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Statute of Limitations:	**Real and personal property: 3 years** from accrual, which is almost always the date of loss. Tenn. Code § 28-3-105 (all references hyperlinked). "Accrual" in a property damages action under Tennessee Code Annotated section 28-3-105(1) occurs upon discovery. *City of Chattanooga v. Hargreaves Assocs.*, 2012 Tenn. App. LEXIS 405 (Tenn. Ct. App. June 21, 2012). The discovery rule "provides that the statute of limitations begins to run when the injury is discovered, or in the exercise of reasonable care and diligence, the injury should have been discovered. The rule responds to the unfairness of requiring that a plaintiff sue to vindicate a non-existent wrong, at a time when injury is unknown and unknowable." *Quality Auto Parts v. Bluff City Buick,* 876 S.W.2d. 818, 820 (Tenn. 1994).
	Personal injury: 1 year from loss date. Tenn. Code § 28-3-104.
	Gov't Entities: (including power companies MLGW and EPB) **1 year** from loss date. Tenn. Code § 29-20-305(b).
	UCC Warranty Claims: 4 years from the tender of delivery to the purchaser. Tenn. Code § 47-2-725(1), (2). *See also State Farm Fire & Cas. Co. v. Pentair Filtration, Inc.*, 2011 U.S. Dist. LEXIS 57780 (E.D. Tenn. May 27, 2011).
	Can parties contractually shorten statutes of limitation? Yes. See *Gagne v. State Farm Fire & Cas. Co.*, 2012 Tenn. App. LEXIS 145 (Tenn. Ct. App. Mar. 5, 2012) (allowing insurance contract to require suit within one year).
Statute of Repose	**Products: 10 years** from when the product was first purchased for use or consumption. Tenn. Code § 29-28-103(a).
	Improvements to Real Property: **4 years** from substantial completion of the improvement. Tenn. Code § 28-3-202. ***Note:*** If the loss occurs in the 4th year, repose runs one year from the date of loss. Tenn. Code § 28-3-203. ***Exceptions:*** Tenn. Code § 28-3-205 provides limited exceptions to the general 4-year rule. (a) The limitation is not a defense by any *person in actual possession* or the control, as owner, tenant, or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action. (b) The limitation is not a defense to any person who shall have been *guilty of fraud* in performing or furnishing the design, planning, supervision, observation of construction, construction of, or land surveying, in connection with such an improvement, *or to any person who shall wrongfully conceal* any such cause of action.
	Defects in Real Property Surveys: 4 years from the date the survey is recorded on the plat. Tenn. Code § 28-3-114. Statute commences when written or drafted statement was produced by the surveyor. "It does not necessarily mean the date when the survey was recorded in a county register's office, as the statute would never begin to run on an unrecorded plat." *Brian Dale et. al. v. B&J Enterprises, et al.*, 2012 Tenn. App. LEXIS 298 (Tenn. Ct. App May 10, 2012).
Product or Improvement?	Tennessee does not provide a statutory definition of "improvement to real property" but Tennessee courts have identified several approaches to defining this term. See *Cartwright v. Presley*, 2007 WL 161042 at *3–5 (Tenn. Ct. App. Jan. 23, 2007). These include (1) a common-law fixture analysis, (2) the common sense approach, and (3) as defined in various editions of Black's Law Dictionary. In *State Farm Fire & Cas. Co. v. Pentair Filtration, Inc.*, 2011 U.S. Dist. LEXIS 35972 (E.D. Tenn. April 1, 2011) a Tennessee federal court held that a water filter—a product when it was purchased—later affixed to a cabinet underneath the kitchen sink with two screws and a mounting plate and made part of the water supply line did not become an improvement for statute of repose purposes through its installation.
