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The Impact of Florida's Sweeping Tort Reform Bill, by Kevin Yombor, Partner, Kaufman Dolowich

Florida Governor Ron DeSantis recently signed House Bill 837/Senate Bill 236 into law, resulting in sweeping changes to Florida tort and bad faith laws.

The legislation, aimed at reducing frivolous litigation, resulted in a wave of new lawsuits being filed by plaintiff attorneys in the days between Florida's Senate passing the law and the Governor signing the legislation. This signals that the new law may help reduce the overall tort liability businesses and insurers face.

Among key changes the Bill, also known as "Civil Remedies," cuts the statute of limitations for negligence actions in half; amends the standard for bad-faith insurance claims; provides for distribution of proceeds when two or more third-party claims arising out of single occurrence exceed policy limits; limits applicability of provisions relating to attorney fees in certain actions against insurers; and provides standards for evidence to prove damages for medical expenses in certain civil actions.

The following below addresses some key changes to tort law. We will discuss the legislation's impact on bad faith law in a subsequent post.

Reduction of Statute of Limitations

The new law amends section 95.11 of Florida Statutes to reduce the statute of limitations for general negligence actions from four to two years. A statute of limitation establishes a time limit for a plaintiff to file an action, or the case will be barred. This law change would apply to negligence causes of action accruing after the law's effective date March 24, 2023. With a shorter statute of limitations, it may encourage plaintiffs to file suits earlier. Florida now joins 44 other states that have negligence statutes of limitations of less than four years.

Modification of Comparative Negligence System

The bill replaces Florida's system of pure comparative negligence with a modified comparative negligence regime. Under the modified system, any plaintiff in a negligence action that is found to be more than 50% at fault for their own injuries is barred from recovery of damages. This does not apply in medical negligence actions. This may serve to reduce the number of claims where the plaintiff is the primary cause of their injury.

Change In Damage Calculations

The legislation provides a uniform process for the admissibility and the calculation of medical damages in personal injury or wrongful death actions, subsequently, modifying the collateral source rule limiting the introduction of evidence for medical damages. For plaintiffs that do not have health insurance coverage, the legislation would require plaintiff to offer evidence of 120% of the Medicare reimbursement rate in effect at the time of trial, or, if there is no applicable Medicare rate for that service, the plaintiff would offer evidence of 170% of the applicable state Medicaid rate. For plaintiffs that receive treatment pursuant to a letter of protection (LOP)- a legally binding agreement guaranteeing payment to a health care provider once a settlement is reached -those plaintiffs would be required to establish monetary damages for their medical bills in the same manner above. And if the medical provider holding the letter of protection subsequently transfers the right to receive payment under the letter of protection to a third party, evidence of the

amount paid by the third party for that letter of protection would be admissible.

Letter of Protection Disclosures

In addition to allowing the disclosure of the amount paid to a third party for the letter of protection, other admissible disclosures include whether the plaintiff had but didn't use health insurance coverage and all billing for a plaintiff's medical expenses, which must be itemized and coded. Further, if the injured party was referred for treatment under a letter of protection, they must disclose the person who made the referral. If the referral was the plaintiff's attorney, disclosure of the referral is allowed. In addition, the financial relationship between a law firm and medical provider including the number of referrals is admissible under the new law.

Steps Businesses Can Take

Since this law will likely speed up the filing of claims with the shorter statute of limitations, businesses should try to identify and get ahead of potential claims and lawsuits before they're filed. This could include gathering any pertinent evidence related to an injury like sequestered security video footage, witness accounts, etc.

How Kaufman Dolowich Can Help

The new law is complex and has dramatically changed Florida's tort landscape. If you need assistance understanding the law's provisions or defending a claim, Kaufman Dolowich's attorneys are here to help.

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