Commentary: Florida Adoption of Federal Judgment Standard a Win for Insurers

Insurance Journal, Southeast Edition
By Kimberly Berman and Eric Reichenberger
January 6, 2021

The way liability claims are litigated in Florida will dramatically change, possibly shifting the balance of power in pre-trial negotiations closer to favoring defendants and their insurance companies after the Florida Supreme Court opted to adopt the federal summary judgment standard, effective May 1, 2021.

The impending rule change ordered by six of the seven justices in a Dec. 31, 2020 motion was prompted by a request for the court to answer a certified question from the Fifth District Court of Appeal in the case *Wilsonart, LLC v. Lopez*.

At issue in the *Wilsonart v. Lopez* case was whether a trial court can grant a party's motion for summary judgment based on video evidence that contradicts conflicting evidence from the nonmoving party. If not, a court must let a jury decide by weighing the video against other evidence, such as eyewitness testimony.

Wilsonart involved a fatal motor vehicle accident after which the decedent's estate sued the front car driver and the driver's employer. The trial court granted summary judgment for the defendants in reliance on video evidence from the front car's dashboard camera. The trial court held the video refuted the plaintiff's position and demonstrated the defendants were not negligent. On appeal, the Fifth District reversed the trial court's decision to grant summary judgment finding the trial court improperly weighed competing evidence on material facts.

On review by the Florida Supreme Court, the parties were asked to file briefs on the issue of whether Florida should adopt the federal summary judgment standard. Businesses and others filed amicus briefs on the issue as well.

Federal Summary Judgment Standard

The current federal summary judgment standard dates back to a trilogy of United States Supreme Court cases from 1986 – *Celotex Corp. v. Catrett*, *Anderson v. Liberty Lobby, Inc.*, and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*

The *Celotex* case involved a widow who had argued that her late husband had been injured by exposure to a company's products. The company denied it was at fault and convinced a federal district court to grant summary judgment in its favor. A federal circuit court of appeals reversed the decision, saying that the company must first refute the allegation that the husband had been exposed. The company then appealed

to the U.S. Supreme Court. The Supreme Court held that a party moving for summary judgment need only show that the opposing party lacks evidence sufficient to support its case.

This ruling is still creating confusion in the federal courts today, but a broader version of the "trilogy" of cases was formally added to Federal Rule of Civil Procedure 56, making it much easier to resolve cases in federal court. In federal court, the party seeking summary judgment need only show that the other party has not presented sufficient evidence to support an essential element of its case. The standard is similar to the standard for a directed verdict. While federal courts have continued to sort out the details, insurance companies and their defense counsel have used the standard favorably to obtain dismissal of claims in federal courts on summary judgment.

Currently, at least 38 states utilize the federal standard. Florida was an outlier in that regard, as its current summary judgment standard stems from the 1966 decision of *Holl v. Talcott*.

Impact of New Standard

Now that the Florida Supreme Court has adopted the federal standard, as of May 2021, the impact on Florida courts will be significant.

It is likely fewer cases may be filed and other cases could be resolved faster and at lower cost to defendants and insurance companies. This may help the backlog that Florida trial courts have been experiencing due to the suspension of jury trials during the recent COVID-19 pandemic.

Legitimate claims and lawsuits would still reach juries or be settled out of court. However, meritless and weaker claims will be far less likely to be filed or they will be resolved quicker. Florida judges would have to be convinced that the underpinnings of the allegations lack critical strength.

If it is easier to refute an injured party's claim at the outset, defendants and their insurance companies have a better chance of settling claims faster and for less money. Lower litigation expenses and lower anticipated settlement values mean that an insurer could set lower reserves and offer premiums that are more competitive.

At present, plaintiff attorneys have financial reasons to pursue a trial or at least to cause defendants to incur significant litigation costs. For multi-party litigation, plaintiffs often lack evidence to implicate a particular defendant, such as in a multi-car collision or a products liability case with multiple component manufacturers and links in the chain of distribution.

The threat of dispositive relief for that defendant can provide significant leverage to prevent them from being "dragged" through the full litigation process up to and possibly through trial that plaintiffs often use to extract settlements.

In addition, depending on where the plaintiffs sue, they can win bigger jury awards and more attorney's fees. Those incentives go down significantly if the defense has an improved chance of getting a case dismissed at an earlier stage and possibly getting the plaintiffs to pay for defense legal expenses.

More importantly, the defense teams in Florida cases will have a much stronger hand to play when negotiating a settlement. They could signal to the other side plans to move for summary judgment and offer to settle for a nominal sum. Claims professionals should meet with their defense attorneys to discuss the implications and implementation of new legal strategies and be ready to argue this new standard to trial courts in Florida, come May 1, 2021.

Kimberly K. Berman is a board certified appellate attorney based in the Fort Lauderdale office of Marshall Dennehey Warner Coleman & Goggin. She may be reached at kkberman@mdwcg.com.

About Eric L. Reichenberger
Eric L. Reichenberger is an insurance defense attorney based in the Fort Lauderdale office of Marshall Dennehey Warner Coleman & Goggin. He may be reached at elreichenberger@mdwcg.com

This article was published in the Southeast edition of Insurance Journal on January 6, 2021. All rights reserved; further duplication prohibited without permission.