



THE MISSISSIPPI BAR LITIGATION SECTION E-NEWSLETTER

February 2017

Message from the Chair

Dear Members of the Litigation Section of The Mississippi Bar,

Greetings from the Mississippi Gulf Coast. I hope everyone has survived the Winter, or what little bit we had, and I am sure you are anxiously awaiting the arrival of Spring. The Litigation Section, the largest in the bar, has been busy planning and working on events of interest to the State's litigators. Along with the Young Lawyers Division, your Section has been working hard on the 2017 Deposition Academy. I would like to thank Section Secretary Clarence Webster for all of his help in the planning of the event, which will take place on June 15-16, 2017.

The Academy will occur at the Mississippi Bar Center and will consist of one day of instruction and one day of mock depositions, during which program attendees will observe accomplished litigators conduct witness examinations. The first deposition academy was a complete success and we anticipate the upcoming one to be sold out as well.

Also, in coordination with the Bar's Appellate Section, plans are being made for the Annual Meeting program on July 14, 2017 in Destin. An all-star panel is being assembled to discuss social media and legal blogging. This is a program you will not want to miss.

I would like to thank Executive Committee member, Lee Ann Thigpen, for her invaluable assistance in helping put together the current Newsletter. We hope that the articles contained will be of interest to you as a practitioner.

Finally, the Section recently provided a \$5,000.00 sponsorship for the 2016 MVLP Pro Bono Awards Dinner.

This Section always welcomes your ideas and participation. If you have any ideas, comments or questions about section membership, please email me at ksessoms@dwwattorneys.com



A. Kelly Sessoms III

In This Issue

- Mississippi Rules Annotated
- MVLP Donation
- "Suing on Borrowed Time"
- Fall Social
- "The Defect In Ionization Smoke-Alarms"
- Executive Committee

2013-2014 Mississippi Rules Annotated

Published by the Litigation Section of The Mississippi Bar and MLI Press.

Mississippi Rules Annotated is the most comprehensive compilation of case annotations for the civil procedure, evidence and appellate court rules available on the market. The 2013-2014 edition has been updated to include rules, amendments and case annotations through March 2013. In this edition, the annotations are arranged topically, making it easier to pinpoint cases that discuss a particular portion of a rule.

If you are a member of the Litigation Section, you will receive a \$15 discount per book.

To order this publication, please [click here](#).

Litigation Section donates to MVLP

The Litigation Section of The Mississippi Bar recently donated \$5,000 to the Mississippi Volunteer Lawyers Project (MVLP). Pictured at the presentation are Gayla Carpenter-Sanders, Executive Director/General Counsel of MVLP and Meade Mitchell, Chair of the Litigation Section. MVLP provides free legal assistance throughout Mississippi. To volunteer, donate, or learn more about MVLP visit <http://www.mvlp.net>



Suing on Borrowed Time: The Application of Mississippi's Borrowing Statute to Claims That Accrued Elsewhere

By: Hank Spragins¹

Introduction

Generally, a borrowing statute allows a party to “borrow” the statute of limitations of the state where the cause of action accrued, if the suit is filed in a different state. One stated purpose of borrowing statutes is to prevent claimants with unpled torts from forum shopping for a jurisdiction with a longer period of limitation when the unpled tort would be time-barred in the jurisdiction where it accrued. Said differently, borrowing statutes seek to prevent a plaintiff from avoiding the statute of limitations of the state where the claim arose by filing suit in a state with a longer statute of limitations for the same cause of action.²

Litigation necessarily requires that one party initiate a proceeding by filing a lawsuit. Before suit is filed, a plaintiff has several decisions he or she must make, including where to file suit. Depending on the specifics of a case, a cause of action could be appropriately filed in more than one state or in one or more counties within a particular state. A litigant's decision where to file suit in one place over another is often labeled “forum shopping.”³ The practice

¹ Hank Spragins is an associate with Hickman, Goza & Spragins, PLLC. His practice is devoted to litigation, including the representation of insurers and their policyholders. He is a member of the Mississippi Defense Lawyers Association and authorized an amicus brief on this issue. In the brief, he suggested that the Mississippi Supreme Court should endorse the view that § 15-1-65 prevents a non-resident from pursuing a claim in Mississippi when that claim is time-barred in the jurisdiction where it accrued.

² See *Finnegan v. Squire Publishers, Inc.*, 765 S.W.2d 703, 705 (Mo. Ct. App. 1989). “Borrowing statutes were enacted to prevent a plaintiff from avoiding the short statute of limitations of the state where the claim arose by shopping around for a jurisdiction with a longer statute of limitations.” *Bendis v. Alexander and Alexander, Inc.*, 916 S.W.2d 213, 218 (Mo. Ct. App. 1995) (citing *Finnegan*, 765 S.W.2d at 705).

³ “Forum shopping” is the practice of filing a lawsuit in one forum over another available forum. See Christopher A. Whytock, *The Evolving Forum Shopping System*, 96 Cornell Law Review 481 (2011).



**Hal S. “Hank”
Spragins Jr.**

Hickman, Goza &
Spragins, PLLC

119 S. Main Street,
Suite 500

Memphis, TN 38103

P: 901-881-9840

F: 844-256-0993

has been criticized, and litigants are frequently questioned on their choice to pursue a claim in a certain forum over another. One consideration a litigant must make when deciding where to file suit is a state's time limits for the underlying cause of action. The general rule is that a forum state applies its own procedural laws, which includes statutes of limitations.

For several reasons, some states - Mississippi included - developed reputations as “havens” for stale, foreign torts. Some believe that Mississippi became a refuge for stale claims of nonresidents due to our more lenient statutes of limitations.⁴ However, during the time when our state supposedly harbored these suspect cases, we had a version of a borrowing statute, Miss. Code Ann. § 15-1-65 (1972), on the books. However, that statute was consistently interpreted to only apply to cases involving nonresident defendants who moved to Mississippi after an action accrued somewhere else, rendering it “ineffective” to actions accruing in other states.⁵ The Supreme Court's analysis of the previous version of the borrowing statute drew criticism from its own bench, namely Justice James Robertson,⁶ who called for a change in the law.⁷

While the choice as to where to file suit lies with the plaintiff, a defendant served with process should ascertain what, if any, jurisdictional arguments or affirmative defenses could or should be raised in the initial motion or answer. Surely, one important affirmative defense that should always be considered is whether the plaintiff has filed suit outside the allowable time limit prescribed by statute or law. If the claim is time-barred due to the expiration of the statute of limitations, a defendant should immediately raise this defense in their initial response to the complaint and move for dismissal.

