

**LANGDON  
& EMISON**

# Newsletter

Winter 2022

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### **Collision Avoidance Technology Poses New Product Liability Trend in Auto Cases**

Collision avoidance technology (CAT) installed in cars and trucks provides drivers with warnings to alert them of potential collisions and can react autonomously to mitigate or avoid imminent collisions. This is one of the hottest areas in the arena of auto products liability, yet many lawyers are not familiar with what to look for in potential cases involving CAT.

Crash avoidance technology can stop a commercial truck from rear-ending other vehicles and can mitigate or even prevent serious auto injuries and deaths. Avoiding rear-end collisions, and collisions resulting from lane departure are a priority for these systems, but these safety features do not always function as intended or may be absent entirely.

CAT is meant to keep drivers safer by alerting them to and avoiding nearby objects. When the systems malfunction or are not installed, the results can be devastating.

CAT systems have been available for years and have advanced a great deal over the past decade. Yet many cars and trucks still are not equipped with the lifesaving technology, and when equipped, the technology may not operate correctly. In either case, the vehicle may be considered defective. Lawyers presented with either scenario may have a CAT case on hand.

New technology is intended to avoid accidents, but when it is defective, lawsuits may be filed on behalf of injured plaintiffs.

Turn to page 6 for  
more information  
about litigation trends  
related to Collision  
Avoidance Technology



## Dangerous ATVs Subject to Recalls, Fatal Injuries

Every year about 100,000 people are treated in emergency rooms across the country as a result of an all-terrain vehicle (ATV) or utility terrain vehicle (UTV) crash. The severity of these injuries is often increased by the failure of the manufacturers to sufficiently protect their occupants. ATVs often lack any occupant restraints or enclosed occupant area whatsoever, which combined with their susceptibility to rolling over in a crash, make them unreasonably dangerous.

Even when these vehicles incorporate safety technology, the restraints often fail to work properly

While some UTVs now have an enclosed occupant area, these areas often lack doors or other structures sufficient to keep the occupants inside the area during a rollover. Instead, the only material between an occupant and the dangers outside of the vehicle are fabric in the form of mesh, straps, or ropes that allow the occupant to collide with the ground or other objects outside the vehicle.



Further, even when UTVs have occupant restraints, they often lack any safety checks to make sure that the restraints are actually worn during operation. And even when the UTVs incorporate such technology, either it or the restraints themselves fail to work properly under foreseeable circumstances.

For example, Polaris recently recalled over 10,000 of its 2020 Ranger UTVs because their safety belts malfunctioned under certain circumstances, endangering occupants. Overall, in evaluating a case involving a severe injury to or death of an ATV/UTV occupant, it is important to consider whether the defective design of the vehicle itself was a cause of the injuries the occupant sustained. Langdon & Emison continues to represent people who've been injured in all-terrain vehicles nationwide.



# AIRBAG DEFECTS 101

If a vehicle crash resulted in catastrophic injury or death, did a faulty airbag cause or enhance the injury? Whether the airbag(s) did or did not deploy, evaluate every serious injury case for a potential airbag claim.

## DEFECTS TO LOOK FOR

INJURIES CAN OCCUR IF AN AIRBAG DEPLOYED IMPROPERLY OR FAILED TO DEPLOY.

### DEPLOYMENT

- Evidence of shrapnel from a Takata airbag
- Late deployment
- Incomplete deployment



### NON-DEPLOYMENT

- Deployment event occurred but airbag did not deploy
- Passenger airbag did not deploy but driver's side did
- Torso or side curtain airbag did not deploy

### FAILURE TO EQUIP

- Side curtain airbags
- Torso airbags



# 15

**TAKATA AIRBAG  
DEATHS IN THE U.S.**

# 124

**GM IGNITION  
SWITCH DEATHS**

### COMMON AIRBAG INJURIES

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

### MORE INJURIES TO COME

## 2.6 MILLION+

**VEHICLES RECALLED FOR  
GM IGNITION SWITCH DEFECT**

- Check for vehicle recalls
- Airbag nondeployment critical to these claims



## 69 MILLION

**TAKATA AIRBAG  
INFLATORS RECALLED**

- Shortage of replacement parts
- Used Takata airbags put in salvaged vehicles



## Baby Formula Linked to Neonatal Medical Condition in Premature Babies

Similac and Enfamil infant formula products have been the subject of recent lawsuits for families whose premature babies suffered or died from necrotizing enterocolitis (NEC) after taking one of these formulas.

Recent media outlets have drawn attention to the fact that medical research has linked cow milk-based infant formulas like Similac and Enfamil to NEC, which is a dangerous neonatal medical condition. The manufacturers of these products did not warn families about this danger.

