

Subrogation Lawyers See Challenges In Florida Tort Reform

By **Eli Flesch**

Law360 (April 11, 2023, 9:10 PM EDT) -- Lawyers advising insurance companies in disputes over recouping losses paid on claims should note important changes to Florida's tort laws that reduce the time to file suit in injury suits and restrict when plaintiffs can recover damages, experts say.



Florida's tort reform package, which was passed by the state legislature and signed by Gov. Ron DeSantis in March, could make it more challenging for insurers to resolve subrogation disputes before litigation. (AP Photo/Phil Sears)

H.B. 837, **approved last month** by Gov. Ron DeSantis, could make it more challenging for insurers to resolve subrogation disputes before litigation and spur extra litigation over comparative fault in negligence suits, insurance professionals say. Such downsides for carriers would be among the few in a tort reform package that has been described by policyholder attorneys as **aggressively pro-insurer** in its stated aim to reduce costly litigation.

In a big change, the statute of limitations for negligence suits is now two years, down from four. The law also does away with Florida's comparative negligence rule, which allowed plaintiffs to recover damages even if they are primarily at fault. The law states that "any party found to be greater than 50% at fault for his or her own harm may not recover any damages," which describes a modified comparative negligence regime.

Matthew Peaire, a Tampa-based subrogation attorney with Butler Weihmuller Katz Craig LLP, told Law360 that there are myriad reasons a claim might not be fully adjusted within two years, even if some payment has been made on the claim. Those include unresolved coverage issues and problems during repair and reconstruction, he said.

That means subrogation litigation may need to start before a claim is finalized, Peaire said. He added that changing the comparative negligence rules could also create new disputes.

"It could force more cases into litigation, simply to flesh out the apportionment of fault that otherwise may have been a candidate to resolve pre-suit," Peaire said, adding that he still expected the statute of limitations changes to have a bigger effect on litigation.

Joe F. Rich, a Miami-based subrogation attorney with Cozen O'Connor PC, said that while it would be hard to predict the consequences of the statute of limitations change for cases unrelated to insurance coverage disputes, he still expected there to be practical implications for all other categories of litigation. In insurance, he said, the tighter statute of limitations should have implications beyond just giving plaintiffs less time to sue.

"It's also a reduction in time for parties to explore pre-suit resolution of their claims or disputes," Rich said. "While two years seems like a lot of time, in a complex case it's probably insufficient to allow the parties to have a meaningful discussion before a lawsuit is filed, and they could potentially generate more litigation now that you have that shorter clock running."

Matthew B. Weaver, a Miami-based Reed Smith LLP attorney representing policyholders, said he felt the changes to the tort law would reduce subrogation potential in Florida, making it less likely that claims would get paid out.

"You want to see carriers pursue subrogation, because it should mean that they're more willing to pay claims," Weaver said. "If there's a subrogation target that the carrier thinks is viable, that probably means they're going to be a little more willing to say, hey, OK, let's make the policyholder whole, or at least, if not whole, then happy."

A shorter statute of limitations could force insurers to make faster decisions about litigating subrogation suits, but otherwise, the effect on such litigation could ultimately be minimal, Weaver said. Generally speaking, the rule changes are tough on plaintiffs, and that could present business difficulties for the subrogation lawyers in Florida, he said.

While the changes to the statute of limitations and comparative negligence rules are significant in their own right, attorneys for both policyholders and carriers have stressed that the overall tort law changes are among the most significant in Florida in years.

Attorneys who represent policyholders are particularly concerned that by eliminating one-way attorney fees and fee multipliers for all

lines of insurance, H.B. 837 could prevent policyholders with more minor but legitimate cases from finding representation.

The one-way attorney fee provision previously allowed policyholders to collect reasonable attorney fees in a suit in which any recovery is awarded. Fee multipliers allow judges to award attorneys working on a contingency fee basis an additional amount. BigLaw lawyers representing insureds have said those provisions make it possible to counsel people who would otherwise not be able to afford such representation for their claims.

Another major change is a new rule mandating that negligence alone on the part of an insurer isn't enough to constitute bad faith, which will make it more difficult for claimants to get punitive damages on bad faith claims, according to insurance professionals.

H.B. 837 also targeted so-called phantom damages by allowing juries to hear about the actual amount of medical expenses paid by an insurance company rather than the listed retail price, which is often much higher.

--Additional reporting by Carolina Bolado. Editing by Haylee Pearl and Nick Petruncio.

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