

**LANGDON  
& EMISON**

# Newsletter

Fall 2022

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## Keyless Cars Leading to Carbon Monoxide Poisoning Cases

The Society of Automotive Engineers (SAE) observed in 2009 an increase of deaths caused by carbon monoxide poisoning coming from keyless cars that were accidentally left running in the garage. SAE called for carmakers offering the keyless start feature to include sound or visual cues that would remind drivers to shut off the car before leaving it.

SAE also called for an optional shutoff function to prevent the problem. NHTSA then proposed a key fob rule that required carmakers to provide internal and external warning beeps. Although NHTSA considered the SAE's recommendation to include a shutoff function, the auto industry opposed the proposal.

### Types of Keyless Ignition

The type of key fob can vary from model to model. SMART Key, Keyless Go, FAST Key, Intelligent Key and Comfort Access, are all examples used with today's vehicles. These cars do not include a traditional key ignition. Instead, the driver has a key fob that emits a low frequency radio ID that opens the car's doors and disarms the ignition immobilizer so that a simple push of a button on the car's dashboard starts the car. But the driver of the car must remember to push the button to turn the engine off.

When keyless start cars are kept in your garage, carbon monoxide death is possible

*(Continued on p. 14)*



## Most Midsize Cars Fail New IIHS Side-Impact Crash Test

The Insurance Institute for Highway Safety (IIHS) recently updated its side-impact crash testing for the first time since 2003. The IIHS stated that the updated crash test was designed to reflect today's real-world crashes which increasingly involve high-speed pickup trucks or SUVs. The tougher standard should address the high fatality rate in side-impact crashes, which accounted for 23 percent of passenger vehicle occupant deaths in 2020.

The original side-impact crash test used a barrier weight of 3,300 pounds and impact speed of 31 miles per hour. The updated side-impact barrier now weighs more and moves faster. The barrier weight was increased to 4,200-pound and the impact speed was increased to 37 miles per hour. Together, these changes mean that the new side-impact test generates 82 percent more energy than the previous test.

Additionally, the honeycomb barrier was also modified so it acts more like today's SUVs or pickups when striking the side of another vehicle. As in the original test, the updated test uses two female crash test dummies in the driver seat and rear seat behind the driver. IIHS said the female crash test dummies have been used since 2003 and were chosen for this test to see how well the side airbag coverage works for smaller occupants.

In order to receive a "good" rating in either the old or new crash test, the vehicle's occupant compartment must maintain its shape well during the crash. Additionally, measurements from the crash test dummies must not indicate a high risk of severe injuries. The side airbags and seat belts must also prevent the dummies' heads from making hard contact with the interior of the vehicle.

The IIHS recently tested seven midsize sedans against the new criteria. According to the IIHS, the 2022 Subaru Outback is the only vehicle to receive a "Good" rating. The Hyundai Sonata and Volkswagen Jetta received an "Acceptable" rating. The Honda Accord was "Marginal." However, the Toyota Camry, Nissan Altima and Chevy Malibu all earned "Poor" ratings.



If your child was diagnosed with autism or ADHD following exposure to acetaminophen during pregnancy, contact us for a free no-obligation review of your potential case.



A growing number of acetaminophen lawsuits are now being filed against manufacturers of acetaminophen-based drugs, alleging that use of the painkiller during pregnancy caused children to develop autism spectrum disorder (ASD) or attention deficit hyperactivity disorder (ADHD).

**52 million.**  
That's the number of Americans each week that consume a pill containing some form of acetaminophen.

Information about the link between Tylenol and autism, ADHD and other neurodevelopmental disorders has been withheld from consumers.

In October 2019, a study in JAMA Psychiatry found that children with the highest levels of acetaminophen metabolites in their blood at birth had the highest risk.

Children exposed to Tylenol during pregnancy were 19% more likely to have autism spectrum disorders and 21% more likely to have ADHD symptoms compared to non-exposed children.



