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INSURANCE COMPANIES SAVED BY THE BELL?

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On the last day of a year that will live in infamy, the Supreme Court of Florida issued a decision that will tip the scales of justice ever so slightly in favor of insurance companies and against property owners—both commercial and residential.

Our Supreme Court establishes the rules of procedure that govern the conduct of litigation. One of the significant rules that affect the parties in litigation is the summary judgment rule [Fla. R. Civ. P. 1.510]. This rule allows either party to seek disposition in that parties' favor by the trial court and not a jury if that party can establish that there are no genuine issues of material fact to conclusively disprove the nonmovant's theory of the case in order to eliminate any matter of fact. For more than 60 years, the state courts throughout Florida have adhered to this standard, which imposed a stringent burden on a party seeking summary judgment. This burden on the moving party meant if there was any competent evidence that created doubt as to any material fact, well established, Florida law mandated denial of summary judgment. The reason for this strict standard was a recognition of the inviolate right to a jury trial except in the rarest of circumstances.

The Supreme Court of Florida, however, changed the rules when it amended the rules in *In re: Amendments to Florida Rule of Civil Procedure* 1.510, No. SC20-1490 (Fla. Dec. 31, 2020). The Court replaced the long-standing standard for adjudicating summary judgment motions with what has been the standard in federal court since 1986. The primary difference is not in the textual language of the rule itself but in how it is interpreted. Under the amended standard, a trial court will now assess whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. More critically, this amended standard relaxes the burden on the moving party so that all that is required is an absence of evidence in support of the nonmoving party's case. The burden shifts to the nonmoving party to make a showing sufficient to establish the existence of an essential element to that party's case. And lastly, this amended standard replaces the hurdle of any competent evidence creates an issue of fact with a less rigorous test as to whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party. If the evidence is merely colorable, or is not sufficiently probative, the trial court should grant summary judgment. This new paradigm of interpreting the same textual rule not only allows but mandates a platform for a judge to substitute his or her assessment of the facts for what has been the fundamental role of a jury.

So what does all this mean for insurance claimant? As noted, this amended standard is an adoption of the standard in federal court. That means there are 30-plus years of precedent in federal court. And there is no question the federal court has been less hospitable to claimants for this and other reasons. Summary judgment is more frequently granted in federal court, and we can likewise expect that summary judgment will be more likely granted under this new standard in Florida's state courts. Given the nature of insurance coverage disputes and the application of broad exclusions and limitations drafted by insurers in contracts of adhesion, threading the coverage needle for policyholders will undoubtedly be that much more complicated. It will require great skill and expertise to navigate these new hurdles.

Notably, this new standard becomes effective on May 1, 2021. During the next four `months, the Court is allowing the public to comment on this amended rule and is seeking comment from The Florida Bar through its rules committee. By inviting comment, the Court left the door slightly open to tweaking this new standard. But for now, claimants should expect a new normal.

Should you have any questions or concerns about your policy, your claim, or your insurance carrier's obligations, please do not hesitate to contact Michael J. Higer of Berger Singerman's Insurance Team.

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