to have an emergency exit.

CONSPICUITY DEFECTS

The motoring public cannot avoid lurking dangers in the dark that they cannot perceive. In collisions related to conspicuity, that is, if a tractor-trailer is not designed to be properly illuminated, even vigilant drivers do 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. Federal requirements allow tractor-trailers to use either reflex reflectors or red and white reflective tape. Manufacturers of the reflectors and reflective tape must be in compliance with Federal Motor Vehicle Safety Standard (FMVSS) 108.

PARAQUAT IS THE MOST HIGHLY ACUTELY TOXIC HERBICIDE TO BE MARKETED IN THE UNITED STATES IN THE LAST 60 YEARS, BUT IT CONTINUES TO BE USED.

Popular Herbicide Linked to Parkinson's Cases Nationwide

L&E now accepting personal injury cases related to Paraquat nationwide

Highly toxic when ingested or inhaled, paraquat dichloride (common name: Paraquat) is one of the most common herbicides used today and has been since its origination in the United States in 1961.

Paraquat has risen in popularity, filling the gap for farmers and landscapers as other herbicides like Roundup have seen significant decline in use due to their potential health risks and the rise of Roundup-resistant weeds.

Paraquat is the most highly acutely toxic herbicide to be marketed in the United States in the last 60 years, but it continues to be used, even against mounting evidence linking exposure of the chemical to a higher risk of Parkinson's Disease (PD).

PD is a progressive nervous system disorder that affects movement and speech. Symptoms include tremors, slowed movement, rigid muscles, impaired posture and balance, loss of automatic movements, and speech and writing changes.

Recently, lawsuits have been filed against Syngenta and Growmark, the manufacturers of Paraquat, by individuals alleging that their long-term use or exposure to Paraquat caused them to develop Parkinson's Disease or related symptoms. Most of the individuals who have been filing these lawsuits are either agricultural workers or farmers who used and/or were directly exposed to Paraquat.

As one of the nation's leading personal injury firms, Langdon & Emison has recovered nearly $1 billion in verdicts for our clients by holding large corporations responsible for their harmful actions. Contact us today to discuss your case or a referral opportunity.

USERS BEWARE: Consumer Product Dangers

Many types of consumer products are the subject of product liability lawsuits because their design, manufacture or failure to warn causes serious injury or fatalities. Below is an overview of various consumer products our firm has evaluated and pursued for product liability claims.

DOLLY CARTS

Langdon & Emison has represented people who have been seriously injured when a dolly wheel explodes. This happens in the U.S. more than one would think.

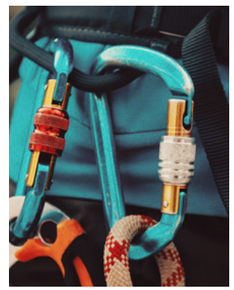
Often these defective dolly's are equipped with plastic wheel hubs, rather than metal hubs, which make them much weaker and more prone to fail and explode during inflation. These products are sold nationwide at home improvement stores, but possess hidden defects. During inflation, the wheel hub often will explode with a force similar to a small hand gun. Permanent injuries can result. W e have successfully argued in these cases that the hand truck design is defective and unreasonably dangerous.

TREE STANDS

As fall approaches, so does hunting season. There are inherent dangers of hunting from elevated tree stands, and every fall there are a number of serious injuries and fatalities from hunters who fall from tree stands. Tree stands can tumble due to structural failures of the stand, ladder or tree steps. Injuries often occur when hunters enter or leave the stand and ascend or descend the tree.

SAFETY HARNESSES

Safety harnesses used to safely secure people at extreme heights are prone to fail if not manufactured properly, leaving people severely injured or worse. Our firm has litigated cases involving repelling equipment and hunting tree harnesses equipped with defective components that violated industry standards. These systems often fail because proper usage warnings are not provided to consumers.



LAWN MOWER DEFECTS

Both ride-on and push mowers are equipped with a dead-man's switch designed to stop the mower and disengage the cutting blade if the operator falls from the driver's seat. When the switch is defective and does not operate as intended, roll-overs occur, causing traumatic brain injuries, lacerations, amputations, burn injuries and fatalities.

L&E Obtains Recovery Over Modified Van Defect in Fatal Workplace Accident Case

Continued from page 1

After a bench trial, a judgment was entered for the Geiler family and against Sharpe in the amount or $9.5 million dollars.

A subsequent garnishment action was filed seeking to enforce the judgment against Liberty because the judgment was covered by Liberty's policy. The garnishment court ultimately entered summary judgment in favor of the Geilers and against Liberty in the amount of $7.5 million, which was the remaining mount of the judgment not satisfied by Sharpe or Starr.

Liberty appealed to the Western District of Missouri Court of Appeals, challenging the garnishment court's jurisdiction over the case as well as whether the umbrella policy it had issued to Sharpe provided coverage. The Western District upheld the garnishment court's judgment, finding that it did have subject matter jurisdiction and that the undisputed material facts showed that no exception under Liberty's policy applied.