# Inadequate Restraint Systems Endanger Millions on U.S. Roadways

There are many seatbelt defects to consider if you have a belted client who is seriously injured. These include:

Lap belt injuries are common when a passenger submerges under a lap belt even if they have a shoulder belt.

- **Seatbelt Spool-out Defects:** Here the seatbelt does not “lock up”, but instead spools out by allowing too much slack in the belt. If the client is belted and has a serious injury or died in the crash a seat belt defect should be evaluated. There will be marks on the belt to confirm the amount of spool-out. Experts can determine the exact amount of spool out and the cause of the defect.
- **Injuries to Children/Defective Geometry Defects:** If the seatbelt geometry is improper, a seat belt can cause catastrophic injuries to a child or adolescent. For example, if the shoulder belt rests across the neck of a passenger, the belt may cause catastrophic spine injuries in an impact. These defects are extremely dangerous for children or small adults. Children who are too old or big for a booster seat often are paralyzed from a shoulder belt that breaks their neck in a crash. If a child is seriously injured or paralyzed in a crash, the vehicle should be immediately preserved and investigated for a defective seatbelt.
- **Lap Belt Injury Defects:** Older vehicles had lap belts only in the middle of rear seats. These belts have paralyzed many children when they jackknife over the lap belt. Generally, these vehicles will be older than 2008 models. However, lap belt injuries are common when a passenger “submerges” under a lap belt even if they have a shoulder belt. This “submerging” may occur when a defective seat pan (seat portion of the seat) allows an occupant’s body to slide under the lap belt and suffer abdominal and spinal injuries. Auto manufacturers have long known that seat pans must have “anti-submerging” safety features to prevent this hazard. To confirm a defective seat pan, a joint inspection with defense is often necessary to “detrim” (remove the cushioning) the seat.
- **Passengers who are Belted, but are Ejected:** If a client is belted, but are ejected, the belt was likely defective. These cases should be investigated for various defects which allow the passengers to slip out of the belt and be ejected. The auto industry has known for decades that if an occupant is ejected, the risk of severe injury or death increases dramatically.
- **Inadvertent Unlatching Defects:** An inadvertent unlatch defect occurs when the passenger is belted, but the design allows the belt to be unintentionally unlatched during an impact. Typically, this occurs when a part of the occupant’s body inadvertently strikes the latch during a collision. In a “false latch” case, the user is led to believe they are properly buckled, but the buckle does not engage or is only partially engaged. This exposes the occupant to serious injury in a collision. If a client states they were belted, but after a crash they are unbelted, these defects should be investigated.





# Truck Accident Statistics

**68%**  
of truck  
wreck  
fatalities are  
passenger  
vehicle  
occupants

**52%** increase in trucking accidents since 2009

**11%**  
of motor vehicle wreck  
fatalities are in crashes  
with semi-trucks

**5,000+**  
casualties  
per year

**40 tons**  
average  
tractor trailer  
weight



**500,000**  
estimated collisions  
with trucks each  
year in the US

Data source: NHTSA, FARS, IIHS



## L&E Litigating Fiduciary Liability Claims

Who's liable for a breach in fiduciary duty?

- Third-party liability
- Personal liability
- Joint fiduciary liability

When fiduciaries use powers over probate or trust assets to take advantage for personal gain, people might be at a loss to figure out what their options are as to obtaining what they believe is rightfully theirs. Fiduciaries have a duty to avoid any conflicts of interest between themselves and their principals or between the principals and any of the fiduciary's own clients, but often that is not the case.

Breaches of fiduciary duty occur when a fiduciary obtains profits or other advantages through self-dealing, or causes a loss to the principal. Individuals who take on fiduciary duties are usually trustees, officers, directors, executors or administrators.

