

**LANGDON
& EMISON**

Newsletter

Fall 2023

What's Inside

Page 2 – L&E Settles
Railroad Crossing Case

Page 3 – U.S. Truck
Accident Statistics

Page 4 – Firm Obtains
Settlement Against Kia

Page 6 – Spotting a
Products Case in a Work
Comp Claim

Page 8 – Revealing Seat
Defects in Today's Autos

Page 10 – JPML Issues
Order in Bard Cases

Page 11 – Acetaminophen
Linked to Pregnancy Risks

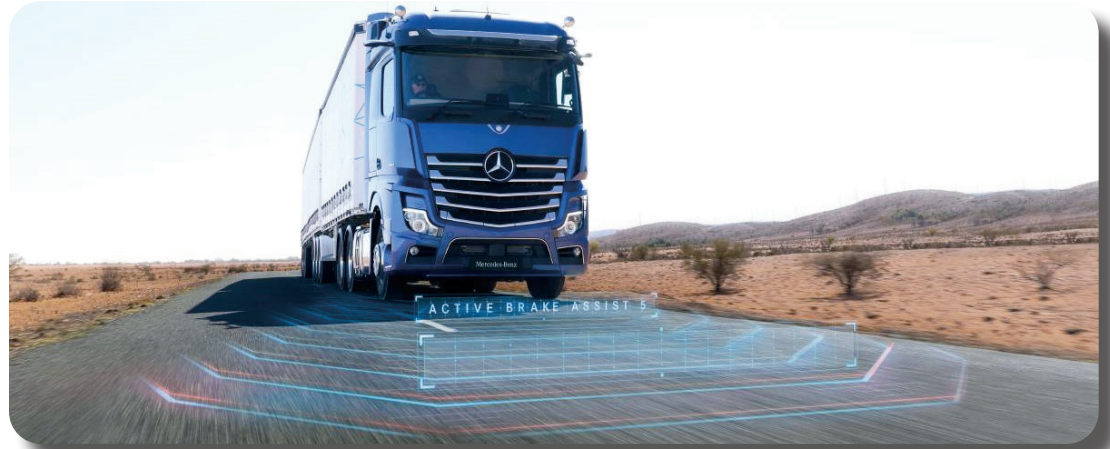
Page 12 – Autonomous
Vehicles and CAT

Page 13 – Firm Settles
Dram Shop Case

Page 14 – IIHS Outlines
New Safety Standards

Page 15 – Defective Airbags
on U.S. Highways

Page 16 – Firm Handles
Fiduciary Duty Matters



Regulators Call for Collision Avoidance Technology Updates on Heavy Trucks

A new proposal from the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration is the latest development in Collision Avoidance Technology – this sweeping rule would require all trucks over 10,000 pounds to be equipped with an automatic emergency braking (AEB) system and an electronic stability control (ESC) system that works in conjunction with AEBs.

This new regulation would go into effect for most new Class 7 and 8 trucks (weight ratings of over 26,000 pounds) within three years of the final rule, and most new Class 3-6 trucks (10,000 pounds) within four years. Collision Avoidance Technology, which we have written about in these pages for a few years, is now on the National Transportation Safety Board's "Most Wanted" list of safety regulations.

NHTSA is proposing a standard that would require the technology to work at speeds ranging between 6 and 50 mph. FMCSA is proposing that all AEB and ESC systems in commercial vehicles as required by NHTSA's part of the rule be engaged by drivers whenever the truck is operating.

AAA estimates that as many as 2.7 million crashes each year in America could be prevented if the latest CAT developments were used fully. CAT includes many different safety measures and auto product improvements, including those for autonomous vehicles, which is covered in more depth on page 12 of this newsletter.

This new regulation would require all trucks over 10,000 pounds to be equipped with an automatic emergency braking system and an electronic stability control system.



L&E Resolves Catastrophic Injury Dispute with Railroad



Brennan Delaney


Langdon & Emison settled another railroad accident case this summer when attorneys Brennan Delaney and Summer Davidson led a legal team in representing the family of a severely injured driver of a truck that was struck by a freight train in Missouri. The firm showed during the dispute that the railroad's negligence led to the crash.