But, just as a single case may have several valid forums or venues, parties may disagree about which statute of limitations applies to a cause of action. These disagreements can easily arise in cases where an action is commenced in a state other than the state where the claim accrued. When two or more states' laws arguably control a given case, choice of law principles will provide litigants the framework for resolving disputes over if or when to apply a certain state's law. By general rule, a forum state will typically apply its own procedural laws, which can include statutes of limitations. Even so,

⁴ See Sam Walker, Forum Shopping for Stale Claims: Statutes of Limitations and Conflict of Laws, 23 Akron L. Rev. 19 (1989).

⁵ See Sam Walker, Forum Shopping for Stale Claims: Statutes of Limitations and Conflict of Laws, 23 Akron L. Rev. 19 (1989).

⁶ See *Shewbrooks v. A.C. and S., Inc.*, 529 So. 2d 557, 568-574 (Miss. 1988) (Robertson, J., dissenting); *White v. Malone Properties, Inc.*, 494 So. 2d 576, 581-83 (Miss. 1986) (Robertson, J., concurring in part).

⁷ *Patton v. Mack Trucks, Inc.*, 556 So. 2d 679, 680 n. 1 (Miss. 1989).

some states, including Mississippi, have enacted borrowing statutes that “borrow” the statute of limitations of the jurisdiction where the cause of action accrued in certain circumstances. These statutes have exceptions, as Mississippi’s borrowing statute does not apply to actions by Mississippi residents.

An example helps illustrate application of a borrowing statute:

Mr. X from State A is involved in an automobile accident with Mr. Y, a resident of State B, in State C.

State A has a one-year statute of limitations.

State C has a one-year statute of limitations.

State B has a three-year statute of limitations.

Mr. X does not file suit within one year in State C but instead files suit in State B within the three-year statute of limitations.

Under this example, Mr. Y may argue that Mr. X’s suit is time-barred in State C (the state where the cause of action accrued) and, for that reason, an action cannot be maintained on the same cause of action in State B. The interpretation and application of the forum state’s borrowing statute would be necessary.

The Mississippi Supreme Court held that the previous (pre-1989) version of the borrowing statute only applied to cases involving nonresident defendants who moved to Mississippi after an action accrued in another jurisdiction. In 1989, the Legislature amended the statute, removing any language that referenced the residency of a defendant. The same year, the Legislature amended the catch-all limitations period from six to three years.⁸ Since the 1989 amendment to the borrowing statute, our Supreme Court has had few occasions to interpret the amended, current version of § 15-1-65. When it did, though, the Court indicated that a plaintiff’s cause of action would be time-barred in this state due to the expiration of the statute of limitations in the state where the action accrued.⁹ Without a clear holding, the question remained open in Mississippi.

But on September 15, 2016, the Mississippi Supreme Court concluded in *North American Midway Entertainment, LLC, et al. v. Murray*, No. 2013-M-01138-SCT, that § 15-1-65 prevents litigants

⁸ Miss. Code Ann. § 15-1-49 (1989).

⁹ See *Patton v. Mack Trucks, Inc.*, 556 So. 2d 679 (Miss. 1989); *Ford v. State Farm Ins. Co.*, 625 So. 2d 792 (Miss. 1993); *Alston v. Pope*, 112 So. 2d 422 (Miss. 2013).

from maintaining actions in Mississippi that are time-barred where they accrued. Justice Maxwell's opening line:

Under Mississippi Code Annotated Section § 15-1-65, when a cause of action has accrued in another state and is time-barred there, it cannot be maintained in Mississippi.¹⁰

Determine which statute of limitations to apply with a borrowing statute

Determining which statute of limitations to apply to a particular cause of action invokes choice of law principles and, with that, a discussion of substantive versus procedural law. For example, most decisions citing common law classified statutes of limitations as procedural rather than substantive.¹¹ Mississippi was no exception.¹² As a result, the general rule was that a forum state's statute of limitations applied to a cause of action, even though an action may have accrued in another state. But this approach was not without criticism:

When the period specified in the forum state's statute of limitations was *shorter* than that in the other state's statute of limitations, application of the early common law rule would not necessarily create a serious problem or result in an unfair result, because if the forum's statute of limitations had expired, the plaintiff, at least as a theoretical matter, still could bring the action in the other state. A more problematic situation was presented, however, when the period provided in the applicable statute of limitations of the forum state was *longer* than that in the applicable statute of limitations in the state where the cause of action arose. In that setting, a plaintiff who failed to timely file an action in the state in which the action arose would be provided the opportunity to search out another jurisdiction in which the applicable period under the relevant statute of limitations for the cause of action at issue was longer and in which the action could be maintained—a classic example of questionable forum shopping.¹³

¹⁰ An exception exists if the claim accrues in favor of a Mississippi resident.

¹¹ See *McCann v. Foster Wheeler, LLC*, 225 P.3d 516, 524-25 (Ca. 2010).

¹² *Williams v. Taylor Machinery, Inc.*, 529 So. 2d 606, 609 (Miss. 1988), *superseded on other grounds by statute as stated in Southern Pacific Transp. Co. v. Fox*, 609 So. 2d 357, 362 (Miss. 1992).

¹³ *McCann*, 225 P.3d at 525 (emphasis from original).

Borrowing statutes, by design, seek to remove the substantive versus procedural discussion, giving way to the application of another state's shorter period of prescription or limitation when the cause of action accrued elsewhere.¹⁴ One state's Supreme Court held that the enactment of a borrowing statute was a "legislative effort to eliminate the confusion created by choice of law determinations that depended on whether a limitation period was classified as substantive or procedural...."¹⁵

Mississippi's statutes of limitation can be generally found at Miss. Code Ann. § 15-1-1, *et seq.* There are approximately 30 statutes under this chapter that prescribe, touch on, or promulgate different limitation periods for different causes of action.¹⁶ And if the limitation period for a cause of action is not prescribed, the action falls under the state's three-year catch-all period.¹⁷ In Mississippi, most personal injury cases must be brought within three years after the cause of action accrued.¹⁸

The pre-1989 statute, described as a "very old statute[,]"¹⁹ read:

When a cause of action has accrued in some other state or in a foreign country, and by the law of such state or country, or of some other state and country where the defendant has resided before he resided in this state, an action thereon cannot be maintained by reason of lapse of time, then no action thereon shall be maintained in this state.²⁰

The statute was enacted "in furtherance of the general recognition of a sound public policy of limiting actions in the forum to the period which would be applicable if the action had been brought where it

¹⁴ "Although the provisions of the various states' borrowing statutes differ in a variety of respects, these enactments typically 'borrow' the statute of another state when the cause of action in question 'arose,' 'originated,' or 'accrued' in the other state and would be barred as untimely in that state." *Id.*

¹⁵ See *Boutelle v. Boutelle*, 337 P.3d 1148, 1151-52 (Wy. 2014).

