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Breaking Down Florida's Shift to the Federal Summary Judgment Standard

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On December 31, 2020, the Florida Supreme Court, on its motion, amended Florida Rule of Civil Procedure 1.510 to adopt the federal summary judgment standard. The amendment will become effective May 1, 2021. The Court noted that Florida's prior summary judgment rule, while "materially indistinguishable" from the federal rule in a textual sense, did not align with the actual federal standard. In creating that alignment, the Court highlighted three chief points of emphasis that it intended to shift toward the federal standard.

1. Similarities between Motions for Summary Judgment and Directed Verdict

The revised standard will recognize the inherent similarities between a motion for directed verdict (made during trial) and a motion for summary judgment (made before trial). Despite those procedural differences, the Supreme Court has concluded that "the inquiry under each is the same; 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."

2. Revising Moving Party's Burden

Additionally, in making this amendment, the Florida Supreme Court opted to do away with the requirement that the moving party conclusively "disprove the nonmovant's theory of the case in order to eliminate any issue of fact." Rather, the burden on the moving party will be determined by each parties' burden of persuasion at trial. Thus, if the moving party would not normally have the burden of disproving the nonmovant's theory of the case during trial, that burden will cease to exist as it pertains to the motion for summary judgment.

3. Adopting the Narrower Federal View of Genuine Issues of Material Fact

Lastly, the amendment seeks to rein in Florida courts' understanding of "genuine issues of material fact." A leading treatise cited by the Florida Supreme Court in its decision describes the current standard as "the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial,...so long as the 'slightest doubt' is raised." The federal standard that Florida courts will now adopt for genuine issues of material fact is not nearly as broad. Under the federal standard, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts."

The litigation reform achieved through adopting the federal standard may signal the Court's desire to use summary judgment as a primary tool for defeating meritless claims and using the jury for cases with true disputes, freeing up scarce judicial resources and potentially alleviating the backlog of trials that have been impacted by the pandemic. Furthermore, the Court's decision comes about a year and a half after its May 2019 decision that Florida would use *Daubert* as the standard for admission of expert testimony. Like the Court's recent decision, the choice to adopt *Daubert* moved Florida in line with a majority of states that use *Daubert* in at least some capacity. Of note, the Florida Supreme Court has had three appointees since 2019 and now consists solely of seven Republican appointees, potentially offering some explanation for the Court's *sua sponte* ruling.

If you have any questions about this topic, contact [David B. Levin](#) or [Josh Kravec](#).

