



Tennessee Defense Lawyers Association

NEWSLETTER

Recent TDLA Legislative Efforts

One of the membership benefits at TDLA is being part of an organization that can make a difference in Tennessee law. TDLA has submitted several Amicus Briefs in the last few months and below is a summary of those efforts.

Individual Healthcare Specialists, Inc. v. Bluecross Blueshield of Tennessee, Inc. - TDLA garnered national attention from DRI for its involvement in this case. The Tennessee Supreme Court issued an opinion in January addressing the issues discussed in the Amicus Brief filed by DRI with the assistance of TDLA last year. In the case, the Court found Defendants breached its contract with Plaintiffs by failing to pay post-termination commissions, but the discovery rule did not apply because the alleged breach did was not "inherently undiscoverable. While the Court did not reject the discovery rule with respect to all breach of contract cases, the opinion indicated that the discovery rule would apply in very narrow circumstances, if at all.

Martin et. al v. Rolling Hills Hospital, LLC - This is a healthcare liability case in which the Court of Appeals reversed the trial court's dismissal of the claim based on plaintiffs' incomplete HIPAA authorization and failure to comply with Tenn. Code Ann. section 29-26-121. The Supreme Court accepted the parties' application and has asked for briefs regarding the role of prejudice in a substantial compliance analysis and when a plaintiff fails to provide a HIPAA-compliant authorization with the pre-suit notice letter. The parties' briefing of these issues is completed, and TDLA has submitted an Amicus Brief. In response, TDLA Professional Negligence and Medical Malpractice Chair **Chris Vrettos** of Gideon, Cooper & Essary has filed an Amicus Brief on behalf of TDLA last week. More to come on this case.

Tennessee Farmers v. DeBruce - TDLA members **Hannah Lowe** of Trammell, Adkins and Ward and **Hank Spragins** of Hickman, Gaza and Spragins have agreed to co-author an Amicus Brief on behalf of TDLA regarding this significant case. The Tennessee Declaratory Judgment Act (Tenn. Code Ann. 29-14-107(a)) requires that "all persons shall be made parties who have or claim an interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." To date, Tennessee appellate courts have never gone so far as to hold that a court would not have subject matter jurisdiction to hear a declaratory judgment action when the insurer failed to include a party that claims an interest in the declaration. This case makes doing so a possibility.



Beware The “Expert” Out Of Their Depth – The Not-So-Expert Expert

By: Mike Costello and Austin Starkey at Elliott Davis

As a litigation attorney, you could eventually need a financial expert in a case. But if you rarely or never engage one, you might be unsure of where to start that search. Do you consult your peers? Do you ask the professional who files your taxes? Do you just start Googling terms like “Certified Public Accountant”, “financial expert”, and “litigation support”?

As you research your options, you likely have your client’s budget in mind. You want to keep the cost low, but you have concerns about whether your potential expert can survive a Daubert challenge. Ultimately, you want to settle the case in a manner that satisfies your client.

If your tax accountant says they can probably handle the work, beware. The Certified Public Accountant (CPA) license spans a wide spectrum of subject matter; thus, a CPA in the context of audit or tax is vastly different from a CPA in the context of litigation support services. We encounter accountants moonlighting as financial experts and operating outside their depth all too often, and these would-be experts are vulnerable to criticisms of their CVs, if not a formal Daubert challenge. A typical accountant is likely ignorant not only of the specific procedures involved to provide litigation support services, but also the time necessary to complete them. In other words, they don’t know what they don’t know.

Qualified financial experts have the SKEET—Skills, Knowledge, Education, Experience, and Training— that most accountants lack. These attributes are what make a “good” financial expert and help you win your case. Additional certifications and professional standards not applicable to our accounting peers in audit and tax comprise key elements of that knowledge, education, and training. Such certifications require completing coursework, passing exams, and earning certain experience on top of the requirements to obtain a CPA license. These certifications offer assurances that we are qualified as professionals to provide litigation support services. Further, maintaining these licenses and certifications requires annual continuing education on matters specific to providing litigation support services and opining as to financial damages.

Often times, an individual outside the accounting industry, such as an economist, is engaged to provide an opinion as to the amount of financial damages suffered. It has been our experience that most of these individuals have not acquired certifications or completed annual continuing education specific to financial damages matters. This may lead to a “one size fits all” mentality and methodology when calculating damages, which can be harmful to your case.

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A typical accountant or economist is frequently unaware of the methodologies associated with this subject matter. Could they explain before-and-after, market share, yardstick, or forecasting approaches for calculating lost profits? How much experience do they have examining legal documents and forming conclusions of damages based on the terms of a specific contract? To a financial expert, these are everyday concepts. Subsequently, a qualified financial expert can convey all this information in front of a judge or jury when it's show time. Testifying is not at all common among CPAs outside of this specialization; whereas, financial experts regularly sit on the hot seat during depositions and trial testimony. In many circumstances, financial experts have undergone training specifically to prepare for such situations. This is the SKEET that distinguishes us.

Consulting a well-qualified expert early in the litigation process can lead to significant efficiencies in quantifying damages. For example, an expert can assist in the request for documents, evaluate discovery documents, and provide insight on potential issues. The sophisticated expert likely has a team under their supervision contributing a large portion of the assistance and analysis required – they can offer that assistance and analysis at a lower hourly rate than that of the testifying expert. This allows you and your client to obtain the services needed in the most cost efficient manner possible.

When you find yourself in need of a qualified financial expert, Elliott Davis and our team of litigation support professionals are ready to help.

Meet the Authors



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News & Upcoming Events

BWC Launches Vocational Rehab Program - The TN Bureau of Workers' Compensation wants local attorneys to be aware that it recently launched a vocational rehabilitation program known as Next Step. Funded by the Subsequent Injury and Vocational Recovery Fund and available to qualified employees injured on or after July 1, 2018, Next Step provides multiple resources for qualified employees attempting to return to meaningful and productive employment, including up to \$5,000 per year in financial assistance to acquire new job skills at Tennessee trade schools, community colleges, and public universities. For more information about Next Step, please contact Brian Holmes at brian.holmes@tn.gov.

May 2, 2019 - TDLA Statewide Happy Hour - Networking Event

The TDLA Young Lawyers section has organized another happy hour networking event this year. The event will be Thursday May 2, 2019 from 5-7pm. We encourage our new members to join us for this great networking opportunity in a casual setting. First drink is FREE!

Knoxville – Pretentious Beer Co.

Chattanooga – State of Confusion

Nashville – Hopsmith

Memphis – Brass Door

June 13-15, 2019 - TDLA / ADLA Joint Summer Conference - Join TDLA this summer at the beach for a wonderful networking and CLE event with Alabama Defense Lawyers Association. The dates will be June 13-15, 2019 at the Sandestin Golf & Beach Resort in beautiful Sandestin, Florida. The general format of the conference will be a reception Thursday night and educational sessions Friday & Saturday mornings until noon. There will also be receptions (also kid friendly events) Friday and Saturday evenings of the conference. Room block deadline is May 11th!

Agenda: [click here](#)

Registration Fees (before June 3, 2019)

\$525 Individual Attendee

\$675 Attendee plus spouse/ guest

\$150 Additional Attendees over age of 18

\$150 Golf - Golf will be played at the Raven golf course; includes boxed lunch

Registration Form: [click here](#) (**checks to be made payable to Alabama Defense Lawyers Association **)

Hotel Information (cut off date for reservations under room block is May 11, 2019) Sandestin Golf and Beach Resort

9300 Emerald Coast Parkway, Miramar Beach, FL 32550 - Housing block rate & reservation form: [click here](#)



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