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Last year we were able to celebrate the TTLA amicus team’s help in winning the Dedmon case. This year we can again praise our amazing legislative lobbying team and we are looking for the Supreme Court’s opinion deciding whether the $750,000 caps on non-economic damages are constitutional. Many TTLA members will be working on winning the fight to overturn the caps.

In this issue we have several articles that I hope will be helpful to our membership. There is also an article about a recent victory against Amazon for selling a dangerous hoverboard on their website to a Tennessee family that caused a great deal of harm. Amazon is one of the largest companies in the world, and holding the powerful accountable for the harms they cause is why many of us became lawyers. I know that was true for me. Finally, I renew my offer to answer the phone calls of any TTLA member who has questions about tort law or appeals. I enjoy the collegial nature of our profession, and especially of our members, who I think are the most collegial.

Have a great rest of the summer, and thanks again to Theresa Grisham for her amazing work on this magazine.

Sincerely,

Donald Capparella,
Editor
2019

OCTOBER 4
Filling Your Tackle Box: Strategies from Pre-Suit to Pre-Trial ........................................ Drury Plaza Hotel, Franklin

OCTOBER 14
20th Annual Dick Jerman Memorial Golf Tournament ...................................................... Jackson, TN

OCTOBER 24
TTLA Ex. Com., Board of Governors & LIFT Trustees Meeting........ Law Offices of Neal & Harwell, Nashville

DECEMBER 5-6
Annual Review & Ethics................................................................. Carnegie Hotel, Johnson City

2020

FEBRUARY 24
Legislative Update & CLE.......................................................... Law Offices of Neal & Harwell, Nashville

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Circle Dinner ........................................................................ Maggiano’s, Nashville

FEBRUARY 25
Civil Justice Lobby Day ............................................................... Cordell Hull Building, Nashville

MARCH 6
Trucking Seminar .................................................................. Doubletree Hotel, Downtown Nashville

APRIL 9
Family Law Seminar ................................................................. Drury Plaza Hotel, Franklin

APRIL 23
TTLA Ex. Com., Board of Governors & LIFT Trustees Meeting........ Law Offices of Neal & Harwell, Nashville

MAY 14
5th Annual Paralegal Seminar .................................................. Drury Plaza Hotel, Franklin

JUNE 17-19
2020 Annual Convention......................................................... Doubletree Hotel, Downtown Nashville

DECEMBER 3-4
Annual Review & Ethics.............................................................. Carnegie Hotel, Johnson City
Dear Fellow TTLA Members,

I’m excited to start my term as President of the Tennessee Trial Lawyers Association. I’m very appreciative of the opportunity to serve over the next year.

As you are aware, TTLA is a statewide organization. At one time or another, I’ve lived in all three grand divisions of Tennessee, so I understand how special each region of our great state is. I grew up in Cookeville, an area I still love and always enjoy getting back to whether it’s for a trip to Center Hill Lake or a side trip to Ralph’s Donuts after meeting with a new client there. In my younger days, I worked for eight idyllic, sunbaked summers at Boxwell Boy Scout Reservation in Gallatin, mostly on the waterfront. I went to law school in Knoxville at UT during the football glory years. I began my law practice in Memphis where I was always amazed by a city whose citizens remained hopeful often under the toughest of circumstances. I moved to Nashville where I was lucky enough to meet my wife and where our three children have been born. I feel blessed to live and practice law in Tennessee every day.

That said, our practices are constantly under attack. Part of TTLA’s mission is to protect the court system including the Seventh Amendment, which is the constitutionally protected right to trial by jury without government interference. There will always be people and special interests – often the insurance industry – seeking to chip away at the right to trials and to trial by jury. Our court system is part of what makes our country great. Every person can seek justice at the courthouse. Our judges should be allowed to practice their craft without their ability to do so being taken away.

My first job in Memphis I worked as a car wreck and medical malpractice insurance defense lawyer at a large firm. While I didn’t particularly enjoy defending clients who I thought should be paying the plaintiffs they had injured, I was able to try over thirty cases during my five years there. I handled administrative hearings. I tried general sessions cases. I tried bench trials. I tried multiple jury trials. That was an invaluable experience where I learned that there are times you need to just get your case ready and go try it. The right to trial must be preserved in Tennessee.

After moving to Nashville, I became a plaintiff’s attorney, and I joined the TTLA. I put up my black cape for good and I found I liked my job a lot more. As I became more active in TTLA, I learned exactly how much the organization, its members, its staff and the lobbying team do daily to keep our practice areas going from year to year. TTLA is often the only group standing between bad laws and what those bad laws will do the unsuspecting citizens of Tennessee. Your membership in the TTLA, and contributions via time, connections, and donations help that cause.

Over the years, I’ve found being a TTLA member has been very valuable to my practice. I gained access to the best trial lawyers in the State. I found continuing legal education that actually helps my practice. I learned the importance of networking and marketing. I made good friends and found referral sources for business. I have enjoyed working with our lobbying team and other attorneys to help craft bills for the legislature. Having a listserv to ask questions of other attorneys has been very helpful to my practice. All these opportunities are available to each member.

I can say that each of you will get as much out of TTLA as you put into it. Find a committee to join, ask for or serve as a mentor, consider serving on the board, recruit a new member or donate money to the cause. We need people in the trenches helping us get better and helping us fight.

Finally, I want to thank our fantastic staff, and lobbying team for all they do for the success of TTLA. Their hard work and dedication make TTLA stronger every day. I also want to thank the great lawyers and paralegals that make up TTLA. I’m proud to be at the helm this year and I look forward to fighting the good fight along with you.

Matt Hardin
PRESIDENT, TTLA 2019-2020

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The first year of the two year 111th Tennessee General Assembly adjourned on May 2, 2019 and will reconvene on January 14, 2020 at noon. The Tennessee Trial Lawyers Association (TTLA) fended off the attacks of special interests so that your clients will continue to achieve equity through the civil justice system. Most importantly, we were able to stop two constitutional resolutions from being presented in committee. This was due to the hard work and collaboration of the leaders of TTLA, civil justice lobby day attendees, members who served in the Attorney on Duty Program, and the lobbying team.

A new administration was established under newly elected Governor Bill Lee. Glen Casada was elected to be the Speaker of the House and Randy McNally was elected again as Lieutenant Governor of the Senate. There were over 30 new legislators. Senate Republicans continued to have a super majority at 28-5. House Republicans also continued their super majority status with 73-26. There are 5 attorneys in the senate and 10 attorneys in the house.

There were many changes to the Senate and House committees this year. Sen. Mike Bell was appointed to be the Senate Judiciary chairman. Speaker Casada made sweeping changes to the House committee structures. He created 14 full committees and 29 subcommittees. The biggest change for TTLA was the creation of the House Judiciary committee (Rep. Michael Curcio – Chairman) which had 4 subcommittees: Criminal Justice (Rep. Andy Farmer – Chair), Children & Families (Rep. Mary Littleton – Chair), Constitutional Protections & Sentencing ( Rep. Micha VanHuss - Chair) and Civil Justice (Rep. Mike Carter - Chair). There are 26 members on the full house judiciary committee. (The House Republican Caucus nominated Rep. Cameron Sexton (R – Crossville) on July 24th to replace House Speaker Glen Casada. Casada is slated to resign August 2nd after the Caucus voted in May in favor of a “no confidence” resolution related to his leadership. Governor Bill Lee has called a special session on August 23rd where the General Assembly will officially vote in the new speaker.)

**TTLA Bills**

**Auto Insurance Bill: SB427/HB1287** (Sen. Gardenhire/Rep. Farmer) This is a caption bill dealing with auto coverage to use as defense against a collateral source bill. Fortunately, a collateral source bill was not filed this session. *(A caption bill is a placeholder bill that opens T.C.A. sections you want to amend in the future. All bills that were filed this year remain in the system next year during the two-year general assembly. More information on collateral source is below.)*

- In 2018 the insurance industry filed 2 bills trying to overturn the Tennessee Supreme Court’s unanimous 2017 *Dedmon* opinion which upheld the collateral source rule in Tennessee. The bills were never discussed or voted on in committee. Plaintiffs can continue to use full, undiscounted medical bills to prove their medical expenses instead of the discounted amounts paid by insurance companies.

**Health Care Liability Bill: SB1034/HB1114** (Sen. Gardenhire/ Rep. Coley) Present law defines “passive investor” as an individual or entity that has an ownership interest in a licensee but does not directly participate in the day-to-day decision making or operations of the licensee. This bill redefines “passive investor” for purposes of this exclusion from liability to mean an individual or entity having an ownership interest of less than 5 percent in a licensed health care provider.

- The TTLA legislative committee made a strategic decision not to run the bill this year but it remains active this coming year.

**CONSTITUTIONAL RESOLUTIONS TO CAP DAMAGES**

A constitutional resolution was filed this year to propose an amendment to the Tennessee Constitution. SJR176/HJR135 (Lt. Governor McNally/Speaker Casada) which would have authorized the legislature to limit the amount of noneconomic and punitive damages that may be awarded in civil actions and specified that these limits do not diminish the right to trial by jury. The resolution was referred to the Senate Judiciary and the House Civil Justice Subcommittee. The TTLA lobby team and legislative committee members met with the chairman and members of the committees early in the session to voice our strong opposition. Ultimately, the resolution was not presented in either committee. This resolution remains active for the coming year.

