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Tennessee

Are preventability determinations and internal accident reports discoverable or admissible in your state? What factors determine discoverability or admissibility?

Tennessee does not recognize any express self-critical analysis privilege. Internal accident reports and preventability determinations are thus generally discoverable if created in the ordinary course of business as opposed to in anticipation of specific litigation. In some instances, internal reports may be protected by the common interest privilege if (1) otherwise privileged information was disclosed due to actual or anticipated litigation; (2) that the disclosure was made for the purpose of furthering a common interest in the actual or anticipated litigation; (3) that the disclosure was made in a manner not inconsistent with maintaining its confidentiality against adverse parties; and (4) that the person disclosing the information has not otherwise waived its attorney-client privilege for the disclosed information. *Boyd v. Comdata Network*, 88 S.W.3d 203 (Tenn. Ct. App. 2002).

Admissibility typically hinges on the degree to which an internal accident report or preventability determination could create juror confusion in that Tennessee courts have held that all drivers are held to the same standard of care regardless of vehicle type. Thus, "[a] person may, out of abundant caution, adopt rules requiring of his employees a much higher degree of care than the law imposes. This is a practice that ought to be encouraged, and not discouraged. But, if the adoption of such a course is to be used against him as an admission, he would naturally find it to his interest not to adopt any rules at all." *Goedeke v. Carter*, No. 143, 1989 Tenn. App. LEXIS 192, *12-13 (Tenn. Ct. App. Mar. 17, 1989) (citations omitted).

Does your state permit discovery of 3rd party litigation funding files and, if so, what are the rules and regulations governing 3rd party litigation funding?

Tennessee has no specific statutory or regulatory restrictions on discovery of third party litigation funding.

What is the procedure for the resolution of a claim for injuries to a minor in your state? Does the minor's age affect the statute of limitations for a personal injury claim?

The statute of limitations for personal injuries to a minor is tolled until the minor reaches the age of 18 pursuant to Tenn. Code Ann. § 28-1-106. Accordingly, a settlement involving a minor's personal injury claim must be approved by a court if it (A) is a settlement of ten thousand dollars ($10,000) or more; (B) is a structured settlement; or (C) involves a minor who is not represented by an attorney licensed to practice in this state. Tenn. Code Ann. § 29-34-105.

What are the advantages or disadvantages in your State of admitting that a motor carrier is vicariously liable for the fault of its driver in the context of direct negligence claims?

All three federal district courts in Tennessee have applied the "preemption rule" whereby a plaintiff may not proceed against an employer on direct negligence claims such as negligent hiring, retention, training, and supervision once the employer has admitted vicarious liability for the actions of its agent. *See Freeman v. Paddack Heavy Transp., Inc.*, No. 3:20-cv-00505, 2020 U.S. Dist. LEXIS 237024 (M.D. Tenn. Dec. 16, 2020); *Ryans v. Koch Foods, LLC,* 2015 U.S. Dist. LEXIS 193054 (E.D. Tenn. July 8, 2015). The issue is currently pending, however, before the Tennessee Supreme Court and a ruling is expected later this year.

What is the standard applied for spoliation of physical and/or documentary evidence in your state?

"[W]hether a sanction should be imposed for the spoliation of evidence necessarily depends upon the unique circumstances of each case. Factors which are relevant to a trial court's consideration of what, if any, sanction should be imposed for the spoliation of evidence include: (1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent, (2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence, (3) whether, at the time the evidence was destroyed, the spoliating party knew or should have known that the evidence was relevant to pending or reasonably foreseeable litigation, and (4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party. A trial court's discretionary decision to impose a particular sanction will be set aside on appeal only when the trial court has misconstrued or misapplied the controlling legal principles or has acted inconsistently with the substantial weight of evidence." *Tatham v. Bridgestone Ams. Holding, Inc.*, 473 S.W.3d 734, 737 (Tenn. 2015).

Is the amount of medical expenses actually paid by insurance or others (as opposed to the amounts billed) discoverable or admissible in your State?

