LUTHER-ANDERSON

NEWSLETTER

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LA LUTHER ANDERSON, PLLP

May 2025

OUR TEAM IN ACTION

From community leadership in the fight against Heart Disease, to recognition by their peers as *Super Lawyers*®, our Partners are making waves as leaders in our community.

Attorney Dan Ripper Named as a 2024 *Super Lawyer!*

Attorney Alaric Henry Named as a 2024 *Super Lawer* – His 18th Consecutive Award!

Attorney Michael S. Jones Named as a 2024 *Super Lawyer Rising Star*

Attorney Chloe Kennedy Named *Leader of Impact* in the Chattanooga Market for the American Heart Association!

FIRM NEWS

Meet our newest partners!

Luther-Anderson is pleased to announce the promotion of two of its newest partners as of January 2024, Chloe E. Kennedy (Chloe), and Michael S. Jones (Mike). Chloe and Mike have been with Luther-Anderson since 2018 and 2019, respectively, during which time they have both shown to be effective litigators, leaders, mentors, and valuable assets to the Luther-Anderson team.

Chloe focuses her practice area within general liablity defense which includes automobile and motor carrier accidents, premises liability, insurance coverage issues, and construction litigation. She can be reached at CEK@lutherandwerson.com

Mike focuses his practice in construction litigation, professional liabiltiy, real estate litigation, premises liability, automobile and motor carrier accidents, general and tort liabiltiy defense, inssurance coverage issues, and workers' compensation. He can be reached via email at MSJ@lutheranderson.com

MEET OUR ASSOCIATES!

Luther-Anderson is pleased to welcome four new associates to its roster: Jennifer Baxter, Kayli L. Martin, Bella Bombassi, and Brittany E. Gilder.

Jennifer Baxter

Practice Areas:
General Liability and Criminal Defense

Education:
University of Georgia and Georgia State University of Law

Licenses:
Tennessee and Georgia

Connect:
JDB@lutheranderson.com

Bella Bombassi

Practice Areas:
General Liability and Criminal Defense

Education:
University of the South; Sewanee and University of Tennessee College of Law

Licenses:
Tennessee

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Kayli Martin

Practice Areas:
General Liability Defense, Automobile and Motor Carrier Accidents, Premises Liability, and Insurance Coverage Issues

Education:
Mercer University and Loyola University New Orleans College of Law

Licenses:
Tennessee

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klm@lutheranderson.com

Brittany Gilder

Practice Areas:
General Tort Liability Defense, Insurance Defense, and Professional Liability Defense

Education:
Eastern Kentucky University and Lincoln Memorial University; Duncan School of Law

Licenses:
Tennessee

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TENNESSEE LAW UPDATES

New Legislation Could Double Damages Caps for Non-Economic Damages in Tennessee Beginning July, 2025.

by **Brittany Gilder**

Proposed legislation in Tennessee's 114th General Assembly (TN HB0005) seeks to double the damages cap for personal injury claims in from $750,000 to $1,500,000 per injured plaintiff. For cases involving catastrophic injuries, the cap would rise from $1,000,000 to $2,000,000. These changes would apply to claims arising after July 1, 2025. This is likely, in part, a response by Tennessee legislators to a 2021 decision by the Tennessee Supreme Court which determined that the current statutory language under Tenn. Code Ann. § 29-39-102 which governs damages caps in civil litigation limited the aggregate total of non-economic damages (A.K.A. pain and suffering, loss of enjoyment, etc.) to $750,000 for all claimants. See generally, Yebuah v. Ctr. for Urological Treatment, PLC, 624 S.W.3d 481 (Tenn. 2021). Of course, the current language also includes exceptions which would allow cases of "catastrophic injury" to go to a cap of $1,000,000, but those losses which could be catastrophic are very narrowly defined.

GEORGIA LAW UPDATES

Georgia Tort Reform and What It Means for Civil Litigation Going Forward

by **Kayli Martin**

For years, there have been rumblings about Georgia's impending tort reform, and the time for this reform has finally come. Both Senate Bills 68 and 69, representing a significant overhaul of Georgia's civil litigation system, have been signed into law by Governor Brian Kemp in April 2025. What this tort reform means for civil litigation going forward and the specifics of each bill, are detailed below.

At the end of January 2025, Georgia Governor Brian Kemp unveiled his tort reform package. The Georgia Assembly passed legislation related to tort reform on March 21, 2025. This tort reform aims to streamline civil litigation, clarify the handling of damages and liability in tort actions, and regulate third-party funding litigation. The tort reform package includes developments and changes involving damages, trials, attorney fees, admissible evidence, premises liability, and procedural mechanisms. The two bills at the center of this tort reform are Senate Bill 68 and Senate Bill 69. The business community has expressed strong support for these changes, while Plaintiffs' attorneys have been voicing concerns about the legislation restricting plaintiffs' rights.

