

**Title:** Two-Year Statute of Limitations

**Issue:** April

**Year:** 2004

## **Two-Year Statute of Limitations**

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In January of 2003, the Legislature approved California Code of Civil Procedure § 335.1,<sup>1</sup> which amended the one-year statute of limitations found in C.C.P. § 340 to include a two-year statute of limitations for personal injury and wrongful death actions. These changes were enacted as a part of Stats. 2002, ch. 448 (SB 688), which deleted the reference to assault, battery, personal injury and wrongful death from the one-year limitations statute (C.C.P. § 340) and created a new two-year limitations period for those causes of action in § 335.1. Libel, slander, false imprisonment, and seduction of a minor remain under the one-year statute. SB 688 did not amend other existing statutory limitation periods for specific personal injuries (i.e., medical malpractice [C.C.P. § 340.5], asbestos [C.C.P. § 340.2], childhood sexual abuse [C.C.P. § 340.1], and the government tort claims statute [C.C.P. § 342; Govt. Code § 945.6.]). No change was made initially to the uninsured/underinsured motorist coverage statutes, but this was remedied with legislation that took effect at the beginning of this year.<sup>2</sup>

Since the Legislature approved § 335.1, the Court of Appeal has issued no definitive statement as to whether § 335.1 extends the period of limitations for actions that accrued in 2002, but had not lapsed as of January 2003. This article addresses the current state of the law concerning application of § 335.1 to cases that accrued before the operative date.

To date, the only Court of Appeal decision specifically dealing with § 335.1 is *Krupnick v. Duke Energy Morro Bay*, (2nd Dist., Feb. 18, 2004) 115 Cal.App.4th 1026, 9 Cal.Rptr.3d 767, which only presented the issue of whether the amended statute would act to *revive* a claim that had already lapsed as of January 2003. In *Krupnick*, the plaintiff was injured in a pool of water on a premises owned by defendant on January 26, 2001. Counsel for plaintiff filed the complaint on January 8, 2003, eight days after C.C.P. § 335.1 took effect. Under these facts, former § 340 imposed a one-year statute of limitation that lapsed on January 26, 2002, almost a year before the case was filed. Plaintiff argued that § 335.1 *revived* the claim when it took effect on January 1, 2003. The Court of Appeal disagreed. The court stated that the only claims that were revived were those relating to September 11, 2001 terrorist attacks. The court refused to allow claims that had lapsed prior to January 1, 2003 to be revived, other than those specified claims under C.C.P. § 340.10.<sup>3</sup>

To date, no Court of Appeal decision has addressed the issue of whether § 335.1

extends the limitations period for cases that accrued *before* January 2003 but for which the prior statute of limitations (under former § 340) had *not* lapsed at the time the § 335.1 was introduced. Take the example of an injury-causing incident that occurred on September 10, 2002: Would the statute of limitations be September 10, 2003 or 2004?

While no Court of Appeal decision has addressed this issue specifically for § 335.1, the reason may be that the California Supreme Court has provided extremely strong language in past cases which applies here, making the issue settled law. In the case of *Mudd v. McColgan* (1947) 30 Cal.2d 463, the Court stated in no uncertain terms that a statute of limitations that is extended by statute during the accrual period of a claim extends that claim's limitation period. The Court stated as follows:

It is settled law of this state that an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted. Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect. Because the operation is prospective rather than retrospective, there is no impairment of vested rights. Moreover, a party has no vested right in the running of a statute of limitation prior to its expiration. He is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay. (*Mudd*, 30 Cal.2d at 468.)

Additionally, all other courts have followed the rule stated in *Mudd* in similar statute of limitation extensions. (See *Angeli v. Lischetti* (1962) 58 Cal.2d 474; *Singer Co. v. Kings County* (1975) 46 Cal.App.3d 852, 866; *Gallo v. Superior Court* (1988) 200 Cal.App.3d 1375; *O'Loughlin v. Workers' Comp.* (1990) 222 Cal.App.3d 1518; *In Re Marriage of Sweeney* (1999) 76 Cal.App.4th 343, 348.)

Therefore, there is no legal basis for a defendant to conclude that the old one-year statute applies to a claim that had not lapsed as of January 1, 2003. However, if the claim had lapsed before January 1, 2003 (unless it falls under § 340.10), the claim would be barred.

While this new statute certainly gives more time to plaintiffs and attorneys to prosecute a case, attorneys still need to be extremely careful as to which claims are affected by the new statute and which claims are not.

1 Code of Civil Procedure § 335.1, under Chapter 3 regarding the Time of Commencing Actions Other Than for the Recovery of Real Property, states: "Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another."

2 As of January 2004, Insurance Code § 11580.2(i)(1) was amended to read as follows: "No cause of action shall accrue to the insured under any policy or

endorsement provision issued pursuant to this section unless one of the following actions have been taken within two-years from the date of the accident ¶ (A) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction. ¶ (B) Agreement as to the amount due under the policy has been concluded. ¶ (C) The insured has formally instituted arbitration proceedings by notifying the insurer in writing sent by certified mail, return receipt requested. Notice shall be sent to the insurer or to the agent for process designated by the insurer filed with the department."

3 C.C.P. § 340.10 provides as follows: "The statute of limitations for injury or death set forth in Section 335.1 Civ. Proc. shall apply to any action brought for injury to, or for the death of, any terrorist victim described in subdivision (a) and caused by the wrongful act or neglect of another, regardless of whether that action lapsed or was otherwise barred by time under California law predating the passage of this section and Section 335.1 Civ. Proc.."

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