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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



Legal Malpractice Statute of Limitations Begins to Run When Right to Add Defendants to Personal Injury Action is Lost, Not When Underlying Case is Settled

February 10th, 2011 by [Steve Wasserman](#)

The legal malpractice statute of limitations begins to run when the right to bring suit against persons not named in a personal injury action is lost, not when the underlying action is settled with the parties who were named. *Elgharbawi v. Hall*, California Court of Appeal, Second Appellate District, B216087 ([unpublished](#)). Elgharbawi retained Hall to prosecute a personal injury action against the driver of an automobile. The driver pulled out from a blind corner of a driveway and injured Elgharbawi, who was walking his bicycle. Hall moved to withdraw one week before trial. The court continued the trial date; Elgharbawi retained new counsel, who eventually settled the case.

Elgharbawi, with his counsel from the personal injury matter acting as his lawyer in the legal malpractice action, claimed that Hall erred by not naming the City and landowner as defendants. The statute ran on claims against the City and landowner while Hall represented Elgharbawi. The trial court sustained Hall's demurrer to the complaint based on the one year legal malpractice statute of limitation set forth in California Code of Civil Procedure Section 340.6.

The Court of Appeal affirmed. The Court noted that although the legal malpractice statute of limitation was tolled while Hall continued to represent Elgharbawi, it began to run once the representation ended. Further, actual injury occurred when the right to name the potential defendants expired, not when the personal injury case was later settled. "Actual injury occurs when the client suffers any loss or injury legally cognizable as damages in a legal malpractice action based on the asserted errors or omissions." (Quoting from *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739,743.) Accordingly, the client suffered actual injury when his right to pursue certain parties was lost, not when the underlying case was later settled.