The collision happened in 2021, and caused the firm's client to be ejected from his vehicle, nearly killing him. The firm argued that the train failed to sound its horn at the crossing. The firm also argued the railroad failed to maintain the vegetation at the crossing consistent with Missouri law, obscuring the driver's view of the eastbound train approaching the crossing.

The railroad accident team at Langdon & Emison has been nationally recognized by Best Lawyers in America as a Tier One railroad practice for plaintiffs. The firm has tried railroad accident cases all across the U.S., and has had a track record of 7-figure verdicts in these cases. Brennan and Summer have been recognized for their outstanding representations of clients by *National Trial Lawyers*, *Best Lawyers in America*, *Super Lawyers*, and *Missouri Lawyers Weekly*.

Common causes of railroad accidents:

- Mechanical failure
- Outdated tracks
- Poor sight lines
- Defective warning devices
- Conductor negligence



Truck Accident Statistics

68%

of truck
wreck
fatalities are
passenger
vehicle
occupants

52%

increase in trucking accidents since 2009

11%


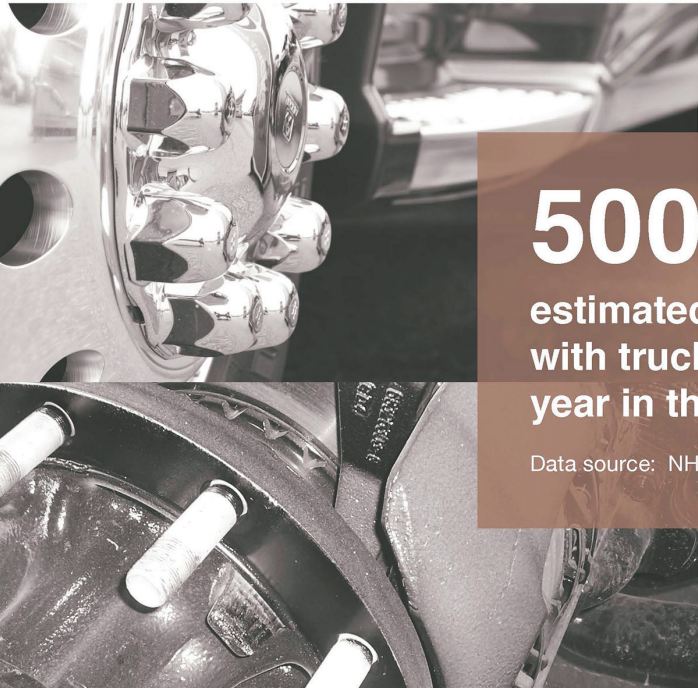
of motor vehicle wreck
fatalities are in crashes
with semi-trucks

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



Firm Obtains Settlement Against Kia Over Defective Non-Deployment of Front Airbag and Seatbelt Pretensioner



Michael Serra

In May 2023, the L&E legal team completed the successful representation of Dave Montgomery, a 73-year-old restrained front seat passenger who suffered a diffuse axonal brain injury because his frontal airbag and seatbelt pretensioner failed to deploy during a significant frontal collision. The global settlement resolved Mr. Montgomery's claims against Kia Motors Corporation and the driver of the 2010 Kia Optima. Partner Michael Serra led the legal team in this matter.

Catastrophic injuries caused by defective design

At the time of the wreck in September 2020, Mr. Montgomery was a properly belted and seated front seat passenger. The operator of the 2010 Kia Optima pulled out into traffic, getting hit by a Honda Civic on the driver's side front door.

Following the initial side impact, the Kia Optima veered off the roadway, striking a tree at the passenger side frame rail or headlight area. Based on a crush analysis, the initial side impact was approximately 13 mph delta-v and the secondary frontal tree impact was approximately a 24 mph delta-v impact.





A download of the event data recorder showed that the airbag control unit lost communication with the front impact sensor, which prevented deployment of the front airbags and seat belt pretensioners during the secondary frontal impact. The L&E legal team argued that the design of the airbag system was defective because the airbag control unit was unable to independently command deployment the frontal airbags and seat belt pretensioners without data from the front impact sensor.

