

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ANTHONY J. FERLITA,

Plaintiff,

v.

Case Number: 23-CA-017063

TROY A. LOWERY and
BARBARA J. LOWERY,

Defendants.

HILLSBOROUGH COUNTY CC
AUG 25 2025 PM4:28

**ORDER DENYING DEFENDANTS' MOTION IN LIMINE REGARDING ADMISSIBLE
EVIDENCE OF PAST AND FUTURE MEDICAL TREATMENT OR SERVICES
EXPENSES AND APPLICABILITY OF MODIFIED COMPARATIVE FAULT**

This matter is before this Court, after a court-reported hearing on August 13, 2025, on Defendants' motion in limine regarding admissible evidence of past and future medical treatment or services expenses and applicability of modified comparative fault, filed July 22, 2025 (Doc. 133). Defendants' motion raises three issues:

1. whether section 768.0427(2), Florida Statutes, limits evidence of unpaid past and future medical expenses;
2. whether section 768.0427(2), Florida Statutes, specifically requires Plaintiff to introduce the evidence listed in the statute; and
3. whether the modified comparative-fault rule in section 768.81(6), Florida Statutes, applies to this case.

This Court addresses each issue in turn. Preliminarily, however, this Court sets forth some background principles.

Background principles

“In interpreting a statute, [a court’s] task is to give effect to the words that the legislature has employed in the statutory text.” *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022). “[I]f a word [in a statute] is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.” *Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) (cleaned up). “Judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text.” *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (cleaned up).¹

Here, the title and prefatory clause to 768.0427(2), Florida Statutes, states: “*ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE EXPENSES*.—Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection.” § 768.0427(2), Fla. Stat. (emphasis added). The phrase used in subsection (2)—“is admissible”—and its opposite phrases—“is inadmissible” and “is not admissible”—bring lots of old soil with them.

These phrases are used throughout the statutory and common-law rules of evidence. Evidentiary rules of inclusion state that evidence “is admissible.” *See, e.g.*, § 90.402, Fla. Stat. (“All relevant evidence *is admissible*, except as provided by law.” (emphasis added)). On the other hand, evidentiary rules of exclusion state that evidence “is inadmissible.” *See, e.g.*, § 90.409, Fla. Stat. (“Evidence of furnishing, or offering or promising to pay, medical or hospital expenses or

¹ This Court does not consider legislative history. As the Fifth District has explained, courts should “eschew legislative history to avoid the ‘backwards approach to statutory construction’ that the Florida Supreme Court has rejected and to faithfully apply the ‘supremacy-of-the-text principle’ that it has articulated.” *Taylor v. Nicholson-Williams, Inc.*, 368 So. 3d 1007, 1015 n.3 (Fla. 5th DCA 2023) (citation omitted).

other damages occasioned by an injury or accident *is inadmissible* to prove liability for the injury or accident.” (emphasis added)).

Most rules of evidence—though perhaps originating in the common law—today have been codified, either in Chapter 90 or elsewhere. *See, e.g.*, § 766.102(5), Fla. Stat. (rules of evidence for expert testimony in medical malpractice cases). But some rules of evidence—like the collateral-source rule—are found only in the common law. *E.g.*, *Joerg v. State Farm Mut. Auto. Ins.*, 176 So. 3d 1247, 1249 (Fla. 2015) (“As an evidentiary rule, payments from collateral source benefits are *not admissible* because such evidence may confuse the jury with respect to both liability and damages.” (emphasis added)). As discussed *infra* § 2, subsection (2) repeals the evidentiary collateral-source rule, but only insofar as the statutory conditions are satisfied.

Section 768.0427(2) is just one more rule of evidence that must be interpreted against the background of all the rules of evidence that have preceded it—many of which are still in effect—as well in the context of the old soil of the word “admissible.” *See, e.g.*, *Wagner v. Orange County*, 960 So. 2d 785, 791 (Fla. 5th DCA 2007) (“The legislature is presumed to know existing law when it enacts a statute.”).

