THE LAW OFFICES OF DIANA SANTA MARIA, P.A.
UNIVERSITY PLACE
5220 SO. UNIVERSITY DRIVE
SUITE 205C
FT. LAUDERDALE, FL. 33328
(954) 434-1077
800-668-2156
Website: www.santamarialaw.net
e-mail address:diana@santamarialaw.net

A WARP-SPEED OVERVIEW OF 10 OVERLOOKED, MISUNDERSTOOD AND PROBLEMATIC DEADLINES- WALKING THROUGH THE MINEFIELDS OF LITIGATION

DIANA SANTA MARIA is the founding and managing partner of the Law Offices of Diana Santa Maria, P.A. in Ft. Lauderdale, Florida and is a graduate of the University of Miami (B.A. with honors, 1981) and the University of Miami School of Law (J.D. 1984).

Since being admitted to The Florida Bar in 1985, she has devoted her practice to the representation of persons injured as a result of the negligence of others. From 1985 until 1991 she practiced with the law firm of Sheldon J. Schlesinger, P.A. in Fort Lauderdale, Florida, in the areas of Plaintiff=s Personal Injury, Medical Malpractice and Wrongful Death, both on the trial and appellate levels. In 1991 Ms. Santa Maria formed her own practice specializing in Plaintiff=s Personal Injury and Wrongful Death. She is a member of the American Board of Trial Advocates, a *Sustaining Member* of the Association of Trial Lawyers of America and she is AAV@ rated by the Martindale-Hubbell Law Directory.

An Eagle patron, Diana has served as a Director on the Academy of Florida Trial Lawyers Board of Directors since 1996. She served on the Academy=s Long Range Planning Committee from 1999 - 2000. She also served as Chair of the Continuing Legal Education Committee from 1999 - 2001 and as Chair of the Allies Committee from 2001-2002. She has been the recipient of various awards given by the Academy including the *AMost Valuable Player*@ Staff Appreciation Award in 1997 and again in 2000, the Legislative Leadership A*Shoe Leather*@ Award (October 1997), the *AAbove and Beyond the Call of Duty*@ Award (June 1999), the A*Wings of Justice*@ Award (June 2000) and the A*Bronze Eagle*@ Award (June 2001). She also serves as an officer and director for the Coalition for Family Safety, and is a Flag trustee.

Diana has been listed in *Who=s Who in American Law, The International Who=s Who of Professionals,* and *Outstanding Young Women of America*. She has lectured and written on numerous legal areas within her specialty, to include Seven Steps to Effective Mediation published in the June, 1997 TRIAL magazine. This year Diana was re-appointed by the president of the Florida Bar to continue her service as an attorney member of the Florida Bar=s Citizens Forum. She also serves as a member of the Florida Bar=s Grievance Committee for the 17th Judicial Circuit. She is listed in the Martindale-Hubbel Bar Register of Preeminent Lawyers and is a Member of the Million Dollar Advocate's Forum.

Diana has served on the Board of Directors for ASPIRA of Florida, Inc. and has been Chair of ASPIRA of Broward, a non-profit community based youth organization dedicated to the leadership and

educational development of minority youth.

THE LAW OFFICES OF DIANA SANTA MARIA, P.A.
UNIVERSITY PLACE
5220 SO. UNIVERSITY DRIVE
SUITE 205C
FT. LAUDERDALE, FL. 33328
(954) 434-1077
800-668-2156

Website: www.santamarialaw.net
e-mail address:diana@santamarialaw.net

A WARP-SPEED OVERVIEW OF 10 OVERLOOKED, MISUNDERSTOOD AND PROBLEMATIC DEADLINES- WALKING THROUGH THE MINEFIELDS OF LITIGATION

This material was developed by Marc A. Gregg, Esq. and Diana Santa Maria, Esq., of the Law Offices of Diana Santa Maria, P.A. The authors gratefully acknowledge the contributions of others to this outline. The authors also wish to thank attorneys Barbara Green, Gene Polk, Reg Wilcox, Gene Harris, David Carter and Dutch Anderson, for their input and suggestions as this outline was being developed.