Kia designed the 2010 Kia Optima with a single front impact sensor and routed the wiring for the sensor through the driver's side front door. Kia's design of the front impact sensor exposed the wiring to damage during a side impact. Through expert testimony, the L&E legal team presented a safer alternative design that utilized dual front impact sensors at the outboard structural rail location. Here, the wiring to the airbag control unit and modified deployment algorithm permitted the airbag control unit to independently deploy the airbags and pretensioners using its internal accelerator.

During this case the firm showed how deployment of the passenger frontal airbag and pretensioner would have prevented devastating brain injuries.

Kia Argued Occupant-to-Occupant Contact

The primary defense of Kia was based on injury causation. Kia argued that Mr. Montgomery's head injuries were caused by occupant-to-occupant contact with the driver during the initial side impact. However, through biomechanical and neuroradiological evidence/testimony, L&E showed that the Mr. Montgomery's head injuries were consistent with his upper body moving forward in response to the tree impact and striking the dash with the front and left side of his head. Moreover, the deployment of the passenger frontal airbag and pretensioner would have prevented his the devastating brain injuries.



Discovering Product Defect Claims in Work Comp Cases

Broader liability can often be found in cases initially relying on a work comp claim for recovery; there are many situations where, during the course of our own client's employment, the party responsible for injuries on the job was not solely the employer. Sometimes these crossover cases can go overlooked, because sometimes as attorneys we can become focused on looking for the case aspects that align with our specialty in the law. But we need not limit our claim to the workers' compensation system, particularly when there may be a viable personal-injury case for the injured party, and still the workers' comp claim is intact.

There may be a viable personal-injury case for an injured party while still keeping the workers' comp claim intact.

One scenario in which a crossover case can exist is when employees are injured by a defective product while acting in the course and scope of their employment. The product may be owned and operated by the client's employer, and he or she may have been using it while on the job, or it could be separate from the employer. This type of opportunity can arise in workplaces connected to industrial equipment, dollies, warehouse vehicles, mobile warehouse storage shelving units, forklifts and scissor lifts, and a whole array of machines.

Multi-employer worksite

One common area where you can see a crossover case in is situations involving an injury suffered at a multi-employer worksite. This would be a situation where more than one employer or trade are working closely together or nearby. For instance, a large industrial workplace has many different projects being worked on at any one time.

Often in these situations your client's injuries may be due to the negligent actions of parties other than his or her employer. In these situations your client will have a viable work comp case to pursue because he was injured while on the job, but also against the party at fault, whether that was a subcontractor or someone else.

Premises liability and dangerous condition cases

Another potential basis for a crossover case can come from a situation when your client is injured on the job, but the accident happened on property not owned by his or her employer. This can include delivery jobs, or other situations where the worker is “off-site.”

We have seen significant damages come from slippery surfaces, and thus there have been cases where there is both a work comp claim and a personal injury claim against the property owner whose employee was negligent in de-icing the sidewalk, or bolting the hardware to the wall, or mopping the floor.



Spotting auto product defect cases

Any accident that involves paralysis, death, loss of limb, or brain damage should be analyzed for possible product liability claims. Here is just a brief look at the types of defects that can be found in an auto accident.

Restraint system defects: A second collision can take place when the passenger hits the interior of the vehicle, or in cases of ejection, impact outside the vehicle. Seat belt injuries can occur when a defective seat belt inadequately protects a passenger.

Roof crush: Instead of making the roofs stronger, auto manufacturers rely on inadequate government standards that fail to require manufacturers to conduct dynamic rollover tests on their roofs. When a roof crushes substantially during an accident, from a failure of the side rails, headers or support pillars, catastrophic injuries can occur. Often, this decreased survival space results in the occupant's head impacting some portion of the vehicle causing death, paralysis or brain damage.

Seat defects: There are several possible defects related to the seat in a vehicle, including seat back failure; seat track failure; and inadequate head rests or the lack of head rests. In our own practice we recently earned a record plaintiff's verdict in a defective seat back case. Generally speaking, a seat back failure can interfere with the car's restraint system, allowing vehicle occupants to impact rear seat objects in a rear-impact collision because they are not properly restrained.

Rollover and stability issues: Sport Utility vehicles (SUV's), and other tall, narrow vehicles are prone to rollover. A vehicle should not roll over because of friction forces alone. We have settled many cases with manufacturers of 15 passenger vans, as those roll over with great frequency.

