

# KLEIN · LYONS

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## FULL DISCLOSURE

### August 2010

#### This Month in Full Disclosure:

**Zimmer Hip Implant Class Action**

**Back to school – Keeping Kids Safe in School Zones**

**ARRIVE ALIVE: Smart Car Technology Gaining Momentum**

**Rehabilitation Resources at GF Strong**

**Woodlands Settlement Approved**

**Klein Lyons Files Class Action For Alberta Municipal Employees Who Received Long Term Disability Benefits**



Europe there have been scores of reports that the implant does not heal properly after surgery and that it fails to adhere to the surrounding bone. Instead, it remains loose or separates from the bone, causing the patient excruciating pain. It must be removed, requiring the patient to undergo further hip surgery. Patients in Canada may wait months for such surgery, unable to work or participate in their normal activities in the interim.

The action was started by Dennis Jones of Langley, BC, and Susan Wilkinson of Osoyoos, BC, who each received a Zimmer hip implant and had to undergo revision surgery when the implant failed. Many other Canadians have since joined the lawsuit.

Concerns about the hip implant were first raised in the United States in early 2008 by orthopedic surgeons who had observed an unusual number of failures with the device. Initially, Zimmer sought to blame the doctors for these failures, even though the complaints were coming from very experienced surgeons. On July 22, 2008, however, Zimmer initiated a recall of the product in the United States. Zimmer took the position that the problems reported with the device in the United States were unique to that country, and that the implant sold there was different from that sold in other countries. Because of that, Zimmer did not immediately issue a recall in Canada.

Subsequently, however, the company did take action in other countries, issuing an urgent safety notice in the United Kingdom on October 13, 2009, and a recall notice in Canada on November 15, 2009 — nearly two years after reports of problems in the United States.

One of the goals of this lawsuit is to get answers for our clients. Many questions arise as to the apparent discrepancy between the marketing of this product in Canada and the United States. It is alleged that the product was defective and that the Defendants failed to adequately test their product, failed to promptly follow up on complaints about the implant and failed to initiate a timely recall. Instead, the Defendants incorrectly blamed the hip implants' failures on physicians.

The lawsuit is now before Mr. Justice Bowden of the British Columbia Supreme Court in Vancouver. The court has established a schedule for the case, leading to argument on class certification on February 7, 2011. [More on the Zimmer Hip Class Action.](#)

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### Back to school – Keeping Kids Safe in School Zones

By Barbara K. Adamski

With the back-to-school season just around the corner, it's time to start thinking about traffic safety issues again.

Back to school schedules produce higher levels of traffic on the roads.

Plan your routes, leave a few minutes early and take care around all school zones.

Keep our kids safe!

Traffic congestion often occurs around schools during peak drop-off and pick-up times. The large number of vehicles pulling in and out of parking spots, even double-parking in an attempt to speed up the process, combined with children who are chatting with friends, sending text messages, listening to digital recorders and possibly jaywalking, makes for a dangerous situation.

Here are a few tips for parents to keep in mind while taking children to and from school:

- **Obey the road signs and basic driving regulations.** This sounds so basic, but if you observe traffic around a school during peak pick-up and drop-off times, you'll see drivers (most of them parents or caregivers), stopping in no-stopping zones, making U-turns on busy streets and in intersections, backing up into crosswalks, and more. Be part of the solution and set an example for others by obeying the rules.
- **Be mindful of safe-driving practices and etiquette.** Remember that 30 kilometres an hour is the speed limit on the streets surrounding most schools — but if there are a lot of children about, there's no harm in going even slower than that. Shoulder check when pulling away from the curb; yield to pedestrians, even if they're jaywalking; and expect the unexpected: watch for children walking into the roadway from between parked cars and be aware that children might sometimes jump out without warning.
- **Obey school crossing guards.** School crossing guards are legally empowered to stop traffic on roadways. Disobeying their commands could result not only in a fine of over \$100 dollars, but could also jeopardize lives.

Remember that 30 kilometres an hour is the speed limit on the streets surrounding most schools — but there's no harm in going even slower than that.

**Turn off your vehicle while you wait.** If you're waiting to pick someone up after school, turn off your engine. Idling vehicles emit harmful pollutants, which affect children's respiratory systems. And if that's not enough to convince you, perhaps a fine is. Many British Columbian communities have implemented anti-idling bylaws. To find out if your community is on board, visit [Idle Free BC](#).

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## ARRIVE ALIVE: Smart Car Technology Gaining Momentum

By Beverly Doran

It used to be that drivers had to rely on what they could see to make decisions regarding the terrain, road conditions, and any obstacles — and rely on skill and

reflexes to deal with any safety concerns. But automated systems that make decisions for drivers are becoming more and more common, especially as the technology becomes more and more affordable.