*The process for a constitutional change:*

1. If a majority of the members of both Houses approve of a proposed amendment, that amendment must then be
referred to the next session of the legislature that meets after the next election of members of the legislature.

2. When the second session of the legislature considers the resolution, two-thirds of all the members elected to each House must approve of it.

3. If that happens, the proposed amendment is placed on the statewide ballot at the next general election in which a governor is to be chosen.

4. The proposed amendment is approved if it gains more “yes” votes than “no” votes and if the “yes” votes equal “a majority of all the citizens of the state voting for governor.”

BILLS TTLA OPPOSED THAT DID NOT PASS

Contingency Fee agreements with political subdivisions: S8981/HB1103 (Sen. Kelsey/Rep. Daniel) The U.S. Chamber filed a bill that would have restricted the ability of local governments to contract with outside attorneys working on a contingency fee to assist with complex litigation. This was filed as a response to the litigation against opioid manufacturers regarding the national opioid crisis. The U.S. Chamber Institute for Legal Reform released a report in March calling for states to strip municipalities of the ability to initiate litigation, or, barring that step, forcing municipalities to get approval from a state’s attorney general before they file a lawsuit. This legislation was introduced here in TN as well as in Texas. The big 4 cities, the Tennessee Municipal League, local DA’s and other municipalities were opposed to this bill.

Insurance: SB704/HB601 (Sen. Stevens/Rep. Marsh) The TN Farm Bureau bill would have eliminated punitive damage remedies or any extra-contractual remedy outside of the bad faith statute against insurance companies. The TTLA lobby team and leadership met early in the session to voice our strong opposition to this bill. TTLA negotiated with the bill sponsors that if we did not oppose SB413/HB348 (see page 5 for explanation) this bill would not be run.

BILLS TTLA OPPOSED THAT PASSED


- The TTLA legislative committee strategy was ultimately to let the bill pass as-is due to the high probability that the bill is unconstitutional. The bill was referred to the Commerce committees where there is only one lawyer on the Senate committee and none on the House committee.

- This issue first arose at the federal level in 2017 when then U.S. House Judiciary Committee Chairman cited a Heart Rhythm Journal paper that found attorney advertisements were scaring patients, causing them to stop taking medications without consulting their physicians. The paper was about Xarelto use and was funded by the drug’s manufacturer, Janssen Pharmaceuticals (a subsidiary of J&J). The US Chamber is now trying to push similar legislation to restrict what attorneys can say in their advertisements at the state level. These bills have been introduced in Florida, Kentucky, Louisiana, Texas, and West Virginia.

TTLA COMPROMISED BILLS THAT PASSED

Employment Law: SB466/HB539 (Sen. Roberts/Rep. Howell) now PC337 (effective Jan. 1, 2020) This bill requires the consideration of a 20-factor test as set out in an IRS Revenue Ruling 87-41 to determine whether an employer-employee relationship exists for purposes of the state’s wage and hour laws, the Occupational Safety and Health Act of 1972, the Tennessee Employment Security Law, and the drug-free workplace laws. The FGA “foundation for government accountability” filed this bill in several states to “Empower Independent Contractors to have states update their laws to match federal standards, making it easier for companies to hire contractors, creating jobs and growing the economy.”

- The original bill included workers compensation. TTLA, NFIB, the Workers Compensation Bureau, the Workers Compensation Advisory Council and others had concerns and ultimately the bill was amended to remove workers compensation.

Insurance: SB1331/HB1347 (Sen. Gardenhire/Rep. Carter) now PC325 (effective Jul 1, 2019) The bill mirrors the TennCare lien statute for county, municipal corporation, or a special school
district right of subrogation under the local authority’s group life, hospitalization, disability, or medical insurance plan.

- Originally the city of Chattanooga wanted to exclude self-insured local governments from the made whole doctrine. TTLA was able to work with the bill sponsor, Rep. Mike Carter, to mirror the TennCare lien statute and make some improvements instead of eliminating the made whole doctrine completely.

**Solicitation of accident victims:** SB1346/HB1107 (Sen. Massey/Rep. Powell) now PC111 (effective July 1, 2019) The bill classifies as confidential the personally identifying information of a driver, owner, or passenger of a motor vehicle involved in a motor vehicle accident contained in any accident report. An attorney may receive an accident report if they certify that they have received permission from persons who are legally authorized to obtain motor vehicle records information. The bill makes it a crime to knowingly use a motor vehicle accident report or information contained in the report for solicitation. The bill also creates a cause of action with civil penalties of up to $2,500 per violation with attorney’s fees to a prevailing plaintiff in any such action.

- TTLA met with a coalition early in the session who wanted to stop solicitation of accident victims that has become a problem in many Tennessee cities. The bill was a compromise between TTLA, law enforcement, insurance companies, state agencies and others.

**Trucking:** SB663/HB756 (Sen. Watson/Rep. Marsh) now PC97 (effective March 28, 2019) Removes the deployment, implementation, or use of a motor carrier safety improvement required by a motor carrier from being considered when evaluating a person’s status as an employee or independent contractor.

- TTLA met with the sponsor of the bill along with the TN trucking association and were able to add an amendment that this bill does not affect the liability of common carriers, motor carriers, private motor carriers, or trucking companies, as provided in the federal Motor Carrier Safety Act of 1986, federal motor carrier safety regulations of the federal motor carrier safety administration, Tennessee law governing motor carriers, and rules and regulations promulgated pursuant to present law, pertaining to the supervision and control of motor carrier vehicles and motor buses.

**BILLS OF INTEREST THAT PASSED**

**AED Immunity:** SB314/HB775 (Sen. Watson/Rep. Ramsey) now PC61 (effective March 28, 2019) The bill specifies that the entity responsible for the AED program is not civilly liable for any personal injury that results from an act or omission related to the use or maintenance of the AED that does not amount to willful or wanton misconduct or gross negligence.


- The original amendment would have totally excluded county and local government employees from PEPFA.

**Civil Procedure:** SB955/HB1003 (Sen. Yarbro/Rep. Beck) now PC151 (effective April 17, 2019) As enacted, allows a party or non-party making certain filings with a court to redact portions of a person’s social security number, taxpayer identification number, birth date, or financial account number or the name of a minor when included in the filing, unless such information is otherwise required by statute, rule, or order.

**Insurance:** SB413/HB348 (Sen. Stevens/Rep. Cepicky) now PC121 (effective April 9, 2019) Allows an insurance company to determine its obligations under an insurance policy as to all parties through a declaratory judgment action, an interpleader claim or action, or both, and creates a rebuttable presumption the insurance company is acting in good faith if the company files such an action or claim.

**Settlement agreements:** SB1262/HB594 (Sen. Gresham/Rep. Beck) now PC425 (effective May 21, 2019) Declares settlement agreement provisions that have the purpose or effect of concealing details or identities of persons relating to a claim of sexual harassment or sexual assault as void and unenforceable and contrary to public policy of this State if a settlement agreement is entered into by governmental entity.

**Statute of Limitations for certain acts of abuse against minors:** SB1252/HB565 (Sen. Gresham/Rep. Dunn) now PC499 (effective July 1, 2019) Extends civil and criminal statute of limitations for certain acts of abuse against minors. A civil action for an injury or illness based on child sexual abuse must be brought within 15 years from the date the person becomes 18. If an action is brought against someone other than the alleged perpetrator of the child sexual abuse, and if the action is brought more than one year from the date the injured person “attains the age of majority” the injured person must offer admissible and credible evidence corroborating the claim of abuse by the alleged perpetrator.

**OTHER BILLS THAT DID NOT PASS**

**Wrongful Death:** SB695/HB834 (Sen. Lundberg/Rep. Lam...
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berth) The sponsor of the bill was trying to amend the wrongful death statute due to a recent Tennessee Supreme Court case, Nelson v. Myres, where the decedent died in a car accident and the daughter filed a wrongful death action, naming several defendants, including decedent’s surviving husband. According to the daughter, the husband “was under the influence of an intoxicant at the time of the accident” and his actions disqualified him from maintaining the suit. The TSC ruled that a surviving spouse maintains priority to file a wrongful death action, even if the surviving spouse’s alleged negligence caused or contributed to the decedent’s death.

911 Calls and Recordings: SB386/HB335 (Sen. Reeves/Rep. Tillis) The bill would have made 911 calls, transmissions, and recordings of an emergency communications district and emergency communications board confidential.

GOING FORWARD

TTLA will continue to fight for the rights of Tennesseans and to protect the civil justice system from the attacks of special interest groups. There will never be a time when we don’t have a battle before us.

We want to thank all members of TTLA for their support, dedication and hard work throughout the year. Thank you to the members of LIFT (Lawyers Involved for Tennessee - our political action committee) and to the Circle of Advocates who fund our lobbying team and legislative program. You truly are helping preserve the civil justice system.

Our Association would not be able to have a meaningful presence in the General Assembly without trial lawyers being involved. Thanks again to all members that served as Attorney on Duty, our leadership and our lobbying team

Lauren Brinkley
TTLA Legislative Counsel

Cameron Jehl
TTLA Immediate Past-President

John Griffith
TTLA Legislative Chair

continued from page 8

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Limiting the Caps: Expanding Damages to the “Economic” Realm

by Brian G. Brooks

Rightly, the focus since the passage of Tennessee’s “cap” statute has been on legal strategies for attacking the constitutional validity of those caps. My friend and colleague John Vail developed strong legal concepts in that regard, and the day before the finishing touches were placed on this article, Randy Kinnard argued those concepts before the Tennessee Court of Appeals. Recently, Eddie Schmidt has taken those concepts to the Tennessee Supreme Court in a case certified by the Federal District Court after obtaining a jury-trial victory exceeding the cap. That case is set for September argument. We may know soon enough at least some of the constitutional boundaries surrounding the cap statute.

