

D.C. Court of Appeals Limits COVID-19 Tolling Based on Statute of Limitations Expiration

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During the COVID-19 pandemic, the District of Columbia, like many jurisdictions, extended statutes of limitations by Administrative Orders of the D.C. Superior Court. Pursuant to his authority under D.C. Code § 11-947(a), the D.C. Superior Court Chief Judge issued an order on March 19, 2020, tolling statutes of limitations due to the COVID-19 emergency. Specifically, the order provided: “Unless otherwise ordered by the court, all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020, including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency.” Through six subsequent amended orders, the end date was ultimately extended to March 30, 2021.

Following the end of the tolling period, many civil defendants argued that the tolling applied only to statutes of limitations that would otherwise expire during the emergency period (which was ultimately March 19, 2020 to March 30, 2021). A series of D.C. Superior Court judges, including at least judges Shana Frost Matini, Todd E. Edelman, Carl Ross and Ebony M. Scott, issued orders interpreting the collective effect of the Chief Judge’s Administrative Orders as tolling *all* statutes of limitations during this period, even if the expiration did not fall within that period. The reasoning of these trial court judges effectively allowed an additional 378 days to be added to every statute of limitations in the District of Columbia.

A Binding Interpretation

The D.C. Court of Appeals has now provided a binding interpretation of this issue in [*Tovar v. Regan Zambri Long, PLLC*](#), No. 23-CV-0165 (D.C. June 27, 2024). *Tovar* is a legal malpractice case where the claim accrued, at the latest, on May 7, 2019. The complaint was filed May 9, 2022. The defendant moved to dismiss the complaint as untimely, arguing in part that the statute of limitations was not tolled by the Superior Court COVID-19 tolling orders. The trial court ruled the limitations period had been tolled by the Administrative Orders but dismissed the case on other grounds. The parties cross-appealed; among other issues in the appeal, the D.C. Court of Appeals directly evaluated the impact and application of the tolling orders on statutes of limitations in D.C. civil cases.

On June 27, 2024, the D.C. Court of Appeals issued a decision disagreeing with the interpretation of the majority of D.C. Superior Court judges who had addressed the issue. Because the Chief Judges’ tolling orders specified that tolling applied to deadlines “that would otherwise expire before March 30, 2021,” applying tolling to all cases was not a natural reading of the tolling orders. The appellate court

applied statutory construction principles to conclude that, for civil cases, the plain and unambiguous language of the orders “tolled the limitations period only in cases where the limitations period expired during the March 18, 2020, to March 31, 2021, emergency period.”

In *Tovar*, therefore, because the applicable deadline for the three-year limitations period from 2019 to 2022 fell outside the emergency period (after March 31, 2021), the court held tolling under the COVID-19 orders was not triggered, although it ultimately held the case was timely filed on other, non-tolling grounds. The opinion of the D.C. Court of Appeals in *Tovar* provides strong additional support for civil defendants seeking to dismiss untimely claims.

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