

**LANGDON
& EMISON**

Newsletter

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What's Inside

Page 2 - Acetaminophen
Risks During Pregnancy

Page 3 - Premises Liability
Matters with Rental
Property Owners

Page 4 - Polaris UTV's
Catching Fire

Page 5 - Firm Settles
Fatality ATV Case

Page 6 - Tire Failures
and Defects

Page 7 - Defective
Restraint Systems

Page 8 - Product Defects
in Today's Trucks

Page 10 - Pro Bono Update

Page 11 - Airbag Defects

Page 12 - Litigating Wheel-
Off Cases

Page 14 - Collision
Avoidance Technology

Page 15 - News & Notes

Page 16 - Firm Handling
Breach of Fiduciary Duty
Cases



Langdon & Emison Obtains \$16 Million Settlement for Family of Trucking Victim Killed by Wheel Separation

Langdon & Emison recently finalized a wrongful death settlement that involved claims against a confidential trucking company and confidential tire service company. Kent Emison, Mark Emison, and Alex Thrasher led the legal team.

In 2020, a 72-year-old man was killed in a tragic wheel-off incident that occurred on a rural Missouri highway. As the man drove down the highway, a wheel separated from an oncoming tractor-trailer. The wheel bounced across the median, went through the victim's windshield, and impacted the victim's upper body. The trucking victim died hours later.

The L&E legal team brought claims against the confidential trucking company for its inadequate training and failure to identify telltale signs of loose lugnuts prior to the wheel separation. The team also brought claims against the confidential tire service company for failing to install the wheel properly.

Systemic failures of both defendants led to this wheel separation, which the industry describes as an "unguided 200-pound missile." Freedom of Information Act (FOIA) requests to the federal government revealed that the confidential trucking company had a history of maintenance and equipment violations due to inadequate inspections. Just months before the tragic wheel-off event, the federal government initiated an intervention and warned the confidential trucking company that its drivers needed to do more thorough pre-trip and post-trip inspections.

(Continued p. 13)

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.
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.

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 of the developmental disorders.

According to additional research published in June 2021, 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.



Litigating Premises Liability Matters with Rental Property Owners



Brett Emison

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. In our practice we've seen numerous egregious examples of inadequate security at hotels, nightclubs, and apartment complexes. Below are just a few tips to keep in mind in these cases.

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 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.



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



Polaris Vehicles Catching Fire Leads to Casualties

Firm successfully litigates utility task vehicle (UTV) matters nationwide on behalf of families whose recreational vehicles has led to catastrophic injuries or death.

The Polaris brand was founded as a snowmobile manufacturer in the Midwest in the 1950s, but its recent success has been found in the manufacturing and marketing of off-road vehicles for decades. However, Polaris' history is also marred by defects in its products causing serious injuries to their occupants. Our firm has litigated Polaris matters all over the country, and we are familiar with the design defects and the product's flaws that lead to these catastrophic injuries. The purpose of this article is to highlight one such defect – Polaris RZR's dangerous propensity to catch fire.

Risk of Serious Burns, Fuel Leaks

According to a *New York Times* report, Polaris Industries issued RZR recalls at least 10 times for fire hazards since 2013. This was a higher recall than any competing product in this space. As we have seen often in our practice, these Polaris fires can sometimes be so complete that they leave little more than a skeletal metal frame. According to the *Times* report, at least 30 people have been burned by these vehicles.

According to the *Times*, “when reports of melting and smoking panels in RZR's emerged, Polaris did not heed initial calls to conduct a recall, according to a former safety director for the company who testified in lawsuits, and it later reported far fewer heat-related incidents than he had cited. As new versions were rolled out yearly, each more powerful and faster, the number of fires, injuries and fatalities climbed.”

Penalties and Recalls

As a result of its failure to disclose the defect in both its RZR and Ranger models of UTVs, Polaris has been assessed over \$27 million in penalties by the Consumer Product Safety Commission. In addition, over 200,000 RZR have been recalled as a result of their catching fire while being operated.

