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[California Court Of Appeal Applies Three-Year Limitation Under Delaware Law To Claim Against Dissolved Delaware Corporation](#)

In [Greb v. Diamond Int'l Corp.](#), 2010 Cal. App. LEXIS 566 (Cal. App. 1st Dist. Apr. 26, 2010), the [California Court of Appeal for the First District](#) affirmed the trial court's dismissal of a personal injury claim against a dissolved Delaware corporation, holding that the claim was filed more than three years after dissolution of the corporation in violation of [Delaware General Corporation Law Section 278](#). In doing so, the Court made it clear that, for purposes of lawsuits filed in California against dissolved non-California corporations, the law of the state of incorporation controls whether claims are timely filed.

Plaintiffs alleged that Mr. Greb had suffered injury from exposure to asbestos and asbestos-containing products. They filed a complaint in California state court against Diamond International Corporation on December 22, 2008. Diamond International, however, was dissolved on July 1, 2005. Section 278 of the Delaware General Corporation Law bars suits against dissolved Delaware corporations filed more than three years after the dissolution. To avoid this bar, plaintiffs argued that they were entitled to file a lawsuit in California under [Section 2010 of the California Corporations Code section 2010](#), which permits lawsuits to be filed against a dissolved corporation irrespective of the date of dissolution.

The Court of Appeal ultimately concluded that Delaware law is applicable and controlling. The Court noted that Section 299(1) of the Restatement (Second) of Conflict Laws states that whether a corporation continues its existence after it has been dissolved or suspended is decided by the state of incorporation. The [Supreme Court of the United States](#), in [Oklahoma Gas Co. v. Oklahoma](#), 273 U.S. 257, 259-60 (1927), recognized this principle, stating that the existence of a corporation after dissolution "concerns the fundamental law of the corporation enacted by the State which brought the corporation into being." Courts in other jurisdictions, including the federal courts in New York, have followed this by enforcing Delaware's three-year bar on lawsuits filed against dissolved Delaware corporations.

The Court of Appeal also considered California authority. Although California courts have held generally that the law of the state of incorporation determines the consequence of corporate dissolution, the court in [North American Asbestos Corp. v. Superior Court](#), 180 Cal. App. 3d 902 (1986), held that Section 2010 of the California Corporations Code prevails over foreign corporation laws that limit survival periods of dissolved corporations. The Court in *Greb*, however, held that the ruling in *North American Asbestos* erroneously attempted to apply legislative intent where statutory authority clearly establishes that Section 2010 should

not apply to foreign corporations. The Court also noted that the holding in *North American* failed to address [Riley v. Fitzgerald](#), 178 Cal. App. 3d 871 (1986), which held to the contrary and was issued only two months earlier. Ultimately, the Court found *North American* to be unpersuasive.

The ruling in *Greb* reinforces the trend in California courts to apply the law of the state of incorporation to claims involving foreign corporations, a trend that adds to certainty for all parties embroiled in corporate litigation in California.

For further information, please contact [John Stigi](#) at (310) 228-3717 or [Amir Torkamani](#) at (213) 617-4180.