Here, though, the discussion is taken in a different direction with a different question. The discussion here is on elements of damage that can be removed from the statutory cap through more traditional and logical statutory construction. The question asked is may some elements of damage traditionally thought to be “noneconomic” damages be taken outside the statutory definition of that term and thus be placed outside the cap? This is an exercise that ought to be undertaken by all of us in every case in which the caps might apply. It is the primary question: does the cap apply at all, or, may the damages case be structured in such a manner as to avoid the cap in the first instance?

To take the question outside of the abstract and into something akin to reality, a more-or-less hypothetical wrong-ful-death case is proposed. The damages “facts” from that case are then analyzed in the context of the key definitions in the cap statute to demonstrate how elements of damage that are at first blush “capped” really ought not be. Those facts are then put to an analytical test to determine whether the caps should apply to the elements of damage set forth.

Please do not read what follows as the end of the conversation. Think of it as the beginning. Be critical. Ask whether the approach works, how it might be improved, and what other elements of damage in other cases might be subjected to it. Let a dialogue begin in which the most can be made of the statutory hand injured victims are dealt by the cap statute.

1. The Case.

Thus begins the more-or-less-hypothetical case.

Jack was killed by the tortious actions of employees of Tortfeasor, Inc. Jack, while living, was a stay-at-home dad married to Jill, a mid-level executive making a comfortable but not excessive income. Jack and Jill have four children. Jack did what most stay-home parents do. He cared for the children, kept the house, cooked the meals, and managed the home. Jill, busy with her job, did little to assist with these tasks necessary for daily living. The family will now have to replace what Jack did to meet the needs of the family unit.

Jack and Jill’s oldest child, Joe, is profoundly disabled. Quite literally, Joe needs 24-hour-per-day care, seven days a week. He cannot care for himself at all. He must be dressed, fed, and toileted. And he must be watched carefully. Joe has tendency to wander if left alone, and has no appreciation for avoiding dangers, like traffic, and has no ability to find his own way back home. Jack fulfilled these needs for Joe while Jack was living. Now that Jack is no longer living and able to meet these needs, the family will be forced to pay someone, a home caretaker or a care facility, to meet Joe’s needs.

Part of the damages recoverable in the wrongful-death suit brought on behalf of Jack, everyone agrees, is the economic value of the household services Jack provided to his family and the economic value of the caretaking services he provided to Joe. These are what the Tennessee Supreme Court termed “incidental damages suffered by [Jack’s] next of kin” in Jordan v. Baptist Three Rivers Hosp. And these damages are “objective-ly verifiable losses” to the survivors, capable of marketplace valuation. Indeed, that is exactly what Jack’s Estate’s experts do in the wrongful-death case; they place an economic marketplace valuation on those services and are prepared to offer that testimony in trial.

Nevertheless, Tortfeasor, Inc. wants these obviously “economic” elements of damage categorized as “noneconomic” in nature. Why? Because if they are so categorized they will be capped at a predetermined maximum amount by statute, limiting Jack’s Estate’s ability to recover for those losses irrespective of their actual economic marketplace valuation. And at first glance, Tortfeasor, Inc. seems to be on solid ground. The damages to Jill, Joe, and the other children are what Jordan and other cases tend to term “consortium” damages falling within the general definition of “noneconomic” damages subject to the cap.
Is Tortfeasor, Inc. right? Are these elements of damage for which a market valuation exists within what the cap statute terms “noneconomic” such that a predetermined cap on them must be applied? Close analysis of the statute, some case language, and some common sense indicate not. These are uncapped elements of “economic” damage.

2. The Statute’s Characterization is the Beginning and the End.

Categorizing damages suffered because of tortious conduct as “economic” and “noneconomic” is a relatively new concept in the law. Historically, a tort victim simply suffered “damages” that could be recovered without any classification of them as “economic” or “noneconomic.” Indeed, the term “noneconomic” damages is a highly technical term, defined, where it exists, typically by statute.6

Tennessee damages law is historically in accord, defining what injuries are compensable without categorizing them as economic or noneconomic. Jordan is an example. It examined what “damages” were available for recovery in a wrong-ful-death case with no consideration of whether those damages were “economic” or “noneconomic.” The opinion, in fact, listed elements of damage most think of as “economic” together with elements of damage typically considered “noneconomic” when it described both the survival-type damages and the wrongful-death-type damages recoverable in a wrongful-death suit. The question in the cases preceding the statutory dam-ages caps was not whether “damages” a tort victim may recover were “economic” or “noneconomic.” The question was simply whether they were “damages” that could be recovered or not. Further characterizing damages as either economic or noneconomic only arose when one of those categories, so-called noneconomic damages, became amenable to a pre-existing damages cap.

Thus, critical to the question of how to characterize or categorize elements of damage are the words of the statute defining these two purely legislative terms. Those words are somewhat clear on their face, reading as follows:

(1)“Economic damages” means damages, to the extent they are provided by applicable law, for: objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, mental health treatment, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, repair or replacement of property, obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses;

(2)“Noneconomic damages” means damages, to the extent they are provided by applicable law, for: physical and emotional pain; suffering; inconvenience; physical impairment; disfigurement; mental anguish; emotional distress; loss of society, companionship, and consortium; injury to reputation; humiliation; noneconomic effects of disability, including loss of enjoyment of normal activities, benefits and pleasures of life and loss of mental or physical health, well-being or bodily functions; and all other nonpecuniary losses of any kind or nature.7

The statute categorizes tort damages based on two obvious criteria. Economic damages are those for which the loss may be determined based on an economic marketplace valuation. That, at the very least, is what “objectively verifiable monetary losses” are. A marketplace “price” exists for items such as medical expenses and medical care, lost income, domestic services, and custodial care. Indeed, those services can be bought readily in the economic marketplace. And that is the underlay-ment for the characterization of those damages as “economic.”

Noneconomic damages, on the other hand, are losses for which an economic marketplace valuation is not available. Or, as recent commentators put it, these are damages “for losses that are clearly tangible but ineffable in monetary terms.”8 No market exists valuing pain, loss of love, or loss of the ability to enjoy social activities. One cannot buy them in the economic marketplace. The want of an economic marketplace in which these items can be bought for a price is the underlay-ment for their characterization as “noneconomic.”

On the face of the statute, therefore, the items of loss suffered by Jack’s family due to Jack’s death are “economic” damages. They are readily amenable to economic marketplace valuation, and in fact can be purchased in the marketplace. Jill can hire a person to care for the children, care for the house, and cook the meals. She also can retain home care for Joe or pay for him to be institutionalized. A market exists for all of these items that are lost to the family due to Jack’s death. Thus, they meet the general definition of “other objectively verifiable monetary losses” and must be “economic damages” as defined by the statute.

These losses also fall within the specific categories of eco-nomic damages set out in the statute. The lost services to the household in general fall within the category of “obtaining substitute domestic services” quite easily. And the lost services caring for Joe are at minimum “medical care” and “custodial care.” So, every way one looks at the question, these damages fit the “economic damages” definition precisely.

The converse is also true. These losses simply do not fall within the category of “nonpecuniary losses of any nature.” “Pecuniary” means “Monetary; relating to money; financial; consisting of money or that which can be valued in money.”9 Nonpecuniary means the exact opposite. The losses suffered by Jack’s family due to Jack’s death are losses that can be, and
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Prior to serving as President of the Tennessee Trial Lawyers Association (TTLA), he served as Vice President, Secretary, Treasurer, and Parliamentarian. Matt is a member of the American Association for Justice, Nashville Bar Association, Tennessee Bar Association, Kentucky Bar Association and Kentucky Justice Association. Matt is the former President of the Nashville Chapter of the Rhodes College Alumni Group. He is also former President of the Board of Directors for his fraternity Alpha Tau Omega’s chapter at Rhodes College. Matt is currently a Trustee for LIFT (Lawyers Involved for Tennessee).

Matt has earned AV Preeminent® certification by Martindale-Hubbell® Peer Review Ratings™. He has been recognized by Best Lawyers® and has been named among the “10 Best in Tennessee” for Client Satisfaction by the American Institute of Personal Injury Attorneys. He is also a Mid-South Super-lawyer and he is a Fellow of the Nashville Bar Foundation. Matt is also an Eagle Scout.

Prior to opening his own firm, Matt was a partner at Rudy, Wood, Winstead, Williams and Hardin, PLLC. He also previously practiced at Gullett, Sanford, Robinson & Martin PLLC in Nashville and at Thomason, Hendrix, Harvey, Johnson & Mitchell, PLLC in Memphis. Matt worked for five years as an insurance defense attorney before he concentrated his practice on representing plaintiffs. This background has given him valuable insight on how insurance companies evaluate and value cases.

Matt and his wife, Janet, are active members of West End United Methodist Church in Nashville, where Matt currently serves on the finance committee. Janet works as the Executive Director of Matt Hardin Law. She has a chemical engineering degree from the University of Notre Dame and an MBA from Belmont University. Matt and Janet are proud parents to Henry, Grace, and Vivian.