Modified Comparative Fault	**Claim Barred if Plaintiff Fault Reaches 50 Percent.** In negligence claims, the percentage of fault attributed to the plaintiff reduces recovery by that percentage—unless that percentage reaches 50, in which case Tennessee bars the claim entirely. See *McIntyre v. Balentine*, 833 S.W.2d 52, 57 (Tenn. 1992). Several factors can be considered when assigning fault to each party. *Eaton v. McLain*, 891 S.W.2d 587 (Tenn. 1994) They include: (1) The relationship between the conduct of the defendant and the injury to the plaintiff; (2) The reasonableness of the party's conduct in confronting a risk; (3) Whether a defendant had an opportunity to avoid injuring plaintiff; (4) The existence of a sudden emergency requiring a hasty decision; (5) The significance of what the party was attempting to accomplish by the conduct, such as an attempt to save another's life; and (6) The party's age, maturity, training, education, and so forth. *Id.* at 592.

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Comparative Fault for Children	**Rule of Sevens.** Tennessee courts have developed the "Rule of Sevens" for whether a minor can be found liable for negligence. *Ulysses Durham, Jr. v. John Noble*, 2012 WL 3041296 (Tenn. Ct. App. July 25, 2012). The rule has three presumptions. The first: a child under the age of seven has no capacity for negligence. The second: a rebuttable presumption that a child between the ages of seven and fourteen does not have the capacity for negligence. And third: a rebuttable presumption of capacity for negligence for a child between the ages of fourteen and twenty-one. (When the Tennessee Legal Responsibility Act of 1971 at Tenn. Code § 1-3-113 lowered the age of majority from 21 to 18 the high range for the third category for the "Rule of Sevens" was reduced from 21 to 18.) The determination as to whether a minor has the capacity for negligence is an issue for the trier of fact.
Joint & Several Liability	**No, with a few exceptions.** Abolished with the adoption of comparative fault, but with a few continuing exceptions: (1) Against all strictly liable parties in the chain of distribution of a product; (2) In traditional vicarious liability cases, specifically cases involving the family purpose doctrine, but most likely also master/servant relationships; (3) Against tortfeasors who act in concert with each other; (4) Against co-conspirators in civil conspiracy; and (5) Where plaintiff is injured by both a negligent and intentional tortfeasor, where the intentional act was a foreseeable risk created by the negligent defendant. See *Banks v. Elks Club Pride of Tennessee*, 301 S.W.3d 214, 219 (Tenn. 2010).
Insured Made Whole First?	**Yes.** In Tennessee, "[a]n insurer is not entitled to subrogation unless and until the insured has been made whole for his or her losses, regardless of what language is contained in the contract." *York v. Sevier County Ambulance Auth.*, 8 S.W.3d 616, 621 (Tenn. 1999). Accordingly, the insured is made whole first. Unless the policy specifically says so, however, this is not automatic: the insured must (1) demonstrate that it has an uninsured loss, and (2) assert a claim for it. ***Does made-whole apply to deductibles? Undecided***. *But see Fireman's Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.*, 72 A.3d 36 (Conn. 2013) (Holding that made-whole rule does not apply to deductibles, likening them to the first layer of coverage and applying the rule that excess carriers are generally reimbursed first on subrogation recoveries.) ***How do you determine whether insured has been made whole?*** Courts in other states have held that a jury verdict constitutes a full recovery for the made whole doctrine. *See Tampa Port Auth. v. M/V Duchess*, 65 F. Supp.2d 1299, 1301-02 (M.D. Fla. 1997); *State Farm Mut. Auto. Ins. Co. v. Perkins*, 216 S.W.3d 396, 403 (Tex. App.–El Paso 2006). ***Required to Reimburse Deductible? No.*** No case law, statute or administrative code provision on point. So, check the policy: if not required there, then reimbursement not automatically required.
Subrogation Elements	A subrogation claim entails making out four elements: (1) the party claiming subrogation has paid the debt; (2) the party was not a volunteer, but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; and (4) no injustice will be done to the other party by the allowance of the equity. Also, proof the insurance contract exists, proof of the loss and resulting payment are generally sufficient to establish the right to subrogation. *Copper Basin v. Federal Credit Union, Inc.*, No. 1:11-CV-203. (E.D. Tenn. October 13, 2011).