A breach of fiduciary duty can take many forms. Some of these require examination of fiduciary accounts from experienced counselors who are steeped in this type of investigation and examination of accounts. Fiduciary relationships can include but are not limited to:

- Executors of estates and heirs
- Trustees and beneficiaries
- Directors/Officers and shareholders

Some common examples of a breach of fiduciary duty could include a trustee selling or trading assets that belong to the trust beneficiary; an executor of an estate paying him or herself for services to the heirs for a higher than agreed upon rate; or, a director or officer making a business decision that benefits him or herself, but harms the company.

### Free No-Obligation Review of Your Potential Case

We can evaluate a fiduciary's actions and can determine whether or not a breach occurred. We enjoy working with co-counsel across the country and are happy to offer a free no-obligation consultation with anyone, as to whether a potential violation may have occurred.



Facilities supplying water to the Camp Lejeune Marine Corps Base in North Carolina were contaminated with volatile organic compounds.



Between 1953-1987, Marines, their families and civilian employees stationed on Camp Lejeune were exposed to **Perchloroethylene (PCE)**. A colorless liquid most commonly used for dry cleaning, PCE was found in the Tarawa Terrace Treatment Plant.

According to the Agency for Toxic Substances & Disease Registry, the PCE levels at the Tarawa Terrace Treatment Plant exceeded current standards by great amounts.

**Trichloroethylene (TCE)** contaminated the Hadnot Point Treatment Plant. Underground storage tank leaks, industrial area spills and water disposal sites are believed to have been the sources of the contamination.

*Extended exposure to PCE or TCE has been linked to: liver, kidney, bladder, ovarian, breast, prostate, cervical, and lung cancers, leukemia, non-Hodgkin's lymphoma, liver disease, miscarriages, and birth defects.*

Our firm is now handling Camp Lejeune cases for clients nationwide.



## **Driver Fatigue and its Role in Lawsuits Over Truck Accidents**

Determining whether driver fatigue played a role in causing a collision of a truck or heavy vehicle is a multi-faceted investigation, requiring a familiarity with the causes and effects of fatigue, knowledge of the sources of evidence supporting fatigue, and use of the rules which serve to combat fatigue's role in causing accidents. Although laborious, this analysis can provide additional claims and sources of recovery beyond simple negligence of the driver and vicarious liability, including claims of negligent retention, supervision and training, as well as independent negligent claims against the trucking company.

Time is truly of the essence in trucking cases, as motor carriers/drivers are only required by law to keep records for a finite period of time.

In any motor vehicle collision, there will be obvious signs that a given driver did - or failed to do - something that caused or contributed to the collision. One example is when there is an admission or eye witness testimony of failure to abide by a traffic signal. Another is where one vehicle crosses into the lane of traffic of an oncoming vehicle. Other causes of a collision may require a more detailed analysis, such as a vehicle driven at an excessive speed for the conditions. Other causes may not be readily apparent, such as the role that fatigue played in diminishing a driver's attention, performance or reaction.

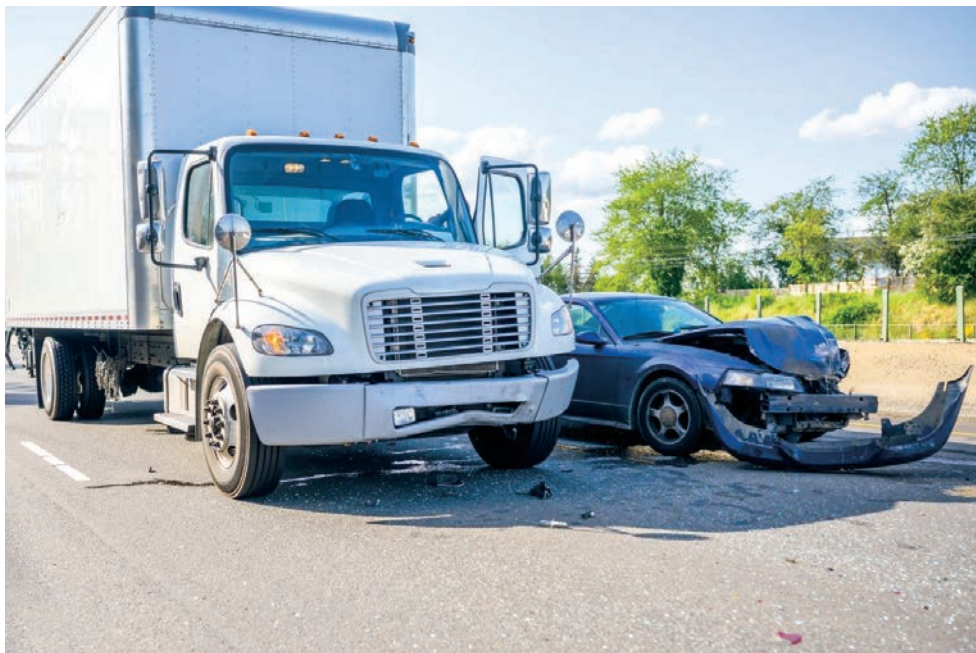
### **Step 1: Identifying Evidence of Fatigue**

