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Successfully Asserting the Statute of Limitations as a Defense to Negligence Actions against Insurance Brokers

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Most professional negligence cases against insurance brokers allege one of two things: either the broker did something which caused the insured to have no coverage for a loss, or the broker did not obtain enough coverage to indemnify the insured fully against a loss. In both of these situations, the insured's cause of action against the broker accrues when the insured suffers damage and knows or suspects that damage was caused by the broker's error. However, when the insured suffers that damage differs.

When the insured has no coverage, the cause of action typically accrues and the statute of limitations begins to run when the insured receives notice from the carrier that it will not be affording coverage for the loss. At that point, the insured knows that it is immediately liable for an uncovered loss. (See e.g., *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Assoc., Inc. (2004) 115 Cal.App.4th 1145, 1162; Butcher v. Truck Ins. Exch. (2000) 77 Cal.App.4th 1442, 1469-1470.)*

In contrast, when the insured is underinsured, the cause of action generally does not accrue and the statute does not begin to run until the insured suffers an excess judgment or other loss which exceeds the available coverage. Until that time, the insured's liability for the excess exposure is merely a possibility. (See e.g., Williams v. Hilb, Rogal & Hobbs Ins. Svcs. (2009) 177 Cal.App.4th 624, 642; Walker v. Pacific Indemn. Co. (1960) 183 Cal.App.2d 513, 516.)

Understanding at the outset which situation is presented is critical in successfully asserting the statute of limitations as a defense to a broker negligence action. Discovery can then be tailored to obtain the facts necessary to establish the defense on summary judgment motion or at trial.

Note: The author has obtained several summary judgments for insurance brokers on various grounds, including the statute of limitations.