Issue #1

DEADLINES APPLICABLE TO PIP LITIGATION

TIMING OF EUOs and PIP SUITS

Summary:

Common belief is that an insured cannot file a PIP suit against its carrier if the carrier has already scheduled an examination under oath (EUO), and that filing a PIP suit will vitiate the insured=s coverage under his policy. However, if the insurer is already in violation of the PIP statute, this is no longer the case.

Insurance companies have relied on Goldman v. State Farm, 660 So.2d 300 (Fla. 3d DCA 1995), a fire loss case, for the proposition that submitting to examinations under oath is a condition precedent to filing suit. That is, if the insurer requests an examination under oath, and the plaintiff files a suit prior to the examination date, the plaintiff has willfully and materially beached his contract, precluding him from recovery under his policy.

The law began to change with Central Metal Fabricators v. The Travelers, 703 So.2d 1251 (Fla. 3d DCA 1998), in which the court held that, because the Plaintiff repeatedly complied with prior examination requests, and only prematurely filed suit, the trial court was directed to simply stay or abate the Plaintiff=s suit until the examination under oath could be held.

The law changed completely with Amador v. United Automobile Insurance Co., 748 So.2d 307 (Fla. 3d DCA 1999, review denied 767 So.2d 464, Fla. 2000) . The insureds sought PIP benefits. Over 30 days after notice of the claim, United Auto scheduled examinations under oath. The insureds filed suit for breach (not paying claims within 30 days), and for declaratory judgment of whether United Auto could force them to submit to an examination under oath as a condition precedent to receiving PIP benefits. *The court held that the insurer is in violation of the PIP statute on the 31st day after a request for payment (subject to Areasonable proof@ of the claim), and the insured is free to file a PIP suit*. Further the burden is on the insurance company to authenticate the claim with the statutory time period. And, although United Auto requested the EUO prior to suit being filed by the Plaintiff, the court held that under the PIP statute, because United Auto had failed to pay within 30 days, United Auto was in breach of contract, and could not deny the Plaintiffs access to the courts for purposes of enforcing the PIP statute.

In State Farm v. Jenkins, 767 So.2d 622 (Fla. 4th DCA 2000), State Farm was overdue on benefit payments when it requested Jenkins to submit to an EUO. Jenkins did not appear, and filed suit to recover unpaid benefits. The trial judge entered judgment for Jenkins, the circuit court affirmed, and the 4th DCA denied a petition for writ of certiorari stating that Jenkins was free to file suit as State Farm was already more than 30 days overdue, citing to Amador.

Issue #2

DEADLINES APPLICABLE WHEN SUING A STATE AGENCY

CLAIMS AGAINST THE STATE, FOR ITSELF AND FOR ITS AGENCIES OR SUBDIVISIONS

Summary:

A trap for the unwary. Although your negligence statute may have four years to run, state law requires that your claim must be presented and the state must deny the claim in writing, within 3 years after it accrues. Further, if the state agency does not respond within 6 months, the lack of response is taken as a final denial. Consequently, if you fail to make your claim, properly and in compliance with the statutory requirements, within 3years, your claim will end up time barred, even though your statute may have four years to run. In a medical malpractice or a wrongful death action, you have even less time. The agency=s failure to respond within 90 days constitutes a final denial.

Fla. Stat. '768.28

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Florida Space Authority, presents such claim in writing to the Department of Insurance, **within 3 years** after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must be so presented **within 6 months after the judgment against the tortfeasor** seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to paragraph (a) are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues.

. . .

(d) . . . The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim **within 90 days** after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality or the Florida Space Authority, upon the Department of Insurance; and the department or the agency concerned **shall have 30 days** within which to plead thereto.