In most fatality accidents, and oftentimes in crashes resulting in serious injury, a commercial motor vehicle examination will occur. As part of this examination, a driver's record of duty status will be examined. If the driver has exceeded his hours of allowable driving or on-duty time, he or she will be issued a citation which you can use as evidence of negligence. At the very least, you can begin to reconstruct the activities and work hours of the truck driver in the days leading up to the accident.

As soon as the decision is made to pursue the case, an evidence preservation letter should be sent. Time is truly of the essence, as motor carriers/drivers are only required by law to keep records for a finite period of time. For example, the FMCSR impose an obligation on motor carriers to require every driver that it uses (regardless of the relationship) to maintain records of duty status.



When available, electronic information can be the ultimate check of a driver's written logs, as it is less prone to alteration or destruction. For example, many motor carriers equip their trucks with Qualcomm communication devices. These devices allow drivers and motor carriers to communicate electronically, similar to e-mail or texting. If enabled, the Qualcomm system also serves to create an electronic version of a driver's daily logs, often with geographical markers of the location of the truck at the time the driver changes his duty status. Other electronic devices, such as GPS tracking, serve a similar function, as they record the location of the truck at specific points throughout the day.



## Step 2: Establishing Fatigue as a Cause

Simply discovering evidence that a truck driver was fatigued at the time of the accident does not end the analysis, as the mere existence of fatigue will be irrelevant if it played no role in the accident.

