1. **Minimum Liability Limits in Tennessee**

   a. $25,000 – For the death or injury of any one person, any one accident. *See* Tenn. Code Ann. § 55-12-102(12).

   b. $50,000 – For all persons in any one accident. *See* Tenn. Code Ann. § 55-12-102(12).

   c. $15,000 – For damage to property in one accident. *See* Tenn. Code Ann. § 55-12-102(12).

   d. $25,000 – Uninsured motorist. *See* Tenn. Code Ann. § 56-7-1201(a)(1).

2. **Negligence laws in Tennessee (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc.?)**

   Tennessee is a modified comparative fault state. The Tennessee Supreme Court adopted modified comparative fault in 1992. *See* McIntyre v. Balentine, 833 S.W.2d 52 (Tenn. 1992). In 2013, Tennessee adopted legislation codifying the abolishment of joint of several liability, and it is applicable to all actions accruing on or after July 1, 2013. *See* Tenn. Code Ann. § 29-11-107. The only exceptions to the general abolishment of joint and several liability concern cases of civil conspiracy and some product liability cases.
3. **Bodily Injury Statute of Limitations for Tennessee**

   One (1) year. See Tenn. Code Ann. § 28-3-104.

4. **Property Damage Statute of Limitations for Tennessee**

   Three (3) years. See Tenn. Code Ann. § 28-3-105.

5. **Are punitive damages insurable in Tennessee?**

   Yes, except if the conduct is found to be intentional, directly assessed punitive damages are insurable in Tennessee. See *Lazenby v. Universal Underwriters Ins. Co.*, 383 S.W.2d 1, 4-6 (Tenn. 1964). In *Lazenby*, the Tennessee Supreme Court construed the policy language at issue as providing coverage for punitive damages, but the Court further noted that coverage would be unavailable for punitive damages arising from intentional conduct. *Id.* The Court has also held that in the absence of a provision to the contrary, an insurer must satisfy a compensatory damage award, to the extent of its limits, before paying any part of a punitive damage award. *West v. Pratt*, 871 S.W.2d 477, 480 (Tenn. 1994). Finally, vicariously assessed punitive damages based upon non-intentional conduct also would likely be insurable in Tennessee because directly assessed punitive damages based upon such conduct are insurable.

6. **Is there an intrafamily immunity doctrine in Tennessee?**

   No. See *Davis v. Davis*, 657 S.W.2d 753, 759 (Tenn. 1983) (abolishing interspousal immunity); *Broadwell v. Holmes*, 871 S.W.2d 471, 476-77 (Tenn. 1994) (greatly abrogating parent-child immunity).

7. **Is there a bodily injury damage threshold? If so, what is it?**

   No.

8. **What are the quick rules on Subrogation MP/PIP?**

   Insurer is generally entitled to reimbursement based on the policy provisions, subject to the Made Whole Doctrine (which cannot be overridden with policy provision). *York v. Sevier County Ambulance Auth.*, 8 S.W.3d 616 (Tenn. 1999). PIP is not mandated in Tennessee.

9. **Are there no fault laws in the jurisdiction?**

   No.

10. **Is the customer’s insurance primary?**

    Tennessee Code Annotated section 56-7-1101(a) provides that in cases arising from the use of a motor vehicle, the owner’s insurance policy is primary if the vehicle was being operated with the owner’s permission and within the scope of the permission granted. Other coverages
available to the permittee are inapplicable until limits of all coverages on the owner’s policy are exhausted. Tennessee Code Annotated section 56-7-1101(b) and (c) provide exceptions, respectively, regarding garage policies and regarding lessees bound by written agreement to provide coverage for the leased vehicle.

11. **Is there a seat belt defense?**

   Pursuant to Tennessee Code Annotated section 55-9-604, evidence of failure to wear a seatbelt, or the receipt of a citation or warrant for arrest for such failure, is inadmissible on the issue of liability in a civil action. It is also generally inadmissible as to the causal relationship between failing to wear a seatbelt and the injuries alleged, except in products liability claims, and subject to certain requirements specified in the statute.

12. **Is there a last clear chance defense?**

   No. Last clear chance is no longer recognized as a separate doctrine, but is addressed in assessing relative degrees of fault. See *Eaton v. McLain*, 891 S.W.2d 587, 590-92 (Tenn. 1994).

13. **Is there an assumption of risk defense?**

   Yes, but it is incorporated as a factor in apportioning fault. See *Eaton v. McLain*, 891 S.W.2d 587, 590-92 (Tenn. 1994). If applicable, assumption of the risk should be asserted as an affirmative defense. It is specifically listed as an affirmative defense under Rule 8.03 of the Tennessee Rules of Civil Procedure. Assumption of the risk is part of the comparative fault analysis, and comparative fault is also identified as an affirmative defense.

