Lowndes

Insights

Governor DeSantis Signs Tort Reform Bill into Law

Article
Lowndes
03.30.2023

On Friday, March 24, 2023, Governor Ron DeSantis signed House Bill 837 into law. The sweeping tort reform bill took effect upon becoming law and applies to causes of action filed thereafter.

According to a news release from the governor's office, HB 837 "modifies the bad faith framework, eliminates one-way attorney's fees and fee multipliers, and ensures that Floridians can't be held liable for damages if the person suing is more at fault."

Comparative Negligence

Florida previously applied a "pure comparative negligence" standard. HB 837 adopts a "modified comparative" negligence standard except for cases involving medical negligence. Under the modified comparative negligence standard, a plaintiff cannot recover any damages if the plaintiff is more than 50% at fault. In medical negligence cases, a plaintiff can still recover damages even if the plaintiff is more than 50% at fault.

Statute of Limitations

With limited exceptions, HB 837 reduces the statute of limitations for general negligence actions from four years to two years. This is expected to reduce the number of negligence lawsuits filed in Florida. As a result, plaintiff lawyers have rushed to file a multitude of lawsuits before the bill goes into effect.

Premises Liability

HB 837 provides that in a premises liability lawsuit that involves a person being injured by a third party's criminal act, the jury must consider the fault of all persons who contributed to the injury. An owner or operator of a multi-family residential property that substantially implements certain security measures on the property will not be held liable for negligence resulting in the death, injury, or damage to a third-party attempting to commit or committing any criminal act on the property where the criminal actor is not an employee or the owner or operator.

Related Attorneys

Terry C. Young
Savannah G. Stewart
Krista Runte

Related Expertise

Business Litigation
Litigation
Real Estate Litigation

Contingency Fee Multiplier

HB 837 creates the presumption that the lodestar fee – the number of attorney hours reasonable expended on the matter multiplied by a reasonable hourly rate – is sufficient and reasonable in a case in which attorneys' fees are determined by or awarded by the court. The presumption may be overcome if an individual can demonstrate that he could not have otherwise reasonably retained competent counsel.

This change is expected to reduce the amounts of attorneys' fees awarded and may make it more difficult for clients to find attorneys to take on risky cases. This should indirectly lower insurance rates as potential attorneys' fees awards become more predictable.

Repeal of One-Way Attorneys' Fees

HB 837 repeals one-way attorneys' fees statutes, sections 627.428 (applying to authorized insurers) and 626.9373 (applying to surplus lines insurers). The effect of this is that one-way attorneys' fees, which entitle insured parties to reasonable attorneys' fees in any lawsuit in which any amount of recovery is awarded, are effectively eliminated in breach of contract cases.

Transparency in Medical Damages

HB 837 provides guidelines on what evidence is admissible to prove the amount of damages for past or future medical care at trial. In short, evidence will be limited to the amount actually paid for medical services.

For past paid medical bills, only the amount actually paid is admissible. The initial billed amount is not admissible as initial amounts are typically inflated and can misconstrue damages.

For past unpaid medical bills, any evidence to prove damages is admissible. The "usual and customary" amount of damages is dependent upon the type of healthcare coverage provided to the individual.

The following evidence is admissible to prove past unpaid medical bills:

- For an individual with healthcare coverage, evidence of the amount the coverage is obligated to pay the provider, plus the individual's medical expenses, under the contract.
- For an individual with healthcare coverage who uses a letter of protection, evidence of the amount the coverage would pay under the contract, plus the individual's portion of medical expenses, had the individual obtained treatment pursuant to the healthcare coverage.
- For an individual with Medicare, Medicaid, or no insurance, 120% of the Medicare reimbursement rate in effect on the date the individual incurred medical services. If there is no rate for the medical services, then the amount is 170% of the applicable state Medicaid rate.
- For an individual who uses a letter of protection that is assigned to a third party, evidence of the amount the third party agreed to pay the provider for the right to receive payment.

For future medical bills, any evidence to prove damages is admissible. The "usual and customary" amount of damages is dependent upon the type of healthcare coverage provided to the individual.

The following evidence is admissible to prove future medical bills:

- For an individual with healthcare coverage, evidence of the amount for which the future charges could be satisfied by coverage, plus the individual's portion of medical expenses, under the contract.

- For an individual with Medicare, Medicaid, or no insurance, 120% of the Medicare reimbursement rate in effect at the time of the trial. If there is no rate for the medical services, then the amount is 170% of the applicable state Medicaid rate.

Under HB 837, damages awarded to a plaintiff at trial will not exceed the amount actually paid for by the plaintiff to the provider, the amount necessary to satisfy the charges owed, or the amount necessary to provide for reasonable and necessary future medical treatment. With damages now based on actual costs instead of inflated medical costs, the amount of damages awarded to a plaintiff at trial will be reduced. Such a reduction may help indirectly lower the cost for certain insurance products, medical services, and other products and services.

Bad Faith Actions

HB 837 provides insurance companies with the opportunity to correct bad faith acts and settle claims in good faith within 90 days of receiving actual notice of a claim and sufficient evidence. Failure of an insurer to tender within the 90-day period is not bad faith and is inadmissible in a bad faith action. In the event of failure to tender, the statute of limitations is extended for an additional 90 days.

HB 837 will amend what constitutes a bad faith claim with the following guidelines:

- Mere negligence alone is insufficient to constitute bad faith.
- The insured, the third-party claimant, and any representative of the insured/claimant have a duty to act in good faith in furnishing information about the claim, making demands of the insurer, setting deadlines, and attempting to settle the claim. If these parties do not act in good faith, damages awarded against the insurer may be reduced.
- A jury may consider whether the insured, the third-party claimant, or his representative did not act in good faith and, if so, reasonably reduce the damages awarded against the insurer.

In an action with two or more third party claimants, an insurer may file an interpleader action for competing claims from the same single occurrence which exceed the insureds available policy limits. The insurer does not commit bad faith by failing to pay the amount that exceeds their limits. In the alternative, an insurer may choose binding arbitration and the third-party claimants are entitled to a prorated share of the policy limits.

If you have questions about the potential impacts of HB 837 on your business, the Lowndes Litigation Group is here to help.