The CPSC has said it is working with industry groups to develop a voluntary standard that would address “the thermal and debris penetration hazards,” but we have seen in our practice that these vehicles are still out in the marketplace and harming consumers. If you have seen a UTV or an all-terrain vehicle (ATV) that caused catastrophic injuries to its occupants, we have worked up several of these matters and can pinpoint the specific defects that lead to the injuries.



Firm Settles ATV Defect Case for \$2 Million



Brennan Delaney

In the latest successful result for Langdon & Emison's legal team litigating cases over all-terrain vehicle (ATV) defects, a \$2 million settlement was reached on behalf of a Missouri widow whose husband suffered severe brain and spinal injuries that ultimately resulted in his death when the brakes of his ATV failed.

In 2020, our client's husband purchased a previously-owned ATV at a local dealer. Only a week later, he was operating the ATV when he attempted to stop by engaging the brakes. However, the brakes failed to slow or stop the ATV, sending it crashing into a concrete barrier and throwing him from the vehicle. He suffered severe injuries that ultimately led to his untimely death.

Upon investigation and inspection of the ATV, the legal team discovered the retailer failed to properly inspect and repair the ATV prior to supplying it to our client's family. An expert inspection revealed that the brake pads on ATV were so worn down that when the deceased attempted to engage the brakes, they catastrophically failed and left him unable to stop. This was despite the dealer assurances that it had looked everything over and it was good to go.

We filed suit against the dealer alleging negligently supplying a dangerous instrumentality and strict liability against the dealer, who settled the case for insurance policy limits. While this settlement does not make up for the tremendous loss suffered by our client, it will provide her family with some additional financial security in the wake of this tragedy.



An expert inspection revealed that the brake pads on the ATV were so worn down that when decedent attempted to engage the brakes, they catastrophically failed and left him unable to brake.

Tire Failures & Defects

Causes of Tread Separation

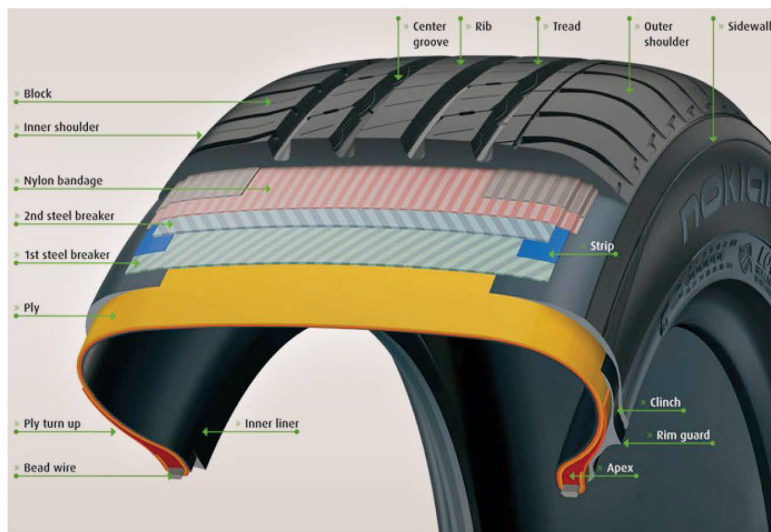
Tread belt separations are often reported as tire blowouts. When the tread and upper belt separate from the body of the tire, vehicle loss of control results, including rollovers that have resulted in serious injuries and fatalities.

IMPROPER DESIGN The tires oxidize because of oxygen permeation through the rubber surfaces, making the rubber brittle which causes separation between the layers.

IMPROPER MANUFACTURING PRACTICES

IMPROPER SELECTION OF RUBBER MATERIALS It is typically the type of rubber that is selected (one that doesn't resist oxygen permeation) that leads to failure.

