TRAUB LIEBERMAN

NEWS & EVENTS

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Florida Tort Reform – Civil Remedies

BY: Michael D. Logan, Rina Clemens, Richard A. Jarolem

Significant tort reform represents a positive change for defendants, corporations, and insurance companies that will apply to all lawsuits filed in the state of Florida from March 24, 2023 forward. The reform takes aim at combatting lawsuit abuse, nuclear verdicts and billboard attorneys.

On February 15, 2023, various Florida House Representatives introduced House Bill 837, titled “Civil Remedies”, which resoundingly passed through the House on March 17, 2023. Companion Senate Bill 236, filed March 2, 2023, was heard on the Senate Floor’s Special Order Calendar on Wednesday, March 22, 2023 and passed in a similar fashion to House Bill 837.

On Friday, March 24, 2023, Governor Ron DeSantis signed the finalized proposed tort reform into law. This law:

- Alters the comparative nature of Florida’s current legal system to a modified system (barring the right of plaintiffs to recover if they are more than 50% negligent, other than for medical malpractice);
- Limits medical damages (i.e. precluding plaintiff attorneys from boarding amorphous “Letter of Protection” charges that are significantly higher than the amounts paid by health insurance or Medicare);
- Reduces the statute of limitations for negligence actions from 4 years to 2 years;
- Curbs premises liability actions - especially in negligent security cases for landlords to be afforded the presumptions of no liability if they have certain security protections and measures in place;
- Eliminates right to one-way attorney fees pursuant to Florida Statute § 627.428. One-way attorney fees provisions for plaintiff are available in limited circumstances; and
- Bad faith will be much more difficult to prosecute. In cases involving multiple third party claimants, low insurance coverage limits and high or excess exposure there will be an arbitration and an interpleader provision.

A few takeaways and recommendations for third party administrators, insurance carriers and corporations:

1. There will be a short-term massive influx of lawsuits filed before the bill became law: Plaintiff attorneys filed lawsuits on thousands of pending claims ahead of March 24, 2023 to avoid the new laws.

2. Potential defendants need to begin investigating as soon as a loss occurs because Plaintiff attorneys will only have two years to file a negligence action.

3. Expect to receive pre-suit demands quickly after a loss occurs. We understand Morgan & Morgan is sending demand letters for policy limits on the cases they filed suit with only five days to respond.

4. Know that prospective changes in the bad faith laws will allow an insurer to avoid bad faith claims if they tender the demand and/or pay limits (whichever is less) within 90 days of receiving actual notice of a claim accompanied by sufficient evidence. For the plaintiffs, the making of a claim and the 90-day investigation period operates as a tolling of the statute of limitations.

Further, in the event the carrier does not pay within the 90-day time period, that fact is inadmissible in proving bad faith at a later date. The prospective law also provides that mere negligence alone is insufficient to constitute bad faith, which will allow for a reduction in any bad faith award for actions by the insured.

This is a significant addition to the law and provides an opportunity to the insurer to avoid the catastrophic judgments under the *Powell v Prudential Insurance*, 584 So.2d 12 (Fla. 3d DCA 1991) doctrine. *Powell* held that bad faith could be found if the insurer did not act fast enough in investigating and attempting to negotiate, holding that waiting sixty-two days to settle was too long.

Finally, where there are multiple claimants with a demand that exceeds policy limits, an insurer may interplead the policy limits and/or arbitrate by agreement and avoid bad faith for non-payment or improper allocation. This may also have a corollary impact on insurance companies' duty to provide a defense (which is separate and apart from the insurance company's duty to pay claims). Again, this is a significant addition to the law and provides an opportunity to the insurer to avoid the massive judgments under the *Powell* doctrine. This law may also have an impact on policy language regarding the duty to provide a defense, which is separate and apart from the duty to pay claims.

5. Early inspection and evidence retention will be critically important now that plaintiffs will be barred from recovering if they are more than 50% at-fault for causing their own accident.

6. Plaintiffs are no longer able to present a jury with overly inflated medical bills from treating providers who have relationships with plaintiff attorneys and/or who are treating under bloated Letters of Protection ("LOP").

Specifically, the new law modifies Section § 90.502, Fla. Stat. to specifically include the disclosure of the referral from the claimant's attorney, the frequency of the referrals from the claimant's attorney and the financial benefit obtained by the treating person/entity. This law statutorily overturns the decision of Worley v. Central Florida YMCA, 2017 Fla. Lexis 812 (Fla. 2017) (holding that the relationship between the Plaintiff's attorney and the lawyers is not discoverable).

In addition, under the new Florida Statute § 768.0427(2), a plaintiff may only argue at trial the actual amount of medical expenses paid. Specifically, if the claimant has insurance, and uses it, the amount that they may post as damages is what the insurance pays, plus the deductible. If the claimant has insurance, but chooses to use LOP treatment, the amount of the "boardable" damages would be what the insurance would have paid, if they used their insurance. If the claimant has no insurance or insurance through Medicaid/Medicare the amount of the damages is 120% of Medicare. If no Medicare rate is available, then 170% of the Medicaid rate is the cap.

For example, if an emergency room charges $50,000.00 for treatment, but the plaintiff's health insurer actually pays $3,500, then only that $3,500 will be admissible. For cases with more substantial damages, evidence of health care liens are also admissible to show a plaintiff's damages.

The same principles will apply to the admissibility of evidence regarding the costs of future medical treatment. As a result, jury verdicts will no longer result in economic damages awards exceeding the amounts actually paid, necessary to satisfy unpaid balances, and necessary for future treatment.