Matt enjoys his children’s many sports activities, as well as college football, college basketball, professional tennis and the Kentucky Derby. Matt loves boating at Center Hill Lake with his family and is always on the hunt for the perfect southern barbecue.
in fact are, “valued in money.” And because these losses are “valued in money” they are pecuniary, economic losses and do not fit the definition of noneconomic, nonpecuniary losses.

As an aside, sort of, the cap statute’s terming “noneconomic damages” as “nonpecuniary” and thus not amenable to being “valued in money” also supports the conclusion that the key factor in the categorization is the existence, or lack thereof, of an economic marketplace for the item of damage. One should readily notice that the losses listed as “noneconomic damages” are, and historically have been, “valued in money” by juries. “Valued in money” in the context of “noneconomic damages” and “nonpecuniary losses” must mean valued in money in the economic marketplace otherwise no damages are noneconomic.

Reading the statute leads to the answer to the question. A marketplace exists for the family’s losses related to Jack’s domestic services to the entire family and Jack’s care for Joe. They are, therefore, “economic” damages that should not be subject to the cap.

3. Tortfeasor, Inc.’s Sidesteps Around the Statute don’t work.

Tortfeasor, Inc. attempts to sidestep around the clear words of the statute by latching on to the word “consortium” in the statute’s definition of noneconomic damages. It’s logic, again, is as follows. Damages recoverable to survivors in wrongful-death cases are called “consortium” damages by the cases. The statute uses the word “consortium” to define noneconomic damages. Therefore, all damages recoverable by survivors must be noneconomic even if they are “valued in money” or are “objectively verifiable monetary losses” or are capable of economic marketplace valuation. This logic, appealing as it is on its face, is assailable and inevitably incorrect for several discernable and obvious reasons.

First, it ignores the words of the statute and the clear intent of the legislature in enacting it. The goal to be met when construing a statute is “to ascertain and give effect to the legislature’s intent.” The place to start that analysis is with the words of the statute. That is where all statutory construction must begin, and often where it ends. Courts presume the legislature intended each word to be given full effect, and where a statute is unambiguous, courts ascertain legislative intent from the natural and ordinary meaning for the words used in the context of the entire statute. If the wording of the statute leads to a logical interpretation that does not expand or contract the statute’s meaning, that interpretation ought to be followed.

The intent of the legislature in defining these two damages terms is abundantly clear from the words of the statute. The legislature intended to allow a full and complete recovery for any and all losses that are “objectively verifiable monetary losses,” or, as set out here, losses for which an economic marketplace valuation is available. It intended to limit recovery for losses that are “nonpecuniary,” or, as set out here, losses for which no economic marketplace valuation is available. That dividing line is clearly marked by the statute.

Putting the words of the statute in a more common context helps. When a person is injured in a car wreck, the cost to repair the car, to set his or her broken leg, and the cost to rehabilitate the injury are “economic” damages. That is so because a market exists to buy them and therefore value them. The physical pain and discomfort of the injury is a “noneconomic” damage, not because juries can’t put a value on it but because no economic marketplace exists for it. That delineation is the clear legislative intent behind the cap statute.

Tortfeasor, Inc.’s logic turns legislative intent and the words of the statute on its head. It categorizes “objectively verifiable losses” to survivors as just the opposite of what they are. This is nonsensical and should be rejected. Again the damages are “economic” because they are amenable to marketplace valuation, which is exactly what the legislature intended with the cap statute.

Second, and similarly, Tortfeasor, Inc.’s logic lifts one word out of the statute and ignores all others. Again, the items of loss Jack’s Estate seeks are, at least, medical care, custodial care, and substitute domestic services, each of which is classified as “economic damages.” To accept Tortfeasor, Inc.’s logic, one must ignore the specific inclusion of these losses in the definition of economic damages and focus only on the word “consortium” in subsection (2) even though “Courts presume the legislature intended each word to be given full effect.” The entire statute, not one isolated word, must be examined.

Tortfeasor, Inc.’s logic ignores the wording of the statute in other respects as well. Subsection (2) lists certain elements of damage that are “noneconomic” including “loss of society, companionship, and consortium” as a group, then concludes “and all other nonpecuniary losses of any kind or nature.” The phrase “all other nonpecuniary losses” clarifies that any of the losses set out in subsection (2) must first be “nonpecuniary” in order to be “noneconomic.” The losses at issue in Jack’s case are anything but “nonpecuniary” for all of the reasons set out previously. Logically, the word “consortium” in subsection (2) is limited to those consortium damages that are “noneconomic” in nature, which does not include the losses at issue in Jack’s case because these losses are “objectively verifiable monetary losses.”

Third, Tortfeasor, Inc.’s logic focusing as it does on one word ignores the effect of other words. The logic is damages to survivors are classified as “consortium” damages by the cases and
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“consortium” is the word used by subsection (2). Therefore, consortium damages must be noneconomic.

This is what Tortfeasor, Inc. misses: consortium damages are also classified in the cases as pecuniary in nature with a pecuniary value. Jordan, for example, wrote

Any individual family member has value to others as part of a functioning social and economic unit. This value necessarily includes the value of mutual society and protection, i.e., human companionship. Human companionship has a definite, substantial and ascertainable pecuniary value, and its loss forms a part of the value of the life we seek to ascertain.79

Similarly, Hall v. Stewart, noted, “Pecuniary value also includes spousal and parental consortium.”20 Yet, we know from the words of the statute that “objectively verifiable pecuniary damages” are economic damages.21 On the other hand, only “noneconomic losses of any kind or nature” are noneconomic damages. Following Tortfeasor, Inc.’s logic, because the damages described in cases like Jordan and Hall have an “ascertainable pecuniary value,” they must be “economic damages” irrespective of whether an economic marketplace valuation exists for them.

This is illogical. The better reasoning is to rely on what the statute actually says and does. The statute defines economic damages as those for which an economic marketplace valuation is available. It defines noneconomic damages as those for which no such valuation exists. And the damages Tortfeasor, Inc. attacks in Jack’s Estate’s case are economic damages under this clear reading.

Finally, Tortfeasor, Inc. attempts to use the precursor phrase “to the extent they are provided by applicable law” in subsections (1) and (2) to make these economic damages fit the noneconomic definition. It claims this phrase binds “consortium” to one category of damage. To the contrary, it merely means the elements of damage available in a particular case are not expanded by the statute. For example, the statute does not expand recoverable damages to include “hedonic” damages just because they are easily classified as “noneconomic losses of any kind or nature.” The phrase has no bearing on whether a particular element of damage is economic or noneconomic. That question turns on whether it is an objectively verifiable monetary loss.

4. Concluding Thoughts.

The premise advanced here is Tennessee’s cap statute has limits that can be tested. It categorizes damages based on whether they represent an “objectively verifiable monetary loss” to the victim of a tort. If an item of damage has economic marketplace value, it is an objectively verifiable monetary loss. That is the classification the statute makes. When elements of damage fall within that classification, the cap cannot apply. Jack’s case applied that premise to certain elements of damage in a wrongfull-death case and concluded the caps do not apply to them.

Test that conclusion. Ask if it holds up. Challenge it and try to break it down. Ask also where the logic might allow other elements of damage to escape the cap. Where might a victim suffer harm that is amenable to marketplace valuation not typically thought of.

ABOUT THE AUTHOR

Brian G. Brooks is a solo practitioner who focuses on appellate practice and complex legal research, writing and advocacy for the plaintiff’s bar. He is also counsel for the Arkansas Trial Lawyers Association, amicus curiae counsel for the Tennessee Trial Lawyers Association. His office is located near Pickles Gap, just between Conway and Greenbrier Arkansas.
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Interesting Direct Examination

by Eddie Schmidt

Direct examination need not be painfully boring for the jury and can be more than the check the box of information technique some of us learned in law school. This article presents some direct examination methods taught at Gerry Spence’s Trial Lawyer’s College (www.triallawyerscollege.org).

First and foremost think about the witness’s testimony as a story; as in what is the story that can be told through this witness? Obviously there are some witnesses in which the potential for story is limited such as the clerk authenticating records. However, witnesses called at trial are for the purpose of telling parts of our client’s case which itself is a story we want the jury to hear and accept.

Secondly, how can the witness’ story be most effectively conveyed? This is where the lawyer’s trial skill can be deployed. Regardless whether the witness’ story is to describe how the plaintiff was harmed, what the defendant did that was negligent, or the plaintiff’s damages, all can be accomplished effectively. We want the jury to experience the story.

Use of present tense. Have the witness tell his/her story in present tense, as though he is describing the story for the first time in real time. The key to this is asking the questions in present tense. Instead of asking, “where were you,” “what happened,” “what was the defendant doing,” “how has Mr. Jones been harmed?” Ask, “where are we,” “what do we see,” “what is the defendant doing,” “how is Mr. Jones hurt?” Asking the questions in present tense will often keep the witness telling his story in present tense.

Use of the senses. Have the witness tell his story by employing as many of the five senses as realistically possible. Not only do we want to know the visual, but also sounds, odors or aroma, tactile or touch, and sometimes flavor. This is most effective when describing the scene where the story occurs. Take for example the story of a young man visiting his girlfriend in the hospital after a terrible wreck. “Where are we?” “What does the room look like?” “Are there unusual sounds?” “How does it feel in this room?” “What does it smell like?” The sense of smell for some jurors is a very powerful trigger.