NEC only occurs in 1 out of every 2,000 full-term live births in the U.S., but in 10% of all premature babies.

Lawsuits allege that the formula makers had a duty to warn about the risks of NEC and their baby formula products, but deliberately failed to include any such warning while continuing to market their products as safe.

### Premature babies at risk

Effects of NEC can vary widely. Some infants have hardly any outward signs, while for others it is extremely serious and life-threatening. If the infection is not stopped quickly enough it may leave dead tissue in the baby's intestines.

If this occurs surgery will be necessary to remove the dead intestinal tissue and repair any perforations. A narrowing of the intestine can result, which can make it difficult for food to pass through. If NEC results in surgical removal of intestinal tissue, it can cause short bowel syndrome and impact development and growth.

### Global companies, global consequences

Similac is manufactured and sold by Abbott Laboratories Inc., a mammoth medical device and health care product company. Mead Johnson Nutrition Company makes Enfamil, and while not as large of a global footprint as the makers of Similac, it is still a large company with millions in sales every year.

Even in spite of all of the above data, Mead and Abbott have continued to present their products to the public as safe, and have not added a warning that might deter sales of these popular products.

Lawsuits being filed allege that the formula makers had a duty to warn about the risks of NEC and their baby formula products but deliberately failed to include any such warning while continuing to market their products as safe.







## Modified Vehicles Threaten Motorist Safety

U.S. roads are flooded with aftermarket vehicles that have been cut apart and put back together without blueprints, drawings or safety analysis. Even worse, owners and occupants have no idea these vehicles were never tested for safety.

### ***What is an aftermarket vehicle?***

Vehicles are considered aftermarket when they have been modified from their “original” or “original but incomplete” status. Aftermarket vehicles may begin as a chassis or frame. The final product is then created or finished by a vehicle modifier such as an RV or limousine manufacturer.



Other aftermarket vehicles begin as completed original equipment vehicles — manufactured, tested and sold by major automakers — but then are stripped down, cut apart and reassembled as something else such as a wheelchair-accessible vehicle or conversion van.

### ***Why do aftermarket modifications cause safety issues?***

Safety problems result when vehicles are modified from their original configuration because:

- Aftermarket vehicle manufacturers may not be required to comply with the Federal Motor Vehicle Safety Standards.
- Many aftermarket manufacturers fail to have an engineer on staff or consult an engineer on vehicle design modifications.
- These vehicles lack standardized plans or blueprints and may never be crash-tested in final configuration.
- Aftermarket manufacturers lack a safety department to ensure design and testing compliance, and therefore have no process or quality controls in place.

If you have a case involving an aftermarket vehicle, contact our firm at 800-397-4910 or [lelaw.com](http://lelaw.com).

### Aftermarket Vehicles

- RVs and camping trailers
- Ambulances
- Limousines
- Conversion vans
- Wheelchair-accessible vehicles



## Collision Avoidance Technology - The Next Frontier in Safety Technology for Cars

Collision Avoidance Technology, or CAT, is exactly what it sounds like: technology designed to avoid crashes involving motor vehicles, including cars, light trucks, SUVs, and heavy commercial trucks. CAT systems are comprised of sensors, cameras, radar, and computers that, like other existing safety systems in vehicles, such as SRS systems, collect and interpret data, and then either activate a safety feature or not based on system programming.

CAT systems may be categorized into two separate sub-categories: (1) systems designed to warn the driver of a risk, and (2) systems designed to act autonomously to avoid a risk. Importantly, systems are only designed to recognize and react to *certain* risks. For example, less advanced systems may only be designed to detect vehicles, or vehicle sized objects, but not pedestrians. Vehicle speed plays a role as well, as CAT systems may not be designed to warn or act autonomously at very high speeds. At right are summary descriptions of the primary CAT warning systems available on the market, and on the next page are summary descriptions of the primary CAT autonomous systems that are available.

### CAT Warning Systems

**Forward Collision Warning** - A forward collision warning (FCW) system monitors the vehicle's speed, and the distance between and speed of a vehicle ahead.

**Lane Departure Systems** - Where FCW systems provide warnings of risks to the front of the vehicle, lane departure systems provide warnings to drivers of risks to each side of the vehicle. Instead of monitoring vehicles, however, these systems utilize sensors or cameras to monitor lane markings and warn the driver when the system detects the vehicle is drifting out of its lane.