Issue #3

DEADLINES APPLICABLE WHEN THE TORTFEASOR DIES OR WHEN THE PLAINTIFF DIES

I. TIMING AND PRACTICE ISSUES WHEN THE TORTFEASOR IS AN ESTATE

Summary:

Probate Statutes

Taken together, these statutes bar civil actions to recover against estates, personal representatives or beneficiaries unless a claim is filed in the probate action within the required time. The time may be extended for specific, enumerated reasons. *If you want to pursue a claim against the estate* of a deceased tortfeasor*, you must file a claim in the probate matter,* in general *within 3 months of the first publication of the notice to creditors* (see statute below). However, *claims against insurers, up to the limits of their applicable policies, are not affected by the statutes*, and usual statutes of limitation apply. See Pezzi v. Brown, 697 So.2d 883 (Fla. 4th DCA 1997); May v. Illinois Nat. Ins. Co., 771 So.2d 1143 (Fla. 2000).

733.710. Limitations on claims against estates

(1) Notwithstanding any other provision of the code, **2 years after the death of a person**, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.
(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.
. . . .

733.702. Limitations on presentation of claims

(1) If not barred by s. 733.710, no claim . . . against the decedent's estate that arose before the death of the decedent . . . is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding **on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor** . . . .
(2) No cause of action . . . shall survive the death of the person against whom the claim may be made, whether or not an action is pending at the death of the person, unless a claim is filed within the time periods set forth in this part.
(3) Any claim not timely filed as provided in this section is barred . . . unless the court extends the time in which the claim may be filed. An extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may

be brought upon a claim which was not timely filed unless an extension has been granted by the court. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension, the creditor **shall be limited to a period of 30 days** from the date of service of the notice in which to file a petition for extension.

(4) Nothing in this section affects or prevents:

. . .

(b) To the limits of casualty insurance protection only, any proceeding to establish liability that is protected by the casualty insurance.

II. TIMING AND PRACTICE ISSUES WHEN THE PLAINTIFF DIES

1. Suggestion of Death

If your Plaintiff dies during the pendency of litigation, you need to file a suggestion of death in the action, per Fla. R. Civ. P. 1.260. However, the trap is in the requirement that a Motion for Substitution must be filed in action **within 90 days** after the suggestion of death. The penalty for failing to move for substitution of parties within the delineated time is that **the action shall be dismissed as to the deceased party**.

Issue #4

DEADLINES APPLICABLE WHEN THE DEFENDANT=S INSURANCE COMPANY GOES BANKRUPT

FIGA STATUTES

Summary:

Upon filing of an insurer=s bankruptcy, an automatic 6 month stay is obtained, which can be extended by the court. *An additional consideration is the deadline for filing claims pursuant to the order of liquidation*- you must settle or file <u>within one year</u> of that deadline (which is delineated in the order of Liquidation itself for each case) or your claim will be barred against both the association (FIGA) and the insured per statute. However, be careful as to whom you file a claim against in the bankruptcy action. Filing a claim releases the insured to the extent of the coverage, consequently you will be barred from pursuing a recovery against the insured beyond the $300,000.00 FIGA claim limits. Also, you can potentially settle with FIGA, but maintain a claim against the receiver, but not if you inadvertently release the receiver when you release FIGA. Read your release carefully.

Fla. Stat. '631.67. Stay of proceedings; reopening of default judgments

All proceedings in which the insolvent insurer is a party *or is obligated to defend a party* in any court or before any quasi-judicial body or administrative board in this state **<u>shall be stayed for 6 months</u>**, or such additional period from the date the insolvency is adjudicated . . . provided that such stay may be extended for a period of time greater than 6 months upon proper application to a court of competent jurisdiction. . . .

631.68. Limitation; certain actions

A covered claim as defined herein with respect to which settlement is not effected and suit is not instituted against the insured of an insolvent insurer or the association **<u>within 1 year after the deadline for filing claims</u>**, or any extension thereof, with the receiver of the insolvent insurer *shall thenceforth be barred as a claim against the association and the insured*.