“Setting the scene” through our witness’s testimony can be eliminated or curtailed by use of photographs or video. We’ve all heard the expression, “a picture is worth a thousand words.” What if there are no photographs? Or the pictures are terrible? Or the courtroom does not have the equipment to show the photographs on a Elmo and projector? We always have to deal with the inevitable defense counsel objections and the sometimes tricky foundational questions needed to get the pictures into evidence. Another challenge with photographs is having one or more of the jurors become distracted. With pictures, the jury’s focus moves from the witness to the exhibits. My preference is to use no photographs or as few as needed. If the witness has a compelling story I prefer to keep the jury’s focus on the witness.

Once oriented to the location, or scene, the witness can then describe the harm as though we are all in the hospital room experiencing the horrible harm a young woman has suffered. You may have noticed I use the pronoun, “we” when asking the direct questions. That is intentional because I want to convey the impression that the plaintiff, the jury and I are all the same journey together. The journey being the story of what happened to my client that requires ordinary citizens (the jurors) to be summoned to resolve a dispute in this trial.

Put into action. A common expression heard at the Trial Lawyer’s College is “show me what happened don’t tell me.” If the witness’ story includes any kind of action, have the witness get off of the stand and show the jury what happened. Getting the witness off of the stand need not only be

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to demonstrate action, but can also be for the simple reason to set or describe the scene where the action occurred. The purpose is to break up the monotony. It does require foundational questions: “Would it assist you in more effectively describing what happened (or the location) by stepping down and showing us?” “Would showing us allow the jury to better understand what happened (or the location)?”

Getting the witness off of the stand to set a scene and to put something in action can both be done. Last summer I tried a case in which one of the pivotal points of the trial was my client being taken to a hospital trauma ward for emergency surgery. The trauma surgeon agreed to testify live and offered to take me into the trauma ward so I could take pictures or a video to show at trial. I declined. Instead, at trial I had the surgeon get off of the stand to physically show the jury how the trauma bay was set up. After walking us through the sights, sounds, feel and smells of the trauma bay and with me posing as the patient (my client), I had the surgeon step into the shoes of each member of the 10 person trauma team to explain in first person present tense what each member of the trauma team did during surgery that saved my client’s life. The demonstration was significantly more interesting and effective than pictures or a video.

If you get the witness off of the stand to demonstrate something, keep in mind a couple of considerations. Getting the witness off of the stand must be for the limited purpose of showing something. Once that is completed, the witness must return to the stand before testifying further. If after the demonstration, you continue the examination, either defense counsel will object or the judge will stop you, unnecessarily interrupting the story. Furthermore, keep in mind the jury’s line of vision when having the witness demonstrate something. Having the witness’s backside to the jury or demonstrating something the jury cannot see defeats the purpose of the demonstration. It’s important to work this out ahead of time, and you may have to re-position the witness so that the jury can see what is being shown during the course of the demonstration.

By the way, asking the witness to show you something is often more effective trial preparation than asking the witness to describe something verbally. Often a witness may not have the verbal skills or education to describe a complicated or emotional event. Asking the witness to show or demonstrate something lowers the threshold. Having the witness describe in present tense and taking him or her through the five senses may allow him to tell the story more effectively and may trigger his recollection of the event more graphically than asking him to describe an event.

What if the judge in your jurisdiction will not allow the witness to step down or the courtroom is so small or cramped putting something into action is not feasible? Ask the witness to show or demonstrate something from the witness chair. “Can you show us the defendant’s reaction?” “How is he sitting?” “How is he standing?” “What is the facial reaction?” I find most judges will allow a trial demonstration because it is different and interesting.

Expert witnesses. Having the expert recite his resume is boring. Instead, find out why and how the expert got into his field. Often times there is a compelling personal story behind how and why the expert developed the passion that led him into his field. Not only can jurors relate better to the personal back story, it often breaks down the barrier between the expert and jury who otherwise cannot fathom the expert’s education and experience. During the course of the expert’s opinions, you can drop in how many articles he has written, how many lectures, etc. This of course not only bolsters the expert’s qualifications but demonstrates further how passionate this expert is about his field.

These methods require planning, preparation and a cooperative, compliant witness. If your witness takes the stand during trial and immediately has that “deer in the headlights” gaze, the methods described here are not usable. However with the right witness and preparation, these methods can provide for a more effective direct exam that is interesting for the judge and jury.

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Eddie Schmidt, originally from Louisiana, attended Vanderbilt undergrad and LSU Law School. In 1998 Eddie attended the Gerry Spence Trial Lawyers College and currently serves as a member of the teaching faculty. Eddie also regularly writes and speaks about trial practice. Eddie has tried all types of civil and criminal cases and obtained significant verdicts in medical malpractice, products liability, unfair trade practices and civil rights in both state and federal courts. He has a long history of strong beliefs in legal and ethical equality. Eddie is a long time supporter of TTLA and his law practice is currently in Nashville at www.eschmitlaw.com. eddie@eschmitlaw.com.
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Check here, if your contribution will be made from a partnership account.

Contributions made from partnership accounts are assumed to be paid from your portion of the assets. If this is not the case, state what portion will be charged to you, as well as what partners will be responsible for the remainder of the contribution:

$ __________

Other monthly contribution allocation:

If you wish to contribute according to a formula that differs from the monthly allocation schedule set forth above, please indicate the amounts to be paid to each:

$ ________ LIFT  $ ________ TTLA  $ ________ AAJ-PAC

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<th>Advocate</th>
<th>LIFT</th>
<th>TTLA</th>
<th>AAJ-PAC</th>
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<td>Copper</td>
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Personal Method:

Personal check is enclosed (payable to "LIFT")

Bank Draft (please complete requested info)

Bank Account Number ____________________________

Bank Name & Address ____________________________

Charge to: mastercard  VISA ____________________________

Credit Card Number __________________ Exp. Date ______

Signature ____________________________

I request that monthly payments be deducted from my personal account according to the allocation schedule set forth herein to LIFT (state PAC), TTLA and AAJ-PAC (federal PAC). It is agreed that (a) each payment, upon being charged to my account by the respective bank or credit card company, shall be my receipt for payment of the designated contribution; (b) I reserve the right to revoke this authorization by giving written notice to the institutions and authority to charge such drafts to my account shall cease upon delivery of written notice of revocation, and (c) any such draft shall be dishonored; whether with or without cause, whether intentionally or inadvertently, no liability whatsoever shall attach.

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Tony Seaton has been practicing in East Tennessee for nearly four decades. It has always been Tony’s calling to serve the folks of his community. In addition to representing injured folks for decades, Tony started a free legal advice clinic in Washington County. This clinic started 12 years ago and has continuously been staffed through volunteer lawyers in Washington County. Operating each month, over 4,000 financially challenged individuals and families have been served.

The legal clinic was such a success that it became a model for starting clinics statewide. In 2012, the Tennessee Supreme Court solicited Tony to become a member of the Access to Justice Commission. Tony then made it his mission for the next 6 years to travel across the state and meet with judges and bar associations in an effort to recruit other lawyers to start similar clinics. At the completion of his term on the Commission, a legal clinic was established in all of the judicial districts of the state.

The clinic was also a model for cooperation with the local Legal Aid Association. Due to Tony’s involvement with Legal Aid of East Tennessee, the Association chose to name the Legal Aid of East Tennessee’s hall of fame after Tony Seaton. In 2017, Tony was the first inductee of The Seaton Hall of Fame pro bono award.

Another program that Tony started in the East Tennessee community started with kids. 14 years ago, right before Christmas, a teacher reached out and told the firm that Christmas was going to be scarce among the Headstart Program’s kids and families. All of the staff of the law firm raised money and bought Christmas presents for all 50 of the 3-5 year old kids attending the Headstart program. One can now say that the rest is history. The tradition continues each year. Tony says: “I can’t imagine having Christmas each year without taking all of the kids gifts and watching their faces light up like a glowing tree!”

Tony is proud of his staff and associates. All of them participate with the clinics and Headstart program. One former associate and now full partner, Robert Bates, began as an intern at Tony’s firm nearly a decade ago. Robert has been nationally recognized, including being named National Trial Lawyers: Top 40 Under 40 and a member of the Multi-Million Dollar Advocates Forum.

Tony and Robert are graduates and instructors in the Keenan Trial Institute. Together, they have taught attorneys across the country various trial techniques including: Jury Selection, Opening Statement, Mediation, Closing Argument, Focus Groups, Cross Exam, Deposition and the use of technology and visuals. Following the model and mentoring of Don Keenan, Tony and Robert share and collaborate with lawyers nationwide in an effort to help those lawyers choose and try better cases, making our communities safer.
Amazon Can Be Held Accountable for Exploding Hoverboard

by Donald Capparella

Steve Anderson and Donald Capparella, both of the Nashville bar, earned a rare victory against the online marketplace giant, Amazon, in the U.S. Court of Appeals for the Sixth Circuit in July 2019, allowing their tort case against Amazon to proceed past the summary judgment stage.