¹⁶ Cf. Miss Code Ann. § 15-1-35 (one-year statute of limitation for certain torts) to Miss. Code Ann. § 15-1-41 (six-year statute of repose for actions on construction deficiencies).

¹⁷ Miss. Code Ann. § 15-1-49.

¹⁸ There are, of course, many exceptions, including medical malpractice cases or claims arising under the Mississippi Tort Liability Act.

¹⁹ *Staving v. American Potash & Chemical Corp.*, 227 F. Supp. 786, 789 (S. D. Miss. 1964)

²⁰ See *Cummings v. Cowan*, 390 F. Supp. 1251, 1254 (N. D. Miss. 1975); Miss. Code Ann. § 15-1-65 (1972).

could have been instituted and maintained.”²¹ It was said that the statute “import[ed] into local law the relevant statute of limitations of a foreign jurisdiction, thus giving one sued in Mississippi the continuing protection of a time bar completed elsewhere.”²²

But the old version of the statute was consistently interpreted to only apply to cases involving nonresident defendants who moved to Mississippi after a cause of action accrued. For example, in *Shewbrooks v. A.C. and S, Inc.*, a suit brought by multiple residents of Delaware against several nonresident asbestos companies for injuries that allegedly occurred in Delaware, New Jersey and Pennsylvania, the Mississippi Supreme Court stated: “We have consistently held that this statute applies only to a nonresident who moves to this State after the statute has run on the cause in the other state.”²³ Thus, the borrowing statute provided no help.²⁴ When the *Shewbrooks* plaintiffs filed suit in Mississippi, their actions were time-barred in the other potential forums. In Mississippi, the defendants successfully moved the trial court to dismiss the plaintiffs’ complaints for lack of personal jurisdiction and *forum non conveniens* grounds. On appeal, the Supreme Court reversed the trial court, finding that *forum non conveniens* requires that an alternative forum be available to the plaintiffs, which did not exist in the case because the claims were time-barred in other forums.²⁵ The *Shewbrooks* Court went on to discuss the defendants’ statute of limitations argument, specifically whether the borrowing statute prevented the maintenance of the action in Mississippi. In holding it did not, the *Shewbrooks* Court held that § 15-1-65 did not help the defendants because they were not nonresidents who moved to Mississippi after the cause of action accrued elsewhere.

Following *Shewbrooks*, § 15-1-65 was amended in 1989 to its current version:

When a cause of action has accrued outside of this state, and by the laws of the place where such cause of action accrued, an action thereon cannot be maintained by reason of lapse of time, then no action thereon shall be maintained in this state; provided, however, that where such a cause of action has accrued in favor of a resident of this state, this state's law on the period of limitation shall apply.

²¹ *Staving v. American Potash & Chemical Corp.*, 227 F. Supp. 786, 789 (S. D. Miss. 1964).

²² *Cummings*, 390 F. Supp. at 1254.

²³ *Id.* at 565.

²⁴ *Shewbrooks v. A.C. and S, Inc.*, 529 So. 2d 557, 558-59 (Miss. 1988).

²⁵ *Id.* at 561-64.

Among other things, the amended version of the statute removed reference to where a defendant resides before or at the time suit is filed. Following its amendment, several state and federal courts weighed in on the new wording.

In 2007, the Fifth Circuit affirmed the dismissal of a suit filed in Mississippi by a Missouri resident whose claim had accrued in Louisiana but had expired under that state’s limitation period, saying: “As the district court held, the plaintiffs’ claims are not governed by Mississippi three-year statute of limitations, but rather Louisiana’s one-year prescription period. Their claims are accordingly time-barred.”²⁶ In *Bell v. General Motors Corp.*, a products liability action filed in Mississippi by a Louisiana resident for an injury that occurred in Louisiana, Judge Gex held that a nonresident could not benefit by moving from Louisiana to Mississippi after his cause of action accrued and expired in Louisiana in an effort to become a Mississippi resident and gain legal shelter under an exception to the borrowing statute.²⁷ In *Birdsong v. Lincoln Nat. Life Ins. Co.*, Judge Jordan, considering the borrowing statute’s application to a claim filed in Mississippi that accrued Alabama, found that the statute “applies a foreign state’s more restrictive statute of limitations to claims that accrued in that other state but are time-barred in that other state.”²⁸ In *Douglas v. Norwood*, a case involving a Texas resident that was involved in an automobile accident in Kentucky but filed suit in Mississippi, Judge Mills opined that our borrowing statute “strongly suggests that the Mississippi Legislature did not intend for courts in this state to become a refuge for actions which are time-barred elsewhere...” and found that “§ 15-1-65 appears to specifically bar non-Mississippi plaintiffs from filing actions in Mississippi which are time-barred in other states.”²⁹

Before the *Midway* case, several state court opinions suggested that the borrowing statute could be applied to prevent the maintenance of a nonresident’s suit in Mississippi that was time-barred in the state where the claim arose. Shortly after adoption of the current version of § 15-1-65, the Mississippi Supreme Court decided *Patton v. Mack Trucks, Inc.*³⁰ Because the *Patton* suit was commenced before the 1989 amendment, the prior version of the borrowing statute controlled the outcome.³¹ The *Patton* case involved a personal injury suit brought by a Pennsylvania resident against a

²⁶ See *Vahle v. Williams*, 244 Fed. Appx. 555, 558 (5th Cir. 2007).

²⁷ *Bell*, 992 F. Supp. At 860-61.

²⁸ No. 3:10cv699–DPJ–FKB, 2012 WL 5026437, at *2 (S.D. Miss. Oct. 17, 2012).

²⁹ No. 3:13cv271, 2015 WL 5638069, at *3 (N.D. Miss. Sept. 25, 2015).

³⁰ 556 So. 2d 679 (Miss. 1989).

³¹ *Id.* at 679.

