

# California Insurance Law Coverage Newsletter for Attorneys

Bruce Cornblum - Insurance Coverage Scholar-Attorney-Litigator  
11665 Avena Place, Suite 203A, San Diego CA 92128  
858-485-8770 email [cornblum@pacbell.net](mailto:cornblum@pacbell.net)

July 26, 2011

website: [brucecornblum.com](http://brucecornblum.com)

## ATTORNEY MALPRACTICE – STATUTE OF LIMITATIONS

*One year period tolled where client has not sustained 'actual injury'*

Code of Civil Procedure § 340.6 states: “(a) an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services must be commenced *within one year after* plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, OR four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be TOLLED during the time that any of the following exists: (1) *the plaintiff has not sustained actual injury*, (2) the attorney continues to represent the plaintiff the specific subject matter in which the alleged wrongful act or omission occurred.” [CCP § 340.6(a)(1)(2)]

Where the alleged attorney malpractice results in the client suing a third party, actual injury occurs when the client learned of the attorney’s negligence and not at some future time when the third party trial is lost. [Truong v. Glasser (2009) 181 Cal.App.4th 102, 112, 103 Cal.Rptr.3d 811] Actual injury refers only to the legally cognizable damage necessary to assert the cause of action. There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney’s error and the asserted injury. The determination of actual injury requires only a factual analysis of the claimed error and its consequences. An attorney’s negligence that allows a third party to interpose an objectively viable defense causes immediate injury to the clients in the form of additional litigation costs in the third party litigation as well as reducing the value of the claim. [Jordache Enterprises v. Brobeck (1998) 18 Cal.4th 739, 752, 76 Cal.Rptr.2d 749, cited in Truong v. Glasser (2009) 181 Cal.App.4th 102, 113,

103 Cal.Rptr.3d 811] In *Jordache*, the attorney failed to advise plaintiffs to file a claim with his liability insurers covering the underlying action. Over 2 years after the attorney’s negligence, plaintiff retained another law firm that recognized the original attorney should have told the plaintiff to tender claims to the liability insurers. The *Jordache* court concluded that the attorney’s negligence allowing the insurers to interpose a viable defense of delay in making a claim, caused injury to the clients well before the litigation with the insurer was concluded. [Truong v. Glasser (2009) 181 Cal.App.4th 102, 113, 103 Cal.Rptr.3d 811]

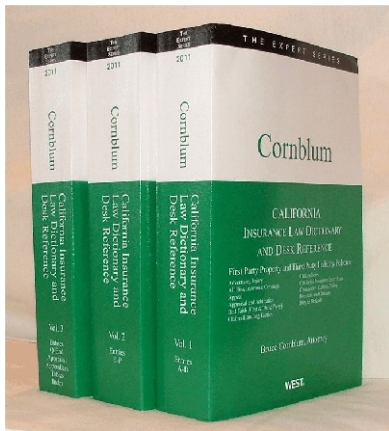
### *Continuous representation*

The application of the continuing-representation tolling provision is rooted in two considerations: (1) it prevents the attorney from defeating a malpractice action by continuing to represent the client until the statute of limitations has run; and (2) it avoids forcing the client to file a lawsuit that would disrupt the ongoing attorney-client relationship, which would prevent the negligent attorney from attempting to correct or minimize the error. [Truong v. Glasser (2009) 181 Cal.App.4th 102, 116, 103 Cal.Rptr.3d 811]

The attorney’s representation is completed when the agreed tasks or events have occurred, the client consents to termination or (in the context of litigation) when a court grants an application by counsel for withdrawal. [Truong v. Glasser, supra.] For purposes of the statute of limitations the attorney’s representation is concluded as to the specific matter when the parties agree, and does not depend on a formal termination like withdrawing as counsel of record. The failure to formally withdraw as attorney of record, standing alone, will not toll the statute of

limitations under the rubric of continued representation. The continuous representation tolling provisions depend, not on the client's subjective beliefs, but rather on evidence of an ongoing *mutual* relationship and of activities in furtherance of the relationship. [*Troung v. Glasser* (2009) 181 Cal.App.4th 102, 116,

103 Cal.Rptr.3d 811] Where there is no dispute that the client hires a different attorney to sue a third party, and the attorney was only retained as a transactional attorney, the relationship was terminated upon change of counsel. [*Troung v. Glasser* (2009) 181 Cal.App.4th 102, 116-117, 103 Cal.Rptr.3d 811]



The 2011 Three-Volume Edition of *CALIFORNIA INSURANCE LAW DICTIONARY AND DESK REFERENCE* (17<sup>th</sup> Edition, 4700 pages) – authored by Attorney Cornblum is now available through Thomson West.

To order this 3-Volume text call West (a Thomson Reuters business) at:

**1-800-344-5008**

#### **Author BRUCE CORNBUM, Attorney at Law**

Bruce Cornblum is an acknowledged insurance coverage trial and appellate attorney who specializes in California insurance law. For 46 years Mr. Cornblum has specialized in proving to California courts that insurance companies do not understand the meaning of their own policies.

He provides scholarly legal services to insureds (and/or their attorneys) with issues relating to duty to defend, denial of coverage, contractors insurance, subcontractors insurance, appraisal proceedings under first party policies, insurance coverage, personal injury, homeowners insurance, business litigation, insurance bad faith. To obtain coverage opinions, preparation of pleadings, supervision of discovery, pre-trial conference, preparation of motions in liminae, preparation of appellate briefs contact Bruce Cornblum at **858-485-8770** or E-mail: [cornblum@pacbell.net](mailto:cornblum@pacbell.net)

**WESTLAW RESEARCH** – Subscribers to WestLaw can research all volumes of *California Insurance Law Dictionary and Desk Reference* on WestLaw by referencing **CAINLAWDDR**.

Mr. Cornblum has been appellate counsel in the Courts of Appeal and Supreme Court in over 100 litigated matters. Our website contains additional information regarding Mr. Cornblum and his law practice.

**BRUCE CORNBUM**  
**11665 Avena Place, Suite 202A**  
**San Diego (Rancho Bernardo), California 92128**  
**858-485-8770**  
Website: [www.brucecornblum.com](http://www.brucecornblum.com)  
Blog: [www.californiainsurancelawblog.wordpress.com](http://www.californiainsurancelawblog.wordpress.com)  
Email: [cornblum@pacbell.net](mailto:cornblum@pacbell.net)