The word “admissible” has never been used in the law to establish a *burden of proof or production*. Instead, the old soil establishes that “admissible” and “inadmissible” mark the boundaries of evidence that a factfinder is *permitted to consider* in deciding whether a party has or has not satisfied its burden of proof. *See Admissible, Black’s Law Dictionary* (12th ed. 2024) (“Capable of being legally admitted; allowable; permissible <admissible evidence>”).

With these background principles in mind, this Court now addresses the issues raised in Defendants’ motion.

1. **Section 768.0427(2) does not limit evidence of unpaid past and future medical expenses.**

In their motion, “Defendants seek to limit the evidence that Plaintiff will present to the jury.” Doc. 133 at 2. As explained below, although section 768.0427(2) limits evidence of *satisfied* medical expenses, it does not limit evidence of *unpaid* past or future medical expenses.

The only limitation in the statutory text is in subsection (2)(a) concerning “satisfied” medical expenses. Specifically, subsection (2)(a) states: “Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied *is limited* to evidence of the amount actually paid, regardless of the source of payment.” § 768.0427(2)(a), Fla. Stat. (emphasis added).

Subsection (2)(b) governs unpaid medical expenses. Unlike subsection (2)(a), subsection (2)(b) does not limit the evidence that may be admitted. Instead, subsection (2)(b) states: “Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but *is not limited to*, evidence as provided in this paragraph.” *Id.* § 768.0427(2)(b) (emphasis added).

Subsection (2)(c) governs future medical expenses. Like (2)(b), subsection (2)(c) does not limit the evidence that may be admitted. Instead, subsection (2)(c) states: “Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive shall include, but *is not limited to*, evidence as provided in this paragraph.” *Id.* § 768.0427(2)(c) (emphasis added).

“[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally.” *USAA Cas. Ins. v. Emergency Physicians, Inc.*, 393 So. 3d 257, 261 (Fla. 5th DCA 2024) (citation omitted). Here, the legislature used different language—“is limited to” for satisfied medical expenses in subsection (2)(a) and “shall include, but is not limited to” for unpaid past and

future medical expenses in subsections (2)(b) and (2)(c). This indicates that the statute does not limit evidence of unpaid past and future medical expenses.

Further, it is well settled that “[t]he verb *to include* introduces examples, not an exhaustive list.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132 (2012); accord *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 783 (Fla. 2017) (“Commonly, the term ‘include’ suggests that a list is non-exhaustive”). “When words of common usage are included in a statute, we construe them ‘in the plain and ordinary sense’ because we presume that the Legislature knows and intends the plain and obvious meaning of the words it used.” *White*, 226 So. 3d at 781. Although the mere use of the word “include” is sufficient to convey a non-exhaustive list, adding the phrase “but is not limited to” further emphasizes the point. *See id.* at 783.

Finally, even if subsections (2)(b) and (2)(c) did not use the phrase “shall include, but is not limited to,” the statute still would not limit evidence for unpaid past and future medical expenses. This is because the last category under subsection (2)(b) is a catch-all that renders admissible “[a]ny evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.” § 768.0427(2)(b)5., Fla. Stat. (emphasis added). Likewise, the last category under subsection (2)(c) is a catch-all that renders admissible “[a]ny evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.” *Id.* § 768.0427(2)(c)3. (emphasis added). Accordingly, even if subsections (2)(b) and (2)(c) were limitations on evidence, subsections (2)(b)5. and (2)(c)3. would still allow a party to introduce “[a]ny evidence.”

2. **Section 768.0427(2) does not create a burden of production on the plaintiff.**

Defendants argue that “Plaintiff is required to produce to the jury evidence showing the amount the plaintiff’s health care coverage would pay” as well as evidence of Medicare and Medicaid rates. Doc. 133 at 2. This Court disagrees. As explained below, section 768.0427(2) merely concerns the admissibility of evidence; it does not create a burden of production.

Again, this Court’s task “is to give effect to the words that the legislature has employed in the statutory text.” *Davis*, 339 So. 3d at 323. Subsection (2) states: “Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection.” § 768.0427(2), Fla. Stat. (emphasis added). Subsection (2) uses the word “admissible.” It does not use the word “required” or state that a plaintiff must introduce the listed evidence. “If the Legislature had intended such a meaning, it could easily have made such intention clear.” *Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015).