Defective tires: Tire tread separation can be caused by bonding problems in the tire manufacturing process, contaminants introduced into the tire during the tire making process, under-vulcanization, old ingredients, improper sized components, or something as simple as air being trapped in between the layers of the tire during manufacturing. Detreading of these defective tires can result in single- or multi- vehicle accidents, or even rollovers.

Defective airbags: We have litigated cases across the country against Takata and other makers of defective airbags. Late deploying airbags can fail to protect an occupant from contact with the interior of the vehicle.





Revealing Seat Defects in Today's Autos

If a front seat is sufficiently strong and adequately designed, one can walk away from a wreck with just temporary inconvenience and soreness. A weak and defective seat, however, increases the risk of a life-altering traumatic brain injury (TBI) or spinal injury. Sadly, defective seats and headrests needlessly continue to harm vehicle occupants.

Dangers Posed by Defective Seats

In frontal collisions, seat belts and air bags protect occupants by keeping the occupant in the seat and limiting dangerous contacts with the passenger cabin and debris. Similarly, in rear-end impacts, the front seat's role is to manage energy and contain the occupant in the front seating space. Weak, defective front seats, however, can fail, collapse, and cause front occupants to catapult backward into the rear of the vehicle. This creates a dangerous hazard to both the front occupant and those sitting in the back.



Danger to Children

Each year, about 50 children seated behind front seat occupants are killed in rear impacts. Countless others suffer severe brain injuries. Auto manufacturers typically recommend that children age 12 and younger be seated in the back to avoid injuries from air bag deployments, but they do not warn parents that the front seats may fail and put their children in danger. When front occupants catapult rearward in a seatback failure, children in the back seat may suffer severe TBIs.



Seatback failures pose a potentially lethal danger to front occupants in two common scenarios. First, front occupants risk severe spinal and brain injuries as their bodies jettison into the rear of the vehicle and violently contact a rear occupant or the rear seat. Second, an initial rear-end impact may leave a front occupant out of position in the seat and vulnerable to being thrown around within the vehicle in subsequent impacts.



Signs of Defective Seats and Headrests

If you suspect a seat failure led to or increased the severity of your client's injury, start by determining the mechanism of injury. A biomechanical expert can use the physical evidence, mechanism of the seatback failure, and evidence of injuries to determine the forces that ultimately caused the enhanced injuries. It also is important to identify deformation to the seat and evidence of occupant contact with other structures. Every rear-end collision that involves a serious TBI, spinal injury, or death should be screened for defective front seats. There are several tell-tale signs of a seat failure.

Deformed or twisted seats. In seatback failures, the front seat commonly appears deformed or twisted. While visible deformation is a red flag, deformation is not always visible. A defective seat may collapse and absorb a small amount of energy. In such a case, there will be less

deformation. When there is little visible seat deformation, the key to identifying a seat failure is first identifying a severe brain or spinal injury in a rear impact.

In addition, during the investigation process, the front seat may not always be reclined rearward after a failure. First responders or scene witnesses commonly adjust the seats in the extrication process, so it is important to interview them regarding their observations of the seat and your client after the impact.

Head and facial trauma. Trauma to both the front and rear occupants provide clues as to whether a defective front seating system contributed to enhanced injuries. Rear occupants may have severe TBIs, facial fractures, or head lacerations. Lacerations, contusions, and injuries to the back or top of a front occupant's head also provide evidence that the front occupant ramped (slid up the seat) rearward and struck a rear occupant. In addition, the friction from rapidly ramping rearward in a seatback failure has been known to cause occupants to lose streaks of hair, which provides evidence of a seatback failure.

For example, in one case, a child was seated in the back behind her mother when their vehicle was struck. The front seat did not contain the mother in the front—rather the mother ramped rearward, striking the child. The child suffered frontal skull and orbital fractures that resulted in severe traumatic brain injuries. The mother suffered less severe injuries, but a 3-inch laceration on the back of her head provided key evidence that she ramped rearward and struck her child due to her defective seat.