631.193. Releases

The filing of a claim constitutes a release of the insured from liability to the claimant to the extent of the coverage or policy limits provided by the insolvent insurer. . . .This release does not operate to discharge the Florida Insurance Guaranty Association or any other guaranty association from any of its responsibilities and duties set out in this chapter.

631.60. Effect of paid claims

. . .

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association . . . .

. . .

(4) Any release of the association and its insured must clearly state whether or not any claim filed with the receiver in excess of the liability of the association under s. 631.57 is waived.

Issue #5

DEADLINES APPLICABLE TO FAILURE TO PROSECUTE THE CASE

Dismissal for failure to prosecute

Simple and deadly, Rule 1.420 provides for the dismissal of actions in which there has been no record activity for a year. The one-year period is measured backwards from the time preceding the filing of the motion to dismiss for lack of prosecution. Frohman v.Stella BAR-OR, 660 So.2d 633 (Fla. 1995). In general, action that moves the case along qualifies for record activity, while action that does not move the case forward does not. The case law contains numerous examples of each kind of activity.

Fla. R. Civ. P. 1.420. Dismissal of Actions

. . .

(e) Failure to Prosecute. All actions in which it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred ***for a period of 1 year*** *shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not*, after reasonable notice to the parties, unless a stipulation staying the action is approved by the court or a stay order has been filed or a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year shall not be sufficient cause for dismissal for failure to prosecute.

Issue #6

DEADLINES APPLICABLE WHEN SUMMARY JUDGMENT BECOMES AN ISSUE

Fla. R. Civ. P. 1.510

Motion for summary judgment may be filed at any time after the expiration of 20 days from commencement of action or after service of a motion for summary judgment by the adverse party.

The motion shall be served at least 20 days before the time set for hearing.

$ However, supporting affidavits of the adverse party must be served:

$ by mail at least 5 days prior to the day of hearing or

$ by delivering the affidavits to the movant=s attorney no later than 5:00 p.m. 2 business days prior to the day of the hearing

Note: **Many local trial orders will limit the bringing of a Motion for Summary Judgment beyond a certain number of days before trial. Always check the court=s trial order to see the specific deadlines applicable in your case.**

Issue #7

DEADLINES APPLICABLE TO PROPOSALS FOR SETTLEMENT

Fla. R. Civ. P. 1.442, Fla. Stat '768.79, Fla. Stat. '45.061

Summary:

The timing of service of a proposal for settlement, combined with its phrasing, strictly controls its impact. Joint proposals must be distinguishable as to the terms and the amount attributable to each party, or the proposal may deemed invalid. Successive proposals may be made, and entitlement to fees may be triggered by any of the proposals.

Fla. R. Civ. P. 1.442

Applies to all proposals for settlement authorized by Florida law, and *supercedes all other provisions of the rules and statutes that are inconsistent* with this Rule (e.g. time provisions of Fla. Stat. '45.061)

- $ On defendant- serve **no earlier than 90 days** after service of process
- $ On Plaintiff- serve **no earlier than 90 days** after action commenced
- $ Can serve **no later than 45 days** before the earliest of 1st day of trial docket or 1st day trial is set
- $ Joint proposal to more than 1 party *shall state* amount and terms attributable to each
- $ Serve on parties but *do not file unless necessary* to enforce the Rule
- $ Rejected unless written acceptance **within 30 days**.
- $ Determination of good faith is discretionary with the Court.

Fla. Stat. '768.79

- $ The making of an offer does not preclude making a subsequent offer

Issue #8

DEADLINES APPLICABLE TO MOTIONS FOR NEW TRIAL, REHEARING, AND APPEAL OF AN ADVERSE VERDICT OR RULING

Fla. R. Civ. P. 1.530

Motion for new trial or rehearing shall be served no later than **10 days after**

- $ return of the verdict in jury action or date of filing judgment in non-jury action

- $ If motion relies on affidavits, they must be served with the motion

  - $ Opposing party then has **10 days** to serve opposing affidavits

Motion may be amended to state new grounds (in court=s discretion) at any time before the motion is determined

Court may order rehearing or new trial on its own initiative within 10 days of entry of judgment, or within the time of ruling on a timely motion for new trial or rehearing

Motion to alter or amend a judgment shall be served no later than 10 days after the entry of judgment.