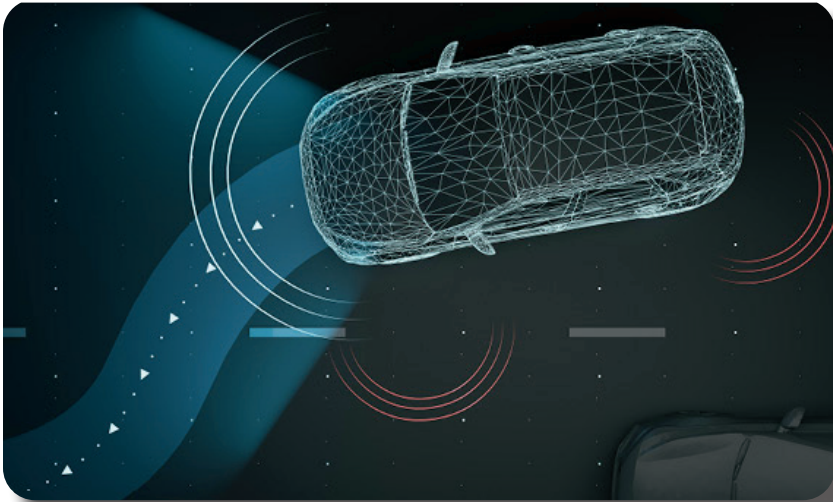
**Rear Cross Traffic Warning** - While a vehicle is in reverse, this warning system monitors the area to the rear of the vehicle for cross traffic, sounding a warning in the event of a potential collision.

**Blind Spot Warning** - These systems use cameras or proximity sensors to monitor a vehicle's blind spot and can issue audible or visual warnings.



## From Seat Belts to CAT to Autopilot

As of 2018, the availability of CAT has increased significantly: forward collision warning was available on 38.3% of vehicles, automatic emergency braking on 42.0%, brake assist on 35.0%, lane departure warning on 30.1%, lane keeping assist on 23.8%, blind spot monitoring on 30.7%, and pedestrian automatic braking on 25.6%. The trend is obviously on the uptick, but with more than 50% of vehicles manufactured in 2018 without some, or any available CAT features, the full benefits of these technologies are simply not being realized.



At some point in the future, CAT systems already available on the market will be standard in new vehicles, and motorists will begin seeing the next evolution—fully autonomous vehicles capable of performing all driver functions under all conditions. Vehicles capable of operating on autopilot on the highway without any monitoring or input from the driver, functions that are still required in existing versions of “autopilot” systems like Tesla Autopilot.

According to the National Safety Council, in 2019, more than 4.5 million people experienced medically consulted injuries in motor vehicle accidents, and more than 39,000 died. This marked a 10.6% increase in deaths since 2013. In 2020, a year when people drove much less frequently due to the pandemic, 4.8 million people experienced medically consulted injuries, and 42,000 people died, an 8% increase over 2019. Clearly, road safety continues to be of paramount importance, and CAT will be front and center.

### CAT Autonomous Systems

**Automatic Emergency Braking** - Automatic emergency braking (AEB) systems can apply a vehicle’s brakes automatically when the system determines a crash is imminent. Dynamic brake support (DBS) systems supplement a driver’s braking if the system registers the driver is braking, but not hard enough to avoid a collision. If the driver is not braking at all, crash imminent braking (CIB) systems will automatically apply the brakes to slow or stop the vehicle.

AEB systems are capable of mitigating or avoiding entirely an imminent forward collision with another vehicle. And this is not a future potential, it is a here and now reality. As reported by NHTSA, “[e]xtensive research on this technology and on relevant performance measures showed that a number of AEB systems currently available in the marketplace are capable of avoiding or reducing the severity of rear-end crashes in certain situations.”

**Lane Keep Assist/Lane Centering Assist** - Building off lane departure warning systems, lane keep assist systems monitor information from the lane departure sensors or cameras to determine whether the vehicle is about to unintentionally depart its lane of travel. If so, the system automatically activates to correct the steering, to accelerate one or more wheels, or some combination of both, to return the vehicle to the original lane.

**Blind Spot Intervention** - These systems operate by automatically applying light braking or steering to maintain the vehicle in its original lane.



## Pavement Edge Drop-offs: Seeking Justice for Injured Clients

More than half of roadway deaths occur following a roadway departure. A large number of these crashes occur because of dangerous pavement edge drop-offs, or uneven height differences on travel lanes and shoulders.

A pavement edge drop-off may exist due to:

- Erosion to the shoulder.
- Lack of an adequate shoulder.
- A contractor's failure to bring the shoulder flush with the paved travel lane.

In the most common pavement edge drop-off crash, a driver's right tire leaves its travel lane, goes over a drop-off and is then restricted from re-entering the travel lane. The vertical difference between the surfaces may cause the tire to "scrub" against the vertical edge.