For example, Florida’s transitory-substance statute expressly states that “[i]f a person slips and falls on a transitory foreign substance in a business establishment, the injured person *must prove* that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it.” § 768.0755, Fla. Stat. (2025) (emphasis added). There are no such words in subsection (2) of section 768.0427. For instance, the legislature did not write: “A party *must prove* the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action as provided in this subsection.”

Defendants emphasize that subsections (2)(b) and (2)(c) of section 768.0427 use the word “shall” in the phrase “shall include, but is not limited to.” But that does not mean a plaintiff is required to introduce the listed categories of evidence. Depending on the context in which it is used, the word “shall” can have either a permissive or a mandatory sense. *E.g.*, *Belcher Oil Co v.*

Dade County, 271 So. 2d 118, 121 (Fla. 1972) (applying “[a] permissive rather than mandatory construction” to the word “shall” in a Florida statute).

For example, the United States Supreme Court has noted that “certain of the Federal Rules use the word ‘shall’ to *authorize*, but *not to require*, judicial action.” *De Martinez v. Lamagno*, 515 U.S. 417, 432 n.9 (1995) (emphasis added). Likewise, the Florida Supreme Court has recognized that “the term ‘shall’ can be construed as ‘must’ or ‘may.’” *Allstate Ins. Co v. Orthopedic Specialists*, 212 So. 3d 973, 978 (Fla. 2017). Indeed, “courts in virtually every English-speaking jurisdiction have held—by necessity—that *shall* means *may* in some contexts, and vice versa.” Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 952 (3d ed. 2011).

There are many Florida Statutes that use the word “shall” to merely authorize the admission of evidence. *E.g.*, § 403.9423(1), Fla. Stat. (2025) (“Certification pursuant to ss. 403.9401-403.9425 shall be admissible as evidence of public need and necessity in proceedings under chapter 73 or chapter 74.”); *see also id.* §§ 672.724, 772.15, 893.105(1). No court has held that these statutes require a party to introduce the listed evidence.

The Florida Supreme Court has explained that the interpretation of the word “shall” “depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute.” *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977). Here, there are two contextual reasons why the word “shall” should be construed in its permissive, not mandatory sense.

First, the legislature did not write subsections (2)(b) and (2)(c) on a blank slate. To the contrary—as indicated at the onset of this order—“the common law can, and sometimes must, inform the proper understanding of a statutory text.” *C.N. v. I.G.C.*, 316 So. 3d 287, 290 (Fla. 2021). Indeed, the Florida Supreme Court has recognized “the importance of reading statutes with an awareness of and sensitivity to background common law rules,” and it has explained that

“[c]ommon law rules might also inform the correct interpretation and application of statutory provisions themselves.” *Ripple v. CBS Corp.*, 385 So. 3d 1021, 1028 (Fla. 2024).

Here, a relevant common law rule is the evidentiary collateral-source rule, which provides that “payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages.” *Joerg*, 176 So. 3d at 1249. For example, courts have applied the collateral-source rule to exclude evidence of insurance benefits. *E.g.*, *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455 (Fla. 1991), *superseded by statute on other grounds*, *Joerg*, 176 So. 3d at 1249. Courts have also applied the collateral-source rule to exclude “evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security.” *Joerg*, 176 So. 3d at 1250 (collecting cases).

The legislature acted against this backdrop when it enacted subsections (2)(b) and (2)(c) of section 768.0427. Whereas the collateral-source rule would have excluded evidence of insurance, subsections (2)(b) and (2)(c) now authorize in certain circumstances the admission of evidence of what insurance is obligated to pay or would pay for medical bills. § 768.0427(2)(b)1.–2., (2)(c)1., Fla. Stat. Likewise, whereas the collateral-source rule would have excluded evidence of Medicare benefits, subsection (2)(b) and (2)(c) now authorize in certain circumstances the admission of “evidence of 120 percent of the Medicare reimbursement rate.” *Id.* § 768.0427(2)(b)3, (2)(c)2.