Pennsylvania defendant arising out of a single-vehicle accident in Pennsylvania.³² After the plaintiffs' claim was dismissed by a Pennsylvania court due to the expiration of that state's statute of limitations, the *Patton* plaintiffs came to Mississippi and filed suit against Mack Trucks, Inc. in the circuit court in Jackson County, Mississippi.³³ At the time suit was filed, Mississippi's three-year statute of limitations had yet to expire. Mack Trucks successfully motioned the Mississippi trial court for summary judgment based on the expiration of the statute of limitations.³⁴ The plaintiffs appealed the decision, and the issue before the Mississippi Supreme Court was "whether the Pennsylvania statute of limitations bars [the] action...." Citing *Shewbrooks v. A.C. & S., Inc.*, Justice Robertson found "this action is subject only to this state's limitations statute."³⁵ However, in a footnote to this quote, Justice Robertson cited to the recent amendment of § 15-1-65, writing that it "effectively ends this state's days as a home for unpled foreign torts."³⁶ Justice Robertson continued by noting that the amended version of the statute provided the defendant "no comfort" because it became effective after the Complaint was filed.³⁷

In *Ford v. State Farm Ins. Co.*, another suit bound by the prior version of § 15-1-65, a Louisiana resident backed into a vehicle driven by another Louisiana resident in Louisiana.³⁸ Suit was filed in the circuit court of Hinds County, Mississippi, only after the plaintiffs' cause of action was dismissed by a Louisiana court because it was time-barred under Louisiana's prescription period.³⁹ The defendant was later granted dismissal on the direct action cause and summary judgment on the underinsured motorist claim.⁴⁰ On appeal, the Mississippi Supreme Court considered whether the trial court erred by finding that Louisiana's Direct Action Statute was inapplicable in Mississippi.⁴¹ To do so, the Court said, it must first determine whether Louisiana's Direct Action Statute addressed procedural or substantive law.⁴² Citing Mississippi's catch-all limitation period, the *Ford* Court found that Mississippi's limitation period "applies to a Mississippi lawsuit even though the tort occurred in Louisiana."⁴³ However, in a

³² *Id.*

³³ *Id.* at 680.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 680 n. 1.

³⁷ *Id.*

³⁸ 625 So. 2d 792 (Miss. 1993).

³⁹ *Id.* at 793.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 794.

footnote to this point, the *Ford* Court stressed that the Legislature had amended § 15-1-65 and, “[u]nder present law, the instant action would be barred by [the borrowing statute.]”⁴⁴

In *Alston v. Pope*, Shirley Alston, an Alabama resident, was involved in an automobile accident in Alabama with Justin Pope, a Mississippi driver operating a truck owned by T. K. Stanley, Inc., a Mississippi corporation.⁴⁵ The plaintiffs filed suit in circuit court in Wayne County, Mississippi, which later dismissed the suit on the grounds of *forum non conveniens*.⁴⁶ The Alstons then filed suit in Alabama, but the Alabama case was dismissed due to the expiration of the statute of limitations. The Alstons then came back to the circuit court in Wayne County, Mississippi with a Rule 60(b) motion for relief, which was denied.⁴⁷ While the borrowing statute was not applicable to the *Alston* holding because Alabama’s statute of limitations had not expired at the time the plaintiffs filed suit in Mississippi, the Mississippi Supreme Court stressed, “when *Shewbrooks* was decided, the former version of Mississippi’s borrowing statute...controlled”, stating it was “[notable], the Mississippi Legislature amended Section 15-1-65 in 1989 following the *Shewbrooks* decision.”⁴⁸ Thus, the Court concluded, “[u]nder present law, the Shewbrookes’ tort claims would have been barred.”⁴⁹

With uncertainty still present, the Mississippi Supreme Court made clear in *North American Midway Entertainment, LLC, et al. v. Murray*, No. 2013-M-01138-SCT, that § 15-1-65 prevents litigants from maintaining actions in Mississippi that are time-barred where they accrued.⁵⁰ The *Midway* case involved the interpretation and application of Mississippi’s borrowing statute to a personal injury claim that accrued in Louisiana but was filed in Mississippi; that suit was filed outside of Louisiana’s limitations period but within the three-year statute in Mississippi. In the *Midway* decision, the Court cited *Patton*, *Ford* and *Alston*, holding that the Murrays could not maintain an action in Mississippi because their claim was time-barred where it accrued (Louisiana) when it was filed here. Because the trial court denied the defendants’ dismissal motion on this issue, the Supreme Court reversed and rendered.

⁴⁴ *Id.* at 794 n. 2.

⁴⁵ 112 So. 3d 422 (Miss. 2013).

⁴⁶ *Id.* at 423-24.

⁴⁷ *Id.* at 423.

⁴⁸ *Id.* at 427.

⁴⁹ *Id.* at 427-28.

⁵⁰ An exception exists if the claim accrues in favor of a Mississippi resident.

Conclusion

Like Mississippi, a majority of states have enacted some form of borrowing statute.⁵¹ “These numerous ‘borrowing statutes’ demonstrate the general recognition of the sound public policy of limiting, under some circumstances, the application of the general statute of limitations of the state of the forum.”⁵² However, language and application of each states’ borrowing statute varies by jurisdiction.⁵³ Even the United States Supreme Court has weighed in on the application of borrowing statutes.⁵⁴ For now, *Midway* prevents litigants whose claims are time-barred where they accrued from pursuing those claims in Mississippi.

⁵¹ See *Boutelle*, 337 P.3d at 1151-52.

⁵² *Order of United Commercial Travelers of America v. Wolfe*, 331 U. S. 586, 607-08 (1947).

⁵³ See *Scott by Ricciardi v. First State Ins. Co.*, 456 N.W.2d 152, 156 (Wisc. 1990); *Keeton v. Hustler Magazine, Inc.*, 549 A.2d 1187, 1199 (N. H. 1988) (“The provisions of borrowing statutes vary widely and not all would apply to defamation actions, *id.*, but such statutes typically provide for the application of some other State’s period of limitation to an action that arose outside the forum State.”).

⁵⁴ See *Cope v. Anderson*, 331 U. S. 461, 465 (1947).

Fall Social

The Mississippi Bar Litigation Section, the Capital Area Bar Association (CABA) and the Jackson Young Lawyers (JYL) co-sponsored a Fall Social at Manship on Thursday, September 29. Members celebrated, socialized and networked during the social, while also welcoming the newly admitted members of The Mississippi Bar.



Richard H. Taylor

Taylor Martino PC
P O Box 894
Mobile, AL 36601-0894
P: (251) 433-3131
richard@taylormartino.com

Edward P. Rowan

Taylor Martino PC
P O Box 894
Mobile, AL 36601-0894
P: (251) 433-3131
ed@taylormartino.com

Robert F. Wilkins

Rocky Wilkins Law Firm
P O Box 2777
Jackson, MS 39207-2777
P: (601) 948-6888
rocky@rockywilkinslaw.com

THE DEFECT IN IONIZATION SMOKE-ALARMS

By: Richard H. Taylor, Edward P. Rowan, and Rocky Wilkins*

When a residential fire causes injury or death, many lawyers overlook a potential lawsuit against a smoke-alarm manufacturer. This article addresses the defect in ionization smoke alarms and how to determine whether you have a meritorious smoke-alarm case.

I. The Ionization Smoke Alarm

There are two primary types of smoke-alarm sensing technology: photoelectric and ionization. A photoelectric alarm is best for detecting smoldering fires that typically produce smoke for a period of time before developing into flaming fires. Smoldering fires typically occur when people are asleep and are generally responsible for more deaths than flaming fires.

