LANGDON & EMISON

Newsletter

Winter 2025

What's Inside

Effective Use of Focus Groups for Winning Your Case

We all would like to have a crystal ball that would show us what jurors are discussing during jury deliberations in our cases, what they like, dislike or don't understand. While focus groups are not crystal balls, they are a close second. Effective use of focus groups will tell us how to make our cases better and how to win your case.

How to Conduct a Focus Group

A focus group will be meaningless unless it's conducted "objectively." The facts and arguments of the parties must be done such that the jurors wouldn't be aware of who you represent. If you fail to do the focus group in a "balanced" manner, you'll do more harm than good.

If you present facts overly favorable to your client, you'll get a false sense of the value of your case. While you don't want to overcompensate, we tend to present the case more favorable to the defense in order to expose what issues we need to address with our experts or arguments. There are two styles of focus groups to consider.

(Continued p. 8)

4 CONSUMER PRODUCTS THAT HAVE LED TO SERIOUS INJURY

Many types of consumer products are the subject of product liability lawsuits because their design, manufacture or failure to warn causes serious injury or fatalities. Here is an overview of four consumer products Langdon & Emison has evaluated and pursued for product liability claims.

1 LAWN MOWERS

They're equipped with a dead-man's switch designed to stop the mower and disengage the cutting blade if the operator falls from the driver's seat; when that switch is defective, rollovers occur.

2 SAFETY HARNESSES

When used to safely secure people at extreme heights, the harnesses are prone to fail if not manufactured properly, leaving people severely injured or worse.

3 TREE STANDS

Tree stands can tumble due to structural failures of the stand, ladder or tree steps. Injuries often occur when hunters enter or leave the stand and ascend or descend the tree.

4 CHILD SLEEPING ROCKERS

Fisher-Price Rock 'n Play Sleepers and similar products can cause infant fatalities due to unrestrained rolling from the back onto the stomach or side. Reports also include positional asphyxiation and torticollis.

Airbag Defects 101

5 Common Airbag Injuries

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

WHAT TO LOOK FOR:

DEPLOYMENT

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

FAILURE TO EQUIP

- Side curtain airbags
- Torso airbags

NON-DEPLOYMENT

- Deployment occurred, but airbag did not deploy
- Driver's airbag deployed, but passenger's did not
- Torso or side curtain bag did not deploy

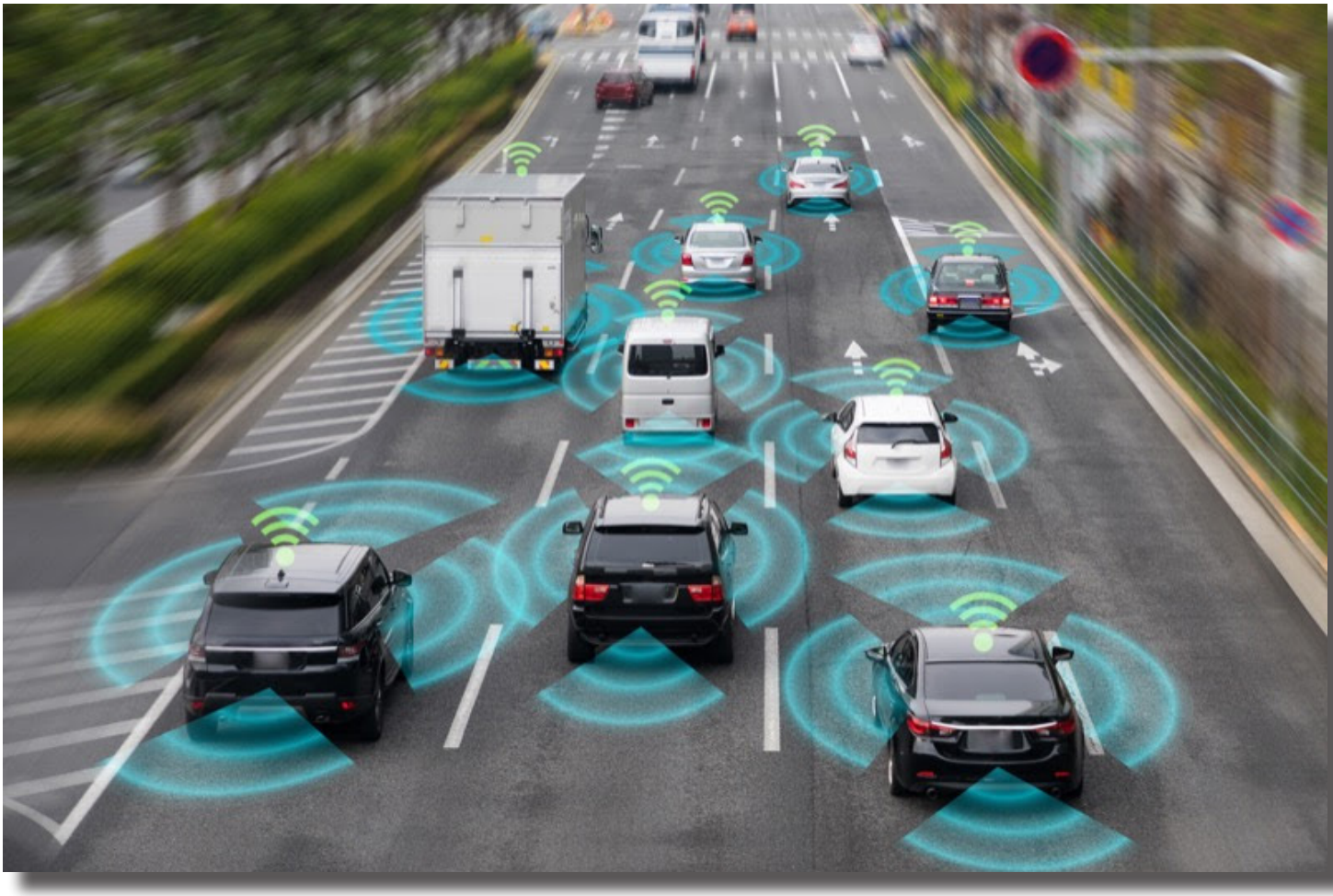
15 TAKATA AIRBAG DEATHS IN THE U.S.

