

Civil Justice 101

A Brief Guide to the Tennessee Civil Justice System

Constitutional Right to Trial by Jury

Both the U.S. and Tennessee Constitution guarantee the right to trial by jury and for *citizens (not special interests)* to judge the conduct in our civil justice system.

Torts

A tort is a civil act (as opposed to criminal) that injures someone because of wrongdoing and allows an action for accountability.

Civil Cases

A civil case is a request that a court resolve a disagreement between two parties or organizations. The person that files the request is the plaintiff and the person being sued is the defendant.

Tennessee Civil Cases

Generally, judges may decide cases unless a party requests a jury. In a jury trial, all twelve jurors must agree with the result.

Statute of Limitations

The legislature set the maximum amount of time for a person to file a legal claim. After the expiration of the statutory period, unless a legal exception applies, the injured person loses the right to file the claim.

- *Personal Injury*: one year (most states are two to six years)
- *Injury to Personal Property*: three years
- *Product Liability*: one year
- *Contracts*: six years

Negligence

Negligence is the failure to use ordinary or reasonable care. Everyone is generally required to use the degree of care that a reasonable person would have exercised in a similar situation.

Simple Negligence:

Simple negligence occurs when a person fails to act reasonably and creates a risk of harm to others.

The Requirements to Prove a Simple Negligence Action:

To prove a negligence case, a party has to establish, by a "preponderance of the evidence" (greater than 50 percent of the weight of the proof): that a defendant owed a duty to the plaintiff (or a duty to the general public, including the plaintiff); that the defendant violated that duty; and that injury was caused by the defendant's wrongdoing.

Example: A person driving a car has a general duty to conduct the car safely. If a driver runs through a red light and causes an injury, the driver may be held accountable in a negligence action.

Gross Negligence/Reckless Conduct:

Gross negligence/reckless conduct is wrongdoing that shows little or no concern for a known risk of significant injury.

Example: Rock climbing tours involve high risk recreational activity. If a tour member is injured when safety equipment provided by the company unexpectedly fails and the company knows up front that the equipment is defective and uses it anyway, this would be gross negligence/reckless conduct.

If a Plaintiff Wins a Civil Case

There are two major types of damages in civil cases – compensatory and punitive:

Compensatory Damages – compensate a plaintiff for their injury or loss caused by the defendant.

- ***Economic Damages*** – compensate for injuries that cause lost wages, lost earning capacity, repairs to cars, medical expenses, etc.
- ***Non-Economic Damages*** – compensate for injuries that cause permanent disability (loss of a limb, blindness, loss of hearing, loss of mobility, etc.), emotional distress, loss of enjoyment of life and pain. For people who do not make a living in the workplace, such as stay-at-home moms, children, the elderly, disabled, these are usually the only damages obtained.

Punitive Damages – damages to punish or deter the defendant's wrongful conduct where the defendant is shown to have acted intentionally, recklessly, or maliciously. Punitive damages are rarely awarded.

Damages Cap – A damages cap limits the amount a jury can award for damages, no matter how severe the losses. A cap is a dollar figure that overrides the authority of judges and juries to determine a fair amount of damages, despite the evidence presented in the specific case. Several states have declared caps on damages to be unconstitutional.

Caps on Non-Economic Damages - Caps or limits on non-economic damages are considered to be unfair and discriminate against injured people who have lower incomes, such as women or men who work inside the home; children; the disabled; seniors or the poor. Caps arbitrarily limit damages in cases where the injuries are the most severe and often where the conduct is the most reprehensible.

TN has a cap on noneconomic damages of \$750,000 for all personal injury cases.

Caps on Punitive Damages - Historically, the prospect of having to pay punitive damages in a lawsuit causes corporations to build safer products and operate more safely. Many dangerous and defective products -- including the Ford Pinto, asbestos, Dalkon Shield IUD, and unsafe baby high chairs -- were removed from the market or redesigned to be safer because of punitive damages. Companies often weigh the potential costs of liability to determine whether a defective product should be redesigned or removed from the market, or an unsafe practice should be stopped. Capping or limiting punitive damages allows companies to treat liability as a cost of doing business, weakening their deterrent impact.

TN has a cap on punitive damages of \$250,000 for all personal injury cases.

Contingency Fees

Contingency fee arrangements allow access to courts for those who cannot afford to pursue cases otherwise. Rather than being charged by the hour, clients are allowed to pay counsel a portion of the potential recovery in the case. It allows an injured individual to pursue restitution from the wrongdoer without having to pay up front for an attorney. Because injury cases often take years and thousands of dollars in litigation costs to prosecute and **the attorney bears the costs if the case is not successful**, this arrangement inherently discourages unnecessary lawsuits.

It is the philosophy of the Tennessee Trial Lawyers Association to assist in finding solutions to any real problems that may exist within the civil justice system while always protecting the rights of Tennessee's citizens.

