

A. Good Student  
1/29/10  
Chapter 2, Wr. Assignment #3  
Virginia

**INTEROFFICE MEMORANDUM**

**TO: Benjamin Befayre, Esq.**  
**FROM: A. Good Student<sup>1</sup>**  
**DATE: January 29, 2010**  
**RE: Statutes of Limitations Regarding Sally's Claims**

Against the City of Arcadia

When completing a Statute of Limitations Analysis, one must initially determine every claim on which the client can sue. In this case, Sally totaled her car and sustained serious injuries when her car struck a large pothole located on the line between Arcadia (the City) and Illyria (the State). Under these facts, she has two claims against the City of Arcadia: a property damage claim for her 2008 Stallion convertible, and a personal injury claim for her injuries sustained in the crash.

The second step is to determine the limitations period for each claim. The limitations period for property damage, not involving a contract, is five years under VA Code Ann. § 8.01-243(B). The limitations period for personal injuries is two years under VA Code Ann. § 8.01-243(A).

Determining the accrual date for each claim is the third step in the analysis. This is the date on which each claim started running. The accrual dates for injury to property and person are found in VA Code Ann. § 8.01-230, which states that the right of action accrues on the date the

---

<sup>1</sup> Student's permission was given for this writing sample to be used.



injury is sustained. In this case, Sally's injury to her car and to her person both occurred on the date of the accident, February 2, 2009. Because this is a suit against the City, Sally must also give written notice to the City within six months of the accrual date under VA Code Ann. 15.2-209, or her claim will be barred. According to this section, the notice must include the time and place at which the alleged injury occurred and must be filed with the proper official in the City. For purposes of this assignment, it is assumed that Sally gave the City proper notice within the six-month period.

Although the limitations period is to begin running on the accrual date, one must determine if there is any reason for the limitations period to be tolled under VA Code Ann. § 8.01-229. Under this section, if a person who is entitled to bring suit becomes incapacitated, then the statute of limitation is tolled during the period of incapacitation. A court or jury must decide whether the person was incapacitated in regards to tolling of a statute of limitations. Sally was in the hospital for over six months due to her injuries. One of those injuries included a concussion, which could cause incapacitation.

The final step is to determine the limitation deadline in light of the above rules and facts for each claim. The limitations periods are counted in calendar years. To count a calendar year, one must look at the date on which the event occurred and then look at the calendar to find the same date however many years later the statute sets forth. Medina v. Lopez, 49 S.W.3d 393 (Tex. App. 2000). For the property damage claim, without considering whether or not there is tolling for the six-month hospital stay, the five-year limitation would end on February 2, 2014. However, February 2, 2014 will be a Sunday; therefore, Sally would have until the following



business day, February 3, 2014, to file her claim. For the personal injury claim, and without considering tolling, Sally would have until February 2, 2011 to bring her claim.

Against the State of Illyria

Sally also has two claims against the state of Illyria: property damage to her convertible and personal injury. Under VA Code Ann. § 8.01-243, the limitation period for property damage is five years and two years for personal injury.

When a claimant is suing the Commonwealth of VA under a tort action, the claim is subject to the Virginia Tort Claims Act, VA Code Ann. § 8.01 – 195.1 et seq. Under this Act, the claimant must give written notice of the claim to the Commonwealth within one year after such cause of action accrues. The notice must include the time and place at which the injury allegedly occurred and the agency alleged to be liable. It must be filed with the Director of the Division of Risk management or the Attorney General. The notice will be deemed as filed when it is received in the office of the official to whom it was directed. VA Code Ann. § 8.01-195.6. At that point, the date of notice essentially becomes the new accrual date and the claimant has 18 months from the date of notice to bring suit. However, the claimant must wait at least six months from the date of notice before bringing the suit. VA Code Ann. § 8.01-195.7. The facts do not state whether Sally has given notice to the Commonwealth. Nevertheless, she is still within the one-year period to give notice, and, therefore, for purposes of this assignment it will be assumed that Sally will give proper notice on February 2, 2010.

Furthermore, it must be determined whether tolling will apply. Under the Tort Claims Act, the limitations period for both filing notice and bringing suit may be tolled if the claimant is



under disability at any time during the period. In this case, it is unknown whether Sally would be adjudged to be incapacitated while in the hospital or while suffering from her concussion.

Lastly, one must determine the limitations deadlines. If Sally gives proper notice on February 2, 2010, she must then bring her suit within 18 months, but cannot bring suit until six months after giving such notice. Therefore, if Sally gives notice on February 2, 2010, her deadline to file suit will be August 2, 2011.

Against HorsePower Inc.

Sally has three claims against the manufacturer of the Stallion convertible, HorsePower, Inc. She has claims for property damage, personal injury, and breach of the implied warranty of merchantability under the UCC. She has a property damage claim because her convertible was totaled in the accident due to the negligent design of the roll bar. She also received serious personal injuries due to the same defect. Additionally, HorsePower, Inc. held this particular model out as the safest convertible on the road due to its design of the roll bar. This roll bar did not perform properly and, therefore, was not fit for the ordinary purpose for which it was sold. This is a breach of the implied warranty of merchantability.

When a property damage claim arises from the breach of a warranty under the UCC two different time limitations may apply. First, under VA Code Ann. § 8.2-725, there would be a four year limitation for property damages. However, one could choose to use the regular five year limitation period under VA Code Ann. § 8.01-243. For personal injuries, under VA Code Ann. § 8.01-243, the limitations period will always be two years, regardless of the theory of recovery. Normally, there is a five-year limitation period for contract breach; however, when the

action is for breach of contract for the sale of goods, then the UCC applies and sets a four-year limitation period. VA Code Ann. §§ 8.01-246, 8.2-725.

The accrual date for the property damage and personal injury claims is the date the injury occurred, February 2, 2009. For the UCC breach of warranty claim, the cause of action accrues when the breach occurs. The breach of warranty occurs when tender of delivery is made, unless there is an express warranty that extends to future performance. VA Code Ann. § 8.2-725. Sally is suing HorsePower, Inc.; therefore, the date of tender will be when HorsePower sold the car to the dealer, which was July 2, 2007.

All three of the above-mentioned limitation periods are subject to tolling if the claimant is incapacitated at the time the action accrues or at any time during the limitations period. There is a possibility that Sally could be adjudged incapacitated for part of the time because of the brain injuries she suffered in the accident.

Lastly, the deadline for the claims must be determined in light of the above rules and factors. For calculation of the deadlines on these three claims, it is assumed that there has been no tolling. The deadline for the property damage claim would be February 2, 2014. Because that is a Sunday, Sally will have until the following Monday, February 3, 2014 to file her suit. The deadline for the personal injury claim would be February 2, 2011. The deadline for the UCC breach of warranty claim would be July 2, 2011. However, that date will fall on a Saturday. Additionally, the following Monday would be Independence Day, a legal holiday for which the clerk's office would be closed. Therefore, Sally would have until July 5, 2011 to file

her suit on this claim. Since she is within the limitations period for all three claims, tolling would not be needed.

### Conclusion

Currently, Sally is within the limitation deadlines for all of her claims against each defendant. The earliest deadline of all the claims is February 2, 2011. This is the deadline for her personal injury claims against the City and against HorsePower, Inc. I would advise that she file suit on all claims against all three defendants by that date. If she does not file all the claims by that date, she risks having the remaining claims barred due to issue preclusion. This would be a real risk because her claims arise from the same occurrence: the accident on February 2, 2009.

