



Cayman Insurance Litigation Q2 2017 Review

Welcome to the Q2 2017 Stuarts Insurance Litigation Review. In this edition, we address limitation periods in claims arising from the negligence of one person which results in the death of another. Stuarts acts for a number of leading Cayman Islands Insurance Companies and specifically advises and acts for Insurers on a range of matters including defending large loss personal injury claims. We hope you will find the review of interest.

Limitation Periods in respect of Civil Claims arising from Negligence causing Death

Stuarts' Cayman Insurance Litigation Q2 2016 Review discussed the Limitation Law (1996 Revision) (the "**Limitation Law**") generally in so far as it relates to civil claims but with a specific focus on claims arising from personal injury and the effect of the Court's discretion, under section 39 of the Limitation Law, to not apply statutory limitation periods when it appears to the Court that "*it would be equitable to allow an action to proceed*".

In this 2017 2nd Quarterly Review, we focus on limitation periods applicable to claims arising from the negligence of one person which results in the death of another, specifically:

1. claims pursued on behalf of the Estate, under the Estates Proceedings Law (1995 Revision); and
2. claims pursued by a Dependant in accordance with the Torts (Reform) Law (1996 Revision)

and the extent to which Limitation periods may, in the discretion of the Court, be not applied.

Primary Limitation Periods - a tension between the Legislative provisions

As set out below, the position in respect of limitation periods applying to claims where negligence has resulted in death is on its face confusing and contradictory. The fundamental difficulty being that the limitation periods specified in the Torts (Reform) Law (1996 Revision) ("**TRL**") and the Estates Proceedings Law (1995 Revision) ("**EPL**") do not match up with provisions dealing with the same types of claims found in the Limitation Law.

Torts (Reform) Law (1996 Revision)

Part II of the TRL concerns fatal accident claims. Section 4 thereof enables an action to be filed by a personal representative for the benefit of a Dependant (as defined in the TRL).

Section 4 of the TRL then provides that all actions under this Law "*shall be commenced **within one year of the death of such deceased person***".¹

However, Section 16 (2) of the Limitation Law prescribes that all claims pursued under Part II of the TRL must be brought **within 3 years from the date of death** or date of knowledge of the person for whose benefit the action is brought (whichever is later).

These provisions are plainly contradictory.



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¹ This reflected the Law in England up to 1954 when the 1 year period was changed to 3 years.

Estates Proceedings Law (1995 Revision)

Section 2 of the EPL provides that:

“ ... on the death of any person all causes of action subsisting against or vested in him immediately before his death shall survive against or, as the case may be, for the benefit of his estate”.

Section 5 of the EPL provides that:-

“No proceedings shall be maintainable in respect of a cause of action in tort under section 2 unless-

- 1. Proceedings were pending at the date of death; or*
- 2. The cause of action arose not earlier than one year before death and suit is filed in court in respect thereof not later than one year after the personal representative or representatives took out representation”.*

However, Section 13 (5) of the Limitation Law (which also concerns claims arising from personal injuries that vest in an Estate following the death of the injured person) provides:-

*“If the person injured dies before the expiration of the period mentioned in subsection (4), the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 2 of the Estates Proceedings Law (1995 Revision) **shall be three years** from-*

- 1. The date of death; or*
- 2. The date of the personal representative’s knowledge, whichever is the later”.*

Again, these provisions are also plainly contradictory. The contradictions are exacerbated by Section 44 of the Limitation Law which provides that the Limitation Law does not apply to any action which is otherwise subject to an express limitation period (i.e. on its face, both the TRL and the EPL).

[Clarification from the Cayman Islands’ Court of Appeal : the conjoined Appeals of Cruz-Martinez and Boxwell.](#)²

The tension between the above-mentioned relevant legislative provisions was addressed by the Cayman Island’s Court of Appeal in the cases of *Cupidon (As Executrix of the Estate of Knight, deceased) v Cruz-Martinez* [1998] CILR 216 and *Sturdivant and Mellon Bank v Boxwell and Parrots Landing Water Sports Park limited* (Unreported, Cause No 134 of 1998).

The Grand Court in both cases declined to strike out the Plaintiffs’ claims as the Defendants in both cases were inviting the Court to do.