Tennessee's version of the collateral source rule allows a plaintiff to claim all billed medical expenses at trial as opposed to amounts actually by a health insurer because "[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable." *Dedmon v. Steelman*, 535 S.W.3d 431, 442 (Tenn. 2017). This rule means that an expert may not testify "that the amount billed is not the amount paid due, in part, to private contracts between the hospital and third parties." *Doty v. City of Johnson City*, No. E2020-00054-COA-R3-CV, 2021 Tenn. App. LEXIS 269 (Tenn. Ct. App. July 7, 2021).

What is the legal standard in your state for obtaining event data recorder ("EDR") data from a vehicle not owned by your client?

Tennessee has no specific EDR statute. It is therefore anticipated that Tennessee law would defer to the Federal Driver Privacy Act of 2015, which requires consent of the vehicle owner at the time the data is sought to be obtained in order to retrieve EDR data, or if the vehicle is leased, the lessee of the motor vehicle in which the EDR is installed. PL 114-94, 2015 HR 22, PL 114-94, December 4, 2015, 129 Stat 1312. Section 24302 part (b) provides that the data recorded or transmitted cannot be accessed by a person other than the owner or lessee of the motor vehicle unless:

1. a court or other judicial or administrative authority having jurisdiction—

   (A) authorizes the retrieval of the data; and

(B) to the extent that there is retrieved data, the data is subject to the standards for admission into evidence required by that court or other administrative authority;

2. an owner or a lessee of the motor vehicle provides written, electronic, or recorded audio consent to the retrieval of the data for any purpose, including the purpose of diagnosing, servicing, or repairing the motor vehicle, or by agreeing to a subscription that describe how data will be retrieved and used;
3. the data is retrieved pursuant to an investigation or inspection under section 1131(a) or 30166 of title 49, United States Code, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data, except that the vehicle identification number may be disclosed to the certifying manufacturer;
4. the data is retrieved for the purpose of determining the need for, or facilitating, emergency or medical response in response to a motor vehicle crash; or
5. the data is retrieved for traffic safety research, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data.

What is your state's current standard to prove punitive or exemplary damages against a motor carrier or broker and is there any cap on same?

Pursuant to Tenn. Code Ann. § 29-39-104:

(a) In a civil action in which punitive damages are sought:

(1) Punitive damages may only be awarded if the claimant proves by clear and convincing evidence that the defendant against whom punitive damages are sought acted maliciously, intentionally, fraudulently or recklessly;

(2) In an action in which the claimant seeks an award of punitive damages, the trier of fact in a bifurcated proceeding shall first determine whether compensatory damages are to be awarded and in what amount and by special verdict whether each defendant's conduct was malicious, intentional, fraudulent or reckless and whether subdivision (a)(7) applies;

(3) If a jury finds that the defendant engaged in malicious, intentional, fraudulent, or reckless conduct, then the court shall promptly commence an evidentiary hearing in which the jury shall determine the amount of punitive damages, if any;

(4) In all cases involving an award of punitive damages, the trier of fact, in determining the amount of punitive damages, shall consider, to the extent relevant, the following: the defendant's financial condition and net worth; the nature and reprehensibility of the defendant's wrongdoing; the impact of the defendant's conduct on the plaintiff; the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm; the duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; the expense plaintiff has borne in attempts to recover the losses; whether the defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior; whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act; whether, once the misconduct became known to defendant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages. The trier of fact shall be

instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole;

(5) Punitive or exemplary damages shall not exceed an amount equal to the greater of:

(A) Two (2) times the total amount of compensatory damages awarded; or

(B) Five hundred thousand dollars ($500,000);

(6) The limitation on the amount of punitive damages imposed by subdivision (a)(5) shall not be disclosed to the jury, but shall be applied by the court to any punitive damages verdict;

(7) The limitation on the amount of punitive damages imposed by subdivision (a)(5) shall not apply to actions brought for damages or an injury:

(A) If the defendant had a specific intent to inflict serious physical injury, and the defendant's intentional conduct did, in fact, injure the plaintiff;

(B) If the defendant intentionally falsified, destroyed or concealed records containing material evidence with the purpose of wrongfully evading liability in the case at issue; provided, however, that this subsection (a) does not apply to the good faith withholding of records pursuant to privileges and other laws applicable to discovery, nor does it apply to the management of records in the normal course of business or in compliance with the defendant's document retention policy or state or federal regulations;