14. **Is there a UM requirement?**

   Yes. UM coverage must be equal to the bodily injury limits stated in the policy. However, it can be rejected by the insured, in writing, or the insured can select lower limits of coverage, but not less than the $25,000 minimum. See Tenn. Code Ann. § 56-7-1201. See question number 1 above.

15. **Is there a physical contact requirement?**

   No, except in the context of UM. In the UM context, if the owner or operator of the vehicle causing the damage is unknown, actual physical contact is required unless the existence of the unknown motorist is established by clear and convincing evidence, other than with evidence from occupants of the insured’s vehicle. The accident must be reported to appropriate law enforcement within a reasonable time after its occurrence, and the insured cannot be negligent in failing to identify the unknown motorist. See Tenn. Code Ann. § 56-7-1201(e).

16. **Is there a mandatory ADR requirement?**

   There is no mandatory ADR requirement in general tort liability matters in Tennessee. In the UM context, binding arbitration is required under certain circumstances. See Tenn. Code
However, many courts, either by local rule or informally, will often require parties to participate in ADR before docketing a matter for trial.

17. Are agreements reached at a mediation enforceable?

Generally, yes. Settlement agreements made during or in contemplation of litigation are enforceable as contracts, and an agreement made at mediation would fall within this category. An agreement reached at, during or after mediation which is reduced to writing and is signed by both parties is construed and enforced in the same manner as other contracts. The agreements would be subject to general contract law. As such, the agreement would also be subject to the same defenses that may be raised to defeat enforcement of other contracts. See Green v. YMCA of Memphis & the Mid-South, 2015 Tenn. App. LEXIS 891, *8 (Tenn. Ct. App. Nov. 4, 2015).

18. What is the standard of review for a new trial?

The appellate court will review the trial court's decision to deny a motion for a new trial under an abuse of discretion standard. See Esstman v. Boyd, 605 S.W.2d 237 (Tenn. Ct. App. 1979).

19. Is pre-judgment interest collectable? If so, at what rate?

Yes, under certain circumstances, usually with liquidated or sum certain damages. When prejudgment interest is available, Tenn. Code Ann. § 47-14-103 provides that except as otherwise expressly provided by statute for certain categories of creditors, lenders or transactions, the applicable formula rate referred to in the contract shall apply; and for all other transactions, ten percent (10%) per annum.

20. Is post judgment interest collectable? If so, at what rate?

Yes. Tenn. Code Ann. § 47-14-121 states as follows:

a) Except as set forth in subsection (c), the interest rate on judgments per annum in all courts, including decrees, shall:
   1) For any judgment entered between July 1 and December 31, be equal to two percent (2%) less than the formula rate per annum published by the commissioner of financial institutions, as required by § 47-14-105, for June of the same year; or
   2) For any judgment entered between January 1 and June 30, be equal to two percent (2%) less than the formula rate per annum published by the commissioner of financial institutions, as required by § 47-14-105, for December of the prior year.

b) To assist parties and the courts in determining and applying the interest rate on judgments set forth in subsection (a) for the six-month period in which a judgment is entered, before or at the beginning of each six-month period the administrative office of the courts:
   1) Shall calculate the interest rate on judgments that applies for the new six-month period pursuant to subsection (a);
2) Shall publish that rate on the administrative office of the courts' web site; and

3) Shall maintain and publish on that web site the judgment interest rates for each prior six-month period going back to the rate in effect for the six-month period beginning July 1, 2012.

c) Notwithstanding subsection (a) or (b), where a judgment is based on a statute, note, contract, or other writing that fixes a rate of interest within the limits provided in § 47-14-103 for particular categories of creditors, lenders or transactions, the judgment shall bear interest at the rate so fixed.

21. Is there a workers compensation exclusive remedy defense?

Yes. The Tennessee’s Workers’ Compensation Law is generally an employee’s exclusive remedy against his employer for personal injuries by accident arising primarily out of and in the course and scope of employment. See Tenn. Code Ann. § 50-6-108.

22. Is the doctrine of joint and several liability applicable?


23. Is there a self-critical analysis privilege?

This privilege is not generally recognized in Tennessee outside of the medical malpractice context.

24. Is accident reconstruction data admissible?


25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?

Tennessee generally follows the Collateral Source Rule prohibiting proof of what has been paid or actually owed as opposed to what has been billed. However, in a recent Order granting a Motion in Limine from the US District Court for the Western District of Tennessee, the Court ruled that a plaintiff in a personal injury case will only be allowed to enter into evidence the amount of medical bills paid, ruling that medical bills that do not show the given discount will be inadmissible. Whether the State Courts or other Federal Courts in this State intend to adopt this reasoning remains to be seen.