Amazon sold almost 250,000 hoverboards on its site for the Christmas of 2015, most of which were manufactured in China without strict product safety oversight. The faulty lithium-ion batteries for many of these hoverboards frequently malfunctioned and caused many of the hoverboards to spontaneously catch fire, regardless of whether they were in use or charging at the time. Amazon ceased all sales of these hoverboards worldwide and launched its own internal investigation, which confirmed the safety risks of these devices. However, Amazon did not tell anyone that they had ceased all sales, or share their knowledge that the hoverboards could burst into flames. Notably, the Amazon product safety manager was so concerned that the “entire product of hoverboards was bad” that he removed the wrapped hoverboard he had purchased as a gift for his own daughter from his home. He did not give the public the chance to do the same thing.

Rather than warn their hoverboard customers of the true danger of these products, on December 12, 2015, Amazon sent what they called a “non-alarmist” email. This email vaguely warned customers about “news reports of safety issues” related to the hoverboards, but not much else. There was no mention of the fires and explosions that Amazon’s internal investigation had revealed. Crucially, Amazon omitted that it had conducted its own safety investigation, or that it stopped selling any hoverboards on their site. At the same time, Amazon emptied these hoverboards from their warehouses and summoned a group of workers to work on Christmas day, anticipating what they expected would be a “sudden uptick” of fires and explosions as children opened and played with their gifts.

Megan and Brian Fox purchased one of these hoverboards on Amazon as a Christmas gift for their son. On January 9, 2016, the Foxes’ hoverboard caught fire and exploded in the family’s $1M home while the parents were out. The fire trapped two of the children on the second story of their home, forcing them to break windows and leap out of the second story into their father’s arms. The family home was destroyed, and the family members sustained extensive injuries.

The Foxes retained Steve Anderson to represent them in federal court against Amazon and W2M Trading Corp. (“W2M”), the Chinese Corporation and “third-party seller” of the hoverboard operating under the Amazon “friendly name” “-DEAL-.” They brought claims under the Tennessee Products Liability Act (“TPLA”), Tennessee tort law, and the Tennessee Consumer Protection Act (“TCPA”). However, W2M disappeared, failing to answer or otherwise defend itself in the case. After the trial court entered a default judgment against W2M, the Foxes turned to Amazon for liability. Amazon answered, in part, by denying that it was a “seller” of the hoverboard under the TPLA, or that it had assumed a duty to warn under the Restatement by sending the “non-alarmist” email.

The United States District Court for the Middle District of Tennessee granted Amazon summary judgment dismissing the entire case, and the Foxes appealed to the Sixth Circuit Court of Appeals.

Donald Capparella joined Steve Anderson as co-counsel for the appeal to the U.S. Court of Appeals for the Sixth Circuit. On July 5, 2019, the Court reversed the grant of summary judgment order with respect to the Foxes' Tennessee tort law claim. The Court held that, under § 323 and § 324A of the Restatement (Second) of Torts, Amazon had assumed a duty to warn the Foxes of the dangers posed by the hoverboard when it sent the “non-alarmist” email. Further, the Court held that genuine issues of material fact existed as to whether Amazon did so negligently and caused the Foxes harm. Additionally, the Court adopted the Foxes' proposed definition of a seller under the TPLA, defining a seller as “any individual regularly engaged in exercising sufficient control over a product in connection with its sale, lease, or bailment, for livelihood or gain.” However, the Court held that Amazon was not a seller in this case because insufficient proof existed that it exercised this amount of control over the transaction in this case. The Court also held that Amazon did not violate the TCPA because there was not sufficient proof that W2M’s use of the name “-DEAL-” in the transaction caused the Foxes’ injuries.

On remand, the Foxes will get the chance to prove that Amazon negligently performed its duty to warn its hoverboard

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customers of the dangerous devices and that the breach of its duty caused the Foxes’ injuries. This is the first case that counsel is aware of that has survived a summary judgment motion for injuries caused by a product sold on the Amazon website, and been allowed to proceed to a jury trial.

A similar case has also made its way to the U.S. Court of Appeals for the Eleventh Circuit. In Love v. Amazon.com, Inc., a customer purchased a hoverboard from Amazon, and the hoverboard caught fire and burned his home. The customer suffered burns to his head, face, back, and shoulders. The fire caused by the lithium-ion battery was so hot that the customer’s gun safe melted.

In Love, the customer brought suit against Amazon as well as five Chinese manufacturers in the United States District Court for the Northern District of Georgia. The trial court granted Amazon’s Motion to Dismiss for failure to state a claim, and the customer appealed. The Eleventh Circuit reversed and remanded the case, holding that the customer alleged sufficient facts to demonstrate that Amazon had at least constructive knowledge of the potential risk of fire associated with the hoverboards. The case will proceed under Georgia law for negligence, negligent failure-to-warn, and for punitive damages.

ABOUT THE AUTHOR

With more than 25 years of experience, Donald Capparella has established a reputation as one of Tennessee’s most respected litigators at both the trial and appellate levels. Individuals, businesses, and non-profit organizations trust him to vigorously represent their interests and get results.

He leads the firm’s appellate practice team which manages civil, domestic, and criminal appeals throughout Tennessee. As a consultant, Mr. Capparella regularly assists trial practitioners, providing services ranging from trial court preparation to handling of the entirety of appeal. He has been an instructor of legal writing at Vanderbilt University School of Law and has taught advanced legal writing at the Nashville School of Law in addition to writing numerous articles and publications.

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LIFETIME ACHIEVEMENT AWARD:
JOHN T. MILBURN ROGERS

by Jenny C. Rogers, Trial Lawyer and daughter of John T. Milburn Rogers

John T. Milburn Rogers, who practiced civil and criminal law for over 40 years, was posthumously awarded the TTLa’s Lifetime Achievement Award for the year 2019. He was fondly known as “John T.” by many friends and colleagues, and he was fondly known to me as “Dad”.

On June 13, 2019, I had the honor of accepting this special award and expressing the gratitude of my entire family for the TTLa recognizing my father’s lifetime of work. My mother Donna Rogers and my husband Wes Fellers attended the ceremony. My aunt Kathy Davis, who lives in Atlanta, attended the ceremony as well. My three sisters were unable to attend but wished they could have been there. Berkeley Bell, Jane Bell, and Bob Lynch are special friends who were also in attendance. Bill Hall Bell, who is also a special friend, planned to attend but was unable to be there.

Born on May 31, 1949, my father grew up on the border of Georgia and Tennessee. He lived with his mother, grandmother, sister, and cousins in Rossville, Georgia. He attended grade school nearby in Fort Oglethorpe. He went to Central High School in Chattanooga, where he loved playing football in the position of “center” for the Purple Pounders.

After graduating from high school, he worked in construction and earned money to help pay for college. He went to the University of Tennessee in Knoxville, where he met my beautiful mother. They married in Bryson City, North Carolina in 1969. Over the span of the next 10 years, my parents had four daughters -- Trenny, Jenny, Emily, and Shelley.

In 1971, when Trenny was just a toddler, my father obtained a degree in History from UT. From there, my father attended law school at the University of Tennessee College of Law. At the same time, my mother was earning a Ph.D. in Nutrition at UT. In 1974, when I was just a toddler, my father graduated from law school.
With a young family to care for, in addition to his legal studies during the day, my father worked nights and weekends as a night clerk in a hotel and as a salesman in a jewelry store. He always had an interest in jewelry and watches because his own father and his uncle sold jewelry and repaired watches.

After law school, my parents moved to Greeneville, Tennessee where my father began practicing law. Over this period of time, Emily and then Shelley would have been toddling about. My father went into practice with Berkeley Bell, his partner in the beginning and his partner in the end.

For his very first trial, my Dad was appointed to defend a man who was charged with public profanity. Berkeley has shared with me that my Dad was so scared to try the case that he was literally hyperventilating while pacing back and forth in the jury room before getting started. The jury returned a verdict of not guilty. As many people may recall, my father could be quite persuasive on the issue of profanity.

My father clearly overcame his initial fear of trying cases, and it didn’t take long. In 1983, at the age of 34 and with 9 years of practice under his belt, he became one of 5 attorneys in Tennessee to achieve the distinction of becoming board certified as a civil trial specialist. The other four attorneys were Edward Butler, Charles Gearhiser, Sidney Gilreath, and J.D. Lee. The same year, 1983, my Dad became the President of the TTLA.

In 1991, my father served as President of the Tennessee Association of Criminal Defense Lawyers. He was also board certified as a criminal trial specialist. In addition, he became board certified as a civil pretrial practice specialist. He was the only attorney in Greeneville and Northeast Tennessee to be board certified in three areas of the law.

In 1999 and again in 2007, my father was President of the American Board of Trial Advocates, Tennessee chapter. He went on to serve as President of the Southeastern American Board of Trial Advocates in 2009. His involvement and leadership in so many legal organizations demonstrate his ability to unite lawyers throughout Tennessee and the Southeast in the common goal of seeking justice.

Legendary trial lawyer Robert E. Pryor, who received the TTLA Lifetime Award several years ago, recently wrote a memorial about my father for the Knoxville Bar Association. Mr. Pryor recalled teaching my Dad in various advocacy programs, describing him as a sponge soaking up every war story, tactic, or lawyer tip available.

Mr. Pryor went on to say, “[John] was one of those people I like to call ‘a real lawyer’ in that he practiced both civil and criminal law. He was just as comfortable in a criminal trial as in a civil damage case. John loved the courtroom and took every opportunity to display his skills and showmanship. John had a big heart and tremendous empathy for his clients. He was a born-again trial lawyer who loved a good fight, and if one was not handy, he would start one just for his own amusement.”