INADEQUATE QUALITY CONTROL MEASURES



11,000

Estimated number of car accidents caused by tire failures each year

DATA SOURCE : NHTSA

612

Fatalities in tire-related crashes in 2019

DATA SOURCE : NHTSA

Improper Tire Installation

Failure to install tires in accordance with manufacturer and industry recommendations can lead to loss of control or premature failure of a tire, resulting in a crash.





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 from) the seat.
- **Passengers who are Belted, but are Ejected:** If a client is belted, but ejected, the belt was likely defective. These cases should be investigated for various defects which allow 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.

Brake Defects

Heavy trucks use air brakes which are complicated, hard to maintain and less effective than the hydraulic brake systems used on light vehicles.

Underride Guards

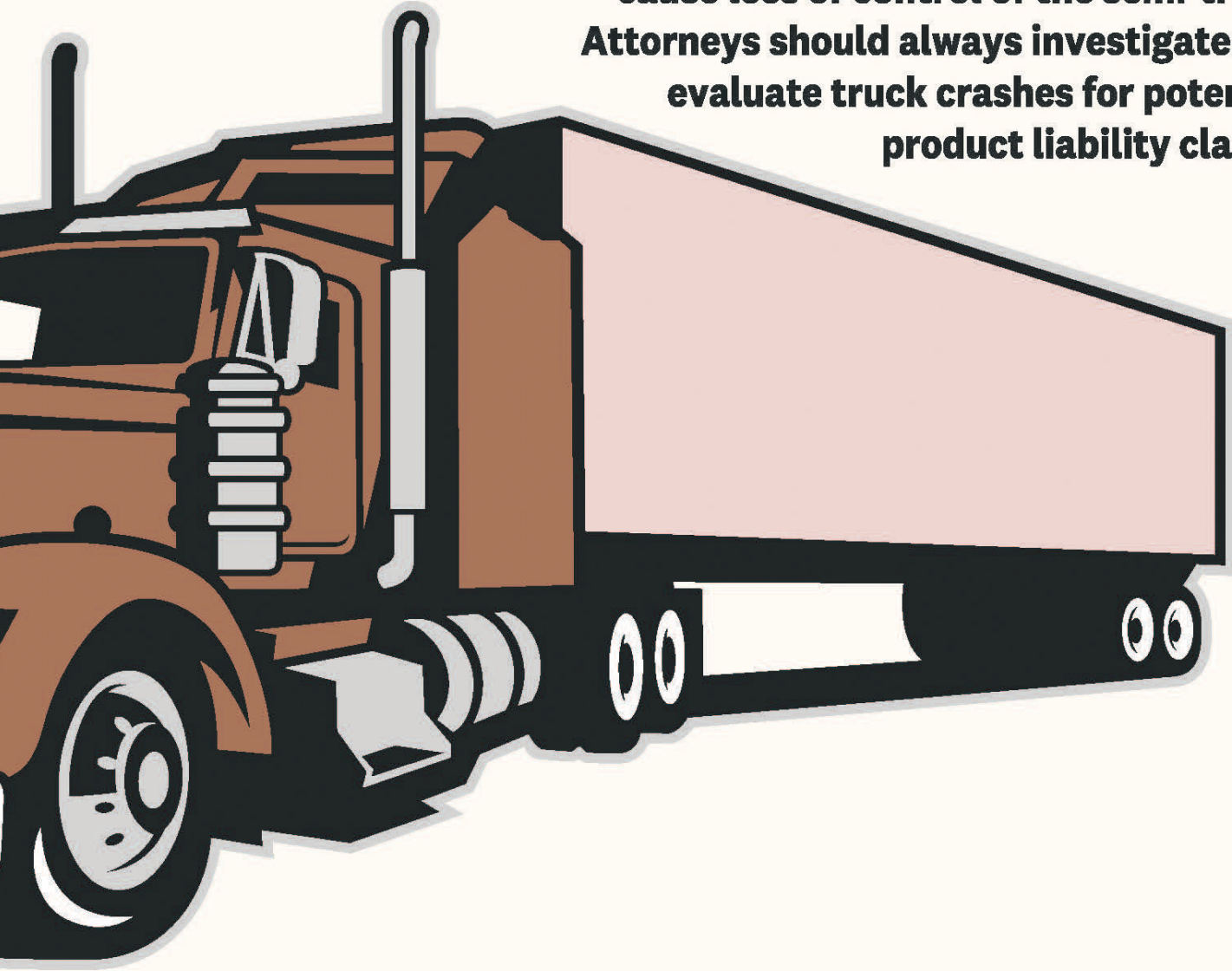
For many years, federal law has required semi-truck trailers to be fitted with “underride guards” to prevent underride crashes. However, studies analyzing both real world collisions and crash tests indicate federal minimum requirements for underride guards are not sufficient to protect motorists. Underride guards that comply with the minimum federal standards often fail, even at low speeds. Attorneys must investigate both 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.