The ionization smoke alarm is best for detecting flaming fires where there is less smoke; but, it is awful at detecting smoldering smoke. Sworn testimony from the major manufacturers establish that ionization smoke alarms are less expensive than photoelectric smoke alarms and represent up to 95% of all smoke alarms sold.¹ But the ionization smoke alarm may not respond at all to a smoldering fire, even when a room is completely filled with toxic smoke. And if an ionization smoke alarm does sound in a smoldering fire, it usually takes *15-30 minutes longer to sound* than photoelectric. There is an abundance of scientific and technical data confirming these defects with ionization smoke alarms.² In fact, the manufacturers have testified that the delay exists and can be *up to an hour*.³ One manufacturer even admitted the delay defect publicly. A senior vice-president of smoke alarm manufacturer First Alert (BRK Brands, Inc.) appeared on the national-television program *20/20*, where he stated that a photoelectric alarm will sound in a smoldering fire “fifteen minutes prior to ionization detector.” In reply to this, the *20/20* investigative reporter stated, “Well, I want that extra fifteen minutes to go wake up other members of my family, to go make sure everybody’s safe, to help them outside.”⁴ These defects with ionization alarms have been demonstrated on

national television many times,⁵ but manufacturers have done nothing to change the defects or warn the public.

II. The UL Defense

The manufacturers defend ionization technology by pointing out that it complies with Underwriters Laboratories (“UL”) Standard 217 for smoke alarms.⁶ The UL Standard 217 test was devised in the 1970s, when most homes had furniture with materials made of cotton. The furniture in modern homes is made of synthetic materials such as polyurethane. Polyurethane is an oil-based product that gives off huge amounts of smoke and deadly gases, such as carbon monoxide and hydrogen cyanide. Breathing the deadly gases emitted by burning polyurethane and similar modern materials causes unconsciousness, and eventually death.⁷ In fact, most people who die in a smoldering fire die as a result of smoke inhalation and not a thermal injury.⁸ UL Standard 217 does not test smoke alarms using modern materials; instead, their tests use cotton and wood on a hot plate. As such, UL 217 is an inadequate test for the most fatal residential fires in modern homes - - smoldering fires.⁹ UL and the manufacturers have been aware of the deficiencies in the UL 217 standard for over twenty years, as evidenced in the UL Technical Advisory Meeting minutes and industry meetings with the CCPSC.¹⁰ In fact, a 2007 UL report recommended polyurethane be added to the UL 217 test protocol¹¹, but a UL panel laden with industry representatives has yet to implement the change. UL was recently added as a defendant in a smoke alarm death case for its negligence in promulgating UL Standard 217 and failing to update it.¹²

III. Consumer Complaints

We know ionization smoke alarms pass the UL Standard 217 laboratory test, but how do they perform in real-world fires? The answer is frightening. There are *thousands* of consumer complaints received by the major smoke-alarm manufacturers complaining about ionization alarms. The major smoke alarm manufacturers have been successful in keeping the consumer complaint data confidential and out of the hands of the public. This consumer complaint data has not been supplied to the Consumer Product Safety Commission (CPSC), Underwriters Laboratories (UL) or the

National Fire Protection Association (NFPA) or other agencies which have an interest in fire safety. However, based upon a review of confidential consumer complaint data obtained in litigation, the major smoke alarm manufacturers have received thousands of consumer complaints beginning from the time ionization smoke alarms were placed on the market until the present. According to testimony from the manufacturers, the most frequent complaint among its customers is that ionization smoke alarms do not respond to smoke.¹³ These consumer complaints are discoverable, although the practitioner must prepare themselves for a protracted fight with the manufacturers before the documents will be produced.

The consumer complaints date back to the 1980's and tell us two significant things. First, in real-world fires, ionization alarms often do not sound at all or have a substantial delay in sounding.

Second, the smoke-alarm manufacturers know how their ionization smoke alarms perform in the real world. That is, the manufacturers are on notice of the "defect" dating back over thirty years.

Consumer complaints are admissible in most states to prove notice of the defect and are also relevant and material to punitive damages.¹⁴ In some states, they can also be used to prove the defect itself.¹⁵ To prove defect, you may have to prove substantially similar circumstances. Some courts hold that this "substantial similarity" requirement is relaxed when offered to prove only notice.¹⁶ Although there is legal authority to admit consumer complaints into evidence, the admissibility is often discretionary with the trial court.¹⁷

The Supreme Court of Iowa, in *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 623 (Iowa 2000), reversed a multi-million dollar verdict, holding that the trial court committed error by admitting three hundred and sixty-three consumer complaints received by BRK. This case discusses how a trial court's discretion can be abused when plaintiff's counsel does not take care in presenting the consumer complaints to the court. The *Mercer* case tells the practitioner what not to do. Consider these practice points to improve the likelihood of the consumer complaints being admitted into evidence without reversal:

1. Review the consumer complaints in great detail and eliminate any complaints that are not substantially similar. That is,

eliminate complaints where the manufacturer found that the alarm did not respond because its batteries were missing or other factors not present in your case.

2. Explain to the court the purpose for which you offer the consumer complaints. For example, if you offer the consumer complaints to show notice to the manufacturer, then all of your complaints should *precede* the date of your fire or the date of manufacture (this depends on the notice law in the particular state).

3. Show the court that all of the complaints offered have the following similarities:

- a. They are ionization smoke alarms.
- b. They were designed and manufactured by the defendant.
- c. Smoke reached the alarm and the alarm did not sound, or there was a delay in sounding.
- d. The alarms were powered and had no deficiency.
- e. The manufacturer received notice of the complaint prior to the fire or date of manufacture.
- f. The manufacturer inspected or evaluated the smoke alarm returned by the customer and found that it was functioning properly.
- g. The alarms all pass UL 217.
- h. The defect alleged in the consumer complaints is the same as the defect alleged in your case.

