

The Road To Justice Starts Here

THE NEW TORT REFORM LAWS AND how they affect you

By Attorney Michael T. Gibson

A couple of months ago, I wrote an article in here encouraging all of our readers to contact their Legislators and have them vote no to House Bill 837, or the omnibus tort reform bill. Unfortunately, before we could even publish that article, the Legislature had already passed House Bill 837. The bill moved at record pace, taking only three weeks of the 60-day legislative session to go from introduction to final passage. The fix was just in on this one, and despite the efforts of many lawyers, doctors, and citizens to stop it, the Florida Legislature passed the largest reformation of tort rights in history, with little debate.

So, what do these changes to the laws mean for personal injury and accident victims? HB 837 has seven basic components, which are as follows:

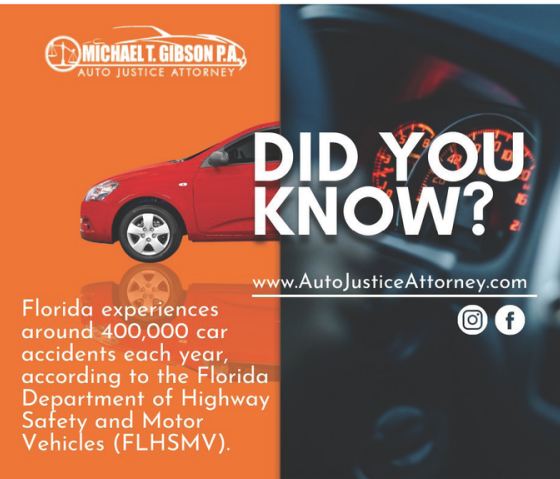
- 1) Provides a 90-Day Safe Harbor to first- and third-party insurers where once presented with a claim and evidence sufficient to support the amount demanded, carrier has 90-day safe harbor to pay policy limits or sum demanded and then be immune from bad faith.
- 2) Elimination of First Party fees under Sec. 627.428 – no prevailing fees in first party case against your insurer; you can only fees for dec actions to determine coverage.
- 3) Presumption of no Negligence for multifamily housing units – In negligent security cases, if apartment complex does 5 things, they get presumption against negligence.
- 4) Moves us from Pure Comp Neg to Modified Comp Neg – If Plaintiff is more than 51% at fault, then Plaintiff recovers nothing.
- 5) Negligence statute of limitations is shortened to 2 Years from Date of Loss; you used to have 4 years.
- 6) Allows Worley Disco to Plaintiffs and their attorneys – LOP triggers Boechler disco to Plaintiffs on their relationship with treating doctors, (i.e. - how many referrals, money paid, etc.) This allows the Defendants to obtain discovery related to the relationship of the Plaintiff's law firm and the doctor's office.
- 7) Medical Bills – Allows the introduction of whether or not Plaintiff has health insurance of any type, and whether or not they used the same and if the insurance made payment, what those amounts paid were. Allows defense to argue health insurance and Medicare/Medicaid rates of reimbursement as reasonable versus pure billed amount. Arguably allows defense to introduce such rates as a rebuttal to reasonableness of pure bills.

As you can see, the components deal with different areas of personal injury law. Some are very specific to a certain type of personal injury case. For example, the presumption of non-negligence to an apartment complex or multi-family housing unit only applies to negligent security actions against those specific types of places. Furthermore, the elimination of prevailing attorney's fees applies specifically to only when you are suing your own insurance company. This particular provision will likely be one of the more controversial areas of this law. We all know and have seen the massive destruction that Florida's hurricanes can cause. We have also all heard the horror stories of insurers delaying and denying claims following these storms. This provision essentially leaves homeowners without the recourse of the court system when an insurance company does not timely pay their claim, or undervalues their claim, and refuses to pay.

The other components all likely are in play in your typical car accident personal injury case, or premises liability case. Let's start with the statute of limitations. You used to have four years to file a lawsuit related to your personal injury case. So, Plaintiffs had plenty of time to allow their medical care to resolve, and to engage in presuit negotiations with the insurance carrier. Now, you have half of that time. Additionally, the insurance

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viaje misionero

A CAMAGÜEY Y SANTIAGO DE CUBA

Por Juan Jose Rodriguez, Abogado de Enlace




Como ustedes saben, hace unos meses fuimos en un viaje misionero a la Habana Cuba. Sin embargo, debido a lo lejos de las provincias, no pudimos alcanzar a la gente de Camaguey y Santiago. De hecho, desde Santiago a la capital nos tomo unas 16 horas en autobús cuando regresamos a la Habana. Para aquellos que somos de Puerto Rico, de acuerdo con datos obtenidos, Puerto Rico es aproximadamente 12 veces más pequeño que Cuba. Para los que vivimos en los Estados Unidos, Cuba es aproximadamente del tamaño del estado de Tennessee.

