



ROGER JUAN MALDONADO
PRESIDENT
rmaldonado@sgrlaw.com

April 16, 2020

Via E-Mail

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Request for Clarification - Executive Orders 200.8 and 200.14 (extending time limits for the commencement, filing and service of legal actions and proceedings in light of the COVID 19 PAUSE)

Dear Governor Cuomo,

Thank you for everything you are doing to keep New Yorkers safe and healthy during this challenging time. The task is extraordinary on so many levels, and we are grateful for and commend your leadership.

Based on feedback from many of our members, we write to seek clarification of the meaning of Executive Orders 200.8 (March 20, 2020) and 200.14 (April 7, 2020), which extend time limits for the commencement, filing and service of legal actions and proceedings in light of the COVID 19 PAUSE.

Executive Order 200.8 “tolled” time limits for the commencement, filing and service of legal actions from March 20 “until April 19, 2020”; Executive Order 200.14 further extended the tolling period to “until May 7, 2020.” The language of the orders gives rise to two questions that, if not answered now, later will have to be resolved by the courts.¹ Clarification now will both guide litigants and save judicial resources.

First: for those time limits previously due to expire between March 20 and May 7, does the statute of limitations now expire on (a) the date Executive Order 200.14 expires (May 7) or (b) the original limitations date plus the number of days that the limit was tolled by the executive orders, *i.e.* 47 days?

CPLR § 209, the tolling provision for times of war, suggests that a toll responding to emergencies shortens the limitation period by the length of the emergency:

¹ See *e.g.* *Scheja v Sosa*, 4 AD3d 410 (2d Dept 2004) (dispute over interpretation of post-September 11 orders’ impact on time limits for commencement); *Koebel v New York State Comptroller*, 66 AD3d 1307 (3d Dept 2009) (same); *Williams v MTA Bus Co.*, 44 Misc. 3d 673 (Sup Ct New York County 2014) (same).

the time which elapsed between the commencement of the war, or of such occupation, and the termination of hostilities with such country, or of such occupation, is not a part of the time within which the action must be commenced.²

Applying this principle to the COVID 19 toll, the new limitations date is the original limitations date plus 47 days. If the toll for COVID 19 does not operate in this manner, we respectfully submit that the orders should be clarified so the courts and bar are on notice that limits are extended only to May 7, 2020, the date Executive Order 200.14 expires.

Second: if the orders are intended to tack on a specific number of days to the original limitation period, what is the effect, if any, on claims that would otherwise expire after May 7, and were subject to a limitations period that would have encompassed the 47 days covered by the orders? For example, if a claim would ordinarily expire on January 10, 2024 (e.g., a six-year limitations period which started to run on January 10, 2018), would the limitations period be extended by 47 days so that it would not be time-barred until February 26, 2024?

We believe that clarification from your office on these two questions is necessary to carry out the intended purpose of the orders -- to provide clarity to the public and to protect rights and claims impacted by the PAUSE -- but not lay a trap for the unwary that will need to be litigated in the future. We thank you so much for your attention at this busy and stressful time.

Respectfully,



Roger Juan Maldonado
President

² The Second Department defined “toll” as the “interruption of the running of the period of limitation. . . . The statute then ceases to run for a specific period of time after the event or circumstance comes into being or for the period of time in which it remains extant.” *Vicki B. v. David H.*, 86 A.D.2d 659, 660 (2d Dep’t 1982), *rev’d on other grounds*, 57 N.Y.2d 427.