

## ***Florida Legislature Potentially changing Tort Landscape... Here's What You Need to Know***

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The Florida Legislature is considering two bills that, if passed and signed into law, will have a significant impact on defending personal injury lawsuits within the State. One bill, House Bill 9, is tort reform that would limit medical bills admitted into evidence to "usual and customary" rates. HB9 is designed to curtail plaintiffs receiving medical treatment under "letters of protection" (LOP), which involves doctors agreeing to receive payment for their care from the proceeds of the litigation and then charging a higher amount for their care. The differences between what is charged between "usual and customary" rates and LOP rates is significant. This is very important as medical bills are often a driving force in evaluating the damages in a personal injury case. Defendants frequently retain doctors as experts to opine on the reasonableness of the cost of services rendered. If HB9 becomes law, it would be a very important step in lowering verdicts and settlements within the State of Florida while still ensuring that injured plaintiffs can obtain the treatment they need. A potential side effect, however, of which insurers and self-insured clients should be aware is that the reasonableness of fees will become a more hotly contested, typical, and costly aspect of the cost of defense. Notwithstanding the aforesaid, on the whole, HB9 is a bill that defendants and their insurers should support. The second bill, Senate Bill 1302, waives the sovereign immunity for the State of Florida, its agencies, and subdivisions for tort claims for damages arising from the actions of government employees acting in the course and scope of employment if the actions are in bad faith, with malicious purpose, or in a manner exhibiting a disregard for human rights, safety, or property. In addition, the bill eliminates a \$200,000 per claimant limit and raises the per occurrence cap from \$300,000 to \$1,000,000 for all claims arising from common law negligence. Moreover, the bill's proposed effective date is the date of the judgment rather than the date the bill becomes law. If the bill becomes law, it will significantly raise the tortious exposure of Florida's municipalities and its agencies and subdivisions. This is important not only for public entities but also for co-defendants seeking to point the finger at a public entity. In addition, if the bill becomes law as is, the new law would be subject to a significant constitutional challenge as it would make a substantive change in the rights of the municipalities and subdivisions of the State in a way that could violate its due process.