In the courtroom, my father was a gifted storyteller and he would weave history lessons, nursery rhymes, fables, and family stories into his arguments. He would spend hours crafting the perfect closing statement, and he would throw himself into the character that supported his theme. On one occasion, he became so animated in the courtroom that a District Attorney asked the judge to enter a picture of my Dad’s face into evidence.

He was unique and charming and had a style all his own, and he was totally relatable to juries. If you had the privilege of watching my father in the courtroom, you could just tell that he was destined to be a trial lawyer. He loved it, every minute of it. He probably lost as many cases as he won, but he persevered and he was never afraid to go to trial. He stood proudly side by side with his clients every step of the way. Over his 40 year legal career, my father became known for his fearless reputation in the courtroom.

When my sisters and I were growing up, my Dad loved to say to people, “you could put my glasses on her, and someone would stop to ask her for legal advice.” Throughout our lives, he imparted a great deal of his legal knowledge and his sense of justice to us -- at the dinner table, at mock trial practices, at trial lawyer meetings, and in the car listening to his favorite Motown music.

Sadly, my father passed away on December 21, 2018 at the age of 69. His life’s work as a lawyer, particularly his advocacy for the oppressed, is simply immeasurable. He would have been so thrilled that his lifetime of work has been recognized by so many wonderful lawyers and friends in the TTLA. Along with so many wonderful memories of my father, this special remembrance of him will be imprinted on my soul.

I offered a “closing statement” for my father at his funeral where I shared many details about his life and work. I also shared the following story. In the months before his death, it was hard to watch his decline. Despite my best efforts, I would cry like a baby when I saw him. On one occasion, he whimsically tracked the tears down my face with his hand, and he said to me, “I love you every day.”

Most respectfully, I submit that my father absolutely loved the law, he loved the TTLA, he loved his friends in the TTLA, and most of all he loved what the TTLA stands for - Justice for All. I know that my father would encourage all of us to love being the best trial lawyers we can be -- every day.
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Kinnard, Clayton and Beveridge's Randy Kinnard presenting Kylie Thewes from Meigs Academic Magnet School with the 1st place prize for the firm's annual RESPECT Contest. The contest asks 5th grade students what “respect” means to them and why it’s important. Kylie won $1,000 for Meigs, $1,000 for her charity pick of Nashville Humane Society, and a $100 cash prize for herself. In her entry, Kylie wrote, “Respect means to put yourself in someone else’s place and think, ‘If I did this, how would I feel? How would the other person feel? What would the outcome be? And what difference would this make?’ Respect is to be equal with the other person and think about the outcome of your actions.” Inspiring words to live by. Congrats Kylie!

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ERISA Claims Regulations, the Old, the New, and the “New New,” Part II

by Eric Buchanan, Chattanooga, Tennessee, ebuchanan@buchanandisability.com

In the previous edition of this magazine, part I of this article discussed the basic rules of ERISA benefits claims, and provided an overview of the ERISA claims regulations. This article, part II, discusses recent amendments to the claims regulations that went into effect for claims filed after April 1, 2018.

As a quick recap, ERISA usually applies to clients’ claims for health insurance, life insurance, disability and similar insurance when those benefits are provided at work. For most clients, that means their work-provided insurance falls under ERISA, and any dispute is covered by federal ERISA law and not state insurance or contract law. Most ERISA claims that go to court are either filed in federal court, or removed to federal court by the defendants.

As discussed in more detail in the previous article, ERISA benefits claims have unusual procedures and specific rules that must be followed before the court can recover the denied benefits. There are also rules that apply in court that are very different than typical litigation. Two important examples of rules that apply in ERISA cases are that a claimant must “exhaust” administrative claims remedies with the insurance company before the case can go to court and that a court will usually only consider evidence related to the claim that was first presented to the insurance company during the claims process.

When exhausting or appealing a denied claim, ERISA claimants must do so in accordance to the requirements of the specific ERISA plan or insurance policy that provides the benefits. However, the requirements of the plans and the way the appeal process is handled must be reasonable under the ERISA claims regulations.

The ERISA claims regulations were amended to add several requirements. These new requirements mostly apply to LTD, or “disability,” claims, and apply to claims filed since April 1, 2018. Here are the important changes:

Plans Must Ensure the Impartiality of Decision-makers and Experts:

As part of the list of those things that make a claim process “reasonable” generally, 29 C.F.R. § 2560.503-1(b) was amended to add a new section addressing the bias inherent in the decision-making process. When insurance companies pay benefits, it is usually with their own money. It is not surprising that insurance companies have been accused of rewarding their decision-makers for denying claims, or of hiring doctors and vocational experts based on their likelihood that they will help support a decision to deny benefits. In order to address that, section (b) now includes:

(7) In the case of a plan providing disability benefits, the plan must ensure that all claims and appeals for disability benefits are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination, promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical or vocational expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

Because the amendments to the regulations are so new, there is little law addressing this addition to the regulations. Presumably, however, this will encourage courts to allow plaintiffs more of a chance to seek discovery about the bias of insurance companies practices.

Plans and Insurance Companies Must Address Treating and Examining Doctors’ Opinions, The Opinions of Their Own Experts Favorable to the Claimant, and the Decision by the Social Security Administration.

As part of the requirement dealing with what a plan must communicate with a claimant, 29 C.F.R. § 2560.503-1(g), (dealing with the content of initial benefits decisions), and (j) (6), (dealing with the final decisions on review after an appeal) were amended to require plans to address:

(vii) In the case of an adverse benefit determination with respect to disability benefits [the notice must contain]- (A) A discussion of the decision, including an explanation of the basis for disagreeing with or not following: (i) The views presented by the claimant to the plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant; (ii) The views of medical or vocational experts whose

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advice was obtained on behalf of the plan in connection with a claimant’s adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(iii) A disability determination regarding the claimant resented by the claimant to the plan made by the Social Security Administration;

Note that this rule does not require significant weight be given to treating or examining doctors, nor that any special weight be given to the decision by the Social Security Administration. It does, however, require the decision-maker to address that information.

Plans and Insurance Companies Must Explain the Time Limit to Go to Court.

One of the most important changes in the 2018 amendments is requiring that plans and insurance companies provide an explanation and a date certain for any deadline to take a case to court.

ERISA plans can include terms that limit the time to take a case to go to court, and that language is enforceable, even if the time can be running while a claimant is going through the mandatory administrative review process. See, generally, Heimeshoff v. Hartford Life & Acc. Ins. Co., ___ U.S. ___, 134 S. Ct. 604, 610 (2013).

The regulation addressing what must be set out in a final denial decision on appeal, at 29 C.F.R. § 2560.503-1 (j)(4)(ii), explains:

(ii) In the case of a plan providing disability benefits, in addition to the information described in paragraph (j)(4)(i) of this section [requiring a description of any voluntary appeals], the statement of the claimant’s right to bring an action under section 502(a) of the Act shall also describe any applicable contractual limitations period that applies to the claimant’s right to bring such an action, including the calendar date on which the contractual limitations period expires for the claim.

This is probably one of the most useful additions to the regulations, in that calculating the time to take a case to court can be very complicated, requiring reading and interpreting multiple parts of the policy. And, historically, insurance companies have used the complicated rules to play the “gotcha” game with claimants.

Claims Decisions Must be Written in a Way That is Understandable.

Another addition to 29 C.F.R. § 2560.503-1 (j) is section (7), setting out what must be in a denial of an appeal, is that decisions must be written in understandable language. It states:

(7) In the case of an adverse benefit determination on review with respect to a claim for disability benefits, the notification shall be provided in a culturally and linguistically appropriate manner (as described in paragraph (o) of this section).

The referenced section then offers this longer explanation:

(o) Standards for culturally and linguistically appropriate notices. A plan is considered to provide relevant notices in a “culturally and linguistically appropriate manner” if the plan meets all the requirements of paragraph (o)(1) of this section with respect to the applicable non-English languages described in paragraph (o)(2) of this section.

(1) Requirements.

(i) The plan must provide oral language services (such as a telephone customer assistance hotline) that include answering questions in any applicable non-English language and providing assistance with filing claims and appeals in any applicable non-English language;

(ii) The plan must provide, upon request, a notice in any applicable non-English language; and

(iii) The plan must include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the plan.

(2) Applicable non-English language. With respect to an address in any United States county to which a notice is sent, a non-English language is an applicable non-English language if ten percent or more of the population residing in the county is literate only in the same non-English language, as determined in guidance published by the Secretary.

“Adverse Benefit Determination” Includes a Rescission of Disability Benefits.

The protections of these ERISA claims regulations sometimes turn on whether a claim decision was really a denial of benefits, or something more procedural or technical. The regulations use the term “adverse benefits determination” to describe those decisions that are substantive enough to be entitled to the protections of the regulations.