Note: **there is no 10 day deadline for filing a motion for rehearing of a non-final order**. The court has jurisdiction until the final judgment to reconsider interlocutory orders; however, if you do move for a rehearing, **the motion does not toll the time for filing a notice of appeal or cert petition**. The time for a notice of appeal or cert petition is **30 days from the original order** and a motion for rehearing does not extend the time.

Fla. R. App. P. 9.110

Order granting new trial must be appealed within 30 days of the order granting it

Note: Orders denying new trial can not be appealed- you need to appeal the judgment, within 30 days of the rendition of the judgment

3. Attorneys fees on appeal

Get your Motion in on time (no later than the time for service of the reply brief), and in the right format, or miss your opportunity.

Rule 9.400. Costs and Attorneys Fees

. . .

(b) Attorneys= Fees. **A motion for attorneys= fees may be served not later than the time for service of the reply brief** and shall state the grounds on which recovery is sought . . . .

Issue #9

DEADLINES APPLICABLE TO MEDICAL MALPRACTICE- CHAPTER 766

Summary:

Two year statute of limitations from date of incident or time the incident is discovered (but in no event any later than a maximum of four years from date of incident, with certain exceptions for children 8 years of age or younger). An extra (automatic) 90 days may be obtained by filing a petition with the clerk of court. Another 90 days is obtained by serving the pre-suit notice letter, which is in addition to the 90 days obtained by filing an extension. At the end of the second 90 days, suit must be filed within 60 days of the end of the presuit period..

Fla. Stat. '95.11

(b) An action for medical malpractice **shall be commenced within 2 years from the time the incident** giving rise to the action occurred **or within 2 years from the time the incident is discovered**, or should have been discovered with the exercise of due diligence; however, **in no event shall the action be commenced later than 4 years from the date of the incident** or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday . . . . The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred, except that this 7-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. This paragraph shall not apply to actions for which ss. 766.301-766.316 provide the exclusive remedy.

Fla. Stat '766.104

(2) Upon petition to the clerk of the court where the suit will be filed . . . **an automatic 90-day extension** of the statute of limitations shall be granted . . . . ***This period shall be in addition to other tolling periods***. . . . The provisions of this subsection shall not be deemed to revive a cause of action on which the statute of limitations has run.

The 90 day period is a genuine extension of time, to be tacked on to the end of the limitations period, and does not run simultaneously with the 90 day tolling period upon mailing of the notice of intent to initiate litigation.

Fla. Stat. '766.106. Notice before filing action for medical malpractice; pre-suit screening period; offers for admission of liability and for arbitration; informal discovery; review

(2) After completion of pre-suit investigation . . . and prior to filing a claim for medical malpractice, a claimant shall notify each prospective defendant . . . of intent to initiate litigation for medical malpractice. Following the initiation of a suit . . . and service of the complaint . . . the claimant shall provide a copy of the complaint to the Department of Health . . . .

(3)(a) **No suit may be filed for a period of 90 days after notice** is mailed to any prospective defendant . . .

(b) **At or before the end of the 90 days**, the insurer or self-insurer shall provide the claimant with a response:
1. Rejecting the claim;
2. Making a settlement offer; or
3. Making an offer of admission of liability and for arbitration on the issue of damages. . . .

(c) . . . Failure of the prospective defendant or insurer or self-insurer to reply to the notice **within 90 days** after receipt shall be deemed a final rejection of the claim . . . .

(d) **Within 30 days of receipt of a response** by a prospective defendant, insurer, or self-insurer to a claimant represented by an attorney, the attorney shall advise the claimant in writing of the response . . .