(C) If the defendant was under the influence of alcohol, drugs or any other intoxicant or stimulant, resulting in the defendant's judgment being substantially impaired, and causing the injuries or death. For purposes of this subsection (a), a defendant shall not be deemed to be under the influence of drugs or any other intoxicant or stimulant, if the defendant was using lawfully prescribed drugs administered in accordance with a prescription or over-the-counter drugs in accordance with the written instructions of the manufacturer; or

(D) If the defendant's act or omission results in the defendant being convicted of a felony under the laws of this state, another state, or under federal law, and that act or omission caused the damages or injuries;

(8) If there is a disputed issue of fact, the trier of fact, by special verdict, shall determine whether the exceptions set forth in subdivision (a)(7) apply to the defendant and the cause of action;

(9) The culpability of a defendant for punitive damages whose liability is alleged to be vicarious shall be determined separately from that of any alleged agent, employee or representative.

Tenn. Code Ann. § 29-39-104(a) (2013). In addition, "punitive damages may be awarded against a defendant based on vicarious liability for the acts or omissions of an agent or employee only if the finder of fact determines by special verdict based on clear and convincing evidence that one or more of the following has occurred:

(A) The act or omission was committed by a person employed in a management capacity while that person was acting within the scope of employment;

(B) The defendant was reckless in hiring, retaining, supervising or training the agent or employee and that

recklessness was the proximate cause of the act or omission that caused the loss or injury; or

(C) The defendant authorized, ratified or approved the act or omission with knowledge or conscious or reckless disregard that the act or omission may result in the loss or injury.

Tenn. Code Ann. § 29-39-104(g)(2013).

Has your state had any noteworthy recent punitive damages verdicts? If so, what evidence was admitted supporting issuance of a punitive damages instruction? Finally, are any such verdicts currently on appeal?

Tennessee's cap on punitive damages largely precludes "nuclear" verdicts. However, in 2016, a Tennessee jury found a hotel franchise 49% responsible for a $55,000,000 judgment (before caps) in favor of a sports reporter who was filmed while in a state of undress in her hotel room by a third party who was criminally prosecuted after he put the footage online.

Does your state permit an expert to testify as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

In the Sixth Circuit, an expert may be allowed to state what an applicable federal regulation provides on its face but cannot interpret or opine on what the regulation requires. *Malburg v. Grate*, No. 11-14856, 2014 WL 4473786, at *4 (E.D. Mich. September 9, 2014). An expert is also not permitted to opine on whether defendant has complied with the FMCRs. *Amalu v. Stevens Transp., Inc.,* No. 115CV01116STAEGB, 2018 WL 6829044, at *3 (W.D. Tenn. Mar. 12, 2018), *aff'd*, No. 15-CV-01116-STA-EGB, 2018 WL 1911136 (W.D. Tenn. Apr. 23, 2018); *Evans v. Aloisio,* No. 1:19-CV-331, 2021 WL 4189692, at *3 (S.D. Ohio Sept. 15, 2021). Further, an expert is not permitted to introduce regulations that do not apply to the facts of the case. *Malburg*, 2014 WL 4473786, at *4.

In *Malburg*, the court allowed the expert merely to present the applicable FMCSRs to assist the jury in understanding the standard of care in the trucking industry. *Id.* at *3. The expert was expressly prohibited from offering "his interpretation of those regulations or expound[ing] on what they may require beyond what they state on their face." *Id.* at *4. The expert was further prohibited from opining that the defendant was negligent in violating those regulations, and he could not speculate on the state of mind of any person or what anyone "knew or believed." *Id.* at *5, *6.

Does your state consider a broker or shipper to be in a "joint venture" or similar agency relationship with a motor carrier for purposes of personal injury or wrongful death claims?

The particular relationship entered into between two parties is "determined by examination of agreements among the parties or of the parties' actions." *Johnson v. LeBonheur Children's Med. Ctr.*, 74 S.W.3d 338, 343 (Tenn. 2002); *see Youngblood v. Wall*, 815 S.W.2d 512, 516 (Tenn. Ct. App. 1991).

