FLORIDA TORT REFORM: Major Changes, What to Know, and Why

On March 24, 2023, Florida's governor signed HB 837 / SB 238 into law, passing extensive tort reform measures pertaining to civil litigation in Florida. This summary addresses the major changes below:

- Two-Year Statute of Limitations for Negligence Actions
- Negligent Security Presumption Against Liability for Third-Party Criminal Acts
- Proving Medical Damages
- Modified Negligence Standard
- Civil Remedy & Bad Faith Changes
- "One-Way Attorney Fee" Eliminated
- Computation of Attorneys' Fees
- Denial of Coverage Attorneys' Fees
- Attorneys' Fees from Proposals for Settlement Apply to Any Civil Actions Involving Insurance Contracts

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Effective Date

HB 837/ SB 238 became effective law on the date of signature, March 24, 2023, and will apply to any lawsuit filed thereafter.

Two-Year Statute of Limitations for Negligence Actions

Prior to the enactment of HB 837 / SB 236, Florida's statute of limitations for general negligence was four (4) years. Newly reformed Florida Statute Section 95.11(4)(a) reduces the time-limit to bring general negligence actions to two (2) years. However, protections are afforded for service members during times of active duty which materially affect their ability to appear under Section 95.11(12). What this means is that typically, a general negligence claimant will have two (2) years from the date of the incident to file suit. Otherwise, the action is subject to dismissal.

Negligent Security Presumption Against Liability for Third-Party Criminal Acts

Florida Statute Section 768.0701 mandates juries to consider "all persons who contributed to the injury" in actions for damages against the owner, lessor, operator, or manager of commercial or real property brought by persons lawfully on the premises who was injured by the criminal act of the third-party. This will allow for the intentional tortfeasor to be added onto the verdict form.

Additionally, Section 768.0706 creates a presumption against liability for criminal acts of third parties who are not employees/ agents in multifamily residential premises where certain minimum security standards are substantially implemented:

1) a security camera system at points of entry and exits which records and maintains video for at least thirty (30) days and video footage to assist in offender identification and apprehension; 2) a lighted parking lot illuminated with an average of 1.8 foot-candles at eighteen (18) inches above the surface from dusk until dawn or controlled by photocell; 3) lighting in walkways, laundry rooms, commons areas, and porches from dusk until dawn; 4) at least a 1-inch deadbolt in each dwelling unit door; 5) a locking device on each window, exterior sliding door, and any other door not used for community purposes; 6) locked gates with key or fob access along pool fence areas; and 7) a peephole or door viewer on each dwelling unit door that does not include a window or window next to the door.

Additionally, by January 1, 2025, multifamily properties must also implement a crime prevention through environmental design assessment no more than three (3) years old and provide proper crime deterrence and safety training to its employees, in order to benefit from the presumption against liability.

Proving Medical Damages

Florida Statute 768.0427(2)(a) limits evidence of past medical treatment that has been satisfied at trial to evidence of the "amount actually paid, regardless of the source of payment."

Juries may consider what is "reasonable" for unsatisfied unpaid medical bills under 768.0427(2)(b)(1-5) including what the claimant's health insurer would have paid if the claimant has health insurance, 120% of Medicare (or 170% of Medicaid if there's no Medicare rate) if the claimant does not have health insurance, or evidence of the amount a third party paid or agreed to pay in exchange for the right to receive payment under a letter of protection. Similar provisions apply to future treatment as well.

Section 768.0427(3) provides for required disclosures for any claimant using letters of protection including: a copy of the letter of protection, all itemized billing for the claimant's medical expenses, utilization of CPT codes, information regarding the selling of accounts receivable to a "factoring company" or third party, whether the claimant had health insurance coverage, and whether the claimant was referred for treatment under a letter of protection and if so who made the referral.

Importantly, there is a special carve-out for if the referral was made by the claimant's attorney. In that instance, even in the face of an attorney-client privilege objection, the financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, is relevant to the issues of bias of a testifying medical provider. This provision will allow for a wealth of discovery into the referral and financial relationships of large plaintiffs' law firms and commonly utilized treating physicians.

