

SB688: Personal Injury/Wrongful Death Statute of Limitations Extended

By: Kenneth "KC" Ward



On Tuesday, September 10, Governor Davis signed SB688 into law. It was a bill that was proposed and pushed by the consumer attorneys, but more important than the political

resolved and it will be business as usual. Even with the current one-year statute, many plaintiffs file claims long before the statute is drawing near. For some claims, it may even be beneficial in that there will no longer be a need for a claimant to run out and get a lawyer if the claim has not been resolved when the first anniversary rolls around, providing an additional year for carriers to resolve claims short of litigation.

aspects are the effects of the bill.

The bill affects the statute of limitations on personal injury as well as the notice requirements for motions for summary judgment.

With respect to statute of limitations, each matter should be looked at on a case-by-case basis, but in general the bill will not revive any cause of action which

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was time barred prior to January 1, 2003, at the time the legislation will go in to effect. The law applies to personal injury actions and wrongful death actions and specifically refers to victims of the 9/11 attack. According to the legislation, personal injury actions and wrongful death actions that arise after January 1, 2003 are subject to a two-year statute of limitations. Similar types of claims that arose before that time are limited to a one-year statute of limitations, except those matters related to the September 11 attacks.

The potential effect of a two-year statute of limitations is to drastically change the way claims and lawsuits can be presented. It is reasonable to expect that a great many claimants and lawyers will want their matters

The downside maybe a resurrection of a problem that preceded the fast track litigation rules. In the old days, some lawyers would file a claim just before the statute ran, but then sit on it for up to another three years before serving the complaint. This allowed them to develop the case in the way they wanted without putting the defendant on notice. Sometimes they would even file cases in the wrong county to foil anyone who might be

checking court filings. Adjusters may find it is now necessary to be more aggressive about locating and interviewing witness after events rather than waiting until the lawsuit is filed.

Most cases in California courts are currently governed by the fast track rules. While the plaintiff may file on the last possible day, upon filing, the case comes under the supervision of the court. Most judges then push to make sure that all parties are served within a few months.

It is worth noting that not all matters that are subject to the current one-year statute of limitations are being extended. For example, actions for libel, slander, false imprisonment and a few other things are still subject to the one-year statute.

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The second significant change made by this bill is to extend the notice provisions for motions for summary judgment and summary adjudication from 28 days to 75 days. As a practical matter, merely adding time before the motion is heard is not that significant. The vast majority of motions for summary judgment are denied and one almost sure way for a party to lose a motion for summary judgment is to set it with minimum notice and to refuse reasonable requests by the opposing party to complete necessary discovery before the motion is heard. What becomes more problematic is that with the fast track rules, these matters all become more truncated.

The first rule is that the motion cannot be made until at least 60 days after the party against whom the motion is being made has appeared. Second, we add a minimum 75 days for notice plus an additional 2 to 20 days for service depending upon the circumstances of the party and the type of service. Next is the consideration that some courts do not allow you to just pick a date for a hearing but require that you contact the court to get a date before filing your motion. That can only serve to add time to this process. Lastly, the motion shall be heard not later than 30 days before the date of trial. The net result of all of this is that in most counties, if you have not filed your motion for summary judgment before you receive your trial date, you will likely be too late. If you personally serve your motion and can pick the date of the hearing, your motion must be on file not less than 105 days before trial. The typical court sets trials in a 60 to 90 day window.

There are some procedural changes in 437c, but they deal with a Court of Appeal allowing for supplemental briefing in the event it upholds a motion for summary judgment on a ground not relied on by the trial court.



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