



NAVIGATING THE NEW LIABILITY LANDSCAPE:

CURRENT TRENDS & POTENTIAL CHANGE

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TOPICS

TORT REFORM

SOCIAL ISSUES
&
PUBLIC PERCEPTION

SOVEREIGN IMMUNITY

A person wearing a bright red coat and blue jeans stands next to a vintage-style suitcase. The suitcase is light-colored with brown leather accents and a metal latch. The background is a blurred outdoor setting, possibly a path or field, with soft lighting. The text "FEEL FREE TO ASK QUESTIONS" is overlaid in the center in a bold, black, sans-serif font.

**FEEL FREE TO
ASK QUESTIONS**



TORT REFORM

TORT REFORM

- On March 24, 2023, Governor Ron DeSantis signed HB 837 into law
- The new changes went into effect immediately upon being signed
- However, certain provisions apply to causes of action *accruing* after the effective date and certain contractual rights will not be affected

EXAMPLE:

The Statute of Limitations for negligence claims occurring after March 24th is two years, but for incidents occurring prior to March 24th, the Statute remains at four years

MODIFIED COMPARATIVE NEGLIGENCE

- Florida was a pure comparative fault state
- Florida is now a modified-comparative fault state:

Explanation: Plaintiff is found more than 50% at fault, the Plaintiff recovers nothing.

50% is **NOT** enough. The jury's comparative negligence verdict must exceed 50% (i.e., 51+%).

Does not apply for medical negligence cases arising from Fla. Stat. Ch. 766.

In other modified-comparative fault states, attorneys cannot inform the jury of the "magic number to beat"

- **Current Standings:**

12 states = pure comparative fault states

34 states = modified comparative fault states

4 states = pure contributory negligence states
(damaged party cannot recover if they are even 1% at fault)

STATUTE OF LIMITATIONS

- For Negligence causes of action *accruing* after March 24, 2023:

2 YEARS

- **Fla. Stat. 95.031:** A cause of action accrues when the last element constituting the cause of action occurs.

*** Hmm... I wonder how many unwitnessed trip and falls occurred on March 23, 2023....

I bet a lot more than normal!

ADMISSIBILITY OF MEDICAL EVIDENCE

- HB 837 makes changes to what constitutes admissible evidence in establishing past, present and future medical expenses
- Now, the admissibility of evidence at trial of **past medical treatment** is limited to 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 is limited to the following categories:
 - (1) if the claimant has health care coverage, the amount which such health care coverage is obligated to pay the health care provider;
 - (2) if the claimant has health care coverage, but obtains treatment under a letter of protection or otherwise does not submit the charges for health care coverage, evidence of the amount the health care coverage would pay the provider;
 - (3) if the claimant does not have health care coverage, evidence of the Medicare reimbursement rate in effect at the time for the claimants incurred medical treatment, or, if there is no applicable Medicare rate for a service, 140% of the applicable state Medicaid rate;
 - (4) if the claimant obtains medical care under a letter of protection and the health care provider subsequently transfers the right to receive the payment to a third party, evidence of how much the third party paid the healthcare provider in exchange for the right; and
 - (5) any evidence disclosed related to the letter of protection.

ADMISSIBILITY OF MEDICAL EVIDENCE

- **Future medical damages:** Evidence offered to prove damages for any future medical treatment or services shall include, but is not limited to:
 - If claimant has health care coverage but obtains treatment under letter of protection or does not submit charges, evidence of amount that health care coverage would have to paid to satisfy the charges

OR

- If claimant does not have insurance, evidence of the effective Medicare reimbursement rate in effect at the time or if there is no applicable rate for the service, 140% of the applicable state Medicaid rate.

ADMISSIBILITY OF MEDICAL EVIDENCE

- **Letters of Protection:** In a personal injury action or wrongful death action, as a condition precedent to asserting any claim for medical expenses for treatment rendered, the claimant must disclose:
 - (1) A copy of the letter of protection;
 - (2) Itemized billing/coding information;
 - (3) Information about any third party for which the provider sold the accounts receivable;
 - (4) Whether the claimant has health care coverage/identifying information; and
 - (5) Whether the 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, **as evidence at trial**
 - “Moreover, in such situation, the financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, if relevant to the issue of the bias of a testifying provider.”