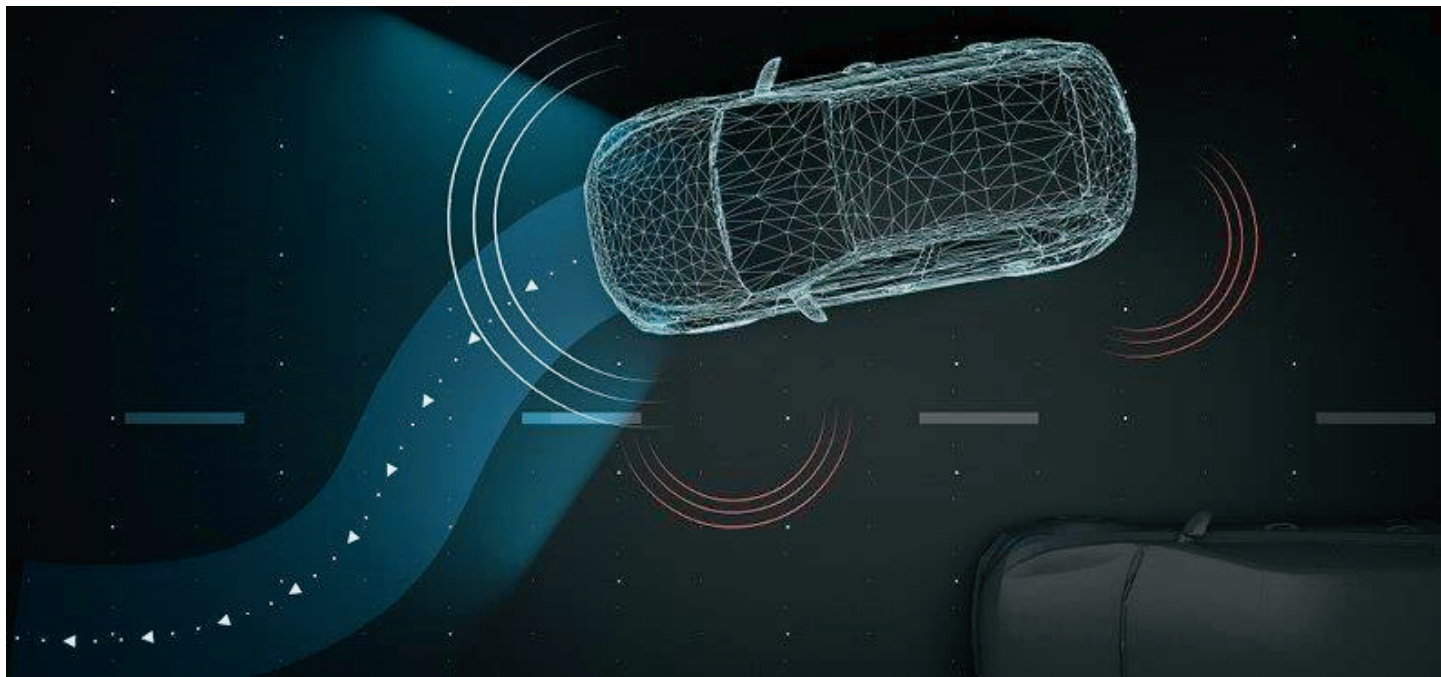
Rather, the key is to establish that said fatigue caused or contributed to cause the collision. To establish causative fatigue, you will likely need to employ experts in multiple fields. First, you will need an accident reconstruction expert whose opinions will serve to establish what the truck driver did or failed to do in the operation of the commercial motor vehicle that served to cause the collision.

*The driver's record of duty status is required to be kept current by the driver, further providing the number of total miles driven in the 24-hour period, the name of the carrier and the name of the shipper, among other information.*

Next, you will need an expert in the truck transportation field to establish the regulatory background in which the truck driver and their motor carrier operate. These opinions should include the existence and binding effect of the FMCSR, as well as the purpose behind the specific regulations at issue (such as to combat driver fatigue and reduce fatigue-related accidents). It is through this trucking expert that you will build a case of negligence per se, or at a minimum, establish the framework from which a jury can utilize a violation of the FMCSR as evidence of negligence. This trucking expert should also testify as to

the industry knowledge of the risks presented by fatigued truck drivers and the response of other motor carriers to combat these issues.

In many cases, you will also need to retain a medical expert with specialized knowledge in the field of sleep/fatigue. The opinions of this medical expert may include identification of medical conditions which put the truck driver at greater risk for fatigue, such as sleep apnea. The opinions should also include a comparison of the driver's acts/omissions in comparison to the effects of fatigue as established in the medical literature.



## A Primer on Collision Avoidance Technology

Collision Avoidance Technology, also known as CAT, is the next frontier in automotive and heavy truck safety technology. The technology represents the first step on the path to a new era of roadway safety: full automation, when cars will drive people, and not the other way around. According to some, once full automation arrives, severe injuries and fatalities on our roads and highways will be a thing of the past.

Full automation is, however, decades away, and for the foreseeable future, severe injuries and fatalities remain an unfortunate part of everyday motor vehicle transportation. But even today, many of those injuries and fatalities are avoidable, and CAT is emerging as a key and increasingly central component to the determination of whether an injury or fatality could have been avoided.