At first instance, it was held by Graham J in *Cupidon* that:

*“the Limitation Law 1991 had replaced the one-year limitation periods in the Estates Proceedings Law of 1974 and the Torts (Reform) Law of 1977 by necessary implication, since later legislation must be taken to repeal earlier inconsistent legislation unless such a construction was impossible on the plain words of the statute”.*³

As a consequence, the Court found that the new Limitation Law imposes a three year limitation period on claims under both the TRL and the EPL.

The Defendants in both cases appealed the first instance decisions which resulted in the Court of Appeal deciding the point which it considered was *“entirely one of construction”*.⁴

Collett, J.A stated that:-

*“A careful reading of the 1991 Law, now reproduced as the Limitation Law (1996 Revision), leaves no doubt that it was intended as a comprehensive reforming statute closely modelled upon the English Limitation Act 1980, for the purpose of setting out new and consistent periods of limitation in respect of legal proceedings of every description coming before the courts of the Cayman Islands. So much is clear not only from the scope and range of its legislative provisions but also from the Memorandum of Objects and Reasons which accompanied the legislation at its introduction into the Legislative Assembly”.*⁵

² 1999 CILR 177

³ At page 217

⁴ Ibid FN1 page 179, 33-34

⁵ Ibid, page 180, 4-12



The Court of Appeal unanimously preferred the “route of purposive construction”⁶ testing it with reference to the “well-recognised mischief rule of construction”⁷ and it was held that the “mischief which prompted the enactment of the 1991 law”⁸ was the “illogicality of the one-year rule applying only to survival of personal actions and to fatal accident litigation”⁹.

The Court held that the legislative remedy was:-

“to substitute a uniform period of three years’ limitation for such actions consistent with other parts of the 1991 Law. The task of the Courts then is to construe the Law so as to advance the remedy and suppress the mischief”.¹⁰

Accordingly, the Court of Appeal endorsed the decision made by Graham J at first instance and the appeals were dismissed with costs.

Discretionary Exclusion under section 39 of the Law.

A separate issue is whether the afore-mentioned limitation periods relating to claims under the TRL and EPL are also subject to the provisions set out above enabling a Court to disregard the normal limitation periods.

In that respect, Section 39 of the Limitation Law provides that:-

“If it appears to the Court that it would be equitable to allow an action to proceed having regard to the degree to which –

- 1. Section 13 or 16 prejudices the plaintiff or any person whom he represents; and*
- 2. Any decision of the court under this subsection would prejudice the defendant or any person whom he represents,*

the Court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.”

However, for claims arising under Part II of the TRL, section 16(1) of the Limitation Law expressly excludes the operation of Section 39 of the Limitation Law.

The three year limitation period applicable to claims by Dependents under the TRL is therefore an absolute deadline unlike in respect of claims under the EPL.

Conclusion

The limitation periods specified in both Section 4 of the TRL and Section 5 of the TRL should therefore be disregarded, the three year Limitation period specified in the Limitation Law itself prevailing.

In respect of not applying those periods, a claim under Section 4 of the TRL does not have the benefit of Section 39 of the Limitation Law and as such the three year period is absolute. In respect of a claim under the EPL (and otherwise), as our 2nd Quarterly Review (2016) made clear, the determination by the Courts in an application under Section 39 will involve an exercise involving the balancing of prejudice likely to be suffered by both parties, in both circumstances, where the claim is permitted to proceed and if such permission is refused.

There is a plethora of case law on the question of prejudice, the most prevalent were cited in our 2016 Q2 review and such, have not been repeated here. In any event, each case turns on its own facts.

Whilst arguments as to prejudice are likely to become increasingly cogent the more time that passes by, from the Defendant’s perspective, it is not just a question of how “out of time” the proceedings are, but the extent to which the delay is causative of the prejudice that the Defendant alleges it will suffer in particular with reference to the effect that the delay has on the availability and/or quality of the evidence and therefore the extent to which a fair trial is no longer possible.

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information please contact Richard Annette at Stuarts Humphries.

⁶ Ibid, page 182, 25-26

⁷ Ibid, page 183, 7-8

⁸ Ibid at 9

⁹ Ibid at 10-12

¹⁰ Ibid at 11-16



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