In short, subsections (2)(b) and (2)(c) were enacted to repeal the evidentiary collateral-source rule in certain circumstances and render *admissible* certain evidence that would have otherwise been excluded by the rule. This understanding further demonstrates that subsections (2)(b) and (2)(c) do not set forth lists of evidence that a plaintiff is *required* to introduce or else suffer a directed verdict.

Another relevant background principle of law is “the general canon of evidence that any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion.” *Williams v. State*, 110 So. 2d 654, 658 (Fla. 1959); *see also* § 90.402, Fla. Stat. (“All relevant evidence is admissible, except as provided by law.”). “The presumption is that no change in the common law is intended unless the statute is explicit and clear in that regard. Unless a statute unequivocally states that it changes the common law, or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law.” *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990); *accord Emerson v. Lambert*, 374 So. 3d 756, 768 n.15 (Fla. 2023).

Here, section 768.0427(2) does not explicitly change this background principle and render other forms of evidence inadmissible. As explained *supra* § 1. the only limitation in subsection (2) is for evidence of *satisfied* medical expenses. Accordingly, the statute does not limit proof for unpaid past or future medical expenses, nor does it require a plaintiff to introduce particular evidence for such expenses.

Second, as previously noted, the last category of admissible evidence under subsections (2)(b) and (2)(c) is a catchall that allows a party to admit “[a]ny evidence” of reasonable amounts billed. § 768.0427(2)(b)5., (2)(c)3., Fla. Stat. (emphasis added). It would not make sense to interpret subsections (2)(b) and (2)(c) as setting forth required lists of evidence when one of the items on the lists is open-ended. Instead, the fact that the lists included open-ended catchalls indicates that subsections (2)(b) and (2)(c) merely *authorize* the admission of evidence.

After all, there are many ways of proving reasonable amounts billed. A party could hire experts to opine on the issue. A party could also admit bills from different providers of comparable treatment. To read subsection (2) as a required list would mean that a plaintiff would need to

introduce every possible form of evidence, which is an absurd result. “Where a statute is open to multiple interpretations, Florida courts endeavor to avoid interpretations which would lead to absurd results.” *Hardee County v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017).

In sum, this Court joins the many courts—including courts in this circuit—that have ruled that section 768.0427(2) merely governs admissibility and does not require the plaintiff to introduce the listed evidence:

1. *Steiger v. Murali*, No. 2023-CA-482 (Fla. 2d Cir. Ct. Nov. 20, 2024) (Frank, J.) (“[These subsections] do not impose an additional burden on a plaintiff to prove anything. In fact, a close reading of the express words of the statute reveals little more than additional statutory direction on collateral sources.”);
2. *Grant v. Cartwright*, No. 23002644CA (Fla. 20th Cir. Ct. Feb. 25, 2025) (Gentile, J.) (“Defense may admit that evidence but Plaintiff is not required to do so.”);
3. *Ofili v. Baska*, No. 23-CA-015341 (Fla. 13th Cir. Ct. Mar. 18, 2025) (Goudie, J.) (ruling that the subsections “impose[] no obligation . . . on the Plaintiff”);
4. *Beyenka v. Pyle*, No. 2023-CA-009204, 2025 WL 1378865, at *2–5 (Fla. 4th Cir. Ct. Apr. 21, 2025) (Daniel, J.) (ruling that section 768.0427(2) “does not limit evidence of unpaid past and future medical expenses” and “does not create a burden of production”);
5. *Miner v. Barardo*, No. 2023-CA-000867 (Fla. 7th Cir. Ct. May 2, 2025) (France, J.) (“adopt[ing] the interpretation of the statute of the Plaintiff,” who argued that “[s]ection 768.0427(2) sets forth lists of admissible evidence for unpaid past medical and future medical bills, and does not limit the evidence that may be offered or require evidence that Plaintiff must introduce”);
6. *Morales v. Reeb*, No. 23-CA-016933 (Fla. 13th Cir. Ct. May 7, 2025) (Ellison, J.) (adopting the order in *Beyenka*, which ruled that “subsection (2) merely concerns the admissibility of evidence; it does not create a burden of production”);
7. *Lanoir v. Peguero*, No. 24001363 (Fla. 17th Cir. Ct. May 13, 2025) (Casey, J.) (“[S]ection 768.0427(2) is not phrased in terms of evidence that the plaintiff must submit. Instead, it is phrased in terms of evidence that is available for any litigant”);
8. *Sledge v. McCabe*, No. 2023CA015665 (Fla. 15th Cir. Ct. May 15, 2025) (Scott, J.) (“[T]he plain text of Florida Statute, section 768.0427, does not impose an additional burden on Plaintiff to prove what rates his health insurance (or Medicare or Medicaid) would have paid towards the medical bills in this auto-negligence case.”);