Our firm has been at the forefront of auto products litigation since we brought Baker v. General Motors to trial in 1998, and we've earned successful resolutions in auto products cases from coast to coast. Below is a list of safety features relevant in CAT cases that can fail; if you have a potential case where serious injuries could have been avoided due to any of these features working as they should have, we can help you maximize a client's recovery.

### Collision Avoidance Safety Features and Systems

- Lane Departure Systems
- Forward Collision Warning
- Blind Spot Warning
- Rear Cross-Traffic Warning
- Lane Keep Assist/ Lane Centering Assist
- Automatic Emergency Braking



# Defective Airbags on America's Roads

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

- 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
- Frontal airbags in heavy trucks

**Over 11 million defective airbags remain in vehicles to date based upon NHTSA replacement figures.**

**Takata airbags have been used in salvage vehicles; at least 19 deaths have been tied to Takata airbags in the U.S.**

### Common Airbag Injuries

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

# Automobile Ejections

**Tempered window glass is prone to shatter into small pieces**, thereby creating an opening through which an occupant can be partially or completely ejected. In comparison, laminated window glass does not shatter, maintaining a barrier to ejection.

Every vehicle uses laminated glass for its windshield. Although the use of laminated side window glass first started in the 1960's, it did not gain widespread use in side windows until the mid-2000's. Even today, vehicles remain that are not equipped with this life-saving technology.

According to NHTSA research in 2003, the fatality rate for an ejected occupant is

**3 TIMES GREATER** than occupants that remain in the vehicle.

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NHTSA further found that fatal injuries occur to belted occupants through partial ejection, where the head is allowed to protrude outside the window.

**57%**  
of the occupants killed in rollovers were ejected from the vehicle.

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## Faulty door designs and non-laminated glass lead to lead to ejections

**According to NHTSA research, door latch integrity is a significant contributor to vehicle occupant ejection, especially in rollover crashes.** In its 2003 study, NHTSA found 1,660 fatalities and 1,970 seriously injured occupants were ejected through doors. This follows earlier research in

the 1990's identifying a mechanism of inadvertent door latch activation when the metal rods used to activate the latch are deformed because of crush to a door. A cable latch system serves to eliminate this risk, as although the cable may be moved by external crush, such movement does not serve to activate the door latch.

### ▼ Rod vs. Cable Door Latch Mechanisms



**7,800**

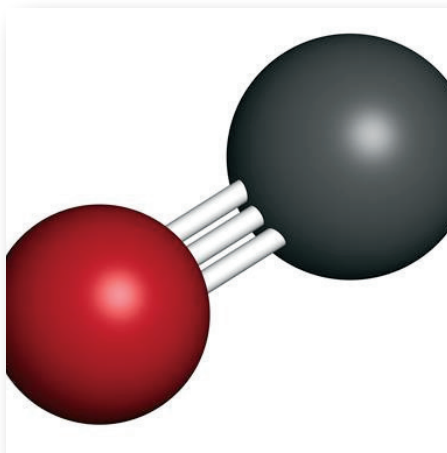
**vehicle occupants are killed each year after being ejected through side windows**

# Keyless Cars Leading to Carbon Monoxide Poisoning Cases

(Cont. from p.1)

## Keyless Car Carbon Monoxide Poisoning Lawsuits

There are a number of examples of people who have died because of keyless start automobiles and lawsuits have been filed around the country on behalf of these families. Lawsuits have alleged that carmakers sold keyless fobs without adequate safeguards, warnings, or other safety features. These could have included an auto turn-off feature that would engage if the car is left unattended.



There have been numerous complaints filed by consumers to NHTSA, citing the need for an auto-off feature. Both Ford and GM have been issued patents that address the issue, demonstrating that they are aware of the problem.

