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Florida Tort Reform – House Bill 837

It is no secret that Florida's long standing tort system had deterred many insurers from underwriting policies in Florida and from aggressively defending lawsuits filed in Florida. From its comparative negligence system, allowing Plaintiffs to recover damages even when such Plaintiffs are 99% at fault, to its stringent bad faith laws, Florida had developed into a venue which, in our view, had given undue advantages to Plaintiffs and led to the filling of frivolous claims. All too often we see policy limits demands which greatly and unreasonably overvalue damages in a case, making it more difficult to not only reach a reasonable settlement value early on in a case, but also leading insurers to settle claims for values which may not necessarily be warranted based on the evidence, out of concerns of being subjected to bad faith claims. On March 24, 2023, Florida House Bill 837 ("HB 837") was signed by Governor Ron DeSantis, bringing sweeping changes to Florida's tort system and improving the litigation landscape for insurers and defendants alike.

At Vanderlaan Law Group, we always strive to keep our current and prospective clients apprised of changes in the important laws which impact both litigation and business decisions. We strive to ensure our clients and prospective clients can not only make informed decisions on litigating individual cases filed in Florida, but so that they also have such information available to implement it into their business planning decisions going forward. We include below some of the most prominent changes taking place in Florida's tort system following the enactment of House Bill 837. At Vanderlaan Law Group, we are always available to help you navigate the changing legal landscape in Florida.

Bad Faith

60 Day Cure Period

HB 837 amends Section 624.155, Florida Statutes. Under the amendment, prior to filing suit for statutory or common law bad faith, a claimant is required to first provide the insurer and the Florida Department of Insurance sixty (60) days-notice of any alleged violation. After receiving notice, an insurer has an opportunity to cure the alleged bad faith and if cured within 60 days, there is no longer a statutory or common law cause of action for bad faith. While this 60-day curing window was previously available for statutory bad-faith claims, by amending Section 624.155,

HB 837 ensures that this 60-day window is now available for both statutory and common law bad faith claims.

Claimant Good Faith

Furthermore, HB 837 dictates that negligence alone is insufficient to constitute bad faith. HB 837 now establishes that a claimant and their representatives have a duty to act in good faith in furnishing information regarding the claim, making demands, setting deadlines, and attempting to settle a claim. While HB 837 does not establish a separate cause of action for a breach of such duty by a claimant and/or their representatives, a finder of fact is now permitted to consider whether such duties have been breached by a claimant and/or their representative and is permitted to reduce any damages against an insurer in a bad faith action accordingly.

With these changes to the bad faith laws, not only is an insurer provided an opportunity to rectify any alleged bad faith and avoid a bad faith cause of action brought against it, but such changes also introduce a higher standard to establish bad faith and place a greater obligation on claimants and their attorneys to engaged reasonably in settlement negotiations. We certainly believe these amendments will help deter unsupported policy limits demands and will further level the playing field so that defendants and insurers can fairly defend unsupported claims and reasonably settle those claims with merit.

Multi-Party Claims

HB 837 also brings more clarity to resolution of multi-party claims, and now provides a clear path to resolution of such claims without insurers risking extra-contractual exposure in the process. Previously, if two or more competing third-party claimants could not agree to a distribution of the available policy limits in settlement of all of their claims, there was no definitive means by which an insurer could insulate itself from potential extra-contractual exposure. To rectify this, HB 837 amends Section 624.155, and provides that if two or more claimants make competing claims arising out of the same occurrence, and if the total claimed exceeds the policy limits, then the insurer cannot be liable for an amount in excess of the available policy limits if, within ninety (90) days after receiving notice of the competing claims, the insurer complies with one of the following requirements:

1. Files an interpleader action, allowing the trier of fact to determine each claimants prorated share of the policy limits; or

2. Appoints a qualified arbitrator to determine each claimant's prorated share of the limits in binding arbitration.

We believe such amendments provide insurers with a clear and reasonable path to resolve multi-party claims which may exceed the policy limits, placing decisions of how best to prorate the policy amongst multiple claimants on independent fact finder(s), and avoid bad faith exposure in the process.

Statute of Limitations

With the passage of HB 837, the statute of limitations on negligence actions has now been reduced to two years from four years.

Comparative Fault

Prior to the passage of HB 837, Florida employed a pure comparative fault negligence standard, which allowed plaintiffs to recover damages in tort actions even if they are found to be 99% at fault. While a damages award for the Plaintiff was still reduced by their percentage of fault, a judgment would still be entered against a defendant even when the plaintiff is the party primarily at fault. HB 837 amends Section 768.81, Florida Statutes, and employs a modified comparative negligence scheme, whereby if a plaintiff is found to be more than 50% at fault, such plaintiff would be precluded from recovering any damages.