Principal-Agent

"The creation of a principal-agent relationship does not require an explicit agreement, contract, or understanding between the parties. *Johnson*, 74 S.W.3d at 343. Instead, determining whether such a relationship exists requires a careful analysis of the facts in a given case. *Tucker*, 180 S.W.3d at 120. The following factors should be

considered when determining whether a person is an agent or an independent contractor: (1) the right to control the conduct of the work, (2) the right of termination, (3) the method of payment, (4) the freedom to select and hire helpers, (5) the furnishing of tools and equipment, (6) the self-scheduling of work hours, and (7) the freedom to render services to other entities. *Id.* (citing *Beare Co. v. State*, 814 S.W.2d 715, 718 (Tenn. 1991)); *see also McInturff v. Battle Ground Acad. of Franklin*, No. M2009-00504-COA-R3-CV, 2009 WL 4878614, at *2 (Tenn. Ct. App. Dec. 16, 2009)."

Bowman v. Benouttas, 519 S.W.3d 586, 597 (Tenn. Ct. App. 2016). "The most indicative factor in determining whether a principal-agent relationship exists is the right of the principal to control the conduct of the work of the agent." *Id.* (citing *Tucker*, 180 S.W.3d at 120). The Tennessee Supreme Court has further explained, "[a]lthough the principal's right to control the actions of the agent is an important factor in finding the existence of an agency relationship ... the right of control is not necessarily as important as the principal's exercise of actual control over the agent[.]" *Id.* at 597-98 (quoting *White v. Revco Disc. Drug Cntrs. Inc.*, 33 S.W.3d 713, 723 (Tenn. 2000)).

Joint Venture

In Tennessee, a joint venture is defined as an:

"[A]ssociation of persons with intent . . . to engage in and carry out a single business adventure for joint profit . . . but without creating a partnership in the legal or technical sense of the term, or a corporation, and they agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal, as well as agent, as to each of the other coadventurers, with an equal right of control of the means employed to carry out the common purpose of the adventure."

Bowman, 519 S.W.3d at 599 (quoting *Fain v. O'Connell*, 909 S.W.2d 790, 793 (Tenn. 1995)). "Thus, the elements necessary to establish a joint venture are: (1) a common purpose; (2) some manner of agreement among the parties; and (3) an equal right on the part of each party to control both the venture as a whole and any relevant instrumentality." *Id*. (citing *Fain*, 909 S.W.2d at 793).

Implied Partnership

In Tennessee, a partnership is the association of two or more persons to carry on as co-owners of a business for profit. Tenn. Code Ann. § 61–1–202(a). In order to form a partnership, the intent of the parties need not be expressed orally or in writing. *Bass v. Bass,* 814 S.W.2d 38, 41 (Tenn. 1991). Instead, "[t]he existence of a partnership can be implied from the circumstances where it appears that the individuals involved have entered into a business relationship for profit, combining their property, labor, skill, experience, or money." *Id.* Further, any entity that receives a share of the profits of a business is presumed to be a partner of the business, unless the profits were received as payment for, *inter alia*, "services as an independent contractor or of wages or other compensation to an employee." Tenn. Code Ann. § 61–1–202(c)(3). However, "[w]hen a partnership agreement is not written, the proponent of the partnership must prove the existence of the partnership by clear and convincing evidence." *Kuderewski v. Estate of Hobbs*, No. E2000-02515-COA-R3-CV, 2001 WL 862618, at *3 (Tenn. Ct. App. July 30, 2001); *see also Tanner v. Whiteco, L.P.*, 337 S.W.3d 792, 798 (Tenn. Ct. App. 2010) ("[C]lear and convincing evidence is required to establish an implied partnership.").

Bowman v. Benouttas, 519 S.W.3d 586, 600 (Tenn. Ct. App. 2016).

