



marlowadler.com

4000 Ponce de Leon Boulevard, Suite 570, Coral Gables, Florida 33146
Telephone: (305) 446-0500 Facsimile: (305) 446-3667

Florida – 2015 Update

Robert Scott Newman,
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Florida has managed to creep up a notch or two in the rankings among those states recognized as “Judicial Hellholes.” Unofficially, the liberal, Florida Supreme Court has led the charge by declaring damage caps in medical malpractice cases unconstitutional. This ruling has fostered a significant degree of uncertainty in an area which enjoyed some degree of certainty for over a decade.

Speaking of uncertainty, the Florida Supreme Court will soon be considering a recommendation from the State Bar Association’s Rules Committee on the subject of admissibility standards for expert testimony. Until a few years ago, Florida State Courts had been governed by the “anything goes” *Frye* standard. The business community, with the assistance of the Florida Legislature, was able to force the courts to adopt the more stringent *Daubert* standard utilized in Federal courts. However, the Plaintiffs Bar has been fighting ever since to bring the issue back before the friendly audience of the Florida Supreme Court. Stay tuned as the Court reviews the recommendations for the Rules of Evidence later this year.

And lastly, in a decision involving the concurrent cause theory versus the efficient proximate cause theory, the Court is being provided with the opportunity to advance the growth of the Plaintiffs Bar through increased litigation while, at the same time, decreasing the certainty previously enjoyed in first party property claims. As opposed to extending coverage under the concurrent cause doctrine in a predictable fashion where a claim involves multiple causes, the Court is expected to adopt the more subjective approach required by the efficient proximate cause doctrine which, by its nature, will require expert testimony to establish the “most substantial cause” of the many causes which allegedly led to the loss. An issue of this sort is exactly what the liberal Florida Supreme Court Justices look forward to embracing in order to further this State’s position in the ranks of “Judicial Hellholes.”