

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-025611-CA-01

SECTION: CA30

JUDGE: Reemberto Diaz

Alejandro Adasme

Plaintiff(s)

vs.

Strategy Investment Group, LLC. et al

Defendant(s)

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' HB 837
AFFIRMATIVE DEFENSES**

THIS CAUSE having come to be heard on Plaintiff's, ALEJANDRO ADASME, Motion to Strike Defendants' HB 837 Affirmative Defenses, and the Court having reviewed the Motion, Response, the Court file, and related documents, and otherwise being duly advised in the premises, it is **ORDERED AND ADJUDGED** that:

This is an auto accident which occurred on February 27, 2023. The Plaintiff alleges he sustained injuries. HB 837 (and specifically Section 768.81(6), Florida Statutes, and Section 768.0427, Florida Statutes) (hereinafter, collectively referred to as "the HB 837 Amendments"), were enacted and became effective twenty-five days later on March 24, 2023. Plaintiff filed his lawsuit after March 24, 2023.

The Plaintiff seeks to strike the following four Affirmative Defenses:

- Third Affirmative Defense: Defendants allege that, at the time of the subject incident, Plaintiff was negligent, and such negligence on his part was the proximate cause of the injuries and damages that are claimed and that Plaintiff is not entitled to recover if he is found to be greater than fifty (50) percent at fault, which would thereby bar the claim against the Defendants and Plaintiff would be precluded from recovering any damages.
- Eleventh Affirmative Defense: This Defendants affirmatively state that the Plaintiff's

claims for medical and hospital expenses are limited and or barred to the amount of any such expenses paid and accepted by any health care provider. See Goble v. Frohman, 901 So.2d 830 (Fla. 2005). Alternatively, the Plaintiff's claims for expenses due to medical or hospital treatment are limited to the amount actually paid and/or owed by the Plaintiff to any such health care provider. Id.

- Twentieth Affirmative Defense: Defendants affirmatively state that Plaintiff is seeking damages for past and future medical damages and Plaintiff's recovery of medical expenses is limited relative to the provisions of Fla. Stat. §768.0427; and that Defendants are entitled to the defenses and limitations provided for by Fla. Stat. §768.0427.
- Twenty-First Affirmative Defense: Defendants rely upon any applicable defenses and all applicable terms and provisions of the Florida Tort Reform Act 2023.

The question presented to this Court is whether the HB 837 Amendments can apply to the facts of this case, when the Plaintiff's cause of action accrued prior to March 24, 2023, but the lawsuit was filed after March 24, 2023.

This Court applies the well-settled two-part test that governs a court's consideration of whether a statute can apply to a cause of action that accrued by the statute's enactment. For the reasons set forth herein, this Court finds that the HB 837 Amendments cannot be applied to the facts of this case. Thus, these four affirmative defenses are hereby stricken for failing to state valid legal defenses.

The first question is whether application of the HB 837 Amendments to this case is prospective or retroactive. During the hearing of this matter, Defendants argued that the HB 837 Amendments are, by their own terms, prospective in nature.

It is true that the HB 837 Amendments state, "Note.—B. Section 30, ch. 2023-15, "except as otherwise expressly provided in this act, this act shall apply to causes of action filed after the effective date of this act. [March 24, 2023]." However, Defendants seek to apply the statutes retroactively to Plaintiff's cause of action which accrued before HB 837's enactment. This Court finds that Defendants' application of the HB 837 Amendments to this cause of action is a retroactive application.

Having determined that the Defendants' attempted application of the HB 837 Amendments is retroactive, the question is then whether the HB 837 Amendments can be applied retroactively to Plaintiff's claims which accrued by HB 837's enactment.

The Florida Supreme Court has mandated a two-part test to determine whether a statute can be applied retroactively. First, a court must determine whether the legislature intended for the statute to apply retroactively. Second, if the legislature expresses a clear intention to apply the statute retroactively, a court must then determine whether it would be unconstitutional to apply the statute that way. *E.g.*, *Am. Optical Corp. v. Spiewak*, 73 So. 3d 120, 130 (Fla. 2011); *Menendez v. Progressive Express Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010).

