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Florida Tort Reform

On March 24, 2023, Governor Ron DeSantis signed House Bill 837 into law. This bill, otherwise known as the Tort Reform Act, is expected to have lasting impacts on personal injury, wrongful death, and insurer bad faith litigation in the state of Florida. Important changes include:

- Amendment of Fla. Stat. 95.11, reducing the statute of limitations from four years to two years for negligence actions, with the exception of active duty military.

- Adoption of a modified comparative negligence standard, under which a plaintiff found to be at 51% of fault or more will be unable to recover damages, with the exception of medical malpractice actions.

- Elimination of the one-way fee attorney fee provision under Fla. Stat. 627.428, which allowed plaintiffs to recover fees and costs if they made even a modest recovery. This may significantly reduce the volume of high-volume, nominal amount suits in practice areas like Personal Injury Protection, Auto Glass Claims, minor property claims, etc.

- Creation of Fla. Stat. 86.121, which authorizes courts to award reasonable attorney fees to a named insured, omnibus insured, or beneficiary under a policy issued by the insurer upon rendition of a declaratory judgment in plaintiff's favor. The statute prohibits the transfer, assignment, or acquisition of the right to such attorney fees except by specified persons.
    - This section does not apply to any action arising under a residential or commercial property insurance policy.
    - A reservation of rights by an insurer does not constitute a coverage denial under 86.121.

- Amendment of Fla. Stat. 57.104, creating a rebuttable presumption that a lodestar fee is a sufficient and reasonable attorney fee in most civil actions, which may only be overcome in rare and exceptional circumstances.

- Creation of Fla. Stat. 768.0427, providing definitions and placing limitations on the admissibility of medical expenses in order to prove the amount of damages for past and future medical care:
    - If past medical expenses have been paid, a party may only present the amount paid, not the total billed amount.
    - For past unpaid and future medical expenses:
        - If the claimant has health care coverage other than Medicare or Medicaid, evidence of the amount the insurer is obligated to pay plus the claimant's share under the insurance contract is required.
        - If the claimant has no coverage or has Medicare or Medicaid, evidence of 120% of the Medicare reimbursement rate in effect on the date of the

claimant's incurred medical treatment, or if there is no applicable Medicare rate, 170% of the applicable state Medicaid rate.
    - Claimants may also offer for both past and future medical expenses any evidence of reasonable amounts billed to the claimant for medically necessary treatment.

- Amendment of Fla. Stat. 624.155 eliminating a common law or statutory bad faith claim against an insurer that tenders the lesser of either the policy limits or the amount demanded within 90 days after receiving actual notice of the claim along with evidence to support the claimed amount. The tendering of this amount is inadmissible in any action seeking to establish bad faith on the part of the insurer.

    - Under the new Amendment, mere negligence alone is insufficient to constitute bad faith, a duty to act in good faith is imposed on the insured, claimant and representative of the insured or claimant. Failure to do so may result in a reduction in the amount of damages awarded.
    - The Amendment also reduces insurer liability in multi third-party claimant cases to the amount of available policy limits for failure to pay all or any amount to the third-party claimants, so long as within 90 days the insurer either files an interpleader action, or pays a prorated share of the policy limits to each applicable claimant as determined by a trier of fact.
    - 624.1552 provides that the provisions of the specified offer of judgement statute applies to civil actions involving insurance contacts.

- Creation of Fla. Stat. 768.0701, Premises liability for criminal acts of third parties. This statute establishes that in an action for damages against an owner, lessor, operator, or manager of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of a third party, the trier of fact must consider the fault of all persons who contributed to the injury.
    - This means that the criminal tortfeasor may be brought in to minimize the percentage of fault faced on the premises owner, reducing damages or completely avoiding liability under the new modified negligence standard.

- Creation of Fla. Stat. 768.0706 providing that the owner or principal operator of a multifamily residential property which substantially implements specified security measures on that property has a presumption against liability for negligence in connection with certain criminal acts that occur on the premises. The statute lays out the security measures, curriculum, and training to employees in great detail.

When does the Tort Reform Act become applicable? The bill itself states that "except as other wise expressly provided in this act, this act shall apply to causes of action filed after the effective date of this act." The Act, as stated above, was signed into law on March 24, 2023. However, this

is still not entirely clear. Courts may ultimately look to the law as it existed based on the policy in place at the time:

> "[S]tatutes with provisions that impose additional penalties for noncompliance or limitations on the right to recover attorneys' fees do not apply retroactively." *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873, 878 (Fla. 2010).
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> "In our analysis, we look at the date the insurance policy was issued and not the date that the suit was filed or the accident occurred, because "the statute in effect at the time an insurance contract is executed governs substantive issues arising in connection with that contract." *Hassen v. State Farm Mut. Auto. Ins. Co.*, 674 So.2d 106, 108 (Fla.1996); *see also Lumbermens Mut. Cas. Co. v. Ceballos*, 440 So.2d 612, 613 (Fla. 3d DCA 1983) (holding that a liability policy is governed by the law in effect at the time the policy is issued, not the law in effect at the time a claim arises); *Hausler v. State Farm Mut. Auto. Ins. Co.*, 374 So.2d 1037, 1038 (Fla. 2d DCA 1979) (holding that the date of the accident does not determine the law that is applicable to a dispute). *Menendez*, 35 So.3d 873, at 877.

Overall, the coming months present a challenging but exciting time as these changes emerge in Florida courts. Taylor Day stands ready, as always, to help navigate these waters. Please reach out if we can be of any assistance.

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WHEN IT MATTERS

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