Defective Truck Tires

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.

Loaded semi-trucks commonly weigh up to 80,000 pounds. When these enormous vehicles are traveling at highway speeds, any defect in a tire, brake or other component can cause loss of control of the semi-truck. Attorneys should always investigate and evaluate truck crashes for potential product liability claims.



Fuel System Defects

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 – 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.



L&E Continues Fight for Exoneration of Pro Bono Client



Langdon & Emison pro bono client Michael Politte was released from the Jefferson City Correctional Center on April 22 of last year. But the battle for clearing his name has not ended, as L&E, the MacArthur Justice Center and the Midwest Innocence Project continue to represent him pro bono for full exoneration.

In a story that was covered by CBS News' *48 Hours*, Michael was only 14 years old when he was falsely charged with the murder of his mother. Mike has been falsely imprisoned for his own mother's murder for over 20 years. In 1998, he woke to the smell of smoke and found his mother's burning body on the bedroom floor of their trailer.

He was immediately targeted by police as the prime suspect because he was the only family member home at the time and he did not act the way police thought he should. Within hours of his mother's death, the 14-year-old was interrogated multiple times, by four different law enforcement officers, over the course of the next 48 hours, without sleep, an attorney or the assistance of an impartial adult. Since police didn't think he, a shocked child, acted as he "should" they labeled him "a cold, emotionless, remorseless killer" – rather than the traumatized kid that he was. These judgments were then used against him in court.

The only evidence used against Michael has been scientifically proven as false. The only actual evidence to ever purportedly tie Mike to this crime was gasoline found on his shoes, paired with the Fire Marshal's instantaneous conclusion at the scene that the fire had been started with gasoline. Science now conclusively proves that there was no gasoline on his shoes. The State has admitted this evidence was false. The Fire Marshall's conclusion has also been debunked and no conclusion can be reached about the source of the fire.

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



Practice Tip: Litigating Runaway Wheel Cases



Mark Emison

“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.

Firm Settles Wheel-Off Trucking Case

(cont. from p. 1)



Likewise, the confidential tire service company had a history of wheel-off events after servicing commercial vehicles. In the 10 years prior to the subject incident, the confidential tire service company had documented 16 wheel separations that occurred after it installed a wheel on a commercial vehicle.

The confidential tire service company installed the wheel at issue just weeks before the separation occurred. After the installation, streaks from the lugnuts appears on the wheel hub – a telltale sign of loose lugnuts and potential wheel-off risk. The confidential trucking company had dozens of opportunities to identify this risk but failed to do so. Rather than taking the tractor-trailer out-of-service to service the wheel, the trucking company continued to drive the tractor-trailer interstate. Over time, the lugnuts lost clamping force which led to the dangerous wheel separation.