Limited Rights to One-Way Attorneys' Fee

HB 837 repeals Sections 627.428 and 626.9373, Florida Statutes, which previously entitled an insured to reasonable attorneys' fees in any lawsuit against an insurer (with the exception of residential or commercial property insurers) in which any amount of recovery was awarded. Essentially, Florida's prior one-way attorneys fee system sought to shield policyholders against legal bills if they wanted to sue their insurer for failure to pay or lowballing claims. The Florida legislature had already taken steps to eliminate the one-way attorney fee system on property claims. With Section 627.428 and 626.9373 now repealed, Florida has effectively ended one-way attorneys fees for claims against all insurers except in limited situations. The repeal does not affect the plaintiff's right to attorney fees in those cases where the insured had to file and prevailed in a declaratory action because of the insurer's complete denial of coverage or in those cases where a bad faith action proceeds to suit because the above provisions of the amendment to 624.155 (Civil Remedy Act) have been fulfilled. Further, the Tort Reform changes to attorneys' fees do not affect the right of Plaintiff or Defendant to attorneys' fees in any action where Florida's offer of judgment statute has been invoked, including insurance related actions.

Attorney-Client Privilege

HB 837 amends Section 90.502, Florida Statutes, to expressly state that there is no attorney-client privilege for communications by an attorney to a client referring the client for treatment by a healthcare provider. It is no secret that Plaintiff's attorneys in Florida have developed relationships with certain healthcare providers, who may make questionable injury diagnoses and refer plaintiffs out for further treatment to other healthcare providers to help support a plaintiff's injury claim and to pump-up a plaintiff's damages. This created an uneven playing field in litigation, where an insurance company's relationships with and financial payments to its medical expert is discoverable, but a plaintiff's attorney referral of a client for medical treatment was not. With Section 90.502 now amended, referrals by Plaintiffs' attorneys to medical providers have become discoverable, allowing defendants to present evidence before a jury that a plaintiff's

medical treatment was on the referral of his/her attorney. We believe such a change in the law gives defendants a greater ability to call into question the veracity of a plaintiff's damages claim and the opinions of his/her healthcare providers.

Letters of Protection and Admissibility of Unpaid Medical Charges

Under HB 837, Section 768.0427, Florida Statutes, has been created and requires letters of protection to comply with the following requirements:

1. Whether the patient/plaintiff has heath care coverage;
2. Itemized bills and codes;
3. The name of the person providing a referral, including if the referral was from an attorney; and
4. Names of third-party factoring companies and the amount by which such companies purchased the accounts, including any discounts.

A letter of protection is an agreement by which a healthcare provider renders treatment in exchange for a promise of payment from a patient/plaintiff from any judgment or settlement of a personal injury action. Plaintiffs could previously show the jury the total amount of unpaid medical bills issued through a letter of protection, which is often higher than the negotiated rates agreed to between a provider and a healthcare insurance carrier, even where a plaintiff has decided not to submit their medical treatment to their healthcare insurer for payment. With Section 768.0427 enacted into law, a plaintiff who has or is eligible for health care coverage, even if treating under a letter of protection, is limited to offering evidence of the amount the plaintiff's healthcare insurer would be contractually obligated to pay to satisfy unpaid medical bills. Likewise, for future medical treatment, a plaintiff is limited to offering evidence of the dollar amount of future charges a plaintiff's healthcare insurer would pay for the same treatment. Such changes to the law are expected to help deter excessive billing by healthcare providers and even if such providers excessively bill under a letter of protection, Section 768.0427 helps cap and reduce the amounts which may be recoverable for the treatment rendered in the past and future.

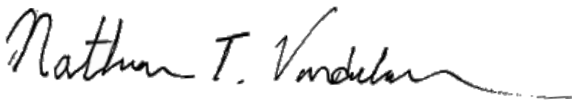
Pre-Tort Reform Lawsuit Filings

In the anticipation of the passage of HB 837, a flood of lawsuits have been filed by Plaintiff's in the Florida courts. On March 23, 2023, the Florida Defense Lawyers Association ("FDLA") sent a letter to Chief Justice Carlos Munez of the Florida Supreme Court, noting that from March 18, 2023 to mid-day March 23, 2023, 70,000 new lawsuits had been filed in the Florida Courts. The letter further notes that the largest Plaintiff firm in the State was in the process of filing 25,000 additional lawsuits by Friday, March 24, 2023. FLDA has asked the Florida Supreme Court to take action and provide defendants with more time to respond to complaints than the time presently available under the Florida Rules of Civil Procedure (20 days), out of concerns the flood of litigation cannot be handled in a timely fashion by defense attorneys across the state, and an increased risk of wide-spread default judgments. As of the date of this letter, we have not been notified of any action which the Florida Supreme Court and/or State of Florida will take to address the flood of litigation which is going to ensue.

Vanderlaan Law Group - Your Florida Defense Firm Solution

At Vanderlaan Law Group, P.A., we are well situated to provide high level defense expertise on Florida tort claims and to handle your Florida litigated claims in a timely manner. Whether a current or prospective client, Vanderlaan Law Group, P.A. looks forward to providing you with high level defense expertise and helping you navigate the changing landscape of Florida tort litigation.

Very truly yours,



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