PROPERTY OWNERS – PRESUMPTION AGAINST LIABILITY

- HB 837 creates a new section of the Florida Statutes which creates a presumption against liability for owners and operators of multifamily residential property in cases based on criminal acts upon the premises by third parties.
- The presumption applies to such owners who implement certain security features, including security cameras at points of entry and exit; lighting in common areas and parking lots; a one-inch deadbolt in each dwelling unit door; window locks; locked gates around pool areas; and sometimes a peephole (when window not available).
- The legislation also creates a new statutory section replacing joint and several liabilities with comparative negligence in certain negligent security matters against property owners.

ATTORNEYS FEES

- HB 837 changes to how attorneys' fees are calculated and awarded by the court.
- Specifically, “[i]n 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.”
 - This can only be overcome in rare and exceptional circumstances in which evidence has been presented that competent counsel could otherwise not have been retained.
- Additionally, HB 837 repeals many of the statutes that provide for one-way attorney's fees in actions involving insurers.
 - While one-way attorney's fees are still available in declaratory judgment actions for the determination of insurance coverage against an insurer after a denial of coverage of a claim, they are no longer available in suits against surplus lines insurers, suits against insurers to enforce an insurance policy, and several other categories of suits involving insurers.

BAD FAITH

- HB 837 creates Florida Statute § 624.155 (4)(b), under which the insured, claimant, and representatives of the insured or claimant have a duty to act in good faith in furnishing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim.
- Under the new standard, mere negligence is insufficient to show bad faith against an insurer.
- There is no separate cause of action for bad faith of an insurer, instead the trier of fact may consider bad-faith, or lack thereof, in apportioning the damages awarded.

The background of the image shows a series of classical, fluted columns and stone steps, likely from a government building or courthouse. A large, dark, semi-transparent rectangular area is overlaid on the center of the image, containing the text. The text is in a bold, white, sans-serif font.

**SOCIAL ISSUES
&
PUBLIC PERCEPTION**

IMPROVING COMMUNITY PERCEPTION

- **Scrutiny over policing activities**
 - National events effect local litigation
- **Rising settlements & verdicts (rogue juries)**
 - Insurance coverage is no longer a secret at trial
 - Battling jurors “who cares” attitude
 - Diminishing quality of jury pools
- **Use of “lottery type” billboards & radio/television advertisements**
 - Free community concerts
 - Athlete endorsements of firms
- **Social Inflation**



SOVEREIGN IMMUNITY

PROPOSED CHANGES

PAST FAILURES TO AMEND SOVEREIGN IMMUNITY CAPS:

- **HB 985:** Would have increased cap to \$400k/\$600k (failed, 2022).
- **SB 974:** Proposed having different statutory caps based on the population of the municipality and the type of governmental body (failed, 2022).

PROPOSED CHANGES

2023 PROPOSALS (DID NOT PASS):

HB 401: Would have increased statutory cap to \$2.5m/\$5m

- Proposed slight changes to claims bill process and would have allowed local governments to settle claims for over the statutory amount
- Proposed limiting pre-suit notice to 3 months
- Proposed increasing the time for filing a claim from three years to four years after the claim accrues
- Would have eliminated the statute of limitations for filing a claim against a governmental entity for sexual battery if the victim was under the age of 16 at the time of the incident
- The Bill was before the House Appropriations Committee
- The Legislative Session ended and it did NOT pass

SB 604: Would have increased cap to \$300k/\$600k. Also, would have made the same changes as above to claims bill process

- Was referred to judiciary committee, but did not move forward
- Cap would have adjusted annually with the consumer price index

Governor DeSantis did not make his position known on either proposal.

A vintage suitcase with a person's hand on the handle, overlaid with the word "QUESTIONS?" in large white text. The suitcase is light-colored with dark brown leather straps and corners. A person wearing a red dress is partially visible in the background, with their hand resting on the suitcase handle. The entire scene is set against a dark, moody background with a white L-shaped graphic element framing the text.

QUESTIONS?

THANK YOU

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