The definitions section, at 29 C.F.R. § 2560.503-1 (m)(4), was expanded to make it clear that a rescission of coverage is also an “adverse benefits determination.” A rescission of coverage is used sometimes by insurance companies to deny a claim not because the person doesn’t meet the definition.
of disability, but because the insurance company decides it should not have provided coverage in the first place. For example, if the coverage required an application, and the insurance company finds out the claimant withheld information or accuses the claimant of committing fraud in the application. Such a decision would be a denial, or an “adverse benefits determination,” under these regulations. It states:

In the case of a plan providing disability benefits, the term “adverse benefit determination” also means any rescission of disability coverage with respect to a participant or beneficiary (whether or not, in connection with the rescission, there is an adverse effect on any particular benefit at that time). For this purpose, the term “rescission” means a cancellation or discontinuance of coverage that has retroactive effect, except to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

29 C.F.R. § 2560.503-1 (m)(4)(ii).

Significant Violations of The Regulations Can Now Have Consequences:

Perhaps the most interesting addition in the 2018 “new new” regulations is the attempt by the Department of Labor to put some teeth into the requirements that the decision making process must be reasonable. The regulation dealing with the “failure to establish and follow reasonable claims procedures,” at 29 C.F.R. § 2560.503-1(l) (this is the lowercase “L” again), has been expanded to add a second section.

The existing section, now (1) provided that for a violation of the regulations, such as missing the time to make a decision, or for other violations, the claim would be deemed exhausted. Now, this addition of (2) adds that for violations or unreasonable claims practices, in addition to being able to go straight to court, when there, the review by a court will be as if the fiduciary failed to exercise discretion, which should result in the review being de novo.

Further, it will not be good enough for plans to say they substantially complied with the regulations, which has long been their defense; rather the regulations apply if they fail to “strictly adhere” to “all the requirements” of the claims regulations. Specifically written for LTD claims and other claims providing disability benefits, the first part of the new section says:

(2) Plans providing disability benefits.
   (i) In the case of a claim for disability benefits, if the plan fails to strictly adhere to all the requirements of this section with respect to a claim, the claimant is deemed to have exhausted the administrative remedies available under the plan, except as provided in paragraph (1)(2)(ii) of this section. Accordingly, the claimant is entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim. If a claimant chooses to pursue remedies under section 502(a) of the Act under such circumstances, the claim or appeal is deemed denied on review without the exercise of discretion by an appropriate fiduciary.

29 C.F.R. § 2560.503-1(l)(2)(i).

But wait. There’s more. Unfortunately, when a “plan fails to strictly adhere to all the requirements” of the ERISA claims regulations, the plan may be able to avoid the provisions of this part of the regulations if the violation was “de minimus.” The next part reads:

(ii) Notwithstanding paragraph (1)(2)(i) of this section, the administrative remedies available under a plan with respect to claims for disability benefits will not be deemed exhausted based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the plan demonstrates that the violation was for good cause or due to matters beyond the control of the plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the plan and the claimant. This exception is not available if the violation is part of a pattern or practice of violations by the plan. The claimant may request a written explanation of the violation from the plan, and the plan must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the administrative remedies available under the plan to be deemed exhausted. If a court rejects the claimant’s request for immediate review under paragraph (1)(2)(i) of this section on the basis that the plan met the standards for the exception under this paragraph (1)(2)(ii), the claim shall be considered as re-filed on appeal upon the plan’s receipt of the decision of the court. Within a reasonable time after the receipt of the decision, the plan shall provide the claimant with notice of the resubmission.


Let’s break down how this might work: First, a claimant shows that the ERISA plan or insurance company violated the rules. In so doing, the insurance company or plan cannot defend such an accusation by claiming they “substantially complied.”

Instead, the plan or insurance company will claim that the violation of the claims regulations was “de minimus.” However, at that point, the plan or insurance company would then need to show that the violations did “not cause, and are not likely

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to cause, prejudice or harm to the claimant.” And the plan or insurance company would have to demonstrate that “the violation was for good cause or due to matters beyond the control of the plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the plan and the claimant.” The regulations do not set out what is good cause or good faith, so courts are going to have to wade through the facts of the claim process to determine if the “de minimus” exception is met.

Further, even if all that is met, the plan still cannot avoid this rule, if the “violation is part of a pattern or practice of violations by the plan.”

Next the rule gets more confusing, because it says the claimant “may” write a letter asking for an explanation to explain why a violation of the rules should not trigger this provision. But, it does not say the claimant “must” do that, so does the claimant (or the representative) need to write such a letter, or can the claimant take the case to court right away?

If, after the claimant takes the case to court, and the whole back-and-forth above is laid out before the judge, the good news is that, even if the court finds the violation “de minimus,” the claim is sent back and considered “re-filed” on appeal.

Because all these additions to the rules are so new, there have been virtually no cases reported on them yet. This will be very interesting to follow in the future.

**Conclusion:**

Most of the changes to the regulations effective for claims filed since April 1, 2018 are favorable to the claimants. Attorneys handling ERISA cases should be familiar with these changes, and should use them to protect their clients’ rights. These changes are new enough, that there is still a lot to learn about how courts will deal with these changes.

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2 The ERISA claims regulations are found at 29 C.F.R. § 2560.503-1, and their general requirements, time deadlines, etc., are discussed more in part I of this two-part series.
3 For a more complete discussion of how to tell if an insurance policy falls under ERISA, please visit the author’s firm’s website at https://www.buchanandisability.com/helpful-resourcesandarticles/how-to-tell-if-an-insurance-claim/
4 ERISA also governs disputes over benefits provided through employers’ self-funded plans and those provided by unions. However, since the majority of claims are provided by insurance policies, this paper will generally refer to those claims provided through insurance.
5 The regulations issued by the Secretary of Labor were first issued in 1977 and were updated through 1984, and then were not updated again until 2000. The regulations were overhauled in the 2000 version regulations, and are referred to in this paper as the “new” regulations, or the “2000 regulations,” and are effective for most types of claims filed after January 1, 2002. 29 C.F.R. § 2560.503-1(c).
6 The regulations were amended again November 29, 2017, with new provisions taking effect for claims filed after April 1, 2018; this newest version is referred to as the “new new regulations,” or the “2018 regulations” in this paper. These “new new” regulations were issued Dec. 19, 2016 (81 FR 92341) and Nov. 29, 2017 (82 FR 56566). The 2016 amendments were not a complete overhaul, but only added a few additions to the existing regulations, primarily focused on disability claims.

The amendments originally were to take effect on or after January 1, 2018; however, the amendments were put on a temporary hold during the change of administrations, and eventually the final version of the rule made those changes effective for claims filed after April 1, 2018. 82 FR 56566.
With a pro-civil justice House majority, AAJ is making real progress in its campaign to end forced arbitration in all areas. The House of Representatives will soon vote on the FAIR Act (H.R. 1423) which would make arbitration voluntary, thereby ending this rigged, anti-consumer practice. For too long, corporations have trampled all over the rights of American consumers and workers by including these pernicious clauses in the fine print. Senate passage will be AAJ’s next big challenge, following House consideration.

Please watch our Faces of Forced Arbitration video to learn more about how this rigged practice rips off the public. Below, you’ll find some recent highlights of our advocacy on behalf of injured workers, patients, consumers, and the military:

**The FAIR Act has 213 co-sponsors in the House**
218 votes are needed to pass legislation, so this bill is well on its way to obtaining a winning majority in the House. The Judiciary Committee will soon consider this bill and then send the bill to the House floor for its consideration. Watch this space for more information on timing.

**AAJ Advocates for the rights of the military**
Congress passed the Service Members Civil Relief Act (SCRA) in 2003 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) in 1994—providing essential financial and employment protections for active duty servicemembers and their families. However, these laws are now unenforceable as employers and financial institutions have tried to bypass these protections by forcing servicemembers into arbitration, undermining the intent of Congress. To remedy this situation, a bipartisan group of House members have introduced the Justice for Service Members Act (H.R. 2750) which ends forced arbitration for all service members when they try to enforce their rights under SCRA and USERRA. AAJ has pushed hard on this bill and now we are seeing results. When the National Defense Authorization Act (NDAA), a bill to reauthorize the Department of Defense, was considered in the Armed Services Committee, an amendment to end forced arbitration under USERRA was added to the NDAA, and it is expected that a provision which would restore rights under SCRA will be added on the House floor.

In other news, a bipartisan group of House members introduced the Sfc. Richard Stayskal Military Medical Accountability Act of 2019, which would amend the Federal Tort Claims Act (FTCA) to specifically allow claims by servicemembers and their families for injuries caused by medical malpractice. Passage of this legislation would upend the Feres Doctrine, the result of a 1950 U.S. Supreme Court ruling, United States v. Feres, that prevents active duty members of the armed services from holding the government accountable for non-combat related injuries. When the National Defense Authorization Act (NDAA) proceeds to the House floor this summer, we are hopeful that the Feres repeal bill will be added as an amendment.

**Proactive Transportation Issues**
On June 12, the House Transportation Highways and Transit Subcommittee held a trucking safety hearing. Andy Young—a lawyer and AAJ member representing victims of truck crashes—testified and asked Congress to raise trucking insurance minimums that have not been updated since 1980; oppose a “national hiring standard” that would protect brokers/shippers from liability; and pass a bill that would require underside guards to be installed on trucks to prevent catastrophic injury and fatalities.

AAJ continues to fight attempts by the trucking industry and other entities to preempt state meal and rest break laws and seeks legislative fixes to the Federal Motor Carrier Safety Administration (FMCSA) preemption of those laws. Most recently, we worked to secure a provision in the House-passed minibus, which contains funding for the Department of Transportation. The provision prohibits the FMCSA from using federal funds to grant petitions to preempt state meal and rest break laws.

**AAJ Fighting for You and Your Clients**
AAJ will continue to fight all efforts to undermine the justice system. We look forward to keeping you on in the loop on important developments. We welcome your input. You can reach me at advocacy@justice.org.
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