**Georgia’s New Tort Reform Law with Senator Kennedy- EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Today we have a real treat for you – we have a special guest, Sen. John Kennedy – President Pro Tempore of the Georgia Senate.

*Sen. Kennedy has been very gracious with his time and his willingness to join us on this podcast. And we love our listeners and like to provide timely information so we asked him to appear and talk about the Tort Reform bill that was recently passed and signed by the Governor just a few days ago.*

Sen. Kennedy has served in the Georgia Senate since 2015, representing the 18th District. His district includes Crawford, Monroe, Peach and Upson Counties as well as parts of Bibb and Houston counties.

*Sen. Kennedy has served in a variety of leadership role in the Georgia Senate and he earned both his undergraduate and law degrees from Mercer University. As a lawyer, he is a partner in the Macon-based law firm of James, Bates, Brannan, Groover, LLP where he focuses on civil litigation, trial work, business advice and fiduciary law.*

Sen. Kennedy is very involved with his community, the Boy Scouts of America, and the local and state Bar among other things. He is married and has two children.

*For today’s purposes, he sponsored SB 68 during this most recent session of the legislature which has been become known as Georgia’s Tort Reform Bill. With all of that said, let’s get into the discussion with Sen. Kennedy.*

Sen. Kennedy, thank you for being here on the Good Judge-Ment Podcast.

Tell us a little about yourself – both as a legislator and as a lawyer

You have served in a number of leadership roles within the Georgia Senate. Tell our listeners a bit about those different roles.

Specifically, you serve on a number of Senate committees that directly impact the judiciary and lawyers in general. Can you tell us what those committees are and what sort of work they do that results in laws that impact the judiciary and the practice of law.

Our audience consists of judges, lawyers and others who are probably familiar with the Legislature in general but may not be up on the details of bills. So with the fanfare that accompanied SB 68 during this last session of the Legislature that concluded earlier this month, we wanted to have you on and discuss the bill – not in terms of politics – but in terms of how this bill will impact judges and lawyers

So, we want to be clear before we begin – we are not going to discuss why the bill was passed or whether the logic behind the changes in the law are good or bad. Instead, we want to introduce all of you to what is contained within the law that has passed and been signed by Governor Kemp.

Keep your policy and strategy arguments to discuss with whomever you want – just not here on the Good Judge-Ment Podcast

We have pulled the “as passed” version of SB 68 and would love to go through it in any way you wish – either section by section or in some other way that you would like to discuss

**Section 1**-amends O.C.G.A. § 9-10-184 relating to damages

Defines economic damages and non-economic damages

Counsel shall not argue the worth or monetary value of non-economic damages or make any reference to any specific amount or range of amounts – those being left to the “enlightened conscious of a jury”

Subsection “c” says that counsel shall be allowed to argue worth of monetary value of non-economic damages only after evidence is closed and in the first opportunity to argue the case but the argument must be rationally related to the evidence

If counsel has opening and concluding arguments, can only argue worth if it was raised in opening closing argument and cannot argue a different amount

\*Nothing should be construed from asking prospective jurors whether they could return a verdict in excess of some unspecified amount or no damages at all provided question is supported by evidence

**Section 2**- amending O.C.G.A. § 9-11-12 relating to answer, defenses and objections

Serving a motion alters deadline to answer

If denied or postponed, 15 days after notice of court’s action

If granted, 15 days after more definite statement is served

Defense can move for more definite statement without having to simultaneously answer

If motion to dismiss is filed, discovery stayed until ruling or until answer is filed

Motion to dismiss to be decided within 90 days of briefing being submitted [This raises the lack of notice to the trial judge as a real problem, although this provision really already existed]

**SECTION 3-** amends O.C.G.A. § 9-11-41 relating to dismissal of actions

Voluntary dismissal within 60th day of answer (eliminates language about “before first witness sworn”]

Voluntary dismissal is without prejudice unless there has previous dismissal in state or federal court on same claim-it is with prejudice

**SECTION 4 –** Amends 9-15-16

In civil action, attorney’s fees, court costs or expenses of litigation cannot be recovered more than once unless the statutes relied upon allow it

Contingent fee agreement is not admissible to prove reasonableness of the fee request

Does not apply to contractual obligation to pay atty fees

**SECTION 5 –** RELATES to Title 40 (Motor Vehicles)

O.C.G.A. § 40-8-76.1 (d) amended to provide that failure to wear a seat belt is admissible but is subject to Rule 403

Failure to wear a seat belt shall not be any basis for a cancellation or increase of rates relating to insurance coverage

**SECTION 6** – Amends Title 51 (Torts)

O.C.G.A. § 51-3-50 provides definitions in relation to negligent security

O.C.G.A. § 51-3-51 (invitee) sets terms under which owner or occupier of land liable for negligent security – includes “reasonably foreseeable” language