Signs of contact on the rear seat. When a defective seat allows a front occupant to catapult into the rear seat, there may be evidence of the contact on the rear seat. For instance, in a recent case, a front occupant ramped into the rear of the vehicle and suffered a catastrophic spinal injury. Documentation of his hair on the rear seat provided key evidence of the front seat failure and subsequent ramping into the rear seat.

Broken or missing headrests. Look for a missing or broken headrest. To dislodge or break the headrest, an occupant's body must ramp rearward and load (apply force) the head restraint. A broken headrest shows the seat did not properly contain the occupant. Injuries resulting from headrest failure include paraplegia.



JPML Issues Order Consolidating Implanted Port Catheter Cases Against Bard

The U.S. Judicial Panel on Multidistrict Litigation has issued an order to centralize federal lawsuits alleging injuries caused by port catheters manufactured by Bard. Langdon & Emison was one of four firms that brought the motion to consolidate and transfer lawsuits across the country with the goal of forming multidistrict litigation.

The Bard litigation has been transferred to the U.S. District of Arizona with the Hon. David E. Campte presiding over the MDL. Lawsuits filed across the country allege implanted port catheters, commonly used to administer chemotherapy and other medicine intravenously, carry a high risk of complications and failure.

An implantable port catheter is a small central venous access port placed under the skin of the chest area. It is attached to a thin, flexible tube called a catheter that is threaded along a large vein into a place near the heart.

These port catheters are made with Barium Sulfate, which manufacturers have known for years leads to structural degradation of the catheter and can cause the device to fracture and migrate into the patient's tissue. This degradation can also create pores in the catheter material that can harbor bacteria and lead to very serious infections that may result in sepsis and even death.

Langdon & Emison is accepting cases nationwide on behalf of patients who suffered serious injuries from defective port catheters. Common injuries include:

- Infection
- Blood Clots
- Injuries such as embolism and stroke
- Post-implant arrhythmias
- Death

For help evaluating a case for a potential port catheter claim, contact our mass tort partners Brett Emison or Danielle Rogers at 800-397-4910. Langdon & Emison is also investigating potential claims for similar injuries resulting from port catheters manufactured by Angio Dynamics.

For help evaluating a case for a potential port catheter claim, contact our mass tort partners Brett Emison or Danielle Rogers at 800-397-4910.

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.



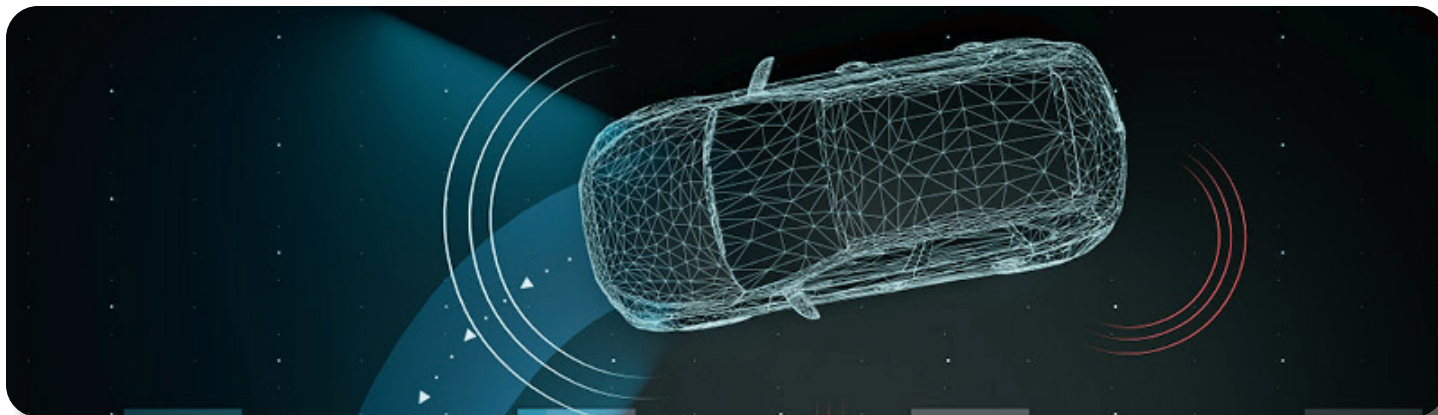
A growing number of acetaminophen lawsuits are now being filed against manufacturers of acetaminophen-based drugs, alleging that use of the painkiller during pregnancy caused children to develop autism spectrum disorder (ASD) or attention deficit hyperactivity disorder (ADHD).