Economic Loss Rule	**Products:** The economic loss doctrine is implicated in products liability cases when a defective product damages itself without causing personal injury or damage to other property. Economic losses include the cost of repair or replacement, as well as lost profits resulting from the product owner's inability to use the product. See *Lincoln Gen. Ins. Co. v. Detroit Diesel Corp.*, 293 S.W.3d 487 (Tenn. 2009). Tennessee has explicitly rejected the exception allowed in some other states for claims arising out of a sudden, calamitous event—such as a fire. *Id.* **Real Property / Construction Defects:** Undecided formally, but see *Lick Branch Unit, LLC v. Reed*, 2014 U.S. Dist. LEXIS 16259 at *49-52 (E.D. Tenn. Feb. 10, 2014) ("The Tennessee Court of Appeals has since implicitly restricted the economic loss doctrine to claims involving products liability or the sale of goods, at least where the plaintiff can establish a sufficiently direct relationship between the defendant's negligent act and the plaintiff's economic loss.") And *SPO Go Holdings, Inc. v. W&O Construction, Co.* 2016 U.S. Dist. LEXIS 60661, No. 1-16-0010 (M.D. Tenn. May 06, 2016) (discussing history of economic loss rule applied to real property damage and suggesting Tennessee recognizes negligence claims for (at least) economic loss for negligent supervision and negligent misrepresentation.)

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Landlord / Tenant	**Not Allowed in Residential Context**. In Tennessee, a landlord's property carrier may not subrogate against a tenant unless the lease expressly reserves subrogation rights. *Dattel Family Ltd. P'ship v. Wintz*, 250 S.W.3d 883, 888 (Tenn. Ct. App. 2007). It is not enough for the lease to state that the tenant is responsible for the damage the tenant causes to the leasehold. (Note that *Dattel* involved residential tenants. Tennessee courts have not addressed this question in the commercial context. *See e.g. Seaco Ins. Co. v. Barbosa*, 761 N.E.2d 946 (Ma. 2002) (rejecting Sutton rule in commercial tenancies).
Anti-Subrogation Rule	**Standard Rule.** "No right of subrogation exists where the wrongdoer is also an insured under the same policy." *Phoenix Ins. Co. v. Estate of Ganier*, 212 S.W.3d 270, 275 (Tenn. Ct. App. 2006). But this anti-subrogation rule does not prevent the insurer from bringing a subrogation claim against its own insured if the underlying policy does not cover risk at issue. *Id.* at 276.
Parents Responsible for Minor Children?	**Yes, but Limited.** Any entity other than a corporation may recover not more $10,000 from the parents or guardian of the person of any minor under 18 years of age, living with a parent or guardian, who maliciously or willfully causes personal injury to such person or destroys property belonging to such entity. Tenn. Code § 37-10-101. A parent or guardian shall be liable for the tortious activities of a minor that injure persons or property where the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts ... but fails to exercise reasonable means to restrain the tortious conduct. Tenn. Code § 37-10-103.
Criminal Restitution Available?	**No.** "A victim's insurer is not within the natural and ordinary meaning of 'victim.' This is true because an insurer's payment of medical or other expenses is made pursuant to a contractual obligation; thus, the insurer does not suffer the unexpected harm that the actual victim suffers." *State v. Alford*, 970 S.W.2d 944, 945 (Tenn. 1998).