9. *Dasher v. Salomon*, No. 2023-CA-6595 (Fla. 10th Cir. Ct. May 21, 2025) (Masters, J.) (denying the defendant’s motion in limine and concluding that section 768.0427(2) does not limit evidence of unpaid or future medical expenses and does not create a burden of production on the plaintiff);
10. *Anderson v. A.M.*, No. 2024-CA-001884 (Fla. 19th Cir. Ct. June 4, 2025) (Pegg, J.) (denying the defendant’s motion, which sought to limit the evidence at trial and require the plaintiff to introduce what insurance would pay);
11. *Schwartz v. Brickell Town House Ass’n*, No. 2023-015389 (Fla. 11th Cir. Ct. June 9, 2025) (Watson, J.) (“The statute does not require a plaintiff (or defendant) to present such evidence, nor does it limit the parties to the evidence listed in the statute, as the statute says that evidence offered to prove past unpaid and future medical expenses is ‘not limited to’ the types of evidence listed in the statute.”);
12. *Perez v. Winn*, No. 2024-CA-493 (Fla. 8th Cir. Ct. June 11, 2025) (Keim, J.) (ruling that “the statute does *not* limit evidence” of unpaid past and future medical expenses and that the statute “merely identifies evidence that is admissible, as well as conditions under which the listed evidence is admissible, without imposing a burden on any party to introduce the listed evidence”);
13. *Kramer v. Comfort Air Heating & Cooling, Inc.*, No. 2023-CA-015417 (Fla. 13th Cir. Ct. June 13, 2025) (Ward, J.) (“The Court finds that Fla. Stat. §768.0427(2)(c) does not provide an exhaustive list of “Admissible Evidence of Medical Treatment or Service Expenses.” Instead, § 768.0427(2)(c) identifies evidence which shall be considered by the Court, if presented.”);
14. *Gopie v. Willis*, No. 2023-CA-004072 (Fla. 18th Cir. Ct. July 1, 2025) (Goerner, J.) (ruling that subsections (2)(b) and (2)(c) “merely set forth lists of admissible evidence” and “do not limit the evidence that may be offered” and “are not lists of required evidence that Plaintiff must introduce”);
15. *Adams v. Garcia*, No. 24008198 (Fla. 17th Cir. Ct. July 9, 2025) (Levenson, J.) (ruling that the statute does not limit evidence and that “section 768.0427(2) is not phrased in terms of evidence that the plaintiff must submit. Instead, it is phrased in terms of evidence that is available for any litigant”);
16. *Murphy v. R.A. Nass Mgmt. Co.*, No. 2023-12495 (Fla. 7th Cir. Ct. July 24, 2025) (Orfinger, J.) (“[S]ubsections 768.0724(2)(b) and 768.0427(2)(c) do not limit a plaintiff to proving damages with evidence of what health insurance, Medicare, or Medicaid would pay Instead, these subsections allow *either* party to introduce evidence of damages by the methods set forth therein.”);
17. *Malcom v. Rodriguez*, No. 2024-10412 (Fla. 7th Cir. Ct. Aug. 1, 2025) (Rowe, J.) (adopting Judge Orfinger’s order in *Murphy*);

18. *Hourihan v. Mona*, No. 16-2023-CA-010388 (Fla. 4th Cir. Ct. Aug. 1, 2025) (Anderson, J.) (ruling that the statute “does not limit evidence of unpaid past and future medical expenses” and “does not create a burden of production”).