Failure to exercise ordinary care

O.C.G.A. § 51-3-52 (licensee) wilfully and wantonly failed to exercise care

O.C.G.A. § 51-3-53 sole remedy except for negligence and nuisance or contract

O.C.G.A. § 51-3-54 owner/occupier not liable to a trespasser, injury does not occur on the property of owner/occupier, wrongful conduct occurred at t place where owner/occupier did not have authority to exclude the bad actor, if the bad actor was a tenant and owner/occupier was in process of evicting the person, calling 911 or making report to LE is reasonable effort by owner/occupier of prior incidents

O.C.G.A. § 51-3-55 owner/occupier not required to assume duties of law enforcement, must consider the security measures employed by owner/occupier (including practicality)

O.C.G.A. § 51-3-56- apportionment of fault between owner/occupier, bad actor, and any other person, cannot discuss criminal punishment, financial resources of anyone involved or effect of apportionment to the verdict, if jury fails to apportion a “reasonable degree of fault” to the bad actor, trial court shall set aside the verdict and there is a rebuttable presumption that it is unreasonable if the % of fault attributed to bad actor is less than that % attributed to the owner/occupier

O.C.G.A. § 51-3-57 – security provider has no greater exposure than owner/occupier

**SECTION 7**- amends O.C.G.A. § 51-12-1.1

Civil action to recover damages resulting from death or injury – value of medical services, if health insurance (or other insurance), amounts charged vs. amount charged to health insurance, letters of protection relevant and discoverable (not necessarily “admissible”), abrogates collateral source rule but allows for jury instruction on impact of insurance

**SECTION 8** – creates O.C.G.A. § 51-12-15

Written demand prior to entry of pretrial order to have fault and damages determines (in first phase of trial) fault of the defendant and % of fault. Evidence and arguments limited to fault

Second phase compensatory damages determined with same judge and jury (evidence and argument limited to compensatory damages)

Third phase – punitive damages, attorney fees, etc.

Judge can reject only if the case involves a sexual offense or the amount in controversy is less than $150,000

**SECTION 9** – effective date

Upon signing EXCEPT

Sections 6 and 7 apply only to causes of action arising on or after effective date

All other sections apply immediately unless such application would be unconstitutional

So we thank Sen. Kennedy for coming in and discussing the Tort Reform bill with all of us

*It sure is nice that he is willing to come onto the podcast and discuss the new law in terms that are important to judges and lawyers*

We are blessed to have folks like Sen. Kennedy being willing to come onto the podcast and discuss these “hot off the press” sorts of issues

So that brings us to the music trivia section of our podcast. Tain – take it away!

Given that Sen. Kennedy is from Macon, it seems only fitting to discuss music trivia relating to Macon. Now, we have previously recorded A BUNCH of trivia involving the Alman Brothers so we are not going to do too much with them today.

With that said, let’s jump in to Macon music trivia

1. Macon obviously has a rich music tradition. Identify two soul music icons who were born in Macon. The first was born in 1932 and his given name at birth was Richard Wayne Penniman. He was truly iconic in the 1950’s. While he did not use his surname professionally, he definitely did use his first name. Guess this artist and we will move on to the second.
2. Little Richard
3. The second artist is also an icon – in about the same time frame as the first one I just asked you about. He was technically born on Dawson, Georgia (Terrell County), but his family moved to Macon when he was very young so Macon is widely accepted as his birthplace. This artist had quite a few hits but the one that really set him apart as an artist was released in 1968, just before he tragically died in a plane crash. He was actually the songwriter for the song *Respect* which was made famous by Aretha Franklin. Got this one?
4. Otis Redding
5. While Macon has a rich history in R&B, there is also a current country artist from Macon. This man was born in Macon in 1977. To date, 27 of his 38 singles have reached #1 on certain country charts. Fairly recently, he released a song that sparked some controversy called *Try That in a Small Town.* Can you guess this one?
6. Jason Aldean
7. I said we were not going to focus on the Allman Brothers but it begs a question – were the Allman Brothers from Macon?
8. No, they are from Nashville but moved to Jacksonville at a young age. But one of the founding members was from Macon – Drummer Jaimoe
9. Ok, I have completely mislead everyone – I am asking one last Allman Brothers question. In an interview, Gregg Allman told the interviewer of how the name for the song *Melissa* came to be. He wrote the song but was missing the woman’s name. It needed to be three syllables. Do you know how he came up with the name *Melissa*?
10. Grocery store – he had the song written but was missing the name – the song was about a fictitious woman so he did not have anything to rely upon. He had been working through all sorts of names and none seemed to fit. There was another lady shopping in the store and she had a female child that was running around like a crazy person. The lady lost sight of the child and called out her name, Melissa. Allman heard it and immediately knew that was it. The rest is history.

Thank you for listening and remember make a wish if you ever look at a clock and it is 11:11.