Who is a "Resident" Under a Homeowners Policy?	"Residents of your household" is necessarily elastic, but a nonexhaustive list of factors relevant to the determination of whether a person is a resident includes: (1) the person's subjective or declared intent to remain in the household either permanently or for an indefinite or unlimited period of time, (2) the formality or informality of the relationship between the person and the other members of the household, (3) whether the place where the person lives is in the same house or on the same premises, (4) whether the person asserting residence in the household has another place of lodging, and (5) the age and self-sufficiency of the person alleged to be a resident of the household. See *Cotton States Mut. Ins. Co. v. Tuck*, 2012 Tenn. App. LEXIS 777 (Tenn. Ct. App. September 9, 2012)
Municipality Liability & Liability Limits	**One Person $300,000 | Multiple Persons $700,000 | Property Damage $100,000** Tenn. Code § 29-20-403. **Immunity:** See Tenn. Code § 29-20-205 for a complete list of acts for which municipalities remain immune. Most notable is 29-20-205(4) "Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment *except* if the injury arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property.
Spoliation	**Permissive Inference / No Independent Tort.** No independent tort recognized in Tennessee (or rejected at this point either). The determination of whether a sanction should be imposed for the spoliation of evidence necessarily depends upon the unique circumstances of each case. Factors which are relevant to a trial court's consideration of what, if any, sanction should be imposed for the spoliation of evidence include (1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent; (2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence; (3) whether at the time the evidence was destroyed, the spoliating party knew or should have known that the evidence was relevant to pending or reasonably foreseeable litigation; and (4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party. *Tatham v. Bridgestone*, 473 S.W.3d 734, 747 (Tenn. 2015).

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Employee v. Independent Contractor	**Fact Specific.** What distinguishes an independent contractor—for whom one is generally not vicariously responsible—from an employee (for whom one generally is)? Look to the following factors: (1) the right to control the conduct of the work; (2) the right of termination; (3) the method of payment; (4) the freedom to select and hire helpers; (5) the furnishing of tools and equipment; (6) self-scheduling of working hours; and (7) the freedom to offer services to other entities. *Dillon v. NICA, Inc.*, 2011 Tenn. App. LEXIS 669 (Tenn. Ct. App. Dec. 14, 2011).
Measure of Property Damages	**Real Property:** The measure of damages for injury to real estate is the difference between the reasonable market value of the premises immediately before and immediately after an injury; but if the reasonable cost of repairing the injury is less than the depreciation in value, the cost of repair is the lawful measure of damages. *Redbud Coop. Corp. v. Clayton*, 700 S.W.2d 551, 560-61 (Tenn. Ct. App. 1985). But the fact-finder can take into consideration the reasonable cost of restoring the property to its former condition in arriving at the difference in value immediately before and after the injury to the premises. *Id.* **Personal Property:** In Tennessee, damages for the loss or destruction of personal property are measured by the market value of the property at the time of its loss. *Reid v. State*, 9 S.W.3d 788, 794 (Tenn. Ct. App. 1999). Alternatively, if no market for the property exists, or if the market value is inadequate, the proper measure of damages for the loss of personal property is the actual value of the property to the owner. *Id.* In either event, damages are calculated with reference to the date of the loss of the property, not the date of its acquisition or purchase by the owner. *Id.*
Damages: Burden of Proof	**Certainty Not Required.** An award for damages requires proof of damages within a reasonable degree of certainty. It does not, however, require exactness of computation in suits that involve a question of damages growing out of contract or tort. *Reynolds v. Roberson, Jr.*, 2012 Tenn. App. LEXIS 287 (Tenn. Ct. App. May 4, 2012). Before a court's consideration of awarding damages based on diminution in value, as opposed to the cost of repair, proof must be offered on both the cost of repair and the diminution in value. *Wilkes v. Shaw Enters.*, LLC, 2011 Tenn. App. LEXIS 232 (Tenn. Ct. App. May 4, 2011). Otherwise, a court is left with no legal basis upon which to grant an award of the diminution in value. Further, *the burden is on the defendant* to show that the "cost of repair is unreasonable when compared to the diminution in value due to the defects and omissions." *Id.* If the defendant fails to meet this burden, the court cannot simply not award diminution in value as the measure of damages. See *id.*
Prejudgment Interest	**Maybe.** "A court must decide whether the award of pre-judgment interest is fair, given the particular circumstances of the case. In reaching an equitable decision, a court must keep in mind that the purpose of awarding the interest is to compensate a plaintiff fully for the loss of the use of funds to which he or she was legally entitled, not to penalize the defendant for wrongdoing. Generally, an award of prejudgment interest is permitted if two criteria are met: (1) the amount is certain or easily ascertainable and (2) the obligation is not disputed on reasonable grounds." *Coleman Mgmt. v. Meyer*, 304 S.W.3d. 340, 349 (Tenn. Ct. App. 2009)
Postjudgment Interest	**Yes.** Tenn. Code § 47-14-121 is a mandatory statute, which provides that interest on judgments "shall be computed at the effective rate of 10% per annum," except as provided by statute or contract. Note that in federal court, federal law controls post-judgment interest, but state law governs prejudgment interest." *Estate of Riddle ex rel. Riddle v. S. Farm Bureau Life Ins. Co.*, 421 F.3d 400 (6th Cir. 2005).