3. The modified comparative-fault rule in section 768.81(6), Florida Statutes, does not apply to this case.

Defendants seek to apply the modified-comparative fault rule in section 768.81(6), Florida Statutes. Doc. 133 at 8–9. Defendants rely on the fact that this case was filed after the effective date of the statute (March 24, 2023). However, Defendants concede that the motor-vehicle crash in this case occurred on February 9, 2023—*before* the statute took effect. Doc. 133 at 1.

Plaintiff’s cause of action accrued on February 9, 2023—the date of the crash. *Dep’t of Transp. v. Soldovere*, 519 So. 2d 616, 616 (Fla. 1988) (“[T]he cause of action accrues upon the happening of an accident and the attendant injuries.”). Accordingly, Defendants are seeking to retroactively apply the statute. *See Metropolitan Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 499 (Fla. 1999) (explaining that a statute operates retroactively if it “attaches new legal consequences to events completed before its enactment”).

The Florida Supreme Court has set forth a two-prong test to determine whether a statute can be applied retroactively: “First, the Court must ascertain whether the Legislature intended for the statute to apply retroactively. Second, if such an intent is clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles.” *Am. Optical Corp. v. Spiewak*, 73 So. 3d 120, 130 (Fla. 2011) (citation omitted).

The first prong is not at issue. Plaintiff does not dispute that the legislature intended for section 768.81(6) to apply to cases filed after March 24, 2023.

This Court must therefore turn to the second prong and consider whether retroactively applying the statute would be unconstitutional. As the Florida Supreme Court has explained, “even where the Legislature has expressly stated that a statute will have retroactive application, [a court]

will reject such an application if the statute *impairs a vested right.*” *Menendez v. Progressive Express Ins. Co.*, 35 So. 3d 873, 877 (Fla. 2010) (emphasis added). “[C]onstitutional due process rights protect individuals from the retroactive application of a substantive law that adversely affects or destroys a vested right” or “imposes or creates a new obligation or duty in connection with a previous transaction or consideration.” *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n*, 127 So. 3d 1258, 1272 (Fla. 2013). “[A]fter it has accrued, a cause of action is a vested right that may not be eliminated or curtailed.” *Id.* at 1273; *accord R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc.*, 869 So. 2d 1210, 1220 (Fla. 2d DCA 2004) (“When a cause of action has accrued, a statute that becomes effective subsequently may not be applied to eliminate or curtail the cause of action.”).

“For the retroactive application of a law to be constitutionally permissible, . . . the law must be procedural or remedial in nature.” *Maronda*, 127 So. 3d at 1272. “Remedial statutes operate to further a remedy or confirm rights that already exist, and a procedural law provides the means and methods for the application and enforcement of existing duties and rights.” *Id.* “In contrast, a substantive law prescribes legal duties and rights and, once those rights and duties are vested, due process prevents the Legislature from retroactively abolishing or curtailing them.” *Id.*

Ever since the Florida Supreme Court’s decision in *Hoffman v. Jones*, 280 So. 2d 431, 438 (Fla. 1973), Florida courts have applied “the ‘pure form’ of comparative negligence.” Under that standard, a plaintiff is not denied recovery because of his own negligence. *Id.* Instead, the jury must apportion liability based on the parties’ respective fault, and a plaintiff is denied recovery only if he is 100 percent at fault for his damages. *Id.*

Section 768.81(6) dramatically modifies the comparative negligence standard. The statute provides that “any party found to be greater than 50 percent at fault for his or her own harm may

not recover any damages.” § 768.81(6), Fla. Stat. In other words, the statute *completely abolishes* a cause of action for a plaintiff who is more than 50 percent at fault. Put differently, the statute *creates a new requirement* by requiring a plaintiff to be no more than 50 percent at fault.

This substantive change cannot be retroactively applied to Plaintiff’s accrued cause of action. In *Spiewak*, for example, the Florida Supreme Court considered a new law requiring a plaintiff suing for asbestos exposure to establish a particular level of actual physical injury caused by the asbestos. *See* 73 So. 3d at 124–25. The court held that the new law could not be retroactively applied to accrued causes of action because it “provide[d] that particular physical impairment symptoms [were] an essential new element of an asbestos cause of action, a requirement that never existed before.” *Id.* at 131. “Retroactive application of the Act . . . would operate to completely abolish the [plaintiffs’] vested rights in accrued causes of action for asbestos-related injury.” *Id.* at 133. It was therefore a substantive change in the law. *See id.* at 132 n.1.