TENNESSEE LAW UPDATES

Interestingly, the proposed language changes (which can be found here) do not remedy the aggregate cap issue but merely expands the recoverable aggregate amount for all claims because only the amounts have been proposed for change. This follows a trend of so-called "nuclear verdicts" throughout Tennessee since the Covid-19 pandemic as well as general increases in verdicts across the board. One thing is clear from this new legislation: Tennessee's verdict landscape is changing, and increased verdict exposure will need to be a consideration in claim evaluations. We will be keeping tabs on this proposed litigation as it moves through the legislature and sharing any changes as they occur.

TN Slip-And-Fall Update: Admission Of Vicarious Liability Is Not A Valid Defense To Claims Of Direct Liability.

by **Brittany Gilder**

In April 2024, Tennessee's Supreme Court addressed a common defense raised by Corporate Defendants in claims where an employee may have committed a negligent act: Preemption of direct liability by admitting to vicarious... liability. Now, it is clear in Tennessee—an employer may be liable not only for the actions of their agents, but also because they were individually liable in the training, hiring, or entrustment of tools to the employee. See Binns v. Trader Joe's E., Inc., 690 S.W.3d 241 (Tenn. 2024).

The idea of negligence for injuries suffered by a patron is not new—in fact, the general common law doctrine in Tennessee has always been that an employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment. See Binns v. Trader Joe's E., Inc., at 247. However, the idea that a Plaintiff would be cut off from additional claims like negligent training or hiring because the Employer admits to its vicarious liability is popular in other states as shown by the cases cited by the Defendant in the Binns case. Here, the Defendant attempted to persuade the court to adopt the preemption rule along with several other states (like Kentucky, Utah, and Missouri). The Tennessee Supreme Court also noted that some lower courts in Tennessee as well as the United States Federal District Courts for the Eastern, Middle, and Western Districts of Tennessee each applied the preemption rule, predicting that if the TN Supreme Court addressed the issue, it would adopt the rule in Tennessee. Binns v. Trader Joe's E., Inc., at 248. These predictions were ultimately wrong, with the court finding that the preemption rule conflicts with Tennessee's system of modified comparative fault and certain well-established principles of Tennessee jurisprudence, such as deterrence and the principle that TN Plaintiffs may claim multiple alternative claims regardless of consistency. Binns v. Trader Joe's E., Inc., at 253.

GEORGIA LAW UPDATES

This legislation limits recoverable damages in two ways. First, it places limitations on evidence of noneconomic damages by prohibiting counsel from arguing for any specific monetary value of noneconomic damages to the jury. Second, the legislation limits special damages for medical and healthcare expenses that Plaintiff actually paid. This means these medical specials are limited to only the damages paid out to a provider, with the reasonable value of the care, treatment, or services including both the amounts charged for past, present, and future care and the amounts actually necessary to satisfy such charges pursuant to any insurance or compensation program, regardless of whether the health insurance has been used, is used, or will be used to satisfy such charges.

The legislation would also allow any party to "bifurcate" the trial of a matter into two phases without a court order. The first phase would be about determining fault, and the second would be to determine damages. In the first phase the trier of fact will also assign a percentage of fault to each defendant. If liability is established, the trial moves to the second phase and compensatory damages are calculated and awarded to the plaintiff. It is also clear in this legislation that parties cannot recover the same attorney's fees, court costs, or litigation expenses more than once. The final bill also specified that contingent fee agreements between a party and their attorney is not admissible as proof of the reasonableness of such fees.

Until this legislation was passed, Georgia law has consistently held that the trier of fact could not consider seatbelt usage as evidence at trial specifically as it relates to comparative fault. However, under this Bill, judges and juries are permitted to consider evidence of seatbelt usage, which is now admissible as evidence of negligence and fault. The reform also creates a "negligent security" cause of action which would likely arise in a similar way to a premises liability claim. A negligent security claim would be based on a Plaintiff trying to hold property owners liable for failures to keep their property safe for their customers and the public.