124 GM IGNITION SWITCH DEATHS

MORE INJURIES TO COME:

2.6 MILLLION+
VEHICLES RECALLED FOR GM IGNITION SWITCH DEFECT

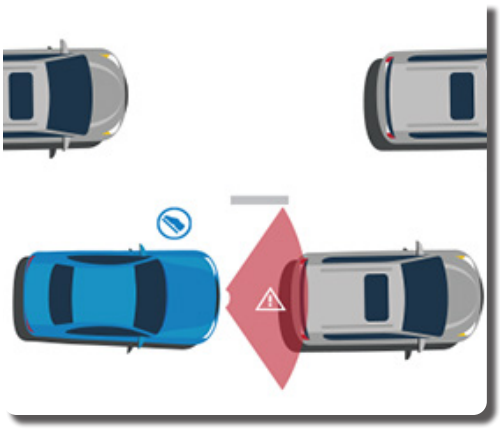
69 MILLION
TAKATA AIRBAG INFLATORS RECALLED



Trends in Advanced Driver Assistance Systems

Advanced Driver Assistance Systems, or ADAS, remains the next frontier in the automotive and heavy truck safety technology, representing the first step on the path to a new era of roadway safety: full automation, or the elimination of human drivers.

Even with the advancement of safety technologies over the last 70 years, full automation remains a product of the future, and severe injuries and fatalities continue plaguing our roads and highways. Nevertheless, many motor vehicle accidents are avoidable now thanks to the growing maturity of systems designed to mitigate collisions, or avoid them entirely. These systems help reduce human driving errors, and help reduce injuries and fatalities on our roads.



By design, ADAS reacts only to specific collision risks. Less advanced CMS functions respond solely to vehicles or vehicle-sized objects, but not pedestrians. Different systems are designed to operate under different conditions and ranges of speed. Understanding the technology's limitations is essential to determining whether a collision and any resulting injury or fatality could have been avoided.

CMS systems fall into two sub-categories: warning systems (alerts the driver of a potential risk and the driver must then take action to avoid it) and autonomous systems (designed to avoid a risk without driver aid).

Warning Systems

1. Lane Departure systems utilize sensors and cameras to monitor lane markings, detect collision risks on each side of the vehicle, and notify the driver when the vehicle is drifting out of the lane. They can eliminate multiple types of collisions including vehicles sideswiping other same-direction vehicles, crossing center lines into oncoming traffic, and colliding with objects on the side of the road.

Many motor vehicle wrecks are avoidable thanks to the growing maturity and accessibility of advanced driver assistance systems.

2. Forward Collision Warning (FCW) systems identify potential collision risks by monitoring the vehicle's speed and assessing the distance and speed of a vehicle ahead. If FCW detects an imminent collision risk, the systems can provide auditory, visual and haptic warning.