As the Florida Supreme Court noted in *Menendez*, "even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty." *Id.* "The statute must pass both parts of this test to be applied retroactively." *Fitchner v. LifeSouth Cmty. Blood Ctrs.*, 88 So. 3d 269, 279 (Fla. 1st DCA 2012); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266, 280 (1994) (noting a statute has retroactive effect, thereby causing due process concerns, when it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new penalties with respect to transactions already completed).

Turning to the facts of this case, the parties agree that the Legislature intended for the HB 837 Amendments to be retroactive – the Plaintiff filed his lawsuit after March 24, 2023. However, the retroactive application in this case would be unconstitutional, and as such, the second prong of the two-part test cannot be satisfied. That is because the HB 837 Amendments in this case would impair Plaintiff's vested cause of action which accrued on February 27, 2023 prior to the enactment of HB 837.

The United States Supreme Court has clearly held that a cause of action is "a species of

property protected by the Fourteenth Amendment's Due Process Clause.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). Similarly, the Florida Supreme Court has explained that “[o]nce the defense of the statute of limitations has accrued, it is protected as a property interest just as the plaintiff’s right to commence an action is a valid and protected property interest.” *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994); *see also R.A.M. of South Fla., Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210, 1220 (Fla. 2d DCA 2004) (“[O]nce a cause of action has accrued, the right to pursue that cause of action is generally considered a vested right.”).

Article I, section 2 of the Florida Constitution guarantees to all persons the right to acquire, possess, and protect property. Section 9 of the same article provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. Florida Courts will not apply a statute retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.” *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995); *see also McCord v. Smith*, 43 So. 2d 704, 708–09 (Fla. 1949) (noting that a retroactive provision of legislation is invalid where it adversely affects or destroys vested rights).

Taking Defendants’ affirmative defenses one by one, we turn to whether Section 768.81(6) can apply to this case where the alleged negligent incident happened by March 24, 2023. With this statutory change, the Legislature modified Florida’s comparative fault scheme so that if a plaintiff is more than 50% at fault for causing his or her injuries, that plaintiff is barred from recovery. [\[1\]](#) This provision is clearly a substantive change that would impede the plaintiff’s vested rights if applied to this case. It effectively bars a plaintiff’s case even where the defendant is 49.99% at fault, a substantial change in the substantive law.

Indeed, under Florida’s modified fault scheme, a jury’s findings will eliminate a plaintiff’s cause of action. In the case at hand, Section 768.81(6) unquestionably impedes Plaintiff’s cause of action by creating a new threshold for him to gain access to the courthouse steps – and may result

in him having the courthouse closed to him. On February 27, 2023, when this crash and alleged negligence happened, the Plaintiff could pursue an auto negligence cause of action even if he was over 50% at fault. Twenty-five after the crash, and after his cause of action became a vested right, the Plaintiff would now have a new burden if this statute is retroactively applied to his case. The new statute could literally abolish the Plaintiff's claim if applied to this case.

Tellingly, the Defendants do not cite any precedent that a statutory change that creates a complete immunity from suit can apply to a cause of action that accrued by the time of the statutory change. Instead, the Defendants simply rely on the language of the statute that the statute applies to cases filed after March 24, 2023.

Thus, Section 768.81(6) appears to affect a substantive change. The Plaintiff's cause of action accrued twenty-five days before HB 837's enactment. The Plaintiff already had a vested right in his cause of action, and application of the new comparative fault law would substantially impair his vested rights, create new obligations, and impose new penalties. As such, this Court cannot apply Section 768.81(6) to the facts of this case.