This part of the bill was proposed based on three cases where the Georgia Supreme Court explored the scope and nature of the liability faced by premises owners, occupiers, and security contractors in cases involving personal injuries arising from third-party criminal conduct. These cases clarified that the reasonable foreseeability of a third-party criminal act is a determination linked to a proprietor's duty to keep the premises and approaches safe under OCGA § 51-3-1, and that the totality of the circumstances informs whether a third-party criminal act was reasonably foreseeable. (Georgia CVS Pharmacy, LLC v. Carmichael, 316 Ga. 718, 718, 890 S.E.2d 209, 217 (2023) and Pappas Rest., Inc. v. Welch, 371 Ga. App. 614, 615, 901 S.E.2d 751, 754 (2024), cert. denied (Sept. 17, 2024)).

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The main takeaway here is that Tennessee's examination of employer liability is as broad as the plaintiff's complaint—not the Employer's defenses. Where a plaintiff asserts (in good faith) that they are entitled to relief under several different (and even conflicting) theories, the law of the land in Tennessee is to allow the Plaintiff an opportunity to litigate each and every claim.

Traffic Citations Extending the Statute of Limitations in Tennessee

by **Kayli Martin**

T.C.A. §28-3-104(a)(1) provides that actions for libel, injuries to the person, false imprisonment, malicious prosecution, or breach of marriage promise; civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; and actions for statutory penalties shall be commenced within one (1) year after the cause of action accrued. However, T.C.A. §28-3-104(a)(2) provides an exception to this rule and the one-year limitation period. This exception makes clear that the cause of action shall be commenced within two (2) years after the cause of action accrued if criminal charges are brought against any person that allegedly caused or contributed to the injury; the conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year; and the cause of action is brought by the injured person against the party prosecuted for the criminal conduct.

The statute makes clear that criminal charges extend the statute of limitations to two (2) years, however, the statute does not lay out what would be considered a criminal charge. This is an issue that the Tennessee Court of Appeals took up in 2021 in Younger v. Okbahhanes, 632 S.W.3d 531 (Tenn. Ct. App. 2021). In the Younger case the Plaintiff filed a personal injury action against the Defendant more than a year after the collision from which the cause of action accrued. The defendant filed a motion for summary judgement arguing that plaintiff had filed an untimely action outside the statute of limitations. The trial court found that the traffic citation issued to Defendant for failure to use due care was related to the conduct or occurrence that gave rise to the cause of action; that a citation for failure to exercise due care is a criminal charge; that the traffic citation issued to Defendant was a sufficient "charging document" to commence a prosecution; and that Plaintiff was the individual allegedly injured by Defendant's criminal conduct allowing the plaintiff to utilize the two-year statute of limitations. Id at 533.

Defendant appealed as the trial court denied their motion for summary judgment, and the issue on appeal was whether a traffic citation for failure to exercise due care is considered a criminal charge as provided in T.C.A. § 28-3-104(a)(2)(A) and a criminal prosecution as provided in subsection (B)

GEORGIA LAW UPDATES

The bill lays out the exclusive remedies for a "negligent security" cause of action, how damages should be apportioned, and limits the liability of security contractors to the same extent as owners or occupiers in this type of action. This legislation also makes significant procedural changes. First, the bill amended the timing of answers to a Motion for More Definitive Statement, requiring a party to respond within 15 days after the more definite statement is served. Second, Discovery is stayed when a motion to dismiss is filed, if a party files a motion to dismiss before or at the time of filing an answer. Once 90 days has passed, if the court has still not ruled on the motion, a party may request the court to terminate or modify the discovery stay for good cause. This change will essentially delay or even preclude unnecessary discovery costs in frivolous matters.

Lastly, the legislation alters when a Plaintiff can file a voluntary dismissal. In order to file a voluntary dismissal, a plaintiff is required to make such a dismissal in writing before the sixtieth day following the date the opposing party either serves an answer or a motion for summary judgment, whichever is sooner. Previously, the law permitted a plaintiff to voluntarily dismiss any time before the first witness was sworn. This should prevent plaintiffs from dismissing their action and re-filing in a more favorable jurisdiction or with a more favorable judge after defense counsel has already invested time in trial preparation and trial.

Lastly, Senate Bill 69 aims to regulate third-party funding litigation. The bill requires litigation financers to register with Georgia's Department of Banking and Finance, sets out the requirements for this filing, and prohibits litigation financiers from making any decisions with respect to the course of any civil actions. The bill lays out specific language that must be contained in every litigation financing contract and such agreements are discoverable. Litigation financiers are also barred from affiliating with any foreign person, foreign principal, or sovereign wealth fund associated with adversarial nations or those considered foreign adversary pursuant to 15 C.F.R Section 14 by the United States Secretary of Commerce.