3. Blind Spot Warning systems alert drivers when another vehicle occupies their blind spot. These are primarily visual, usually a simple signal on the side mirror. However, activating the turn signal when a vehicle occupies a blind spot typically employs auditory warnings.

4. Rear Cross-Traffic Warning systems only act when a vehicle is in reverse, monitoring the space behind the vehicle for cross traffic and alerting when there is a collision risk (such as a vehicle or pedestrian to the rear of the vehicle). These systems play a vital role when risks are outside the range of a backup camera.

Autonomous Systems

1. Lane Keep Assist systems prevent lane drifting by detecting unintentional lane departures using sensors and cameras. The system maintains the vehicle's lane by accelerating one or more wheels, autonomously correcting the steering, or combining both actions.

2. Lane Centering Assist systems use cameras to monitor the vehicle's position inside its designated lane of travel, automatically applying steering adjustments to keep it centered.

3. Automatic Emergency Braking (AEB) systems automatically apply the vehicle's brakes if they detect an imminent crash, helping reduce or avoid forward collisions in certain situations. Two versions of AEB systems exist, and they often work in tandem: crash imminent braking (CIB) and dynamic brake support (DBS).

4. Blind Spot Intervention systems supplement blind-spot warning systems, intervening when drivers ignore them by preventing transition into the occupied lane through light braking or steering the vehicle back into its original lane.

Motor vehicles serve as the primary means of travel for the average person and play a crucial role in commercial transportation. The National Safety Council reports an 8% increase in motor-vehicle crash deaths from 2019 to 2020, despite reduced vehicle usage during the pandemic. In 2021, deaths rose by 11% to 46,980, while 2022 saw a slight decrease to 46,027 deaths and 5.2 million medically consulted crash-related injuries.

While it is uncertain whether ADAS and fully autonomous vehicles will eliminate all motor-related injuries and fatalities, the Plaintiffs' bar must ensure reasonable safety features are integrated into all vehicles and hold the motor vehicle industry accountable with corrective action if defects do arise. These figures underscore the critical importance of prioritizing road safety.

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 is also 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.

Focus Groups *(continued from p.1)*

Discussion/Narrative Style

In a discussion or narrative format, a moderator presents a short, neutral narrative of the case facts. Although "neutral," our firm tries to "stack the deck" against the plaintiff's case so we find out as much as we can about the issues in the case.

We use a combination of a discussion of the issues with a PowerPoint presentation to help present the important facts or issues. One advantage of a narrative focus group is that you can direct the discussion to the issues you want to learn about. Narrative focus groups can be done on a low budget and generally take less time than adversarial presentations.

Adversarial Style

In an adversarial focus group, one attorney presents the plaintiff's case and then another attorney presents the defendant's case. Care must be taken such that "advocacy" of the two sides does not skew the results. Adversarial focus groups generally take longer than narrative focus groups, but they are closer to the adversarial nature of the real trial.

A focus group may tell you if you have a causation issue that needs to be addressed, or something related to the liability theory in your case.

When to Conduct Focus Groups

There are at least four occasions where focus groups should be considered. The first is before you accept the case. In this stage, you need enough facts to conduct the focus group, but assuming you have basic facts, this is very important in certain situations. One circumstance where you'd want to perform a focus group is if your client is at fault and you're in a jurisdiction where there is no recovery if the client is over 50% at fault. Another would be if you have a good claim but your client was slightly over the legal limit.

Another stage where you want to consider focus groups is before you produce expert witness reports. This is extremely helpful to make sure your experts' opinions are in line with the focus group "takeaways." The focus group may be able to tell you if you have a causation issue that needs to be addressed, or something related to the liability theory in your case.

Another stage for focus groups: After defense experts are deposed. This will tell you what issues you need to address with a rebuttal witness.

Finally, focus groups can help you prepare your opening statement. A jury must clearly understand your opening statement. Use this time to make sure you clearly explain your case in opening. You don't need focus groups on each of the times listed above, but depending on the case, one or more will be critical in evaluating your case. The last two, after defense experts and for opening statement, are the most important in our experience.

Different Formats for Focus Groups

There are many options for conducting your focus group. In-person focus groups can be done for as little as a few hundred dollars. This assumes you do your own recruiting. The key here is to be careful to recruit a good cross-section of jurors.

In-person focus groups should be as close to the actual trial as possible.

We use Zoom or online focus groups more than in-person focus groups. These are relatively easy to set up and present. The ultimate "take-aways" are excellent and just as effective as in-person. The cost of these is approximately $5,000 to $6,000 with 12-15 jurors.