Section 768.0427 likewise does not govern claims that accrued by March 24, 2023, like the instant case. The statute impacts far more than provisions related to process and procedure. Subsection (4) changes the "damages that may be recovered by a claimant in a personal injury or wrongful death action for the reasonable and necessary cost or value of medical care." The Legislature then specifically makes clear that not only are a party's medical damages limited to what is admissible in subsection (2), but the damages may not exceed what is set forth in (4)(a), (b), and (c). By impacting the medical damages that cannot just be admitted into evidence, but recovered from the fact-finder, this statute has substantive elements such that it cannot govern this case that accrued on February 27, 2023.

Indeed, these statutory provisions affect the damages a plaintiff may recover for medical care

rendered through March 24, 2023, with preexisting decisions made on where to obtain medical care, and any contractual arrangements for that medical care. Applying the statute to claims that accrued by March 24, 2023 would impair a plaintiff's vested rights in seeking medical care and seeking to recover medical damages from alleged tortfeasors arising from that medical care obtained by March 24, 2023.

Moreover, subsection (3) of the statute would likewise impede Plaintiff's vested rights that accrued by March 24, 2023. This subsection not only requires a plaintiff to disclose a broad category of information, but states these disclosures are "a condition precedent to asserting any claim for medical expenses for treatment rendered under a letter of protection." § 768.0427(3). By imposing these conditions precedent on a party's ability to recover medical damages, the statute clearly has another substantive component. The Plaintiff's cause of action accrued twenty-five days before this statute took effect. The change to Florida law cannot govern this case.

Conditions precedent are substantive requirements. *Williams v. Campagnulo*, 588 So. 2d 982 (Fla. 1991); *VanBibber v. Hartford Accident & Indemn. Ins. Co.*, 429 So. 2d 880 (Fla. 1983); accord *Weaver v. Myers*, 229 So. 3d 1118, 1151- 52 (Fla. 2017) (Canady, J., dissenting). The last of those conditions precedent is disclosure of attorney-client communications previously protected by the attorney-client privilege under section 90.502, Florida Statutes. *Worley v. Cent. Fla. Young Men's Christian Ass'n*, 228 So. 3d 18, 20, 24-25 (Fla. 2017). The idea that this portion of the legislation does not impact a plaintiff's vested right to keep communications with counsel confidential is unfounded. Indeed, if a plaintiff had attorney-client communications with an attorney up through March 24, 2023, reasonably believing those were cherished, privileged communications, that same plaintiff is now required to reveal those communications to recover any medical damages. This clearly creates new legal obligations and imposes new legal consequences and penalties on a plaintiff.

Consider, too, the provisions in subsection (3) regarding Letters of Protection. Injured plaintiffs

may have signed written contractual agreements through March 24, 2023, (or at later dates where the alleged negligence happened by March 24, 2023), and were reasonably entitled to rely on those contractual agreements to obtain the necessary medical care. Attorneys may have referred their clients to treating physicians in reliance that these referrals – to physicians they presumably believed would provide the best medical care for their clients – would not be subsequently utilized to limit, if not, eliminate, a plaintiff’s ability to recover any medical damages. The Legislature has imposed new legal penalties, consequences that may eliminate a plaintiff’s right to recover medical damages, for lawsuits filed after March 24, 2023.

Based on the foregoing, Section 768.0427 cannot apply to this case, as the substantive changes to the law impede Plaintiff’s rights which vested on February 27, 2023, twenty-five days before this statute took effect.

This Court having heard argument of counsel, and being otherwise advised in the premises, it is **ORDERED AND ADJUDGED** as follows:

Plaintiff’s Motion is **GRANTED**. Defendants’ Affirmative Defenses #3, 11, 20, and 21 are hereby stricken with prejudice as any further amendment would be futile.

^[1] Section 768.81(6) now provides, in pertinent part: “(6) **Greater percentage of fault.**--In a negligence action to which this section applies, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.” (emphasis in statute).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 5th day of November, 2024.



2023-025611-CA-01 11-05-2024 9:11 AM

Hon. Reemberto Diaz

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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