A VAN MODIFICATION CAUSES A FATAL EJECTION

At the time he was fatally injured, Mr. Geiler was a passenger in a 1995 Ford Aerostar van owned by the defendant. He sat in the van's rear-facing third-row seat, which was not bolted to the floor. Because the van was intended to transport cargo—not people—there were no seatbelts in the rear of the van, and the back seats could not be installed without substantial modification.

Instead, Defendant Sharpe Holdings, Inc. found two scrap seats and set them in the second- and third-row positions. As a result of this unsafe vehicle modification, the back seats could shift and even fall over during transport. Additionally, the van's back doors did not have a working latch. The driver-side rear door lacked any mechanism for holding it closed, and the passenger-side rear door was held closed by a single bungee cord.

The incident at the heart of this lawsuit occurred while Mr. Geiler was riding back to work after lunch. The van was slowed to approximately 10 mph to avoid a front loader, then accelerated to around 20 mph to get the van out of its way. Because the third-row seat was not secured to the van, this acceleration caused it to tip backward.

Without seatbelts or functioning door latches, Mr. Geiler was ejected out of the back of the van along with his third-row seat. He landed head first on the gravel feed floor, which caused severe skull fractures and intracranial hemorrhages. He was transported by life flight helicopter to a nearby hospital, where he died a few hours later. For more information on this case, please *see Geiler v. Liberty Insurance Corp.,* --- S.W.3d --- , 2021 WL 96068 (Mo. App. W.D. January 12, 2021).

Practice Tip: Truck Accident Wheel-Off Cases

"Runaway" truck wheels pose a lethal danger to motorists. These tragedies are preventable with proper maintenance and inspections. Wheels may come loose if they are not properly torqued. Failure to properly clear rust and debris from wheels may also cause lug nuts to become less effective and eventually fail. After a wheel is replaced, the lug nuts and wheel should also be checked within 100 miles of travel. It is vital in these cases to identify the entities and individuals who maintained the vehicle and to discover the equipment and procedures used to maintain the wheels.

The motor carrier and drivers themselves are also responsible if a wheel comes off. Federal regulations and industry standards require motor carriers and commercial vehicle drivers to perform pre-trip and post-trip inspections that include inspecting wheels and lug nuts.

These inspections should identify any indicators of loose lug nuts. When a lug nut is not properly torqued, there may be signs of corrosion or "rust lines" coming from the lug nuts. In addition, if wheels are not properly torqued, it may cause an audible noise that indicates something is wrong.

If these inspections are done properly, any issues with the wheels and lug nuts should be corrected before someone is seriously injured or killed by a runaway wheel.

The streaks on this wheel show where the loose lug nuts were, from a recent case of ours.

News & Notes

Firm Featured in National Webinar Programming

During the COVID-19 lockdown that has led to cancellations of most major bar association and law school presentations, Langdon & Emison attorneys stayed busy with a series of webinars for law students and developing trial lawyers. These webinars were co-produced by invitation from various law schools across the country, as well as state trial lawyer associations and regional bar associations. Topics covered in this series include an in-depth look at various auto product defects, trends in truck accident litigation, and trial advocacy tips for attorneys newer to the art of trying cases. We will gladly ship you a free boxed set copy of "The U.S. Personal Injury Litigation Webinar Series." To receive a free boxed set copy you can call our office any time at (800) 397-4910.

L&E ATTORNEYS' RECENT SERVICE TO THE PROFESSION

The pandemic lockdown led to challenges for us all; in spite of the lack of in-person conferences the last year, our attorneys stayed busy with involvement in different organizations. Here are just a few examples.

Tricia Campbell enjoyed a leadership role as part of planning committees for continuing legal education and key fundraising events, for both the Kansas City Metropolitan Bar Association and the University of Missouri-Kansas City, and moderated a KCMBA CLE on personal injury.

Brennan Delaney served on the solo/small firm committee for the Missouri Bar, helping plan its annual conference for 2021.

Brett Emison spoke at several Trial Academy programs, and successfully concluded terms as President and Immediate Past-President of the Missouri Association of Trial Attorneys. He also serves on several AAJ committees.

Mark Emison volunteered with the Student Law Academy, which helps bring lawyers into the classroom and into the lives of young people in communities with less access to legal professionals.

Bob Langdon and **Kent Emison** spoke at the Attorneys Information Exchange Group winter CLE event.

Alex Thrasher participated throughout the last couple years in Military Matters, helping local veterans with legal issues.

Our Areas of Practice

Let us help maximize compensation for your clients.

- Airbags
- Auto Accidents
- Auto Product Defects
- Child Car Seats
- Dangerous Consumer Products
- Dangerous Drugs
- Defective Medical Devices
- Defective Tires
- Medical Malpractice
- Medication Errors
- Premises Liability
- Roadway Design Defects
- Seat Backs
- Truck Accidents

1-800-397-4910
LangdonEmison.com

LANGDON & EMISON

1828 Swift, Suite 303
N. Kansas City, MO 64116
816-831-1000

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

110 E. Lockwood, Suite 150
St. Louis, MO 63119
314-638-1500
By appointment only.

55 W. Monroe Street, Suite 3700
Chicago, IL 60603
312-855-0700
By appointment only.