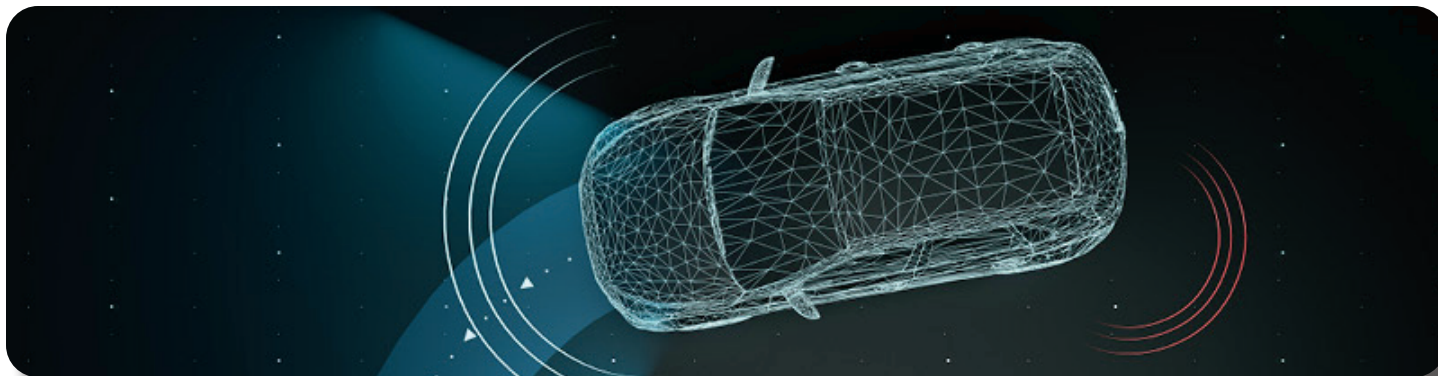
The case was venued in Clinton County, Missouri and settled on the eve of trial. The settlement involved \$10 million from the confidential trucking company and \$6 million from the confidential tire service company.



Wheel-off cases often include catastrophic injuries, like in this case the firm successfully resolved late in 2022

Potential Causes of Wheel-Off Incidents

- **Improper Torquing.** Wheel-offs may also result from improper torquing – the process of fastening the lug nuts to the wheel. Most commercial wheels specify torquing to 450-500 foot-pounds. If the lug nuts are under-torqued, they may become loose over time. This can lead to the movement of the wheel, and an eventual loss of clamping force. Likewise, over-torquing may stretch the lug nuts, studs, or threads and eventually lead to a wheel-off event.
- **Miscalibration of the impact gun.** Technicians typically use impact guns to torque lug nuts.
- **Improper Lubrication.** Depending on whether the wheel is hub-centric or lug-centric, either over-lubricating or under-lubricating may eventually lead to loose lug nuts and a loss of clamping force.



Autonomous Vehicles in Collision Avoidance Technology Cases



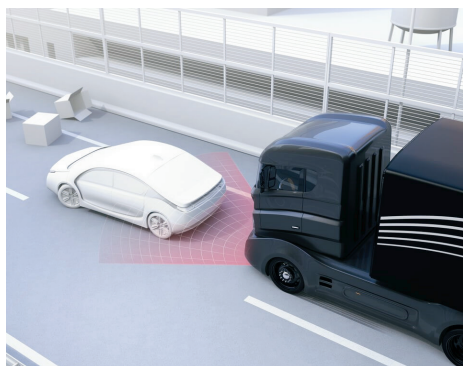
Justin Watkins

The Society of Automotive Engineers (SAE) defines vehicle automation systems on a scale from Level 0 to Level 5. At Level 0, there is no automation: the human driver does everything. At Level 1, the vehicle can assist the driver in conducting a part of a driving task, such as speed maintenance through adaptive cruise control systems that accelerate and decelerate to maintain speed and distance between vehicles. A level 2 vehicle is partially autonomous, capable of assisting the driver with multiple parts of driving. Level 2 vehicles, in addition to maintaining speed, are capable of steering without driver input, but the driver still must monitor the road and be actively engaged. At level 3, vehicles

will conduct all the driving tasks without driver engagement, with the driver merely required to be in “stand-by” mode to intervene under certain conditions. At level 4, vehicles will conduct the entire driving task without driver input, but only in certain limited conditions, such as at speeds of less than 25 mph. At level 5, vehicles will be fully autonomous under all driving conditions.

