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Florida Tort Reform

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So, Florida Passed Tort-Reform; Now What?

As Bob Dylan famously sang, "The Times They Are A-Changin' " and such a notion could not be more true for Florida's legal landscape. Historically, Florida has garnered a less-than-ideal reputation among those defending tort-based litigation, however, both Chambers of Florida's Legislature recently passed comprehensive tort-reform ("HB 837/SB 236").1 Indeed, on Friday, March 24, 2023, Governor DeSantis took the final step by signing HB 837/SB 236 into law.

Thus, HB 837/SB 236 now constitutes Florida law, effective March 24, 2023.2 The following provisions constitute some, but not all of its extensive changes:

Amendment To Florida's Statute Of Limitations

Amendment to Fla. Stat. § 95.11, such that the statute of limitations for negligence actions will be reduced from four (4) to two (2) years. This amendment applies to causes of action accruing after the effective date of HB 837/SB 236.

From Pure To Modified Comparative Negligence

Amendment to Fla. Stat. § 768.81, including adding subsection (6): In a negligence action... any party found to be greater than 50% at fault for his or her own harm may not recover any damages. This subsection does not apply to an action for damages for personal injury or wrongful death arising out of a medical negligence action pursuant to Chap. 766, Fla. Stat.

Creation Of New Statutes Creating More Protection Against Negligent Security Cases

Creation of Fla. Stat. § 768.0701: in an action for damages against certain possessors of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of third party, the trier of fact must consider the fault of all persons who contributed to the injury—i.e. third-party criminal assailants.

Creation of Fla. Stat. § 768.0706: certain possessors of multifamily residential property which substantially implements certain security measures on that property has a presumption against liability in connection with criminal acts that occur on the premises which are committed by third parties who are not employees or agents of the owner or operator of the property.

Creation Of A New Statute, Discovery And Admissibility Procedures For Medical Expenses

Creation of Fla. Stat. § 768.0427, including subsection (2), which shall concern the admissibility of evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action.

Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.

Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services, as well as the amount of damages for any future medical treatment or services the claimant will receive, shall include, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, evidence of the amount that the health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's

incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant has health care coverage but obtains treatment under a letter of protection or otherwise does not submit charges for any health care provider's medical treatment or services to health care coverage, evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation...
3. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, evidence of 120% of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment or services, or, if there is no applicable Medicare rate for a service, 170% of the applicable state Medicaid rate.
4. If the claimant obtains medical treatment or services under a letter of protection and the health care provider subsequently transfers the right to receive payment under the letter of protection to a third party, evidence of the amount the third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection.
5. Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.

Creation Of A New Statute, Discovery And Admissibility Procedures For Letters Of Protection

Creation of Fla. Stat. § 768.0427, including subsection (3): In a personal injury or wrongful death action, as a condition precedent to asserting any claim for medical expenses for treatment rendered under a letter of protection, the claimant must disclose:

(a) a copy of the letter of protection;

(b) all billing for the claimant's medical expenses, which must be itemized and, to the extent applicable, coded pursuant to certain procedures/regulations;

(c) if the health care provider sells the accounts receivable for the claimant's medical expenses to a factoring company or other third party (inclusive of the name of the entity who purchased such accounts and the dollar amount that was charged, including any discount provided below the invoice amount);

(d) whether claimant, at the time medical treatment was rendered, had health coverage and, if so, the identity of such coverage;

(e) whether claimant was referred for treatment under a letter of protection and, if so, the identity of the person who made the referral. If the referral is made by the claimant's attorney, disclosure of the referral is permitted, and evidence of such referral is admissible notwithstanding Fla. Stat. § 90.502. The financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, is relevant/discoverable.

Notably, (e) will effectively overturn the Worley v. Central Fla. Young Men's Christian Ass'n, 228 So. 3d 18 (Fla. 2017).