Reduction for Non-Party Fault?	**Yes—Even Against Entities the Plaintiff Cannot Sue.** A jury may apportion fault to entities named in the defendant's Answer—even those who are "effectively immune" from suit, such as those protected by a statute of repose. *Biscan v. Brown*, 160 S.W.3d 462, 474 (Tenn. 2005).

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Standard for Expert Testimony	**Multi-Factor Test Similar to *Daubert*.** Tennessee has not adopted the Daubert standard but instead requires a consideration of a nonexclusive list of factors set out in *McDaniel v. CSX Transp.*, 955 S.W.2d 257 (Tenn. 1997). These include (1) whether scientific evidence has been tested and the methodology with which it has been tested; (2) whether the evidence has been subjected to peer review or publication; (3) whether a potential rate of error is known; (4) whether the evidence is generally accepted in the scientific community; and (5) whether the expert's research in the field has been conducted independent of litigation. Eight years later, the Court added more factors to this non-exclusive list, including the expert's qualifications and the "connection between the expert's knowledge and the basis for the expert's opinion." *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 274-75 (Tenn. 2005).
Products Liability	**Products Liability Standard:** In Tennessee, there are two tests for determining whether a product is unreasonably dangerous. *See* Tenn. Code § 29-28-102(8). The "consumer expectation test" requires a showing that the product's performance was below reasonable minimum safety expectations of the ordinary consumer having ordinary, "common" knowledge as to its characteristics. Under the "prudent-manufacturer test, "the Court imputes knowledge of the dangerous condition to the manufacturer, and then asks whether, given that knowledge, a prudent manufacturer would market the product. The consumer expectation test is, by definition, buyer oriented; the prudent manufacturer test, seller oriented. *Maness v. Boston Scientific*, 751 F. Supp. 2d 962, 969 (E.D. Tenn. 2010). Only sellers and manufacturers may be held liable under the TPLA. Tenn. Code § 29-28-102(4), (7).
	Must you prove a specific defect? Probably. To recover in a product liability action, a plaintiff must prove that the product allegedly manufactured or supplied by defendants was "in a defective condition or unreasonably dangerous at the time it left the control of the manufacturer or seller." Tenn. Code § 29-28-105. "[T]he failure or malfunction of the device, without more, will not make the defendant liable. A plaintiff must show that there was something wrong with the product, and trace the plaintiff's injury *to the specific defect*." *King v. Danek Med., Inc.*, 37 S.W.3d 429, 435 (Tenn. Ct. App. 2000). See also *Browder v. Pettigrew*, 541 S.W.2d 402, 404 (Tenn. 1976) (holding that in order to establish a defective design claim, the plaintiff must "trace the injury to some specific error in construction or design of the [product]" and that "in a products liability action in which recovery is sought under the theory of negligence, the plaintiff must establish the existence of a defect in the product just as he does in an action where recovery is sought under the strict liability theory or for breach of warranty, either express or implied.") But see *Motley v. Fluid Power of Memphis, Inc.*, 640 S.W.2d 222 (Tenn. Ct. App. 1982). Suggesting a lesser proof of defect is required when suit is brought for breach of warranty than when brought under the theory of strict liability. "Proof of the specific defect in construction or design causing a mechanical malfunction is not an essential element in establishing a breach of warranty. When machinery 'malfunctions', it obviously lacks fitness regardless of the cause of the malfunction. Under the theory of warranty, the 'sin' is the lack of fitness as evidenced by the malfunction itself rather than some specific dereliction by the manufacturer in constructing or designing the machinery."