We often have a jury consultant help with the focus group which obviously increases the cost. Two companies to consider for these are Legally Under Oath and Focus Forward. These focus groups can cost over $20,000. We use these to present the case as close to the actual trial as possible. When spending this much on a focus group, we always have a jury consultant observe.

What Evidence Should Be Shown to the Focus Group

- Some obvious items are photos of the scene, summaries of critical fact witnesses, etc.
- Jurors like to see videos of key witnesses. You'll get good feedback on what the jury thinks of the witness and how much weight or credibility the witness may be given at trial.
- When testing liability issues, we often wait to present "damage" evidence, which provides a more true sense of liability without sympathy for your client being factored into the discussion.
- Make sure the evidence you present is balanced to both sides.

Home Fires Pose Danger to All

358,500

The estimated number of house fires in America each year

The importance of having working smoke alarms in each bedroom and on each level of our homes, including the basement, is well publicized in America. But did you know that they might not alert you to an attic fire?

A friend of the firm's learned this recently when a fire started in her attic while she and her family were sleeping. Because hot air rises, the smoke and flames were trapped in the attic and did not set off the fire alarms in the living areas of her home. Fortunately, an up-late neighbor noticed the flames shooting from the attic and called the fire department. The firemen broke into the house, awakening the family, and saving them moments before the ceiling and roof collapsed.

You might think that the solution is to put a smoke detector in the attic. But in the Midwest, attics get very hot in the summer, and you're likely to have false alarms. A better option for the attic is a heat sensor.

There are three types of heat sensors. A fixed temperature heat sensor is triggered by the temperature in the attic. Most trigger at 135 degrees. But you might experience false alarms in hotter parts of the country. Another type is called "rate to rise." It triggers when the temperature rises at a sudden rate. The third type is a combination of rate-of-rise and fixed temperature.

As a reminder on smoke alarms, they can be photoelectric or ionization, or, better yet, dual sensor (both photoelectric and ionization). Photoelectric alarms detect smoldering fires (such as a cigarette), while ionization alarms are better at detecting fast-burning fires.

One can now find many smoke detectors that have a 10-year battery life – especially great for those who have hard-to-reach high ceilings. And don't forget to have a working carbon monoxide detector outside each bedroom and on every floor.

News and Notes

Seven L&E Attorneys Honored by Best Lawyers in America

Best Lawyers

Partners Bob Langdon, Brett Emison, David Brose, Kent Emison, Mark Emison, Michael Serra, and Mike Manners have been recognized by *Best Lawyers in America* as top attorneys in their respective categories of personal injury litigation for plaintiffs. Additionally, two of our younger attorneys were included in the publication's "Ones to Watch" category that honors the nation's top young lawyers.

Connor Brown, Margaret Stansell, and Sara Skelton Join Langdon & Emison as Associate Attorneys

CONNOR BROWN *SARA SKELTON* *MARGARET STANSELL*

In the past year, Connor Brown, Sara Skelton and Margaret Stansell joined the firm as associate attorneys in our complex torts division. Each attorney has a great deal of experience litigating motor vehicle collisions, products liability cases, professional malpractice and insurance coverage issues. Connor is a graduate of Lindenwood University and the Washburn University School of Law; Margaret from the University of Missouri-Kansas City for both undergraduate and law school; and Sara from Truman State for undergrad and UMKC for law school.

Firm Continues Support of Trial Advocacy Team

L&E has continued its multi-year commitment of the trial advocacy program at the University of Missouri-Kansas City School of Law, contributing $25,000 annually. In the short time that the school has been collaborating with trial lawyers on this program, they have built a mock trial team that consistently makes deep runs in competitions sponsored by the ABA, AAJ, and the championship of the National Mock Trial Competition. This year the UMKC team made it to the finals or semifinals in all its major competitions.

For more than 35 years, we've been working together with lawyers across the country, and would love to have a chance to work with you to maximize your recovery for your client. Visit us at LangdonEmison.com or call us any time at the number below for a no-obligation review of your potential case.

To date we have shared more than a half billion dollars in settlements with our co-counsel, against some of the largest companies in the world.

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Fiduciary Duty
Airbag Defects
Defective Vehicles
ADVANCED DRIVER
Premises
Train Crossing Accidents
ASSISTANCE SYSTEMS
Liability
Defective vehicles
Seat Defects
Defective Tires
NEGLIGENT SECURITY
Brake Defects
Defective
DEFECTIVE CONSUMER
Auto Accidents
Restraint Systems
PRODUCTS
All-Terrain Vehicles
FUEL-FED FIRES
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