## Long term effects of Carbon Monoxide poisoning include:

- Brain damage
- Heart problems
- Memory loss
- Poor concentration
- Speech impairments
- Depression
- Muscle shakes, stiffness or slow movement
- Blindness
- Deafness
- Pregnancy miscarriage or stillbirth
- Neurological problems
- Coma
- Death

## Kids and Cars Releases Tips for Preventing CO Poisoning in the Home

According to the Centers for Disease Control and Prevention, more than 400 people die in the United States each year due to unintentional, non-fire-related CO poisoning, many of which were vehicle-related. From KidsandCars.org:

- Ensure that you have working carbon monoxide detectors in all areas of the home, especially near sleeping areas. Replace batteries twice a year and replace detectors every 6-10 years.
- Always clear the tailpipe of a vehicle in inclement weather conditions. If the tailpipe becomes clogged with ice, snow or other debris, carbon monoxide can leak into the passenger compartment of the vehicle.
- Never warm up a vehicle in any enclosed or partially enclosed space.
- Never leave a vehicle running in the garage, not even with the garage door open.
- Keyless ignition vehicles should always be double-checked to ensure the vehicle has been turned off. Even if you take the key fob with you, the vehicle could continue running.
- Do not put children or adults inside a running vehicle while clearing snow or ice off the vehicle.
- During busy times and changes in routine, be extra cautious as distractions and multi-tasking can lead to forgetting to turn the car off.
- Keep vehicles locked at all times and make sure keys and remote openers are out of reach of children. Children may be tempted to get into vehicles to play or hide.



## News and Notes

### Langdon & Emison Welcomes Four New Partners



This summer Langdon & Emison welcomed the elevation of four associates to Partner status. Pictured are attorneys Justin Watkins, Danielle Rogers, Nicole Smith and John Tyner, the newest Partners in the firm. Justin and John work in cases related to auto product defects, fiduciary duty, and other personal injury matters from the firm's Kansas City office. Danielle and Nicole focus their practice on mass torts litigation from the firm's Lexington, Mo., office.

### Five Partners Named Best Lawyers in America

The logo for Best Lawyers 2022, featuring the text "Best Lawyers" in a red serif font, underlined, with "2022" in a smaller red serif font below it.

Partners David Brose, Brett Emison, Kent Emison, Bob Langdon and Michael Manners were honored this year with the status of Best Lawyers in America, for the category of Personal Injury Litigation for Plaintiffs. Additionally, Partners Brennan Delaney, Mark Emison and Michael Serra were all elected to the list of "Ones to Watch," where Best Lawyers honors the top young litigators in America. This year Best Lawyers came to their results after conducting 12.2 million interviews with lawyers nationwide.

### In The U.S. Personal Injury Litigation Webinar Series, L&E Offers Educational Programs to Trial Lawyers, Law Students Nationwide



Langdon & Emison attorneys collaborated with law schools and state trial lawyer associations in the past year, on a series of webinars for law students and developing trial lawyers. 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. To receive a free boxed set copy of "The U.S. Personal Injury Litigation Webinar Series," please contact us at (800) 397-4910.

# Langdon & Emison Accepting Co-Counsel Opportunities Nationwide

*Maximize the recovery for your client's personal injury case*

In this edition of our firm's quarterly newsletter, we share information about the many recovery avenues to explore in personal injury cases and offer practical tips for evaluating and litigating a range of personal injury cases. We deeply value the opportunity to work with law firms across the country to help maximize their clients' recoveries in cases involving defective products, negligence and catastrophic injury. We welcome the opportunity to work with you.



Our presence on a case adds unparalleled experience and a name that corporate defendants recognize from nearly 40 years of practice in personal injury litigation. Likewise, a co-counsel partnership not only benefits your client's recovery, but also benefits your law firm. We can help you explore all potential recovery avenues and maximize your client's compensation.

## What's inside:

- Driver fatigue in truck accidents
- Defective restraint systems
- Camp Lejeune
- Acetaminophen
- Collision Avoidance Technology
- Airbag defects



**LANGDON  
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Let us help maximize compensation for your clients.

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