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.



Autonomous Vehicles in Collision Avoidance Technology Cases



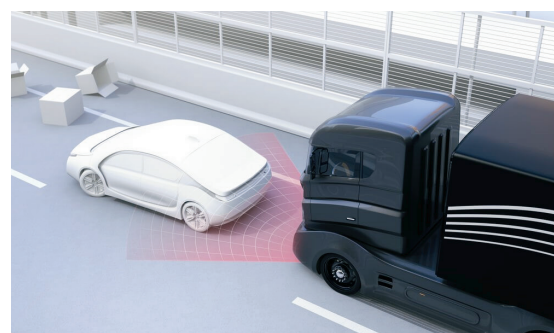
Justin Watkins

Despite the limited automation actually available in newer model vehicles, car makers use buzz words like “self-driving”, “semi-autonomous” or “autopilot” in their marketing. This strategy to 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.”

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. 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.

Cars and trucks are being equipped with this technology but the majority of lawyers don't know how it can be defective.



Firm Settles Dram Shop Fatality Case

It is estimated that 28 people die each day in alcohol impaired crashes in the U.S.

Langdon & Emison favorably settled another dram shop matter this year when it resolved a case against a bar in southwest Missouri that over-served a drunk driver who then got behind the wheel and crashed, killing his passenger. Partner Brennan Delaney led the legal team that obtained a significant recovery for the deceased passenger's family.

The 2019 wreck came after the driver had spent the night at the defendant bar, where he was repeatedly served drinks. The L&E legal team located evidence that established that the driver's intoxicated state was apparent on-site yet the bar kept serving him. As a result, the defendant bar's insurer paid its policy limits to resolve the case.

NHTSA data showed that in a recent year approximately 28 people died each day in alcohol impaired crashes in the United States, with many more wrecks leading to injuries. In the numerous states that have dram shop liability, a claim against the bar is a potential additional avenue of recovery if the drunk driver's own insurance is insufficient.

However, an initial investigation of this type of claim is often complicated by ongoing criminal proceedings against the drunk driver. L&E has successfully litigated these cases for a number of years.

Two keys to investigating such claims are determining 1) where and when the drunk driver was served their last drink; and 2) what the drunk driver's BAC was. Once this information is obtained, a toxicologist can backward extrapolate the person's BAC to the time the last drink was served and then correlate it with what the signs of intoxication the majority of people would be displaying at that BAC. Combined with any witness testimony, other evidence shown throughout the night, including in the moments right before or after the crash, can be used to make a convincing showing that the defendant driver was visibly intoxicated when he was being served alcohol.

A toxicologist can backward extrapolate the person's BAC to the time the last drink was served and then correlate it with what the signs of intoxication the majority of people would be displaying at that BAC.



IIHS Strengthens Safety Requirements for Safety Ratings

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.



Many vehicles have obtained poor ratings from the new frontal testing that uses child dummies in the back seat.

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.

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.

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

Langdon & Emison Litigating Fiduciary Liability Claims on Behalf of Individuals and Families



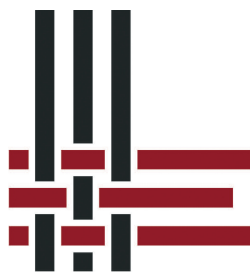
Breaches of fiduciary duty occur when a fiduciary obtains profits or other advantages through self-dealing, or causes a loss to the principal. Individuals who take on fiduciary duties are usually trustees, officers, directors, executors, or administrators. Langdon & Emison represents individuals and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



**LANGDON
& EMISON**

When It Matters, We'll Be There.

1828 Swift, Suite 303
N. Kansas City, MO 64116
816-793-8867

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

*110 E. Lockwood, Suite 150
St. Louis, MO 63119
314-638-1500

*55 W. Monroe Street, Suite 3700
Chicago, IL 60603
312-855-0700

1-800-397-4910

*By appointment only.

LangdonEmison.com