

Suit Dismissed with Prejudice because Certificate of Merit not filed with Complaint

A crane operator that sustained injuries when his crane tipped over filed a professional negligence claim against an engineering firm. The complaint was filed two days before the running of the statute of limitations and failed to include a certificate of merit that was required by state law. An amended complaint was filed six months later and included a certificate of merit – but this was after the statute of limitations had run.

The question for the court was whether the case should be dismissed with prejudice because the certificate of merit was not filed with the original complaint and was subsequently filed after the statute of limitations had lapsed, or should the “relation back doctrine” be applied so that the late certificate of merit would be deemed to relate back to the original complaint that was filed within the period allowed by the statute of limitations. **Held:** The relation-back doctrine does not apply to a certificate which, by statute, is required to be filed “on or before the date of service of the original complaint.” The case was therefore dismissed with prejudice. *Curtis Engineering Corporation v. Superior Court*, 16 Cal.App.5th 542 (California 2017).

The California Code of Civil Procedure in question requires the attorney for plaintiffs and cross-complainants in certain professional negligence actions to serve and file a certificate on the defendant or cross-defendant on or before the date of service of the complaint or cross complaint declaring that he or she has consulted with and received an opinion from an expert in the field, or an adequate excuse for not doing so. In this case the court held that the later filed certificate did not relate back to the filing of the original pleading.

The court stated:

“Under the relation-back doctrine, a court will ordinarily deem a later-filed pleading to have been filed at the time of an earlier complaint if the amended complaint is based on the same general set of facts. (citation omitted). Where the statute of limitations has expired before the filing of an amended complaint, unless an amended complaint relates back to a timely filed original complaint, the amended complaint will be time-barred. (citation omitted). Under the relation-back doctrine, to avoid the statute of limitations bar, the amended complaint must allege the same general set of facts, refer to the same accident, same injuries, and refer to the same instrumentality as alleged in the original complaint. (citation omitted).

Sutherland has not cited, and we have not found, any cases supporting the proposition that the relation-back doctrine applies to a certificate which, by statute, is required to be filed “on or before the date of service” of the original complaint. (§ 411.35(a).) Applying the relation-back doctrine in this situation would render meaningless the statutory requirement that the certificate be filed “on or before the date of service.” (§ 411.35(a).)”

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