



**Andrew B. Downs**  
San Francisco,  
Shareholder

Direct Dial: 415.352.2716  
Fax: 415.352.2701  
Email Attorney

## **The Math Just Got More Complicated**

By Andrew B. Downs

### **California Insurance Commissioner Suspends All Statutory and Contractual Deadlines For 90 Days After the Termination of State of Emergency**

California Insurance Commissioner Ricardo Lara has suspended all statutory and contractual deadlines associated with insurance claims for 90 days past the termination of California's current COVID-19 State of Emergency. The Commissioner's Notice does not mention the claims handling deadlines set by the Department of Insurance's own regulations. Not only does this have immediate effects, but it will also have an impact for several years into the future.

California Governor Gavin Newsom declared a State of Emergency regarding COVID-19 on March 4, 2020. That State of Emergency is open-ended and will end only when the Governor says so. The Insurance Commissioner's action applies, at a minimum, to "deadlines for the submission of a sworn proof of loss, other claim forms, examinations under oath, medical examinations, physical inspections of insured property, separating damaged property from undamaged property, temporary repairs to prevent further damage, and any other policy, statutory, or insurer imposed deadlines placed on the policyholder where failure to comply could result in the forfeiture, limitation or waiver of any policyholder(s) rights to benefits under any policy of insurance."

The Notice is silent regarding the Commissioner's own Fair Claims Handling Regulations, so the time limits for insurer and adjuster conduct under those Regulations remain in full force and effect. Only policyholders get a pass.

The downstream impact of this Notice is still somewhat unknown. First, we don't know when it will end. Given that California's Stay at Home orders now extend through May 3, 2020, and may well be extended beyond that date, the earliest the suspension of deadlines will end is August 1, 2020. Second, what happens when a policyholder's now excused inaction (for example in having temporary repairs performed) aggravates the damage to the insured property?

Until at least the time the suspension is lifted, the Commissioner's action is also likely to toll the running of suit time. Suit time is already effectively tolled through May 3 in most California counties because the courts have declared judicial holidays through May 3. Code of Civil Procedure §§ 12 and 12a operate to extend any deadlines that fall on a judicial holiday to the next non-holiday. But, once the judicial holidays end and the courts return to semi-regular operation, the Commissioner's suspension is likely to be interpreted to prevent suit time from running. For claims still being adjusted and investigated, this will not have a bearing because since 1990 under *Prudential-LMI v. Superior Court*, the running of suit time is tolled while the claim is being adjusted and investigated. What will become complicated, and will have an impact stretching into at least 2022 is for losses happening during the State of Emergency, courts are also likely to interpret the Commissioner's action as meaning suit time will not begin to run, even if notice of the loss is not given, during the State of Emergency.

All of us are improvising during the current pandemic. Just as some of the improvisational choices each of us make now will have long term consequences, so too will the improvisational decisions made by courts and regulators. For the next several years, the math will not always be simple.