



Luther-Anderson, PLLP

Newsletter
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PENDING DECISIONS AND FIRM NEWS

Dedmon v. Steelman – *Limiting medical expenses & “phantom damages”*

by Matt Wayne

Pending before the Tennessee Supreme Court is the case of *Dedmon v. Steelman*, 2016 WL 3219070 (Tenn. App. June 2, 2016), which could significantly impact personal injury litigation; specifically as to what constitutes “reasonable medical expenses” under Tennessee law. Accepted for review by the Supreme Court, with oral arguments to be heard on April 5, 2017, *Dedmon* presents the interesting question as to whether the amount billed by a medical provider or the amount actually paid in satisfaction of medical expenses (or some combination of the two) constitutes “reasonable” medical expenses recoverable by the patient/plaintiff. The Supreme Court’s decision will likely have vast ramifications for the valuation of personal-injury cases,

including settlement offers, and types of proof introduced during litigation.

The *Dedmon* case directly addressed the Tennessee Supreme Court case of *West v. Shelby County Healthcare Corp.*, 459 S.W.3d 33, 36 (Tenn. 2014). Briefly, the Court in *West* considered the appropriate measure of “reasonable medical expenses” in the context of the Tennessee Hospital Lien Act (HLA), as codified in T.C.A. § 29-22-101(a). *Id.* at 44. HLA medical providers are entitled to a lien for the “reasonable medical expenses” that arise from treatment. In this context, the crucial issue decided in *West* was the extent of “reasonable expenses” healthcare providers may recover under HLA.

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L-A Welcomes New Associates

Luther-Anderson would like to welcome two new members to its family, Matt Wayne (left) and Elizabeth Roderick (right).

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Recent Military Spouse Rule Celebrated

Members of the 101st Airborne and 5th Special Forces celebrate with the TN Supreme Court.

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Tennessee Law Update

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Luther-Anderson Welcomes New Associates



Matt is a native of South Pittsburg, Tennessee, whose practice focuses primarily on insurance defense and general civil litigation, including premises liability, products liability, worker's compensation and personal injury. Matt completed his undergraduate studies at the University of Tennessee at Chattanooga where he majored in Political Science: Legal Studies and Economics. Matt was very involved on UTC's campus, holding various leadership positions on campus and with the Kappa Sigma Fraternity.

Matt attended the University of Tennessee College of Law where he served as Research Editor for the Tennessee Law Review, where he was recognized as an Editor of the Year for his contributions, chaired the Student Ambassadors program and tours, served as representative for his class and represented UT Law in Brisbane, Australia.

He has a variety of legal experience including work as a Legal Analyst with the Tennessee Valley Authority, clerking with the Tennessee Attorney General in the Real Property and Transportation Division and served as the law clerk for the Honorable William T. Ailor in the Knox County Circuit Court. In addition, Matt assisted in the instruction and teaching of advanced legal writing as a Teaching Assistant.

In his free time, Matt enjoys walks with his dog, Riley, cooking, exercising, golf, and reading historical nonfiction. Additionally, Matt serves as a mentor for high school seniors, frequently volunteers in his community and is a member of Red Bank Baptist Church.



Elizabeth Roderick is a native of the picturesque Turtletown, Tennessee. She received her Bachelor of Science Degree in Business Administration from the University of Tennessee, Knoxville in 1997. She attended the University of Tennessee's College of Law where she was a member of the Order of the Barristers and the mock trial team. While in law school, she clerked for the Hon. Curwood Witt with the Tennessee Court of Criminal Appeals. After graduating in 2003, Elizabeth made her home in Chattanooga to begin her practice where her focus was primarily on medical malpractice defense and governmental law.

Prior to joining Luther-Anderson, Elizabeth also spent several years as an "in-house" attorney for a local municipality where she represented the city in matters of Governmental Tort Liability and Civil Rights, as well as advising it on issues of employment law and contracts. She now focuses her practice on Insurance Defense, General Civil Litigation, including Premises Liability, Medical Malpractice, Professional Negligence; Governmental Law, Employment Law, and Family Law.

Elizabeth is the proud mother of six children: Emily, Jacob, Aidan, Morgan, Alex, and Molly Kate. She and her husband, Steve, make their home in North Chattanooga with their children and three dogs. In her spare time, she enjoys volunteering at her children's school and watching them participate in their extra-curricular activities, gardening, and listening to music.

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[CONTINUED] . . Dedmon v. Steelman – *Limiting medical expenses & “phantom damages”*

. . . [CONTINUED] Forsaking the misleading “unadjusted charges” issued by healthcare providers, the Supreme Court held that “with regard to an insurance company’s customers, ‘reasonable charges’ are the charges agreed to by the insurance company and the hospital.” *Id.* at 46. Thus, these unadjusted charges essentially allowed the hospital’s contract with the insurer to define what the “reasonable charges” for medical services would be. *Id.*

In light of this, *West* limited a hospital’s “reasonable expenses” to the amount paid and accepted in satisfaction of medical services provided and held that recovering undiscounted medical bills is “unreasonable” because such does not “reflect what is [actually] being paid in the market place.” *Id.* at 45. Accordingly, the hospital in *West* was not allowed to recoup the entire amount of undiscounted bills from the insureds’ tort recovery under the HLA.