Modified Negligence Standard

Florida's newly reformed laws provide for a modified comparative negligence standard, as opposed to the pure comparative standard previously utilized. What this means is a claimant who is found to be more than fifty (50) percent at fault may not recover any damages. Previously, that same claimant would still recover damages reduced by the percentage of their fault.

Civil Remedy & Bad Faith Changes

Under the new Florida Statute 624.155(4)(b), an insurer is not liable for bad faith for a liability insurance claim brought under statutory or common law, if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within ninety (90) days of receiving actual notice of a claim accompanied by sufficient evidence supporting the amount of the claim. Under 624.155(4)(c), failure of an insurer to tender within the ninety (90) days is not bad faith and is not admissible in a bad faith action. If the insurer fails to tender within the ninety (90) day period, any applicable statute of limitations is extended for an additional ninety (90) days.

Section 624.155(5)(a) states that mere negligence, alone, is insufficient to constitute bad faith. In fact, according to Section 624.155(5)(b), the claimant (the insured) has the duty to act in good faith in furnishing information about the claim, making demands to the insurer, setting deadlines, and attempting to settle the claim. However, this subsection does not create a separate cause of action. Of note, the jury may consider whether the insured or their representative acted in good faith and reasonably may reduce damages against the insurer accordingly under Section 624.155(5)(b)(2).

Section 624.155(6) states that if two or more third-party claimants have competing claims arising out of a single occurrence, which in total may exceed the insured's available policy limits, the insurer does not commit bad faith by failing to pay all or any portion of the available limits to one or more of the third-party claimants if, within ninety (90) days after receiving notice of the competing claims, the insurer either:

(1) files an interpleader action under the Florida Rules of Civil Procedure. If the claims of the competing third-party claimants exceed the policy limits, the third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. This does not alter or limit the insurer's duty to defend the insured; or

(2) pursuant to binding arbitration agreed to by the parties, makes the entire amount of the policy limits available for payment to the competing third-party claimants before a qualified arbitrator selected by the insurer and the third-party claimants at the insurer's expense. The third-party claimants are entitled to a prorated share of the policy limits as determined by the arbitrator, who must consider the comparative fault, if any, of each third-party claimant, and the total likely outcome at trial based upon the total of the economic and non-economic damages submitted to the arbitrator for consideration. A third-party claimant whose claim is resolved by the arbitrator must execute and deliver a general release to the insured party whose claim is resolved by the proceeding.

"One-Way Attorney Fee" Eliminated

"One-way attorneys' fees" corresponding with Florida Statutes Sections 626.9373 (suits against surplus lines insurers), 627.428 (suits against insurers to enforce an insurance policy), 631.70 (suits against life insurers of insurance policies or annuity contracts), and 631.926 (suits against the insurers of residential or commercial property) have been eliminated. These statutes are repealed. Further, one way attorney's fees are eliminated from auto-glass and personal injury protection (PIP) cases, which will substantially curb, if not nearly eliminate this type of litigation.

Computation of Attorneys' Fees

The newly amended Florida Statute Section 57.104 limits the awarding of attorneys' fees multipliers to "rare and unusual circumstances." There is a strong presumption that the lodestar fee is sufficient and reasonable. This change brings the Florida contingency fee multiplier statute in line with the federal standard.

Denial of Coverage Attorneys' Fees

Under the newly added Florida Statute Section 86.121, there is the limited ability to recover attorneys' fees from an insurance company after a total coverage denial. Such fees may be awarded in declaratory action to determine the validity of coverage.

Attorneys' Fees from Proposals for Settlement Apply to Any Civil Actions Involving Insurance Contracts

The provisions of Florida Statute Section 768.79 (offer of judgment or proposal for settlement section) now apply to any civil action involving an insurance contract.

Questions

Should you have any questions about how Florida's tort reform affects your business, please contact your Wicker Smith attorney or the local office.