### Avoid Bumps with Automated Parking Assistance

Novice drivers and those who have difficulty with parallel and/or garage parking may welcome cars that can virtually park themselves. Assisted-parking systems rely on sensors that judge the vehicle's approach angle as well as the surrounding space, while still allowing the driver to retain control and deactivate the parking assistance by taking over the steering or by braking.

### The Outlook's Bright for Driving after Dark

Driving after dark is often challenging, especially for those of us with poor night vision. Over the years, however, headlight technology has helped us see better at night. Some examples of recent technology are high-intensity lights and adaptive lights that move around like eyeballs, picking up hills, curves and objects on the road, changing the car's headlight direction accordingly.

Infrared sensors that alert the driver to oncoming objects on the road are one of the newer innovations in night-driving technologies. A far-infrared (FIR) thermal camera installed on a

No matter what car

vehicle allows the nighttime driver to see anything that emits heat, such as people, animals, trees and other vehicles, no matter how dark it is.

FIR night vision cameras can see up to 400 metres in front of the vehicle, which is far beyond the range of most headlight systems, according to Larry Carley of Import-Car.com ([complete article](#)). What's more, poor weather such as fog and rain has a lesser effect on FIR than it has on technologies that rely on reflected light for night vision.

The main drawback to FIR, however, says Carley, is that the technology is expensive, adding over \$2,000 to the cost of a new vehicle.

### Smart Driving Is Still Key to Safety

No matter what car manufacturers install in vehicles to make them safe, it's the driver who remains legally in control of the car. Drivers still need to be alert and operate their vehicles safely. Smart car technology should not mean the end of smart driving.

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## Rehabilitation Resources at GF Strong Rehabilitation Centre

By Barbara K. Adamski

If you've been injured in a car accident, chances are you'll be in need of some form of rehabilitation. While less serious injuries can benefit from massage, physiotherapy,

chiropractic or acupuncture, more serious injuries require a more involved approach.

GF Strong is the largest intensive rehabilitation resource centre in British Columbia. The organization provides inpatient, outpatient and outreach support and services to clients in four main programs, including acquired brain injury, spinal cord injury, arthritis and neuromusculoskeletal impairment.

GF Strong's Assistive Technology and Seating Service (ATSS) provides support to clinicians and rehabilitative professionals by way of consultation, assessment, evaluation, intervention, education and equipment loans for assessment purposes.

The Driver Rehabilitation Centre provides patient and vehicle assessments as well as driving lessons in vehicles that are specially equipped to handle the special needs of disabled drivers. The Centre's high-tech assessment and training van includes adaptations such as horizontal zero-effort steering, Digipad controls, and a removable power driver seat with wheelchair tie-downs that allow clients to operate the motor vehicle from their own wheelchair. The Centre can even arrange for priority road-test times at the Motor Vehicle Branch.

Counselors in GF Strong's Vocational Rehabilitation Services help those with disabilities prepare to either return to their previous employment or develop new job skills through education and training. The counselors' many duties include facilitating clients' return to work after a period of disability; liaising with employers and insurance plan consultants; referring clients to government agencies for assessment, education /training and job search; and informing people of their legal rights to work.

To find out more about GF Strong, visit their website at <http://gfstrong.vch.ca/>. To participate in one of GF Strong's rehabilitation programs, see your doctor for a referral.

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## Woodlands Settlement Approved

On July 7, 2010, the Supreme Court of BC approved a settlement of the Woodlands class action. The settlement agreement allows people who lived at Woodlands School in New Westminster to claim compensation for the sexual, physical and emotional/psychological injuries they suffered there on or after August 1, 1974. Claims made by

Woodlands survivors will be decided on by an adjudicator who will be able to award compensation from \$3,000 to \$150,000 in proven cases. All claims must be filed within one year. More details available at: <http://www.kleinlyons.com/class/woodlands/woodlands-settlement-index.php>.

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## **Klein Lyons Files Class Action For Alberta Municipal Employees Who Received Long Term Disability Benefits**

Klein Lyons, in conjunction with Docken & Company in Calgary, has filed a class action against Sun Life Assurance Company of Canada on behalf of a group of long term disability beneficiaries who have not been paid cost of living increases under their group insurance policy. The plaintiffs in this action are part of a group of current and former municipal employees from Alberta who, after April 1, 1982, received long-term disability payments for more than 12 consecutive months. The claim alleges that cost of living increases were owed to employees receiving these payments, but have never been paid.

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