Currently, the highest level of autonomy available to consumers for purchase is level 2, although level 3 capable vehicles are on the way. But, despite the limited automation actually available in newer model vehicles, auto manufacturers have been overstating the capabilities of their vehicles, using buzz words like “self-driving”, “semi-autonomous” or “autopilot” in marketing, or in naming the vehicle’s autonomous systems, and leading drivers to believe they can relinquish control over the vehicle to the system. This marketing strategy, intended of course to gain a competitive edge and drive sales, has worked, as studies have shown that a significant majority of consumers believe it is currently possible to purchase a “self-driving car.”

Collision avoidance technology (CAT) is one of the hottest areas of the auto products liability arena, as cars and trucks are being equipped with this technology but the majority of lawyers don’t know how it can be defective.



This marketing approach likely goes beyond overstating a vehicles “self-driving” capabilities, extending as well to inflate the capabilities of other safety systems, such as automatic emergency braking. Drivers are led to believe these systems will prevent accidents on their own in all circumstances, without driver input, when in fact the systems have defined limitations, and still suffer from inconsistent activation under certain conditions. A driver that believes a system is more capable than it really is will over trust the system, leading to misuse in the form of complacency, overreliance and ultimately inattention, increasing the risk of serious accidents.

News and Notes

L&E Once Again Named a Tier One Firm for Plaintiffs



L&E has once again been ranked among the top practitioners in the 2023 edition of “Best Law Firms in America” for the category of personal injury litigation for plaintiffs. This publication for 12 years has ranked our firm as one of the top plaintiff’s options in the areas of both product defect litigation and personal injury. The rankings are based on a thorough evaluation process, including both client and attorney evaluations, peer review and data provided by law firms.

Firm Hosts Chicago Client and Injured Veteran at Arrowhead Stadium



One of our clients whose case was recently resolved successfully received an extra treat this fall, when Partner Bob Langdon hosted him to a game at Arrowhead Stadium. Veteran Max Gross is a self-described huge NFL fan, and so a chance to see Patrick Mahomes and the Kansas City Chiefs play on the annual Veteran’s Day game was a special experience. Max is a paraplegic who lives in the Chicago area, and the firm brought him in for this special Veteran’s Day experience.

Michael Manners Named a Top Appellate Attorney for Plaintiff’s Lawyers



Mike Manners

Partner Michael Manners has been named again as one of the most influential appellate attorneys as part of *Missouri Lawyers Weekly’s* “Power 30” ranking for 2023. Mr. Manners focuses his practice on appellate law services to plaintiff’s lawyers. As a trial lawyer he was accepted into the American Board of Trial Advocates and the International Academy of Trial Lawyers. He is a frequent lecturer to CLE’s and bar associations, and has served as president of both the Eastern Jackson County Bar Association and the Missouri Association of Trial Attorneys.



Brett Simon

Brett Simon Joins L&E as Associate Attorney

Brett Simon joined Langdon & Emison this winter as an attorney in the firm’s Kansas City office. Brett was an attorney most recently with the Baker Sterchi law firm in Kansas City. He is a graduate of the UMKC School of Law and was included in the “Ones to Watch” list for the nation’s top young attorneys by *Best Lawyers in America*.

Firm Litigating Fiduciary Liability Claims on Behalf of Individuals and Families



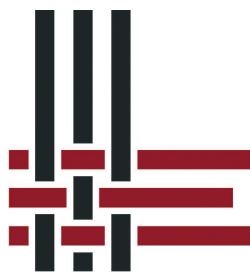
Breaches of fiduciary duty occur when a fiduciary obtains profits or other advantages through self-dealing, or causes a loss to the principal. Individuals who take on fiduciary duties are usually trustees, officers, directors, executors, or administrators. Langdon & Emison represents individuals and families who think they may have been a victim of such breaches of fiduciary duty.

Fiduciary relationships can include but are not limited to:

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

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 for how to obtain 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.

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.



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