



Florida’s Comprehensive Tort Reform – Governor DeSantis Signs H.B. 837 Into Law, Signaling a New Era For Civil Litigation in Florida

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On March 24, 2023, Florida Governor Ron DeSantis signed H.B. 837 into law. This legislation enacts significant and wide-ranging changes to civil litigation practice in the state, including revamping comparative negligence standards for jury verdicts, bad faith insurance claims, the statute of limitations for negligence actions, and the standards for computing attorney’s fees. This legislation applies to actions filed after the passage of H.B. 837, except as to the new negligence statute of limitation, which apply to negligence claims accruing after March 24, 2023, the effective date of the Act.

Bad Faith Insurance Claims

H.B. 837 amends the legal standard for bad faith actions—whether based in statute or common law—so that “mere negligence is insufficient to constitute bad faith”. The statute also bars bad faith claims where an insurer tenders either policy limits or the amount demanded by the claimant (whichever is less) within 90 days of receiving actual notice of the claim supported by sufficient evidence to support the claim.

The reform also creates a duty of good faith on the part of the insured in providing information related to the claim and in attempting to settle the claim. While this section does not provide a new cause of action for bad faith against the insured, it does allow evidence of the insured’s actions to reduce damages awarded against the insurer.

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Some of these changes appear to come as a response to the Florida Supreme Court's decision in *Harvey v. GEICO Gen. Ins. Co.*, 259 So. 3d 1 (Fla. 2018). In *Harvey*, the Court upheld a bad faith verdict despite the insurer having offered policy limits within nine days of the incident at issue, and with evidence suggesting that the failure to settle the underlying suit was due in part to the insured's actions.

Modified Comparative Fault

With the passage of H.B. 837, and through Fla. Stat. § 768.81(6), Florida joins the majority of comparative fault states in barring any recovery in cases where a plaintiff is greater than 50% at fault. The only exception to this new rule is in medical negligence cases, to which the section does not apply.

Statute of Limitations:

H.B. 837 modifies the statute of limitations for negligence actions from four years to now being subject to Fla. Stat. § 95.11(4)'s two year limitation period.

Computation of Attorney's Fees:

Where a claimant may recover attorney's fees, H.B. 837 adds subparagraph two to Fla. Stat. § 57.104 that creates a strong presumption that a lodestar fee is sufficient and reasonable. While courts can also consider a contingency fee multiplier to increase fees awarded, the legislation codifies a "strong presumption that a lodestar fee is sufficient and reasonable" which can only be overcome under a "rare and exceptional circumstance"

Attorney Fees in Insurance Declaratory Relief Actions:

H.B. 837 creates Fla. Stat. § 86.121 to govern declaratory judgment actions involving insurance coverage after the denial of a claim. Under the new section, the insured has a non-transferrable right to recover reasonable attorney fees. This statute does not apply to actions related to residential or commercial property insurance.

Admissibility of True Cost of Medical Expenses

H.B. 837 implements Fla. Stat. § 768.0427 to allow juries to learn the actual amount paid for medical expenses by an insurance company rather than limiting the evidence to the much higher "sticker price" of the medical care.

Premises Liability

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H.B. 837 creates Fla. Stat. § 768.0701 in an action for damages against the 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.

H.B. 837 also implements Fla. Stat. § 768.0706 that allows owners and operators of multi-family properties to receive a presumption against liability in connection with criminal acts that occur on the premises which are committed by unassociated third parties when these owners substantially implement the following security measures that include: security cameras, lighted parking lot, lighted walkways in common areas, deadbolt locks on every tenant's door, locks on windows and gates and peepholes in doors.