Amendments to O.C.G.A. § 9-11-67.1 Requiring Less Strict Compliance with Holt Demands

by **Kayli Martin**

Georgia's pre-answer settlement statute, O.C.G.A. § 9-11-67.1, also known as the Holt Demand Statute based on the 1992 Georgia Supreme Court decision in S. Gen. Ins. Co. v. Holt, which held that an insurer that fails to settle a claim for its insured and is found to have done so negligently, fraudulently, or in bad faith may be liable for damages in excess of the insurance policy limits. These Holt Demands have usually required strict literal compliance with the demand and any failure to comply with the demand could bring about the plaintiff's attorney claiming bad faith.

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In Tennessee, violation of T.C.A. § 55-8-136, or failure to exercise due care, is a class C misdemeanor, a Class C misdemeanor may be punishable by up to thirty days of incarceration and a fine of up to $50. The Court of Appeals determined Tennessee law is clear that a violation of T.C.A. § 55-8-136 for failure to exercise due care is a Class C misdemeanor and, therefore, a criminal offense. Additionally, under T.C.A. § 55-10-207(d), when a traffic citation has been prepared, accepted, and the original citation delivered to the court, that original citation "shall constitute a complaint to which the person cited must answer and the officer issuing the citation shall not be required to file any other affidavit of complaint with the court." Younger v. Okbahhanes, 632 S.W.3d 531, 536 (Tenn. Ct. App. 2021).

Other than preparation, acceptance, and delivery of the original citation to the court there was nothing further the police officer was required to file in order to commence the prosecution for such criminal offense, and the individual charged with the traffic violation was required to answer the citation. The Court reasoned that these citations are subject to extending the statute of limitations, because if the Georgia General Assembly intended to exclude traffic citations from the application of T.C.A. § 28-3-104(a)(2) for policy reasons, it easily could have done so. The Court held that the traffic citation issued to Defendant for failure to exercise due care, which had been prepared, accepted, and the original citation filed with the court, is a criminal charge and a criminal prosecution by a law enforcement officer, such that T.C.A. § 28-3-104(a)(2) is applicable to extend the statute of limitations to two years.

The Court of Appeals clarified that T.C.A. § 28-3-104(a)(2) is not applicable when the citation or ticket is civil in nature in Glover v. Duckhorn, No. W202200697COAR3CV, 2023 WL 3193204 (Tenn. Ct. App. May 2, 2023). Tennessee courts have consistently held that municipal ordinance violations are civil matters and that violations of state statutes are criminal matters. Therefore, violations of state statutes that result in a ticket or citation do extend the statute of limitations to two years for a personal injury action under T.C.A. § 28-3-104(a)(2), but a ticket or citation for violation of a municipal ordinance does not.

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GEORGIA LAW UPDATES

The amendments to the statute are making significant changes to essential elements of the demand process including acceptance and compliance. The amended statute essentially provides that all offers are bilateral contracts. Georgia courts have interpreted the statute to mean that offers could be unilateral contracts that required acceptance by performing an act, meaning courts could find no settlement agreement where an insurer communicated their intent to accept, but failed to perform all the acts required by an offer. Now, courts should be able to enforce settlement agreements where the parties express their mutual intent. The statute also makes clear that it applies to and controls all attorney settlement offers from the time and accident happens until all the answers of all named defendants are filed in the personal injury action, or those defendants have been found to be in default.

One of the biggest changes the amended statute will make is outlining the permitted material terms required as compliance with an offer to settle. The only material terms that may be included in an offer to settle are: 1) the date by which the offer must be accepted, which must be at least 30 days from receipt; and 2) a statement under oath as to whether all liability and casualty insurance has been disclosed that must be delivered within 40 days of receipt of the offer and the statement under oath can be waived by the offeror. The statute further provides that any recipient of such an offer has a right to seek clarification "regarding the terms, the terms of the release, liens, subrogation claims, standing to release claims, medical bills, medical records, and other relevant facts," which will not be deemed a counteroffer unless it seeks to change the material terms set out in the statute. The statute also now creates a safe harbor for insurers when any term or required act deviates from those listed material terms in the statute. The demand may include additional terms, but the statute explicitly states that failure to comply with an immaterial term does not give rise to failure to settle claim.

However, the recipient must provide a writing that purports to accept the material terms of the offer in their entirety; provide the required statement under oath regarding no additional insurance, if required by the offer; and make payment, for the lesser of the amount demanded or the available limits of the applicable insurance policy. These requirements must be met on or before the dates specified in the offer.

The Safe Harbor provision applies to any offer to settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle collision, not only those subject to the statute. If the first offer is made at a point before the statute controls the demand (after all the answers in the lawsuit have been filed), the safe harbor can still be met. This safe harbor provision applies to the first offer to settle only.