

The ‘Sunshine’ State: New Comparative Negligence Jury Instructions Following the Adoption of House Bill 837

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House Bill 837 adopted a modified comparative negligence scheme in Florida. Now, if a plaintiff wants to recover on his or her claim, a jury must determine that a plaintiff was less than 50% negligent in the action(s) that caused the plaintiff’s injury. The Florida Supreme Court Committee on Standard Jury Instructions in Civil Cases has proposed and now adopted new jury instructions to address the changes made to the modified comparative fault scheme.

The question then emerged whether the court should inform the jury that a plaintiff would be barred from recovery based on the assignment of fault at trial or if the court should make that determination after trial. If the former, then some believe this would threaten to upend this critical reform.

This article delves into the history surrounding this key debate, the competing theories, the empirical evidence, and a look at Florida’s new jury instruction addressing the modified comparative fault scheme.

History

Informing the jury of the plaintiff’s recovery bar when apportioning negligence resurfaces a debate that has been raging across the country for the last century. Beginning with the tort reform movements in the 1900s, state legislatures pushed away from contributory negligence schemes and toward pure and modified comparative negligence schemes. Once adopted, these new comparative negligence schemes presented a critical question that has been a contentious source of debate between the plaintiff and defense bar—whether the jury should be informed that the plaintiff will be barred from recovery if the jury apportions more than a certain percentage (50% or 51%) fault to that person during their deliberations.

Two main schools of thought crystallized in the years since the onset of this debate.

The Blindfold Rule

One philosophy became known as the “blindfold” rule for jury instructions. Under the blindfold method, juries are left in the dark

about the comparative negligence scheme and the practical effects of its negligence apportioning decisions.

Supporters also claim that informing the jury of the comparative negligence scheme only serves to confuse them and may lead a jury to make decisions based on emotions and sympathy instead of the facts at trial. The main critique of this rule is that it makes an adequate recovery significantly harder for the plaintiff and gives defendants an unfair advantage in achieving positive outcomes.

The Sunshine Rule

On the flipside of this debate is the “sunshine” rule, which calls for the jury to be made fully aware of the effects of its decision. Proponents of this scheme base their arguments on the jury being the ultimate arbiter of what is just and fair, even if that means nonconformity with the existing laws. Supporters of the sunshine rule argue that to answer any factual questions posed to a jury, leaving the jury in the dark about the practical effects of those decisions can result in arbitrary, inequitable and unintended results.

The main critique is that, instead of focusing on the case and making decisions based on the weight of the evidence and what the jury just heard at trial, a jury would make its decisions based on emotion. Critics also seem to agree that the sunshine rule benefits plaintiffs and gives them a better chance at a successful outcome.

The Pendulum Between the Two Rules

Since the early 1900s, during the first round of tort reforms throughout many states, a pattern seemingly emerged of growing and

waning popularity amongst the blindfold and sunshine rule. Every few decades it seemed whichever of the rules was commonplace began to lose favor until states began to switch to the opposing rule.

For example, the blindfold rule was popular and was adopted by many states when tort reform began in the early 1900s. But, around the 1960s and 1970s, the blindfold rule had lost its allure, and many states opted to adopt a sunshine rule instead. It was not until the 1990s that many states reverted to blindfold rules.

The Empirical Evidence

For the time this debate has raged and the relative stagnation in the arguments for and against either side over the last several decades, surprisingly little empirical evidence exists to test the veracity of these arguments. Seemingly, the study, “The Effect of Lifting the Blindfold from Civil Juries Charged with Apportioning Damages in Modified Comparative Fault Cases: An Empirical Study of Alternatives,” was completed in 1998 and is still cited more than any other.

In that study, published in the *American Business Law Journal*, the authors wanted to test the claims made for and against both the blindfold and sunshine rules. To do this, they conducted a study with a fake trial, based on a real case, and had juries deliberate after some received a blindfolded instruction and others received a sunshine instruction.

Ultimately, the study determined that plaintiffs were more likely to succeed in their claims under a sunshine rule as opposed to a blindfold rule. However, interestingly, the alleged economic impact of a sunshine rule over a blindfold rule was not so clear. The study revealed that, although the sunshine

rule seems to benefit plaintiffs, the difference in jury awards between sunshine and blindfolded juries was statistically insignificant.

Florida's Sunshine Rule

In Florida, earlier this year, the committee proposed jury instructions to inform the jury of this 50% negligence bar to recovery. After receiving many comments and suggestions from interested parties on all sides of the debate, the committee ultimately ignored the comments and suggestions and adopted the instruction as proposed.

The new civil jury instruction 409.135, applicable to cases where HB 837 applies, reads: If you find for (defendant), [or if you have assigned greater than 50% of any negligence fault to (claimant), you will not consider the matter of damages. But, if you find for (claimant), [and if you have assigned 50% or less of any negligence fault to (claimant), you should award (claimant) an amount of money that the greater weight of the evidence shows will fairly and adequately compensate (claimant) for (describe appropriate elements of those damages incurred by claimant).

This instruction will take the damages question out of a jury's consideration if the jury finds in favor of the defendant or finds the plaintiff was more than 50% at fault. This

type of instruction aligns with the sunshine rule.

The committee adopted modifications for several other jury instructions to reflect the adoption of the sunshine rule. Practitioners should carefully review the new and modified instructions when crafting jury instructions for use at trial where modified comparative negligence is raised as a defense.

Conclusion

It remains to be seen whether Florida is leading the way in states returning to the sunshine rule, once again, or if Florida will stand alone as the only light in a sea of blindfolds. Although Florida's adoption of a sunshine rule in the new jury instructions may lead to more successful outcomes for plaintiffs, the hope for defendants is that the plaintiff will likely end up collecting no larger a judgment than had the jury deliberated with a blindfold on.



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