Counsel must emphasize to the court those cases which hold that the “substantially similar” predicate for proof of similar incidents is defined by the defect or the product at issue. Any differences in the circumstances surrounding these occurrences go merely to the weight to be given to the evidence, not to the admissibility.¹⁸ If your trial judge is more conservative-leaning, consider not offering the consumer complaints into evidence, but instead requesting permission to discuss the defendant’s notice of the consumer complaints. For example, the major alarm manufacturers collect, analyze and chart consumer complaints and then discuss them within the company. Counsel should seek to admit this testimony even though not a single consumer complaint may go

into evidence.¹⁹ Similarly, counsel should be allowed to cross-examine defendant's witnesses and experts if these witnesses testify that the smoke alarm is safe for its intended use. In fact, some federal courts allow evidence of dissimilar incidents to be admitted for purposes of impeachment.²⁰

IV. Causes of Action

The causes of action most frequently asserted against smoke-alarm manufacturers are products liability, negligence, and wantonness claims for defective design, based on the ionization smoke alarm's failure to sound or failure to sound in a timely manner. The most effective cause of action is defective design because all ionization alarms are inherently defective due to the mode of detection.²¹ However, the practitioner should also consider failure-to-warn claims, which may allow evidence of notice that might not otherwise be admissible in a pure strict-liability state. That is, a negligent failure to warn count requires proof that a manufacturer knew or should have known that the product was unreasonably dangerous for its intended use. In order to prove the manufacturer's knowledge, the plaintiff should be allowed to introduce evidence of consumer complaints that may not be otherwise admissible under a strict liability cause of action which requires little or no knowledge of a defect.²²

In most states, a failure-to-warn claim can be brought as a product-liability claim, a negligence claim, or a wantonness claim, or under all of these causes of action. The consumer complaints and research data make it relatively easy to prove that the manufacturer knows that ionization smoke alarms have a history of failure and defect, with or without the admission of consumer complaints. The manufacturer should admit the comparative delay in sounding, and will certainly admit its knowledge of the consumer complaints, even if the court does not allow the actual consumer complaints into evidence. Despite the manufacturer's knowledge of defects, the manufacturers do not adequately warn about the hazard. The practitioner should also purchase an ionization smoke alarm at a local retail store and read the package front and back before opening it. Typically, the only information pertaining to the limitation of the ionization smoke alarm is the UL-approved wording as follows:

Manufacturer recommends for maximum protection that both ionization and photoelectric smoke alarms be installed. Ionization technology is faster at detecting flaming fires that give

off little smoke. Photoelectric technology is faster at responding to smoldering, smoky fires.

There is no warning on the package telling the purchaser how much faster the photoelectric alarm is at detecting a smoldering fire, despite the manufacturer's knowledge that the ionization alarm has a delay of fifteen to thirty minutes in sounding. Significantly, the smoke-alarm manufacturers and UL admit that they do not warn about the substantial delay in sounding or the risk of not sounding. The manufacturers and UL only have "recommendations" on the packaging that are not prominently displayed.

Many people rent an apartment or move into a home where the smoke alarms are already installed, or a contractor will install the alarm. These people have never read the packaging, the package inserts, or the owner's manual. They only see the smoke alarm attached to the wall or ceiling, and it is completely devoid of any warnings. Therefore, your liability theory could be the total lack of warnings on the smoke alarm itself. In this factual scenario, the Plaintiff will avoid getting bogged down with the adequacy of the "warnings" that come with the package. This failure-to-warn theory should be easy for your warnings expert to support and present, if you need one at all.

Smoke alarm cases are time-consuming and very expensive. Attorneys should perform due diligence before filing a case. Below are some practice tips.

V. Were There Smoke Alarms in the Home?

The first thing to determine is whether the home had smoke alarms installed. If none were present, consider a lawsuit against the landlord or whoever was responsible for the installation of smoke alarms.²³ International, federal, and most state and local codes require smoke alarms.²⁴

VI. How Many Smoke Alarms Were in the Home and Where Were They Located?

The occupants of the home should explain how many smoke alarms were in the home and where they were located. The number and location should be correlated to where the fire started. You need to establish that smoke reached an alarm in time for an effective warning to sound, and in sufficient quantity for it to sound. A substantial amount of heavy smoke can reach an ionization smoke

alarm and either it will not sound, or it will sound too late. If an alarm sounds too late, then it does not serve its purpose.

VII. Batteries

Many people remove the batteries to stop nuisance alarms caused by smoke from cooking, and never replace them. Also, batteries oftentimes separate from the smoke alarm during the fire or during fire suppression efforts. You must prove that energized batteries were in the alarm when smoke reached the alarm. Obviously, there can be no causation, and thus, no case, if the smoke alarm was not powered.

You should immediately take possession of all smoke alarms in the residence. If the batteries can be recovered, their energy level can be tested and documented. Frequently, smoke alarms are burned beyond recognition, but x-rays of the alarm remains may still identify a battery. Also, it is not unusual for the batteries to pop out if the alarm falls to the floor during a fire or during fire suppression. Retaining a “cause and origin” expert to sift through the fire debris to attempt to locate a missing battery is a possibility. This should be done as soon as possible after the fire.

You should question the occupants of the home and if applicable, maintenance personnel, to determine when the batteries were replaced and when they were last checked. Apartment complexes and Section 8 housing require periodic, documented inspections of smoke alarms.²⁵

VIII. Proximate Cause

The purpose of a smoke alarm is to alert occupants of a home to a fire so they can escape in time. You must determine if the people in the home at the time of the fire were awake or asleep, especially the adults. If the alarm failed to sound in a timely manner or at all, but the occupants nonetheless were awake and aware of the fire and could have escaped, there is no proximate causation for the death or injuries.²⁶

IX. Did the Smoke Alarm Sound?

In about half of the cases evaluated, the smoke alarm sounded, while in the other half it did not sound at all. You may have a case in either situation.

As stated, the ionization smoke alarm represents about 95% of all smoke alarms sold in the United States. More likely than not, the residence had an ionization smoke alarm. Again, the ionization alarm frequently does not sound in a smoldering fire, or has a substantial delay in sounding of fifteen minutes or more as compared to a photoelectric. Therefore, if the alarm did sound, you must determine the stage of the fire when it sounded. (Note: If you have proof the alarm sounded then you have proof it was powered which eliminates the battery defense.)

If the smoke alarm sounds and an adult jumps out of bed to rescue a child, what stage had the fire and smoke reached? Often the fire has progressed to the point where a parent cannot save a child, or an adult cannot escape, because he or she is overcome by carbon monoxide and smoke. On the other hand, if the smoke alarm sounded earlier, and the occupants had sufficient time to leave the residence in a normal ingress/egress path before being overcome, there is no case. Therefore, it is important to find out where everybody was and what they were doing when the smoke alarm sounded, and the characteristics of the smoke at the exact time. How much smoke was in the room? How high was it? What color was it? How thick was it? Were there flames? Was their normal path of ingress/egress blocked by fire? And so on. (This overlaps with the proximate cause issue.)