In the aftermath of *West*, Tennessee defense attorneys attempt to limit the amount of recoverable medical expenses in tort actions to the amount paid in satisfaction of a plaintiff/ patient’s medical expenses. Plaintiffs’ attorneys have opposed these attempts arguing in favor of recovering the difference between the undiscounted charges and the amount actually paid and accepted a.k.a the “negotiated price differential” or “phantom damages.” Relying on *West*, these motions to reduce medical bills to the amount accepted as payment in full have been met with various and inconsistent opinions, one of which leading to the current Supreme Court case, *Dedmon v. Steelman*.

In *Dedmon*, the defendants filed a motion *in limine* to prohibit the plaintiffs, who were injured in a car accident, from introducing evidence of any medical expenses in excess of the amount accepted in satisfaction of the plaintiff’s medical expenses. The defendant’s motion *in limine* was granted given that such undiscounted medical expenses were unreasonable as a matter of law and *West*, which “clearly stated that the reasonable medical expenses are defined as that which the medical provider accepts from medical insurance, as a matter of law.” *Id.* at *2. An interlocutory appeal followed in which the Court of Appeals reversed the trial court’s granting of defendant’s motion—with a caveat.

The Court of Appeals adopted a “hybrid approach,” allowing plaintiffs to present evidence of the “unadjusted” expenses, while also allowing defendants to present evidence of the lesser, “adjusted” expenses actually paid. *Id.* at *11. Although the Court noted these unadjusted expenses are “vastly different” than the amounts actually paid, defendants are admonished not to overstep the collateral source rule in regards how a bill was actually paid, such as insurance. *Id.* at n. 5. Essentially the Court rejected plaintiffs’ arguments that “phantom damages” are protected by the collateral source rule, thus allowing defendants to “offer proof contradicting the reasonableness of [those] medical expenses.” *Id.* at *11.

In addition, the Court of Appeals requested that the Supreme Court specifically address whether *West* is applicable to personal injury actions, observing that the *West* court expressly addressed “reasonable medical charges for the purposes of the Hospital Lien Act.” *Id.* at *9. In his concurring opinion, Special Judge Joe Riley, wrote separately to explain that, “[w]ere it not for existing case law which [the Court of Appeals was] bound to follow as an intermediate appellate court, [he] would apply the *West* rationale to personal injury litigation.” *Id.* at *9 (RILEY, Sp. J., concurring). Judge Riley further noted that “if the non-discounted charge is used as the reasonable medical expense, I believe the amount of the windfall to plaintiffs is no longer rationally based and is out of kilter as compared to the past.” *Id.* Judge Riley concluded that he finds “no reason to continue to provide the jury or other fact-finder with misleading data.” *Id.*

As stated by Judge Riley in *Dedmon*, “the time has come to re-evaluate the method of calculating reasonable medical expenses in personal injury litigation in light of modern billing practices and in accordance with the dictates of *West*.” *Id.*

Follow Luther-Anderson, PLLP’s next issue discussing the Supreme Court’s imminent *Dedmon* decision, its implications and impact on Tennessee’s definition of “reasonable medical expenses” and its effects on tort litigation.

Tennessee Supreme Court Upholds Constitutionality of State's Lethal Injection Protocol

The Supreme Court has upheld the constitutionality of the written protocol by which the Tennessee Department of Correction carries out an execution by lethal injection.

The plaintiffs in this matter, each of whom have been convicted of first degree murder and sentenced to death, brought a declaratory judgment action in the trial court challenging the constitutionality of the lethal injection protocol under both the United States and Tennessee Constitutions. This protocol provided that inmates who had been sentenced to death were to be executed by injection of a lethal dose of the drug, pentobarbital. The trial court conducted a lengthy evidentiary hearing and eventually denied the plaintiffs relief.

The plaintiffs appealed the trial court's decision to the Tennessee Supreme Court arguing that the lethal injection protocol is unconstitutional because it creates a substantial risk of serious harm and lingering death and that the trial court erred in dismissing their claim because the protocol requires the State to violate federal drug laws.

In the unanimous opinion authored by Chief Justice Jeffrey S. Bivins, the Court determined that the plaintiffs failed to establish that the lethal injection protocol, on its face, violates constitutional prohibitions against cruel and unusual punishment. In so holding, the Court upheld the constitutionality of the protocol under both the United States and Tennessee Constitutions. Additionally, the Court affirmed the trial court's dismissal of the plaintiffs' claim that the protocol requires the State to violate federal drug laws because the plaintiffs had no cause of action under the Controlled Substances Act, 21 U.S.C. §§ 801-904 (2012). The Court noted that "[c]learly, the federal government does not consider those of its own executions that are conducted by lethal injection to violate a regulatory scheme for the prescription and use of controlled substances" and declined to construe the Controlled Substances Act in a manner that was inconsistent with the federal government's interpretation.