Loaned Servant

The loaned servant doctrine "is a principle of agency law in which a general employer 'loans' his agent to a special employer, thereby giving the special employer control over the agent, along with responsibility for the agent's actions or omissions." *Gager v. River Park Hosp*., No. M200902165COAR3CV, 2010 WL 4244351, at *6 (Tenn. Ct. App. Oct. 26, 2010). "Control of how work gets done also plays an important role in determining whether a servant of one master becomes the loaned servant of another." *Armoneit v. Elliott Crane Serv., Inc.*, 65 S.W.3d 623, 629 (Tenn. Ct. App. 2001). Tennessee has adopted the Restatement of Agency approach to this inquiry:

Since the question of liability is always raised because of some specific act done, the important question is not whether or not he remains the servant of the general employer as to matters generally, but whether or not, as to the act in question, he is acting in the business of and under the direction of one or the other. It is not conclusive that in practice he would be likely to obey the directions of the general employer in case of conflict of orders. The question is as to whether it is understood between him and his employers that he is to remain in the allegiance of the first as to a specific act, or is to be employed in the business of and subject to the direction of the temporary employer as to the details of such act.

Gaston v. Sharpe, 168 S.W.2d 784, 786 (Tenn. 1943) (quoting Restatement (First) of Agency § 227 (1933)). "[W]hether a servant of one employer has become the servant of another is a question of fact" would normally "be for the jury" to decide. *Arrow Elecs. v. Adecco Emp. Servs., Inc*., 195 S.W.3d 646, 652 (Tenn. Ct. App. 2005) (quoting *Parker v. Vanderbilt Univ*., 767 S.W.2d 412, 416 (Tenn. Ct. App. 1988)). But, if a written contract controls the relationship parameters, then "[t]he interpretation of an unambiguous written agreement is a question of law for the court." *Id*. (quoting *Parker*, 767 S.W.2d at 416).

Provide your state's comparative/contributory/pure negligence rule.

Tennessee uses the modified comparative fault negligence system. *McIntyre v. Balentine,* 833 S.W.2d 52, 57-58 (Tenn. 1992). In other words, if plaintiff is found to be 50% or more at fault, plaintiff cannot recover. *Id.* 'Among other factors, the relative fault of the parties may be determined by considering (1) "the reasonableness of the party's conduct in confronting a risk, such as whether the party knew of the risk, or should have known of it;" (2) "the existence of a sudden emergency requiring a hasty decision;" and (3) "the party's particular capacities, such as age, maturity, training, education, and so forth." *Eaton v. McLain,* 891 S.W.2d 587, 592 (Tenn. 1994).

A defendant may successfully raise the defense of comparative fault by "set[ting] forth affirmatively facts in short and plain terms relied upon to constitute . . . comparative fault." Tenn. R. Civ. P. 8.03. Defendants are permitted to allege the fault of nonparties as an affirmative defense. *Austin v. State,* 222 S.W.3d 354, 357 (Tenn. 2007). However, "[a] defendant is not required to allege the fault of the nonparty explicitly or use the words 'comparative fault.'" *Id.* at 358.

In addition, Tenn. Code Ann. § 20–1–119, gives plaintiffs "a limited time within which to amend a complaint to add as a defendant any person alleged by another defendant to have caused or contributed to the injury, even if the statute of limitations applicable to a plaintiff's cause of action against the added defendant has expired." *Austin*, 222 S.W.3d at 357 (citing *Owens v. Truckstops of Am.,* 915 S.W.2d 420, 427 (Tenn. 1996)). "Tennessee Code Annotated section 20–1–119 applies whenever a defendant's answer gives a plaintiff notice of the identity of a potential nonparty tortfeasor and alleges facts that reasonably support a conclusion that the nonparty caused or contributed to the plaintiff's injury." *Id.* at 358.

Provide your state's statute of limitations for personal injury and wrongful death claims.

The statute of limitations for personal Injury and wrongful death are the same – 1 (one) year from date of loss or

injury. Under Tennessee law, a plaintiff has one year within which to file suit from the date the cause of action accrued, which is the date the injury occurred or the date the injury was discovered or reasonably should have been discovered. See T.C.A.§ 28—3-104(a)(1)(A).

However, Tennessee law has a narrow exception, which extends the statute of limitations for personal injury and wrongful death, if:

> (A) criminal charges are brought against any person alleged to have caused or contributed to cause the injury;
>
> (B) 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 by:
>
> (i) a law enforcement officer;
>
> (ii) a district attorney general; or
>
> (iii) a grand jury; and
>
> (C) the cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct.