	Seller Liability? Limited. Tenn. Code § 29-28-106(b) "No product liability action as defined in § 29-28-102(6), when based on the doctrine of strict liability in tort shall be commenced or maintained against any seller of a product ... unless the seller is also the manufacturer of the product or the manufacturer of the part thereof claimed to be defective, or unless the manufacturer of the product or part in question shall not be subject to service of process in the state of Tennessee or service cannot be secured by the long-arm statutes of Tennessee or unless such manufacturer has been judicially declared insolvent.
	Apparent Manufacturer Doctrine? Maybe. "The vendor, through its labeling or advertising of a product, caused the public to believe that it was the manufacturer and to buy the product in reliance on the vendor's reputation and care in making it, and was held to have assumed the obligations of a manufacturer and to be estopped to deny its identity as the manufacturer. The loss caused by an unsafe product should be borne by those who create the risk of harm by marketing and distribution of unsafe products, those who derive economic benefit from placing them in the stream of commerce, and those who are in a position to eliminate the unsafe character of the product and prevent the loss." *Travelers Indemnity Company v. Industrial Paper & Packaging Corp.* No. 3:02-CV-491, 2006 WL 3864857 at *8 (E.D. Tenn. December 18, 2006). *See also Tatham v. Bridgestone*, 473 S.W.3d 734, 753 n. 13 (Tenn. 2015).

	Post-Sale Duty to Warn? Undecided. In *Flax v. DaimlerChrysler Corp.*, the Tennessee Supreme Court considered the issue before concluding that "this case does not present the facts necessary to allow us to consider the merits of recognizing post-sale failure to warn claims." 272 S.W.3d 521, 542 (Tenn. 2008). The Court decided to "express no opinion, however, as to the merits of recognizing that cause of action in an appropriate case." *Id.* But two Courts of Appeals have held that Tennessee does not recognize a post-sale duty to warn. See e.g. *Irion v. Sun Lighting Inc.*, 2004 WL 746823, at *17 (Tenn. Ct. App. 2004)
Expert Licensure Requirement	**Lack of PI License Will Not Disqualify.** See *Doochin v. U.S. Fidelity & Guar. Co.*, 854 S.W.2d 109, 114-15 (Tenn. App. 1993) (holding that insured's witness, who was full-time arson investigator for fire department, should not be disqualified as an expert witness on ground that he did not have license as private investigator: even if licensing statute did apply to him, license was only one factor affecting his expertise).
Conflict of Law Rules	For torts, the most significant relationship, as set forth in the Restatement (Second) Conflicts of Law. *Hataway v. McKinley*, 830 S.W.2d 53 (Tenn. 1992). For contracts, *lex loci contractus* (the place of the contract). *Messer Griesheim Indus. v. Cryotech of Kingsport, Inc.*, 131 S.W.3d 457, 474-75 (Tenn. App. 2003).
Is Contract for Goods or Services?	To determine whether a mixed transaction is the sale of goods or the provision of a service, Tennessee courts examine the language of the parties' contract, the nature of the business of the supplier of the goods and services, the reason the parties entered into the contract (i.e. what each bargained to receive), and the respective amounts charged under the contract for goods and services. *Audio Visual Artistry v. Stephen Tanzer*, 2012 Tenn. App. LEXIS 903 (Tenn. Ct. App. December 26, 2012).

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