Re-entry requires a sharper angle than normal. Instinctively, surprised drivers oversteer aggressively toward the travel lane. As a result, the vehicle veers across the roadway, loses control and potentially goes into a rollover or collides with other vehicles. Pavement edge drop-offs pose an even greater risk to motorcyclists due to the semi-circular shape of motorcycle tires.

In cases involving a road construction zone, a timeline showing the sequencing of "lifts"—layers of asphalt or pavement—are critical. Often, road construction jobs require multiple lifts. To prevent dangerous drop-offs, many states require that one lift be completely finished on the roadway and shoulders before starting the next lift.

### Key Evidence

- Photographs of the drop-off
- Measurements of the drop-off height
- Measurements of the drop-off angle
- Photographs showing "tire scrubbing"
- Timeline and sequencing of multiple lifts (travel lanes vs. shoulder)
- Documenting the existence (or lack) of pavement edge markings and signage
- Prior accidents and complaints

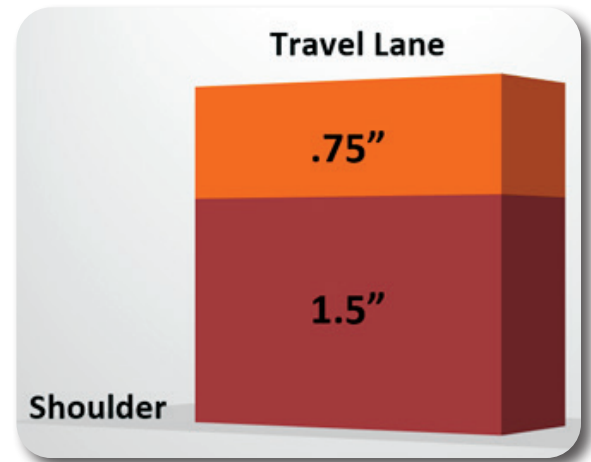


### **How High is Too High?**

Numerous studies have called for a standardized threshold drop-off height, but the calls have gone unanswered. Currently there are no mandatory national requirements.

Your first step is to research applicable state highway specifications and regulations. Mandatory heights of vertical drop-offs vary state to state, but generally range from 1.5 to 3 inches depending on the location of the drop-off. Generally, maximum allowable heights are shorter in drop-offs between lanes of travel.

Some state laws often address required actions to mitigate the existence of drop-offs, such as required signage, temporary edge markings, permanent edge markings, and maximum time periods drop-offs may be present on roadways. Other states are silent on these issues as well as the maximum allowable height, and the case depends on establishing the applicable contract and industry standards.



#### **Key Documents**

- Traffic Control Plan
- Bids/Contracts
- Applicable state road specifications
- Contractor's daily logs

National standards give guidance and help establish industry standards. The American Association of State Highway and Transportation Officials' (AASHTO) Roadside Design Guide outlines specific drop-off heights that pose significant risk to motorists. Other national standards, including the Manual on Traffic Control Devices (MUTCD) and the Federal Highway Administration (FHWA) set specifications for warnings, traffic control and signage that should be utilized when pavement edge drop-offs are present.

### **Common Defenses**

It is critical to be aware of your jurisdiction's laws regarding defenses that extinguish liability, as well as applicable caps on damages. Most state highway entities may be sued but many establish caps on the recoveries. Sovereign immunity caps do not apply to the private construction companies, but other dispositive defenses may apply. Some states allow contractors to assert the "acceptance doctrine," wherein the state's acceptance of the work precludes liability of a negligent contractor. Before litigating a highway defect case, it is vital to understand the application of these defenses.

The most common defense is to blame the driver for leaving the roadway. To combat this defense, talk to your client and other witnesses to understand why the vehicle left the roadway. Also, identify whether the defendants appropriately warned the driver of the drop-off with required signage, temporary and permanent pavement edge markings, and traffic control.

The lack of appropriate signage and markings is often an explanation for the driver going over a drop-off. From a human factors perspective, the color of the travel lane and shoulder are often similar and are not easily perceived without appropriate markings and traffic control.

As a principle of highway design, motorists will inevitably leave the travel lane for reasons ranging from reacting to other motorists, curves, road conditions and inadvertent drifting. Just as airbags and seatbelts are safety features in crashes, shoulders and edges are safety features on roadways intended to protect motorists when leaving the travel lane.