Another example is *Miles v. Weingrad*, 164 So. 3d 1208 (Fla. 2015). There, the Florida Supreme Court considered the retroactive effect of a statute that limited noneconomic damages in a medical-malpractice case. *Id.* at 1210. The court held that the statute did not apply retroactively to a cause of action that accrued before the statute took effect because it was a substantive change in the law. *See id.* at 1212–13. The court rejected the notion that “no one has a vested right in the common law,” explaining that the plaintiff had a vested right because his cause of action accrued before the statute took effect. *See id.* at 1211–12.

Here, too, section 768.81(6) is a substantive change that cannot be retroactively applied to Plaintiff’s accrued cause of action. The statute would completely abolish Plaintiff’s cause of action if he were found to be more than 50 percent at fault. Accordingly, this Court joins the many

courts—including courts in this circuit—that have ruled that the modified comparative-fault rule in 768.81(6) does not apply to causes of action that accrued before the effective date of the statute:

1. *Briesemeister v. G.L. Homes of Fla. Corp.*, No. 50-2024-CA-001426 (Fla. 15th Cir. Ct. June 25, 2024) (Kerner, J.) (“The Plaintiff’s cause of action accrued thirteen days before HB 837’s enactment. The Plaintiff already had a vested right in her cause of action, and application of the new comparative fault law would substantially impair her 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.”);
2. *Rudd v. Gomez & Velazques Corp.*, No. 50-2024-CA-000690 (Fla. 15th Cir. Ct. Sept. 18, 2024) (Parnofiello, J.) (“[T]his Court finds the Defendant’s 8th affirmative defense is seeking retroactive application of the amendment to 768.81(6), and as set forth above, such retroactive application would be improper.”);
3. *Velasquez v. Alfonso*, No. 2023-CA-013268 (Fla. 13th Cir. Ct. Sept. 27, 2024) (Huey, J.) (“[P]rovisions of HB 837, insofar as they impact past and/or future medical expenses, or as they impact comparative fault, are not retroactive in application to this case as the causes of action accrued prior to the enactment of HB 837.”);
4. *Adasme v. Strategy Inv. Grp.*, No. 2023-025611 (Fla. 11th Cir. Ct. Nov. 5, 2024) (Diaz, J.) (“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.”);
5. *Adams v. Waste Pro of Fla., Inc.*, No. CACE24009265 (Fla. 17th Cir. Ct. Jan. 17, 2025) (Olefson, J.) (“[T]he Court find that HB 837 does not apply retroactively as the relevant changes created are substantive in nature and effect a vested property interest. In doing so, retroactive application in this instance would violate Plaintiff’s due process rights in an unconstitutional manner as Plaintiff’s cause of action accrued prior to the enactment of HB 837.”);
6. *Anderson v. Tony*, No. 24005465 (Fla. 17th Cir. Ct. Jan. 25, 2025) (Bidwill, J.) (“[S]ince Plaintiff’s cause of action accrued before HB 837’s enactment, the plaintiff already had a vested right in his cause of action, and application of the new §768.81(6) would substantially impair his vested rights, create new obligations, and impose new penalties. As such, application of §768.81(6) in this case would be unconstitutional.”);

Finally, Defendants rely on *Wolf v. Williams*, 397 So. 3d 799 (Fla. 5th DCA 2024).


However, *Wolf* did not address whether section 768.81(6) could be retroactively applied to a cause of action that accrued before the effective date of the statute. Instead, the court held that section

768.0427(2) did not apply because the case was filed before the effective date of the statute. Accordingly, *Williams* is not precedent on the issue at hand. *Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”).

CONCLUSION

For the reasons stated in this order, Defendants’ motion in limine regarding admissible evidence of past and future medical treatment or services expenses and applicability of modified comparative fault, filed July 22, 2025 (Doc. 133), is **DENIED**.

SO ORDERED in chambers in Hillsborough County.



Circuit Judge Michael S. Williams

Copies Provided to:
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