26. What is the jurisdiction’s rule on offers of judgment?

Rule 68 of the Tennessee Rules of Civil Procedure is patterned after Federal Rule 68. An offer must be served more than 10 days before the trial begins. The party to whom the offer is
made may accept it within 10 days after service by serving written notice of acceptance. If the offer is accepted, the clerk enters judgment on the offer upon the filing of the offer, notice of acceptance, and proof of service. If the offer is not accepted, it is deemed to be withdrawn. If the offer has been withdrawn before it has been properly accepted, the offer is of no effect. Evidence of the offer is not admissible at trial. Successive offers may be made. If a formal offer of judgment complying with the requirements of Rule 68 has not been accepted and the party declining does not obtain a judgment more favorable than the offer, the offeree must pay all costs accruing after the offer. Included “costs” are somewhat limited.

27. **What is the jurisdiction’s rule on spoliation of evidence?**

   Tenn. R. Civ. P. 34A.01 provides: “Before a party or an agent of a party, including experts hired by a party or counsel, conducts a test materially altering the condition of tangible things that relate to the claim or defense in a civil action, the party shall move the court for an order permitting testing and specifying the conditions under which it is to be made.”

   Tenn. R. Civ. P. 34A.02 provides that “Rule 37 sanctions may be imposed upon a party or an agent of a party who discards, destroys, mutilates, alters, or conceals evidence.”

   The doctrine of spoliation states that the intentional spoliation or destruction of evidence relevant to a case raises a presumption, or an inference, that the evidence would have been unfavorable had it not been destroyed. The presumption or inference arises only where the spoliation or destruction was intentional, and indicates fraud and a desire to suppress the truth. The presumption or inference does not arise where the destruction was a matter of routine with no fraudulent intent. *Tatham v. Bridgestone Ams. Holding, Inc.*, 473 S.W.3d 734, 741 (Tenn. 2015) (other citations omitted).

28. **Are there damages caps in place?**

   Generally, yes. Under Tenn. Code Ann. § 29-39-102, compensation for noneconomic damages are capped at $750,000 unless the injuries are catastrophic, in which case they are capped at $1,000,000.

   Catastrophic loss or injury means one (1) or more of the following: (1) Spinal cord injury resulting in paraplegia or quadriplegia; (2) Amputation of two (2) hands, two (2) feet or one (1) of each; (3) Third degree burns over forty percent (40%) or more of the body as a whole or third degree burns up to forty percent (40%) percent or more of the face; or (4) Wrongful death of a parent leaving a surviving minor child or children for whom the deceased parent had lawful rights of custody or visitation.

   T.C.A. § 29-39-104: For punitive damages you need “clear and convincing” proof of malicious, intentional, fraudulent or reckless conduct the you can recover two (2) times the compensation award but the punitive damages cannot exceed $500,000.

   There are certain exceptions which allow for recovery outside the caps such as injuries or death from resulting specific intent, occurring while under the influence of alcohol, drugs, or
other intoxicants, occurring while committing a felony which results in a conviction, or intentionally falsifying, destroying, or concealing records.

29. Is CSA 2010 data admissible?

There is no specific case in Tennessee addressing this issue.

30. Briefly, does the jurisdiction have any unique rules on electronic discovery?

Rule 26 of the *Tennessee Rules of Civil Procedure* governs electronic discovery and generally electronic materials are discoverable whether they relate to a claim or defense of the party seeking such discovery. The rules instruct the parties to first confer about the time and method of electronic discovery, but either party may move the court for an order compelling electronic discovery. In situations where the cost of producing electronic material is high, the judge has discretion to shift the discovery costs to the party seeking discovery.

31. Is the sudden emergency doctrine recognized in the jurisdiction?

Yes. The sudden emergency doctrine is a factor to consider in the comparative fault analysis. *See McCall v. Wilder*, 913 S.W.2d 150, 157 (Tenn. 1995). *See also* Tennessee Pattern Jury Instructions 3.08, 3.50 and 3.52.

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

Generally, no.

33. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

The General Sessions Court jurisdictional limit is generally $25,000.

34. Are state judges elected or appointed?

State Appellate and Supreme Court Judges in Tennessee are appointed by the governor and confirmed by the legislature, but citizens vote to retain or replace these Judges every eight (8) years.

State Judges in Trial Courts are elected by citizens for eight (8) year terms, unless a vacancy occurs before an election, in which case the Governor can appoint a Judge to fill the seat until the next election.