## **Federal Appeals Court Reinstates 3M Multi-District Litigation Bair Hugger Suits**

The U.S. Court of Appeals for the Eight Circuit reinstated nearly 6,000 lawsuits alleging patients developed severe infections from the 3M Bair Hugger warming system used during joint replacement surgeries. The appeals court ruled that testimony from plaintiffs' experts that the Bair Hugger can cause infection was incorrectly excluded under Daubert. The Eighth Circuit ruling also reversed the district court's grant of summary judgment to 3M and its Arizant Healthcare Inc. unit, which followed the order excluding experts' testimony.

Two of Langdon & Emison's Missouri state-court filed cases against 3M and others were remanded prior to the ruling, and our firm continued to litigate those cases pending the appeal of the MDL court's decision. We also continue to review new potential Bair Hugger claims for patients who suffered serious infections after joint replacement surgeries. To qualify, patients must have undergone hip or knee replacement surgery and suffered a deep joint infection within one year after surgery.

## **Herbicide Paraquat Linked to Parkinson's Disease**

### *L&E Accepting Cases Nationwide*

Farmers and agricultural workers across the U.S. are filing lawsuits against Syngenta and Growmark, the manufacturers of Paraquat, alleging their long-term use and exposure to the herbicide caused them to develop Parkinson's Disease. Langdon & Emison is accepting cases nationwide on behalf of individuals who developed Parkinson's disease after exposure to Paraquat.

Paraquat is widely used throughout the world for weed and grass control. Despite mounting evidence linking Paraquat exposure to a higher risk of Parkinson's Disease, widespread use of the herbicide continues. Although manufacturers have known about the link between Paraquat and Parkinson's Disease, the herbicide has been distributed and sold without adequate warnings, even for certified applicators.

If you have a client who has been diagnosed with Parkinson's Disease after use of or exposure to Paraquat, we would be pleased to help evaluate your client's potential claim. For more information about Paraquat litigation, contact L&E partners Brett Emison or Tricia Campbell at 800-397-4910.







## L&E Files Suits on Behalf of People Injured, Killed by Grain Vacuums

Between 1970 and 2010, more than 800 people died as a result of farm-related grain entrapments. The number of individuals that suffer this fate also has increased every year. Many of these deaths could be prevented by correcting a design defect present in most commercial grain vacuums.

A grain vacuum—as its name implies—is a type of farm equipment that uses a turbine-style blower to draw in grain through an intake and to blow it out



through a discharge on the vacuum. Once the grain vacuum is turned on, one person uses the intake nozzle inside a grain bin or other grain storage area to suck the grain into the vacuum which then dispels the grain out of the discharge outside. Many models of grain vacuums do not provide the person operating the machine inside the grain storage area any way to turn the vacuum off should the need arise. Thus, if the person inside the bin begins to get pulled down into the grain as a result of the vacuum's suction, he has no way to stop himself from becoming entrapped in the grain. And as his chest becomes entrapped, the sheer weight of the grain will slowly force the air out of his lungs until he eventually loses the ability to breathe at all.

The solution to this problem is for the manufacturers of grain vacuums to include on their products either an emergency shutoff device on the intake nozzle of the vacuum or, at least, an alarm system that could be used in case of an emergency to advise those outside to shut the machine down. While both of these solutions have been suggested by the National Institute for Occupation Safety and Health for more than 20 years, many manufacturers have still not implemented either safety device into the designs of their grain vacuums.

Many models of grain vacuums don't provide any way to turn it off in case of emergency.

Many manufacturers have still not implemented suggested industry safety solutions.

## Bob Langdon Named Lawyer of the Year for Personal Injury Litigation by *Best Lawyers in America*



*Bob Langdon*

Langdon & Emison partner Bob Langdon has been named the *Best Lawyers*® 2022 Personal Injury "Lawyer of the Year." *Best Lawyers in America* names one attorney per metro market as a "Lawyer of the Year," and this marks the third time in his career that Bob has been recognized in this way for the Kansas City market. Bob has focused his practice on representing seriously injured individuals for over 30 years.

Currently an Executive Board member of the Attorneys Information Exchange Group, Bob is a Past-President of the Missouri Association of Trial Lawyers and a past member of the Board of Governors of the American Association for Justice. In recent years, he has worked diligently on defective vehicles and other consumer products.

"I'm grateful for my colleagues in the profession and others who selected me for this honor," Bob said. "I've always tried to focus my practice on representing those individuals injured by negligence or products that can harm people. I feel lucky that I've been able to help people while doing what I love."

Bob resides in Parkville, Mo., with his wife and family and looks forward to representing clients and working with co-counsel for many years to come.



**LANGDON  
& EMISON**

Let us help maximize compensation for your clients.

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\*By appointment only.

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