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Florida Enacts Transformative Tort Reform Legislation

On Friday, March 24, 2023, Governor Ron DeSantis signed into law House Bill 837, providing an overhaul to tort law in the state of Florida. The new legislation makes transformative changes, including reducing the statute of limitations for negligence actions from 4 years to 2 years, changing Florida's comparative negligence system from pure comparative negligence system to a modified system, and reshaping the "bad faith" framework for bringing claims against insurance carriers.

Anticipating the new legislation, Plaintiffs' counsel rushed to file thousands of lawsuits across the state before the bill became law, strongly suggesting the potential impact on the tort landscape. For example, Morgan & Morgan, one of the largest plaintiff firms in the country, reportedly filed around 25,000 insurance claim cases in the days before the bill went into effect. *Id.* Indeed, the torrent of litigation caused a civil defense lawyers association to ask the Chief Justice of the Florida Supreme Court to issue an emergency declaration allowing defendants more time to respond to the rapid-fire claims. *Id.* Although the ultimate effect this legislation will have on the state remains to be seen, the discussion below highlights some of the major changes that will likely have the largest impact on the Florida legal system.

FLORIDA'S COMPARATIVE NEGLIGENCE SYSTEM

HB 837 converts Florida's pure comparative negligence system to a modified comparative negligence system. Under a pure comparative negligence system, juries apportion fault among the responsible parties, and plaintiffs' damages are proportionally reduced based on their percentage of responsibility. Under the new modified system, which does not apply to medical negligence claims, any plaintiff in a negligence action that is found to be more than 50% at fault for his or her own harm is barred from recovering damages. In adopting the modified comparative negligence system, Florida joins 34 other states that use the same negligence standard. As stated in Section 30 of the Act, this change



applies to causes of action filed after HB 837's effective date on March 24, 2023.¹

STATUTE OF LIMITATIONS

Florida Statute § 95.11 previously provided a four-year statute of limitations for negligence actions. HB 837 amends this section and provides a reduced two-year statute of limitations for negligence actions. Florida now joins 44 other states which employ statutes of limitations of under four years for negligence actions. As stated in Section 28 of HB 837, this change applies to causes of actions accruing after March 24, 2023.

CALCULATING MEDICAL DAMAGES

HB 837 implements significant changes to how medical damages are calculated and presented at trial, recognizing that such damages are subject to manipulation and often do not reflect actual medical costs. HB 837 creates a new statute, Florida Statute §768.0427, that establishes a uniform process for calculating medical damages, limiting the medical expense evidence a party may present only to the amount actually paid for the services—not the original amount billed. Under the statute, medical bills will still be evaluated as to reasonableness and if past or future treatment was medically necessary.

PREMISES LIABILITY

HB 837 makes several changes to the law governing negligent security claims, including permitting apportionment of fault to criminal actors and implementing a presumption against liability for owners of multi-family housing complexes who meet certain conditions.

A clear departure from the previous rule that forbade juries from apportioning fault to a third-party criminal actor who intentionally harms a plaintiff, the Act requires juries to consider the fault of all parties who may have contributed to a plaintiff's injury from a criminal act while on another's property. The Act also establishes a presumption against negligent security liability in scenarios where the property owner implements certain specific security measures and identifies additional requirements that, if implemented by January 1, 2025, will further establish a presumption against liability.

INSURER "BAD FAITH" FRAMEWORK

Significant changes and clarifications were made to the framework of "bad faith" actions against insurance carriers. First, HB 837 clarifies that negligence alone is not enough to demonstrate bad faith. The next key change requires an insured, claimant, or representative to act in good faith regarding furnishing information, making demands, setting deadlines, and attempting to settle the claim. Third, the new law allows an insurer to avoid third-party bad faith liability if the insurer tenders the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of the claim. Finally, an insurer now limits its liability in actions involving multiple claimants by paying the total amount of the policy limit at the outset of the dispute.

OTHER NOTABLE CHANGES UNDER HB 837

- Eliminates the attorney-client privilege for medical referrals, meaning that if the referral is made by the claimant's attorney, disclosure of the referral is permitted along with evidence of such referral. Notably, this provision effectively overturns the Florida Supreme Court's 4-3 decision in *Worley v. Central Florida YMCA*, which held that the defense could not seek discovery information about the relationship between plaintiff attorneys and medical providers to whom they referred clients, finding that "the question of whether a plaintiff's attorney referred him or her to a doctor for treatment is protected by the attorney-client privilege." 228 So. 3d 18, 25 (Fla. 2017).



- Creates a strong presumption that a lodestar fee is sufficient and reasonable in any action in which attorney fees are determined or awarded by the court. The presumption may be overcome only in rare and exceptional circumstances with evidence that competent counsel could not otherwise be retained.
- Requires specified disclosures relating to claims for medical expenses for treatment rendered under letters of protection. Under the new law, there is now a condition precedent for asserting a claim for medical expenses in personal injury and wrongful death cases, which requires claimants to disclose a copy of the letter of protection and the identity of who made the medical referral, all itemized billings for medical expenses with universal coding that allows comparison of Medicare-based rates, and whether the claimant had health care coverage at the time medical treatment was rendered.

EFFECTIVE DATE

HB 837 took effect on March 24, 2023, when Governor DeSantis signed the bill into law. Section 30 provides a catch-all applying the changes to all causes of actions filed after the effective date unless otherwise expressly provided therein. The Act also states that as for insurance contracts, HB 837 may not be interpreted to impair rights under insurance contracts arising before the effective date, and the legislative changes will apply to insurance contracts issued or renewed after the effective date of the act.

POTENTIAL IMPACT

The transformative changes to Florida tort law provided in HB 837 are far-reaching and will likely affect civil litigation defendants, business owners, property owners, and insurance carriers. Ultimately, these changes were intended to reduce the volume of lawsuits and impact the types of claims brought against various classes of defendants in Florida. Time will tell whether these changes will provide the intended benefit of driving down insurance and medical costs.

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¹ <https://www.sun-sentinel.com/news/politics/fl-bz-case-filing-surge-before-tort-reform-20230324-7ze7uzxslbcndcaessd4bmgzy-story.html>