Como todos los viajes que hemos ido a Cuba, nos impresiona los habitantes. Como hemos mencionado en otras ocasiones, este país, como la gran mayoría de los países se está enfrentando al alto costo del combustible, víveres, y productos básicos de consumo. Sin embargo, uno puede observar el deseo de superación que viven, no se quejan, sino que siguen luchando, y cada obstáculo lo ven como una oportunidad a superarse. Nuestro primer evento fue una conferencia para matrimonios en Camaguey ofrecida por la Dra. Amneris Albizu, la directora del MIZPA Christian University en la región sudeste de la organización de Iglesia De Dios Pentecostal MI. Fue un momento de compartir y aprendizaje ameno. Continuamos con un evento para niños en la misma área, en la que pudimos reparar utensilios escolares, incluyendo mochilas, libretas y lápices. En este evento dedicado a la niñez, se ofreció una orientación bíblica sobre Jonás y la importancia de la obediencia, con cantos y dinámicas por mi esposa Dalmaris y la misionera Norma Santos vestidas de "muñecas", juntamente con la participación de Monserrat Martínez, como el personaje de Jonás. Obviamente, como todo evento dedicado a los niños no faltó el famoso pastel -o bizcocho como algunos de nosotros le llamamos a esta delicia esencial de eventos con la niñez.

De Camaguey nos trasladamos unas cuantas horas de distancia a Santiago de Cuba. De hecho, Santiago esta aproximadamente a una hora de Guantánamo, donde está localizada la base naval de USA. Si le añadimos nuestro recorrido de nuestro pasado viaje en el que visitamos a Pinal Del Rio, hemos prácticamente recorrido la Isla de Cuba de esquina a esquina.

El área de Santiago nos trajo recuerdos de los campos de nuestra isla de Puerto Rico. En ese lugar, nuestra estadia fue en un campamento llamado Monte Sinaí, donde más de 200 personas compartieron por unos días y nuestro grupo pudo dar talleres de capacitación a los jóvenes, las damas, los caballeros y hasta a los hombres de negocios. Como si fuera poco, la Dra. Albizu ofreció un mini taller sobre el tema de escatología. También en las afueras del campamento, fuimos al sector Aguacate, donde dimos otro evento para niños, en la que también pudimos reparar utensilios escolares y en este evento dedicado a la niñez, también ofrecimos orientaciones Bíblicas con dinámicas y cantos para deleite de los niños y adultos de este humilde sector.

Para resumir, fuimos en representación de nuestro bufete de abogados de Michael T. Gibson, a llevar ayuda, y conocimiento por medio de los talleres de capacitación que ofrecimos y una vez más, gracias a Dios, podemos declarar: MISION CUMPLIDA. ■



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companies now get an additional 90-day grace period, within which to absolve themselves of any previous bad faith they may have committed. The practical result of these two changes is that we are going to speed up the timelines within which we send settlement demands to the carriers, and the time where we make decisions and recommendations on filing a lawsuit. So, for accident victims, my advice on how to handle this is two-fold. First, seek legal counsel as soon as possible after your accident. We now have less time to investigate your case, and to try to resolve your case. Take prompt and immediate action. Secondly, if you are undergoing medical care and treatment for an accident-related injury, stay compliant with your care and be diligent in follow up. Again, we now only have two years to file your lawsuit. Getting the answers on what your medical diagnosis and prognosis, and a full and complete understanding of your injuries is very important, and needs to be done timely.

Note, these timeline changes only affect any cases brought after 3/24/2023. For all cases where the accident occurred prior to this date, the old, four-year statute of limitations still applies.

This law also affects the evidence that can be presented at trial with regards to an accident victim's medical bills. The long and short of it is this, accident victims can still admit their full doctor's bill into evidence. So, whatever the doctor bills and says you owe, that we can submit as proof of your bill. However, now, the defense gets to contest your bill, and say that your bills should be less. If you have private health insurance, they get to

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it's Jen's turn

TO TRAVEL AROUND THE STATE

By: Attorney Michael T. Gibson




Busy times here at the Gibson house. It is now Jen's turn to travel around the state with a kid each weekend, as Emery's dance competition season is here. So, every other weekend, they are off to somewhere. Just like Brady and I do the same in the fall and winter with travel hockey. So far, through two competitions, Emery's team has won just about everything they could win. She is featured in four group dances, and has a solo dance. I have watched her practice day and night at home, all while attending hours of practice daily at the studio. Emery has been awarded double platinum for her solo at both competitions. She has done great, and we are so proud of her, especially as this was her first year in competitive dance. And Jen, well she is surviving the constant travel. I think she has a new appreciation for what I do for travel hockey for seven months out of the year. Speaking of travel hockey, we are also very proud to announce that Brady made the highest rated Bears 14U team. He has really stepped up and worked hard this off season, working out in the gym with me twice a week, and doing skating and hockey lessons two days a week. I am still working on the ice with him, but I will admit, he is dusting me pretty good out there. I can still outlift him in the gym, but he is right there with me. His strength and speed have really improved, thanks to all the hard work he has put in. We are extremely proud to see him get rewarded for the same. I also made the team, and I was retained to be an assistant coach. I am looking forward to continuing to be a part of his hockey journey. And lastly, this old man still has a thing or two left on the ice as well. My team and I won a championship in our 35 and over league. Combining the two leagues I play in, this is my third championship in the last calendar year. Not too bad for the worst hockey player in our house! We hope you and your family are enjoying the last days of spring, and are set for a wonderful summer. ■




