

52

1/3/69

Second Supplement to Memorandum 69-3

Subject: Study 52 - Sovereign Immunity (Statute of Limitations)

The attached letter presents a consideration not previously discussed for tolling the statute of limitations in a personal injury action by a minor against a public entity.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

JAMES F. BOCCARDO
JEAN M. BLUM
DAVID S. LULL
EDWARD J. NILAND
HERBEN N. TEERLINK
STANLEY J. BELL
JOHN W. McDONALD
NORMAN W. SAUCEDO
ALISTER McALISTER
HERBERT C. WOODRUFF
VINCENT R. RUOCCO
ROBERT H. BOHN
STANLEY A. ISLER, JR.
JAMES F. McMILLAN
JAMES F. MATTHEWS
DAVID J. BENNING
RICHARD D. CAPPARELLA
ROBERT R. CATALANO

BOCCARDO, BLUM, LULL, NILAND, TEERLINK & BELL

ATTORNEYS AT LAW
COMMUNITY BANK BUILDING
111 WEST ST. JOHN STREET
SAN JOSE, CALIFORNIA 95113

TELEPHONE
298-5678
AREA CODE 408
CABLE ADDRESS
"LOLITA"

December 30, 1968

California Law Revision Commission
Stanford University
Palo Alto, California

Attention: John H. DeMouilly, Executive Secretary

Re: Proposed Amendment to Section 352
of the California Code of Civil Procedure
which tolls the Statute of Limitations
when the plaintiff is a minor.

Dear Sir:

I believe that the Statute of Limitations should be tolled in a personal injury action by a minor against a public entity, or for that matter, against any entity.

Injuries to individuals who have not attained full skeletal maturation sometimes produce residual problems which are not manifested in the one year Statute of Limitations. Even though there is some uncertainty as to residual complaints whenever there is a personal injury of a grave nature, this problem is particularly applicable to minors.

For example, at the present time, we have as a client a Portuguese family who speak only broken English. Their boy was severely injured when several vertebrae in his back were broken in a personal injury accident. At the present time, approximately 1½ years post injury, this boy has no significant neurological deficits. However, competent medical opinion informs us of the significant possibility that this boy may develop problems ranging from spasticity in the legs to paraplegia due to growth deformities in his spine.

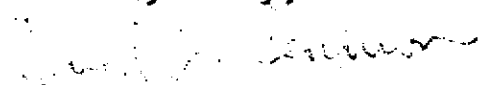
Similar problems as the skeleton matures are encountered in injury to the epiphyseal plate in growing bones of young people.

As you are no doubt aware, defendants have the benefit of a jury instruction informing the jury that they should not speculate and that future medical problems should be established to a reasonable medical certainty. When a minor receives a serious personal injury, often times such medical certainty cannot be attained until full skeletal maturation has occurred.

Additionally, in a very young plaintiff, the victim may be unable to communicate sufficiently well so as to be able to convey the nature of his symptoms to a doctor, let alone to a jury.

For these reasons, I believe that the Code of Civil Procedure section tolling the Statute of Limitations for a minor should be continued in effect.

Yours very truly,


David J. Bennion

/jc