Talking Points- Special Bulletin

Florida Tort Reform Bill Becomes Law

On March 24, 2023, Florida's governor signed a new tort reform bill (H.R. 837) into law (the "Act"). The Act changes areas of Florida law that have previously been viewed as favoring tort plaintiffs and insurance policy holders. The changes primarily relate to the timing of negligence actions and the mechanics of proving and recovering damages in personal injury and insurance lawsuits. In anticipation of the Act's passage, plaintiffs have rushed to file lawsuits before the new law takes effect.

Key changes as a result of the Act include:

- The statute of limitations for negligence actions was shortened from four to two years.
- In negligence actions, if the plaintiff is found to be more than 50% at fault for his or her own injuries, the plaintiff cannot recover damages. Prior to the Act, a plaintiff found to be greater than 50% responsible for his or her injuries could nonetheless recover prorated damages against a responsible defendant.
- The Act creates additional rules and obligations that govern bad-faith claims asserted against insurers.
    - An insured cannot maintain a claim of bad faith against an insurer if the insurer pays the lesser of the policy limits or the amount demanded by the insured within 90 days after receiving a notice of claim from the insured.
    - The Act clarifies that negligence alone is insufficient to form the basis of a bad faith claim.
    - The Act places on insureds obligations to act in good faith in making claims, furnishing information, and attempting to settle claims with insurers. In bad faith actions against an insurer, the trier of fact may consider whether the insured itself complied with these good-faith obligations and potentially reduce any damages awarded to the insured.
- The Act contains provisions specifying the evidence that can or must be offered at trial to prove the amount of past and future medical expenses in personal injury or wrongful death actions. These provisions narrow the type of evidence that can be presented, and there are different rules for already-paid medical expenses, medical services provided but not yet paid, and to-be-incurred medical expenses. These provisions create a more standardized process to evaluate medical expenses sought to be recovered by a plaintiff.

- When a plaintiff seeks to recover medical expenses incurred pursuant to a letter of protection (an arrangement in which a healthcare provider treats a patient in exchange for a payment from a future judgment or settlement) the plaintiff must disclose the existence of the letter and information concerning the billing.

- The Act addresses situations in which there are two or more third-party claimants arising out of a single occurrence. If the total of those third-party claims could exceed the available policy limits of the insured, the insurer cannot be liable beyond the available policy limits so long as within 90 days of receiving notice of the competing claims the insurer:
    - interpleads in the lawsuit, or
    - in arbitration, makes the entire amount of the policy limits available for payment.

- The Act sets forth certain security measures owners and operators of multifamily dwellings can take to gain a presumption against liability for criminal acts on the premises committed by third parties.

The Act makes significant changes to Florida law. Both insureds and insurers will have to review these changes closely to ensure compliance. It is recommended that both consult with counsel or a qualified broker to best understand the impact of these changes.

Additional Articles on this topic
Florida Tort Reform Now Law: Effective Upon Governor's Signature

Florida Plaintiff Firms Rushing to File Before Tort-Reform Bill Signed into Law

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