See T.C.A. § 28-3-104 (a)(2).

It is important to note the Tennessee Court of Appeals has recently held that issuance of a traffic citation for failure to exercise due care, codified at T.C.A. § 55-8-136, is a criminal prosecution for the purpose of extending the statute of limitations for a period of two years. See *Younger v. Okbahhanes*, 632 S.W. 3d 531 (Tenn. Ct. App. 2019).

In your state, who has the authority to file, negotiate, and settle a wrongful death claim and what must that person's relationship to the decedent be?

Under Tennessee law, wrongful death actions, the survival actions, are creatures of statute and are governed under the same. The authority to control a wrongful death action, and the relationship required for this authority, is outlined in T.C.A. § 20-5-107. T.C.A. § 20-5-106:

> T.C.A. § 20-5-107 – Wrongful death; Parties institution Action governs the priority in which a wrongful death case can be filed.
>
> (a) The action may be instituted by the personal representative of the deceased or by the surviving spouse in the surviving spouse's own name, or, if there is no surviving spouse, by the children of the deceased or by the next of kin; also, without the consent of the personal representative, either may use the personal representative's name in bringing and prosecuting the suit, on giving bond and security for costs, or in the form prescribed for paupers. The personal representative shall not, in such case, be responsible for costs, unless the personal representative signs the prosecution bond in an individual capacity.

Under Tennessee law, the courts have generally recognized "that decedent's surviving spouse, if there is one, has the 'prior and superior right above all others' to file the wrongful death action and control the litigation." *Beard v.*

Branson, 528 S.W.3d 487, 499 (Tenn. 2017).

Under Tennessee law, the surviving spouse, or next of kin, is entitled not only to file the action, but also direct the settlement on behalf of the wrongful death beneficiaries. The priority of right to maintain and control a wrongful death cause of action is strictly construed by the Tennessee Supreme Court.

T.C.A. § 20-5-106 addresses the beneficiaries of the deceased. The statute specifically states:

> The right of action that a person who dies from injuries received from another, or whose death is caused by the wrongful act, omission, or killing by another, would have had against the wrongdoer, in case death had not ensued, shall not abate or be extinguished by the person's death but shall pass to the person's surviving spouse and, in case there is no surviving spouse, to the person's children or next of kin; to the person's personal representative, for the benefit of the person's surviving spouse or next of kin; to the person's natural parents or parent or next of kin if at the time of death decedent was in the custody of the natural parents or parent and had not been legally surrendered or abandoned by them pursuant to any court order removing such person from the custody of such parents or parent; or otherwise to the person's legally adoptive parents or parent, or to the administrator for the use and benefit of the adoptive parents or parent; the funds recovered in either case to be free from the claims of creditors.

T.C.A. § 20-5-106 – Wrongful Death; Beneficiaries

Further, wrongful death beneficiary statutes specifically allow for the recovered funds to be placed in a trust established for the benefit of a beneficiary in cases where the beneficiary, at the time of death, was a minor or who was otherwise legally incompetent.

If the settlement involves a minor, Court approval is required if the settlement is one ten thousand dollars ($10,000.00) or more; is a structured settlement, or involves a minor who is not represented by an attorney licensed to practice law in this state. T.C.A. § 29-34-105.

Practitioners should be aware that a surviving spouse waives his or her status as a beneficiary under Tennessee's wrongful death statute if the children or next of kin "establish the surviving spouse has abandoned the deceased spouse as described in § 36-4-101(a)(13) or otherwise willfully withdrawn for a period of two (2) years." (See T.C.A. § 20-5-106).

Is a plaintiff's failure to wear a seatbelt admissible at trial?

Plaintiff's failure to wear a seatbelt is generally not admissible at trial. However, in a products liability case, failure to wear a seatbelt is admissible in a products liability case as to the casual connection between such failure and the injuries alleged.