There are ways to determine if a smoke alarm sounded other than by questioning the occupants of the home. Sometimes the occupants are all dead or the survivors are only small children. One option is to interview the first responders and the neighbors. If a next-door neighbor heard no alarm when the fire occurred, you can sound an exemplar alarm inside the burned residence. If the neighbor hears it, you have proof the alarm in question did not sound. There are other ways to determine if an alarm sounded. For example, experts may be able to conduct a soot agglomeration test on the recovered smoke alarm to determine if it sounded in the fire.²⁷

X. Product Identification and Preservation

The alarms must be preserved. It is imperative to maintain the integrity of the smoke alarms and their batteries during and after removal. Failure to do so may result in a spoliation-of-evidence defense, which can have adverse consequences. If the manufacturer can be identified prior to removal, it is best to contact the manufacturer and notify it of your intention to remove the alarm. Next, determine the make, model, and manufacture date of the alarm. If you intend to pursue litigation against the manufacturer,

you should purchase four or five exemplar alarms. You will need them for expert testing, demonstrations, and the like.

XI. Conclusion

A smoke alarm case is very expensive and time consuming; but, if a proper investigation of the facts of the fire reveal an ionization smoke alarm did not sound or sounded late, then a cause of action against the smoke alarm manufacturer should be considered.

*Rocky Wilkins of Rocky Wilkins Law Firm, PLLC practices in Jackson, MS. His firm focuses primarily on personal injury, product liability, automobile accident litigation and criminal defense. He can be reached at rocky@rockywilkinslaw.com. Richard Taylor is a senior shareholder at Taylor Martino in Mobile, AL, concentrating primarily on personal injury and products liability litigation. He has spent over twenty years handling fire cases of all type and complexity. He can be reached at richard@taylormartino.com. Ed Rowan is a shareholder at Taylor Martino who also concentrates on fire litigation. He can be reached at ed@taylormartino.com.

ENDNOTES

¹ Sworn testimony from the manufacturers is on file with the authors. *E.g.*, Transcr. Depo. Chris Rovenstein, *Spencer v. Walter Kidde Portable Equipment, Inc.*, No. 02-CV-2005-4109 (Ala.13th Cir. Mar. 19, 2009); Transcr. Depo. Mark Devine, *Hosford v. BRK Brands, Inc.*, No. 03-CV-2011-901193 (Ala. 11th Cir. Oct. 23, 2013); Transcr. Depo. Taysir Barakat, *Anna Belle Newman v. Maple Chase Company*, No. 02-CV-2000-2227 (Ala. 13th Cir. Jan. 29, 2002).

² Studies, reports and test data showing the performance of ionization smoke alarms are on file with the authors. *E.g.*, R.W. Bukowski *et al.*, *Performance of Home Smoke Alarms: Analysis of the Response of Several Available Technologies in Residential Fire Settings: NIST Technical Note 1455-1*. (National Institute of Standards and Technology 2009); Joseph M. Fleming, *Photoelectric and Ionization Detectors – A Review of the Literature – Re-Visited* (Working Paper, 2006 available at <http://www.mass.gov/eopss/docs/dfs/osfm/boards/specific-meetings/j-fleming/photo-vs-ion-re-visited-2004-j-fleming.pdf>); Thomas Z. Fabian & Pravinray D. Gandhi, *Smoke Characterization Project*. (Underwriters Laboratories Apr. 2007).

³ Sworn testimony (via corporate representatives and experts) from the manufacturers of First Alert /Family Gard, Kidde/Nighthawk, Invensys/Fire-X detailing the ionization alarm's delay in responding to smoke is on file with the authors. *E.g.*, Transcr. Depo. Daniel T. Gottuk, *Spencer v. Walter Kidde Portable Equipment, Inc.*, No. 02-CV-2005-4109 (Ala. 13th Cir. Nov. 15, 2007); Transcr. Depo. Larry Ratzlaff, *Spencer v. Walter Kidde Portable Equipment, Inc.*, No. 02-CV-2005-4109 (Ala. 13th Cir. Nov. 15, 2007); Transcr. Depo. Taysir Barakat, *supra*.

4 20/20, TV Series, “Sounding The Alarm - The Reliability of Smoke Detectors” (ABC May 17, 1996).

5 A historical collection of newscasts highlighting the performance of ionization smoke alarms in smoldering fires are on file with the authors. *E.g.*, 20/20, *supra*.

6 UL 217 a/k/a ANSI/UL 217 (Single and Multiple Station Smoke Alarms) is the industry standard for residential smoke alarms. Most codes have incorporated the requirements of UL 217 by reference.

7 *Smoke Characterization Project, supra*; Underwriters Laboratories, *Fire Safety Research & Implications*, <http://www.ul.com/global/eng/mobile/featured-innovation/new-science/fire-safety/detail.html> (accessed Aug. 2, 2013); *Authors’ collection of data, supra*.

8 Federal Emergency Management Agency, *Multiple Fatality Fires Reported to NFIRS 1994–1996*, (U.S Fire Administration 1999).

9 Documents outlining the inadequacies of UL 217 are on file with the authors. *E.g.*, Consumer Products Safety Commission, *Status of recommendations made by CPSC to upgrade UL 217*, <https://www.cpsc.gov/PageFiles/105608/smokedetectors.pdf> (Oct. 31, 1995); *Photoelectric and Ionization Detectors – A Review of the Literature – Re-Visited, supra*; *Smoke Characterization Project, supra.*; *WTHR 13 Investigates*, TV Series, “*UL testing questioned - Safety organization cannot explain why some smoke detectors did not detect smoke*” (NBC July 30, 2007) (available at <http://www.wthr.com/story/6860228/ul-testing-questioned>).

10 An extensive collection of communications regarding the performance of ionization smoke alarms are on file with the authors. *E.g.*, Meeting Logs and other material related to ionization smoke alarms as documented by the Consumer Product Safety Administration (CPSC) can be found by submitting a FOIA query on the CPSC’s website.

11 *Smoke Characterization Project, supra*.

12 *Hosford v. BRK Brands, Inc.*, No. 03-CV-2011-901193 (Ala. 11th Cir. Dec. 28, 2011). Some minority states like Alabama allow lawsuits against trade associations, *e.g.*, *King v. National Spa and Pool Inst., Inc.*, 570 So.2d 612 (Ala. 1990), while others do not. *See In Re Welding Fume Prods. Liability Litigation*, 526 F.Supp.2d 775 (N.D. Ohio 2007) for a discussion of various state laws on the issue.

13 Sworn testimony (via corporate representatives and experts) from the manufacturers of First Alert/Family Gard and Kidde/Nighthawk detailing the consumer complaints on the ionization alarm’s delay in responding to smoke is on file with the authors. *E.g.*, Deposition taken in July, 2014 revealed that one major smoke alarm manufacturer receives, on average, three complaints per week that ionization smoke alarms are not responding to smoke. The manufacturer created an acronym “NRS,” meaning “No Response to Smoke” in order to analyze

and chart the consumer complaints. The manufacturer testified that it has been unable to determine why they receive so many NRS complaints because they test the smoke alarms when they're returned and they pass the 40-year-old UL 217 test.

