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[Claim Against Insurance Broker Time-Barred](#)

March 28th, 2011 by [Steve Wasserman](#)

A California Court of Appeal has affirmed summary judgment for an insurance broker based on the statute of limitations set forth in California Code of Civil Procedure section 339(1) which provides a two year limitation period for general negligence claims. *Pacific Environmental Resources Corporation v. INSPRO Corporation et al.*, California Court of Appeal No. B222303, Los Angeles Superior Court No. BC402419. The unpublished Second Appellate District decision can be found [here](#). The Court held that the plaintiff knew or should have known of its broker's alleged negligence and had sustained damage more than two years prior to filing suit.

The plaintiff claimed that the broker was to procure a policy on which the plaintiff would be named as an additional insured in connection with a wastewater treatment plant construction project. The policy did not name the plaintiff as an additional insured, but rather provided less extensive coverage under a vicarious liability endorsement. The policy was issued and sent to the plaintiff to review, accompanied by a cover letter asking the plaintiff to review the policy to ensure that it provided the desired coverage. The plaintiff did not request any changes and the construction project went forward.

A lawsuit was filed against the plaintiff; the case was ordered to arbitration and the plaintiff incurred defense costs. The plaintiff also incurred attorney's fees in having its counsel review the policy to evaluate whether it provided coverage. The plaintiff was eventually notified that the policy did not provide coverage.

The Court noted that the plaintiff should have known of the error as soon as it received the policy. Further, it sustained damage as soon as it incurred defense costs in the underlying action, all of which occurred more than two years before it filed suit.

The plaintiff argued that it did not know it had sustained damage until the insurer formally refused to provide a defense. It argued that the delay in denying coverage meant the running of the statute was subject to equitable tolling. The Court stated that while suit may not be brought against an insurer until it formally declines to defend, no such rule applies to claims against insurance brokers. Thus, the plaintiff could not rely on equitable tolling to extend the limitations period. Having had both knowledge and injury more than two years prior to filing suit, the claim was barred.