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TORT AND INSURANCE NEWSLETTER

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The Great Outdoors: A Review of Tennessee’s “Recreational Use” Statute

We in Tennessee know our state has an abundance of beautiful land to enjoy. We also know that any outdoor excursion comes with the risk of injury or an accident. But not many may know Tennessee has a “recreational use” statute that could offer a landowner relief from a claim or lawsuit when an accident occurs on the landowner’s property. Tenn. Code Ann. § 70-7-102 provides that a landowner (and others in control of land, such as a lessee) owes no duty of care to keep the land safe for entry or use by others for certain recreational activities listed in the statute. These activities include hunting, fishing, camping, water sports, hiking, rock climbing, off-road vehicle riding, and even sightseeing. Further, a landowner is not required to warn of hazardous conditions or activities that are present on the land, except as provided by certain exceptions listed in Tenn. Code Ann. § 70-7-104.

A person who makes a claim arising from alleged recreational use of land may defeat the landowner’s statutory immunity by showing that the landowner’s conduct falls within one of the exceptions in § 70-7-104. For example, a landowner will not be excused for gross negligence. In most cases, deciding whether conduct constitutes gross negligence will be a question of fact for a jury unless reasonable minds could reach only one conclusion. Courts have found that conduct such as allowing trespassers to access a military firing range containing unexploded ordinances is gross negligence, but have also found that the failure to post a “No Trespassing” sign at a property known to have a cave was not gross negligence.

Further, the statute does not excuse a landowner for willful or wanton conduct resulting in a failure to guard or warn against a dangerous condition, use, structure, or activity on the land. And the statute does not apply if a third party is injured by the acts of a person whom the landowner allowed to use the land and if the landowner owed a duty to the injured third person. The statute clearly states it is not intended to impose liability or to remove immunity for failure to guard or warn of a dangerous condition created by forces of nature.

If you receive a claim or lawsuit involving an accident that occurred during a recreational activity, these statutes may help provide an immunity defense or clarify liability for the landowner. You should consult an attorney to decide whether Tennessee’s recreational use statute will apply.

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Please contact Brittany Key (bkey@raineykizer.com)
and we will gladly add you to our e-mail list.



TORT AND INSURANCE NEWSLETTER



The Attorneys & Staff at RKR B wish you & your family a Merry Christmas & a Happy New Year!

Tennessee Legislature Further Limits Joint and Several Liability

This summer, the Tennessee Legislature further cemented the position that joint and several liability is abolished in almost all circumstances in Tennessee. This occurred through enacting a new statute (Tenn. Code Ann. § 29-11-107) and overruling at least two Tennessee Supreme Court cases. Those cases allowed certain defendants to be financially responsible for others' fault. As a result of this new legislation, there are now only two exceptions in Tennessee where joint and several liability still applies:

- Cases involving civil conspiracy among two or more at-fault defendants.
- Cases against manufacturers in a product liability action based on strict liability or breach of warranty theories.

Otherwise, if multiple defendants are found liable in a civil case governed by comparative fault, a defendant will only be liable for the percentage of damages attributed to that defendant's fault. No defendant will be held jointly liable for damages. However, the statute does not eliminate any party's claim for contribution or indemnity and it does not prevent allocation of fault to non-parties.

While this new legislation may be a victory for defendants, it is important to note that the statute does have limits. Specifically, it does not eliminate traditional claims for vicarious liability or respondeat superior. Instead, these types of claims must be reviewed under the law of agency and the existing legal framework.

RAINEY KIZER WELCOMES FOUR NEW PARTNERS TO FIRM



Ashley D. Cleek works in the medical malpractice group and represents hospitals and healthcare providers in Memphis and throughout West and Middle Tennessee. He joined the firm as an associate in 2004.



Jonathan D. Stewart joined the firm as an associate in 2003. He practices primarily in the area of insurance coverage litigation, handling claims across multiple lines of business. He also handles tort defense and arson and fraud defense.



Adam C. Crider's practice is focused on collection work (debtor/creditor), estate planning, contract drafting, business formation and residential real estate. He has been with the firm since 2003.



James V. Thompson has practiced with the firm since 2003 in the areas of tort and insurance defense, workers' compensation, and employment law.