Pursuant to § 55-9-604, (a) The failure to wear a safety belt or receipt of a citation or warrant for arrest for failure to wear a safety belt shall **not be admissible** into evidence in a civil action; provided that evidence of a failure to wear a safety belt or receipt of a citation or warrant for arrest for failure to wear a safety belt, as required by this chapter, may be admitted in a civil action as to the causal relationship between noncompliance and the injuries alleged if the following conditions have been satisfied:

(1) The plaintiff has filed a products liability claim;

> (2) The defendant alleging noncompliance with this chapter shall raise this defense in its answer or timely amendment thereto in accordance with the rules of civil procedure; and
>
> (3) Each defendant seeking to offer evidence alleging noncompliance with this chapter has the burden of proving noncompliance with this chapter, that compliance with this chapter would have reduced injuries and the extent of the reduction of the injuries.

Upon request of any party, the trial judge shall hold a hearing out of the presence of the jury as to the admissibility of the evidence in accordance with this section and the Tennessee Rules of Evidence.

In your state, are there any limitations on damages recoverable for plaintiffs who do not have insurance coverage on the vehicle they were operating at the time of the accident? If so, describe the limitation.

In Tennessee, there are no limitations on damages recoverable for Plaintiffs who do not have insurance coverage on the vehicle they were driving at the time of the accident. While some states have adopted "no pay, no play laws," Tennessee has not adopted such laws.

How does your state determine applicable law/choice of law questions in motor vehicle accident cases?

When a conflict of law exists in a motor vehicle accident or other tort suit, the Tennessee Supreme Court has adopted the approach of the ***Restatement (Second) Conflicts of Laws*** (1971). In adopting the Restatement analytical framework, the Tennessee Supreme Court, in *Hataway v. McKinley*, 830 S.W.2d 53, 54 (Tenn. 1992), held:

> We conclude [the Restatement (Second) approach] is the more logical position because generally the law of the state where the injury occurred will have the most significant relationship to the litigation. In addition, the Restatement is easier to apply in difficult cases because it provides a "default" rule whereby trial courts can apply the law of the place where the injury occurred when each state has an almost equal relationship to the litigation. Moreover, the Restatement approach allows a court to apply the law of the state that legitimately has a stronger interest in the controversy, as opposed to a state that may have no interest at all in the proceedings.

Hataway, 830 S.W.2d at 59.

In *Hataway*, the Tennessee Supreme Court specifically identifies sections 6, 145, 146 and 175 of the ***Restatement (Second) Conflicts of Law*** as applicable to conflict of law analysis in Tennessee tort cases.

As with most conflict of law analysis, the first step is to decide whether a conflict of law actually exists between the relative laws of the different jurisdictions. Once the conflict of law is identified, the courts then examine the ***Restatement (Second) Conflicts of Law*** factors to determine which state has the most significant relationship to the case. Generally, under Tennessee law there is a presumption that the place of the accident has the most substantial relationship to the case. The Restatement suggests as follows:

§ 6 – The Choice of Law Principles

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,
(b) the relevant policies of the forum,
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.

In addition to the factors set forth under ***Restatement (Second) Conflicts of Laws*** § 6(2), the Tennessee Supreme Court has indicated that the "most significant relationship" approach also includes the following factors:

§ 145. The General Principle

The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.

Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

The place where the injury occurred,

The place where the conduct causing the injury occurred,

The domicile, residence, nationality, place of incorporation and place of business of the parties, and

The place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

§ 146. Personal Injuries

In an action for personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

Hataway, 830 S.W.2d at 59-60.

In wrongful death actions, the ***Restatement (Second) Conflicts of Laws*** also provides as follows:

§ 175. Right of Action for Death

In an action for wrongful death, the local law of the state where the injury occurred determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

§ 178. Damages

The law selected by application of the rule of § 175 determines the measure of damages in an action for wrongful death.

Restatement (Second) Conflicts of Laws (1971), §§ 175, 178.

A recent Tennessee decision held that Tennessee law governed a claim arising from an injury occurring in Tennessee, even where none of the parties had additional connections to the State of Tennessee. *Baldschun v. Action Resources, Inc.*, 1:19-CV-49, 2021 WL 1410033, at *9 (E.D. Tenn., March 16, 2021). In that case, arising from a motor vehicle accident in Tennessee, between a Georgia plaintiff, Texas defendant, and Alabama defendant, the federal court held that "Tennessee has the most significant relationship . . . ," and, therefore, Tennessee law applied.