"The new tort reform laws and how they affect you" continued from page 2.

argue that the bill should only be whatever your private health insurance would pay for the same bill. If you have Medicare or Medicaid, they get to argue those rates. If you have no health insurance, they still get to argue for the Medicare and Medicaid rates. So, basically, the Defendant will be allowed to argue that your bills should not be what the doctor charged, but a cheaper rate, based on private and/or governmental insurance rates.

This isn't new. Defendants have been arguing for "discount justice" for as long as I have been practicing law. What is new though, is that before, these discount justice arguments were severely limited in Court. In fact, until now, the jury never heard if a plaintiff had health insurance or not. Now, it is fair game, and can be introduced. This will lead to longer trials, as the defense will spend a great deal of time arguing and putting on evidence of these discounted rates. I am not too concerned about it though. From our years of practice, we know that major health insurance routinely denies claims related to auto accident victims. It is going to be difficult for the insurance carriers to argue that you should only get what your health insurance would pay, when the health insurance company already flat out denied such care. Plus, this is a trial issue. While we will no doubt try more cases due to the cumulative effects of these new laws, it is still highly likely that 5% or less of all cases will result in a trial. Thus, I would not worry too much about this change. As long as the treating doctor can explain and justify why they charge what they charge, I do not think these types of arguments by the defense will be very successful in Court.

Lastly, perhaps the biggest change is the change to a modified comparative negligence law. Before this change, Florida was a pure comparative negligence jurisdiction, meaning that a plaintiff was charged with and had their own percentage of fault deducted from any award they received. So, if the plaintiff, was 51% at fault, they received 49% of their damages. Now, under this new law, if the plaintiff is found to be 51% at fault, they receive nothing. The unfair part of this law is that a defendant can be 51% at fault and they are limited to paying for only that share of fault. But a plaintiff who is the same, gets completely denied of any compensation whatsoever. It is arbitrary and produces unjust results. This law will also lead to a number of insurance companies taking unreasonable positions on liability and denying claims. For our part, the changes we were filing a lawsuit where you were 51% or more at fault were not very good prior to the passage of this law. So again, it likely has little effect on how we practice now. It does mean though that we will look very carefully at any liability issues in a case, and scrutinize the same to make sure we can beat this 51% threshold.

Make no doubt about it, all of these changes and measures are meant to rig the game in favor of the insurance company. The Legislature did not do any favors for accident victims or their lawyers here. However, despite all these changes, I am actually optimistic that our firm, and most importantly our clients, will fair just as well, maybe even a little bit better, in this system. First off, as this law was passing, My partner, Todd Curtin, and

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This publication is intended to educate the general public about personal injury, medical malpractice, and other issues. It is for information purposes only and is not intended to be legal advice. Prior to acting on any information contained here, you should seek and retain competent counsel. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.

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I looked at and reviewed every system in our law firm. We tried to find every single thing we would need to change or do differently, under these new laws. We spent hours each night covering hypothetical situations, and reviewing past cases. Our conclusion was that we didn't need to change a thing. We have never been a firm that attempts to manipulate our client's medical care and treatment. We have never worked with providers that inflate their charges and bills. And, like I said before, if we had a client that had over 51% fault for the accident, we likely were not filing suit on that case either.

Secondly, we went to work on revising our case timelines and goals for each checkpoint in our cases. With a reduced statute of limitations, it is important that we have all cases on a timely track. I anticipate our average case duration will speed up. I also anticipated that we will file more lawsuits, litigate more cases and try more cases to verdict in this new system. Considering we have won our last two trials, and significantly achieved a result much higher than the last settlement offer, we are ok with trying more cases. As I write this, we have trained our staff on these changes, and are implementing our new case guidelines. So, the plan has already been in motion, and so far, it is working well.

And lastly, I want to leave you with this thought. House Bill 837 changes a lot of things. But it is important to remember the things it does not change, which includes the following:

- That people get into Car Accidents
- That people get hurt in those Car Accidents
- The frequency of Car Accidents
- The extent and the Nature of the Injuries associated with those Car Accidents
- The need for medical care and treatment for said injuries
- The complex legal nature of claims for compensation for a Car Accident in this State

So, if ever you or a loved one finds themselves dealing with a car accident, it is now more important than ever that you seek experienced legal counsel as soon as possible. The game may be rigged in favor of the insurance company. But with the right players by your side, you can still win the same. Our resolve to help all of our clients has never been stronger! ■

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