Creation Of A New Statute, Discovery And Admissibility Procedures For Medical Treatment Or Service Expenses

Creation of Fla. Stat. § 768.0427, including subsection (4): the damages that may be recovered by a claimant in a personal injury or wrongful death action for the reasonable and necessary cost or value of medical care rendered may not include any amount in excess of the evidence of medical treatment and services expenses admitted pursuant to Fla. Stat. § 768.0427(2), and also may not exceed the sum of the following:

(a) amounts actually paid by or on behalf of the claimant to a health care provider who rendered medical treatment or service;

(b) amounts necessary to satisfy charges for medical treatment or services that are due and owing but at the time of trial are not yet satisfied; and

(c) amounts necessary to provide for any reasonable and necessary medical treatment or services the claimant will receive in the future.

Amendments To Florida's On Bad Faith Statutes

Amendment to Fla. Stat. § 624.155, including adding subsection (4)(a): an action for bad faith involving a liability insurance claim, including common law claims, shall not exist if the insurer tenders the lessor of the policy limits or the amount demanded by the claimant within 90-days of actual notice of the claim which is accompanied by sufficient evidence to support the amount of the claim.

Amendment to Fla. Stat. § 624.155, including adding (5)(a), so that mere negligence by an insurer will no longer be sufficient to sustain a bad-faith action.

Amendment to Fla. Stat. § 624.155, including adding (5)(b)1. and 2., which entail for any action for bad faith against an insurer, not only does the insured, claimant and representative of the insured or claimant have a duty to act in good faith relative to furnishing information, making demands, setting deadlines and attempting to settle the claim, but the trier of fact may also consider the prior enumerated actions in order to determine whether said persons did or did not in good faith and, in turn, the trier of fact may reasonably reduce the amount of damages awarded against the insurer.

Amendment to Fla. Stat. § 624.155, including adding subsection (6): If two or more third-party claimants have competing claims arising out of a single occurrence, which in total may exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants if, within 90-days after receiving notice of the competing claims in excess of the available policy limits, the insurer files an (a) interpleader action or (b) pursues binding arbitration, and if the clams of the competing third-party claimants are found to be in excess of the policy limits, the third-party claimants are entitled to a prorated share of the policy limits as found by the trier of fact/arbitrator.

Repeal and Elimination Of One-Way Attorney's Fee Provisions

Both Fla. Stat. §§ 627.428 and 626.9373 are repealed, which eliminates one-way attorney's fees provisions.

Amendment To Reflect That Lodestar Rules The Day

Amendment to Fla. Stat. § 57.104(2), such that in any action in which attorney fees are determined or awarded by the court, there is a strong presumption that a lodestar fee is sufficient and reasonable. The latter presumption

may be overcome only in a rare and exceptional circumstance with evidence that competent counsel could not otherwise be retained.

Creation Of A New Statute For Recoverability Of Attorney Fees In Declaratory Relief Actions Against Insurer

Creation of Fla. Stat. § 86.121, including subsection (1): in an action brought for declaratory relief in state or federal court to determine insurance coverage after the insurer has made a total coverage denial of a claim: (a) either party is entitled to the summary procedure provided in Fla. Stat. § 51.011 and (b) the court shall award reasonable attorney fees to the named insured, omnibus insured, or named beneficiary under a policy issued by the insurer upon rendition of a declaratory judgment in favor of any of the afore-mentioned.

However, the aforementioned section does not apply to any action arising under a residential or commercial property insurance policy.

As noted above, while the foregoing constitute only some the pertinent changes encompassed by HB 837/SB 236, we fully expect extensive forthcoming legal challenges, which shall result in further "a-changes" to Florida's new-law-of-the-land. To date, we have already seen an exponential increase in the filing of personal injury lawsuits statewide. Thus, if you have a question on any aspect of HB 837/SB 236, or its implications on your rights, business or bottom-line, please do not hesitate contacting us.

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1On March 17, 2023, the Florida House passed HB 837 by a vote of 80 Yeas to 31 Nays; and, on March 23, 2023, the Florida Senate passed SB 236 by a vote of 23 Yeas, 15 Nays.

2Notably, HB 837/SB 236 at Sections 29 and 30 provided that: "This act shall not be construed to impair any right under an insurance contract in effect on or before the effective date of this act. To the extent that this act affects a right under and insurance contract, this act applies to an insurance contract issued or renewed after the effective date of this action" and "Except as otherwise expressly provided in the act, this act shall apply to causes of action filed after the effective date of this act", respectively.

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