14 *Brazos River Authority v. GE Ionics, Inc.*, 469 F.3d 416 (5th Cir. 2006) (New trial granted for excluding similar incidents offered to show notice, defect, causation and lack of intended use.); *Smith v. Ingersoll-Rand Company*, 214 F.3d 1235 (10th Cir. 2000). (Similar incidents admitted to show defect, notice and to support punitive damages.).

15 *CA Associates v. Dow Chemical Co.*, 918 F.2d 1485,1489 (10th Cir. 1990) (Similar incidents admissible to prove notice.); *Smith v. Ingersoll-Rand Company*, *supra.*; *White v. Ford Motor Co.*, 312 F.2d 998 (9th Cir. 2002).

16 *Smith v. Ingersoll-Rand Company*, *supra.*; *AH v. Evenflo Company*, CV 10-2435 (D. Colo. 2012); *Jackson v. Firestone Tire & Rubber Company*, 788 F.2d 1070 (5th Cir. 1986); *Bado-Santana v. Ford Motor Company*, 364 F.Supp.2d 79, 91-92 (D.P.R. 2005) (citing *Jackson v. Firestone*, *supra.*); *Nachtseim v. Beech Aircraft Corp.*, 847 F. 2d 1261 (7th Cir. 1988); *Wheeler v. John Deer Company*, 862 F.2d 1404 (10th Cir. 1988).

17 *Id.*

18 *Jackson v. Firestone Tire & Rubber*, *supra.*; *Ramos v. Liberty Mut. Ins. Co.*, 615 F.2d 334, 338-39 (5th Cir. 1980).

19 *E.g.*, see Transcr. Depo. Jim Wells, *Hosford v. BRK Brands, Inc.*, No. 03-CV-2011-901193 (Ala. 11th Cir. Jul. 29, 2014).

20 *Cooper v. Firestone Tire & Rubber Co.*, 945 F.2d 1103 (9th Cir. 1991); *Hale v. Firestone Tire & Rubber Co.*, 850 F.2d 928 (8th Cir. 1987).

21 *See Hackert v. First Alert, Inc.*, *supra.*

22 *Reformulating The Strict Liability Failure To Warn*, 49 Wash. & Lee L. Rev. 1509 (1992); Judicial Council of California Civil Jury Instructions, Vol. 1, CACI No. 1205 (2014).

23 *Williams v. T-Bone Investments, LLC*, No. 02-CV-2008-901298 (Ala. 13th Cir. Aug. 14, 2008).

24 Code collection is on file with the authors. *See e.g.* Nat. Fire Protection Agency, *NFPA 1: Uniform Fire Code* §§ 13.7.2.14, 13.7.4.6 (2009); Nat. Fire Protection Agency, *NFPA 72: National Fire Alarm and Signaling Code* §§ 11.1.1-11.11.2 (2010); Nat. Fire Protection Agency, *NFPA 101: Life Safety Code* § 24.3.4 (2006); International Code Council, *International Fire Code* § 907 (2009); Southern Building Code Congress International, *Standard Housing Code* § 907 (3rd Ed., SBCCI 1994).

25 Types of Housing and Property Standards, 24 C.F.R. § 884.110(d) (GPO e-CFR current through Apr. 14, 2014); Maintenance, Operation and Inspections, 24 C.F.R. § 884.217(c) (GPO e-CFR current through Apr. 14, 2014).

26 *Hackert v. First Alert, Inc., supra.*; (Excerpt from Court’s Order: “The smoke detector’s failure was a legal cause of the deaths of William and Christine Hackert.”); *Mercer v. Pittway Corp.*, No. 89732 (Iowa, Scott Co. Dist. Ct. 1996) (Excerpt from Court’s Order: “A smoke detector that sounds approximately nineteen minutes after smoke reached its sensing chamber is like an airbag that does not deploy until nineteen minutes after a car accident.”); *Dillard v. Pittway Corp.*, 719 So. 2d 188 (Ala. 1998) (A delay in smoke alarm sounding can give rise to proximate cause.); *Werner v. Pittway Corp.*, 90 F.Supp. 1018 (W.D. Wis. 2000). (Smoke alarm death case dismissed for failure to prove proximate cause.).

27 K.C. Kennedy et al., *A Fire Analysis Tool – Revisited: Acoustic Soot Agglomeration in Residential Smoke Alarms* (INTERFLAM 2004); C.L. Mealy & D.T. Gottuk, *Full-Scale Validation Tests of a Forensic Methodology to Determine Smoke Alarm Response* (Fire Technology 2011).

Litigation Section Executive Committee

Chair

Kelly Sessoms
Dogan & Wilkinson, PLLC
PO Box 1618
Pascagoula, MS 39568-1618
Phone: (228) 762-2272
Fax: (228) 762-3223
Email: ksessoms@dwwattorneys.com

Vice Chair

Matt Miller
Copeland Cook Taylor & Bush
P O Box 17619
Hattiesburg, MS 39404-7619
Phone: (601) 264-6670
Fax: (601) 264-5660
Email: mmiller@cctb.com

Secretary

Clarence Webster
Bradley
188 E Capitol St Ste 400
Jackson, MS 39201-2100
Phone: (601) 592-9906
Fax: (601) 592-9906
Email: cwebster@bradley.com

Past Chair

Meade Mitchell
Butler Snow
P O Box 6010
Ridgeland, MS 39157-6010
Phone: (601) 985-4560
Fax: (601) 985-4500
Email: meade.mitchell@butlersnow.com

Member at Large (8/2014-7/2017)

Rachel Waide
Waide & Associates
P O Box 1357
Tupelo, MS 38802-1357
Phone: (662) 842-7324
Fax: (662) 842-8056
Email: rpierce@waidelaw.com

Member at Large (8/2015-7/2018)

Brian Hyneman
Hickman Goza & Spragins PLLC
P O Box 668
Oxford, MS 38655-0668
Phone: (662) 234-4000
Fax: (662) 234-2000
Email: bhyneman@hickmanlaw.com

Member at Large (8/2016-7/2019)

Lee Ann Thigpen
Carroll Warren & Parker
P O Box 1005
Jackson, MS 39215-1005
Phone: (601) 592-1010
Fax: (601) 592-6060
Email: lthigpen@cwplaw.com

Contact Us

Rene' Garner
The Mississippi Bar
Section and Division Coordinator
P.O. Box 2168
Jackson, MS 39225-2168

Phone: 601.355.9226

Fax: 888.497.8305

Email: rgarner@msbar.org

[Visit the Litigation Section on the web](#)