To read the Court's opinion in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, go to the opinions section of [TNCourts.gov](http://www.tncourts.gov). Credit to: <http://www.tncourts.gov/press/2017/03/28/tennessee-supreme-court-upholds-constitutionality-states-lethal-injection-protocol> (source).

Around the State

SUPREME COURT CELEBRATES RECENT MILITARY SPOUSE RULE



The Hamilton County Courthouse.

The Tennessee Supreme Court and 53 members of the 101st Airborne Division and 5th Special Forces Group, stationed at Fort Campbell, Kentucky, recently celebrated the Supreme Court's Revised Military spouse Rule (Rule 7), which permits attorney spouses of those in the military to obtain temporary law licenses to practice in Tennessee while their active-duty spouse is stationed in Tennessee.

Chief Justice Bivins noted that economic conditions often require both spouses to work; particularly in military families, yet that can be very difficult when military service requires a family to move to a new location often. He expressed the Court's desire to assist and support Tennessee's military spouses and their families.

Under the revised Military Spouse Rule, attorney spouses are not required to take the Bar exam again if they previously passed the exam in another state. The attorney spouses may be admitted as long as they are licensed in another

• Immigration Law for Employers in Trump Era

A webcast presentation on July 6 from Bruce Buchanan addressed how immigration law is undergoing massive changes that will directly affect employers. Some of the areas that will see change include immigration compliance, an increase in ICE audits and a possible return to raids. Visas could also see change, especially H-1B and L visas.

• ABA Launches Homeless Youth Legal Network

The American Bar Association announced the creation of the Homeless Youth Legal Network, spearheaded by the ABA Commission on Homelessness & Poverty, Commission on Youth at Risk, and Section of Litigation Children's Rights Litigation Committee, which aims to serve homeless youth seeking legal assistance, help service providers working with homeless youth and train lawyers who want to help.

For legal assistance, contact any of your local, talented attorneys at Luther-Anderson, PLLP. An established firm for 50 years in Chattanooga, we have the expertise to meet your legal needs.

Tennessee Law Updates & Recent Opinions

By: Matt Wayne

➤ No AED, No Problem

In *Wallis v. Brainerd Baptist Church*, 2016 WL 7407485 (Tenn. Dec. 22, 2016), the Supreme Court of Tennessee determined whether a business entity's duty to aid and protect its patrons requires it to acquire and make an AED available for use or to use an AED that has already been acquired. No other Tennessee case had addressed this unique question. In *Wallis*, the plaintiff's husband collapsed and died after participating in a cycling class at a recreation facility owned and operated by the church. Although the class instructor and others present at the fitness facility attended the plaintiff's husband and called 911, they did not utilize the AED on site. The plaintiff filed a wrongful death action against the church, alleging, among other things, that the church had negligently failed to utilize the onsite AED, to train facility personnel on the proper use of the AED, and to comply with applicable state statutes. *Id.* at *1. The church filed a third-party complaint against the company that sold the AED at the facility, after which wife filed an amended complaint naming company as defendant.

On appeal, the Court held that the seller did not owe a duty of care to the plaintiff's husband or other users of the fitness facility independent of its contract with the church and that the church had no statutory or common law duty to acquire or use the AED it purchased from the seller, and as a result, the plaintiff's husband was not a third-party beneficiary of the church's contract with the seller. *Id.* In addition, as applied to the defendant church, the Court noted that, while "Tennessee statutes encourage entities to acquire AEDs and make them available for use, these statutes do not impose any affirmative or mandatory duty on businesses to do so, nor do these statutes mandate use of AEDs that are acquired." *Id.* at *10. Thus, in *Wallis*, the Church had no statutory duty to Mr. Wallis to acquire and make an AED available for use, nor did the Church have a statutory duty to use the AED it had already acquired. *Id.*

*** *Al Henry and Amanda Dunn of Luther-Anderson, PLLP successfully defended defendant Brainerd Baptist Church in having the Supreme Court of Tennessee confirm that there is no legal duty of a business to purchase or even use an AED.***

➤ Rental Vehicle Considered An "Uninsured Motor Vehicle"

In *Martin v. Powers*, 505 S.W.3d 512 (Tenn. 2016) the Defendant was involved in a vehicle accident with the Plaintiff in a car he had rented from Enterprise Rent-A-Car. The Plaintiff sued the Defendant, the Defendant's automobile liability insurer, and Enterprise. Additionally, the Plaintiff provided notice to his own automobile liability insurance carrier, in order to recover through the uninsured motorist coverage provision of the Plaintiff's policy ("the Policy"). Plaintiff's insurer denied coverage and moved for summary judgment, arguing that the rental car did not qualify as an "uninsured motor vehicle" under the Policy. The trial court granted the insurer's motion, and the Court of Appeals affirmed. On appeal, the Court held that the rental car was an "uninsured motor vehicle" under the Policy given that the term "self-insurer," in the Policy's provision covering injuries from an "uninsured motor vehicle," which excluded vehicles "owned or operated by a self-insurer," meant a person or entity able to cover the risk of a liability through their own assets, and the rental vehicle was an "uninsured motor vehicle" despite the rental agency's certificate of self-insurance under the Financial Responsibility Law. *Id.*