(4) The notice of intent to initiate litigation shall be served within the time limits set forth in s. 95.11. However, **during the 90-day period, the statute of limitations is tolled as to all potential defendants**. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have **60 days or the remainder of the period of the statute of limitations**, whichever is greater, within which to file suit.
. . .
(10) If a prospective defendant makes an offer to admit liability and for arbitration on the issue of damages, **the claimant has 50 days from the date of receipt** of the offer to accept or reject it . . . . If the claimant rejects the offer, he or she may then file suit.

(a) . . . Upon rejection of the offer to admit liability and for arbitration, **the claimant has 60 days or the remainder of the period of the statute** of limitations, whichever period is greater, in which to file suit.

(b) If the offer to admit liability and for arbitration on damages is accepted, the parties have **30 days from the date of acceptance** to settle the amount of damages. If the parties have not reached agreement after 30 days, they shall proceed to binding arbitration to determine the amount of damages as follows:
1. Each party shall identify his or her arbitrator to the opposing party **not later than 35 days** after the date of acceptance.
2. The two arbitrators shall, within 1 week after they are notified of their appointment, agree upon a third arbitrator. If they cannot agree on a third arbitrator, selection of the third arbitrator shall be in accordance with chapter 682.

3. **Not later than 30 days** after the selection of a third arbitrator, the parties shall file written arguments with each arbitrator and with each other indicating total damages.
4. Unless otherwise determined by the arbitration panel, within 10 days after the receipt of such arguments, unless the parties have agreed to a settlement, there shall be a 1-day hearing, at which formal rules of evidence and the rules of civil procedure shall not apply, during which each party shall present evidence as to damages . . . .
5. **No later than 2 weeks** after the hearing, the arbitrators shall notify the parties of their determination of the total award . . . .

Fla.R.Civ.P. Rule 1.650 Medical Malpractice Pre-suit Screening Rule

Applies only to the procedures prescribed by Fla. Stat. '766.106.

Notice of intent to initiate litigation shall be served by certified mail, return receipt requested, prior to the expiration of any applicable statute of limitations or statute of repose. If an extension has been granted under section 768.495(2) (section now renumbered as 766.104), Florida Statutes, or by agreement of the parties, the notice shall be served within the extended period.

The action may not be filed against any defendant **until 90 days after** the notice of intent to initiate litigation was mailed to that party. The action may be filed against any party at any time after the notice of intent to initiate litigation has been mailed after the claimant has received a written rejection of the claim from that party.

To avoid being barred by the applicable statute of limitations, an action must be filed **within 60 days** or within the remainder of the time of the statute of limitations after the notice of intent to initiate litigation was received, whichever is longer, and the earliest of the following:

The expiration of 90 days after the date of receipt of the notice of intent to initiate litigation.

The expiration of 180 days after mailing of the notice of intent to initiate litigation if the claim is controlled by section 768.28(6)(a), Florida Statutes.

Receipt by claimant of a written rejection of the claim.

The expiration of any extension of the 90-day pre-suit screening period stipulated to by the parties in accordance with section 768.57(4) (section now renumbered as 766.106), Florida Statutes.

Issue #10

**DEADLINES FOR NURSING HOME NEGLIGENCE -
PRESUIT AND LITIGATION TIME PERIODS**

In a nutshell, the NEW nursing home statutes are applicable to causes of action accruing on or after May 15, 2001, and provide for a shorter Apresuit@ period than medical malpractice/negligence cases. Also, your nursing home case is mediated almost

immediately following the conclusion of presuit, unless the parties agree to an extension of time to mediate.

STATUTORY PERIOD: TWO (2) YEARS UNLESS FRAUD

The statutory period is normally **two (2) years** Afrom the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered or should have been discovered with the exercise of due diligence.@ However, there are circumstances where **the statutory period may be extended to four (4) and even six (6) years** depending on whether fraudulent concealment or intentional misrepresentation of facts are present. ['400.0236]

PRESUIT PERIOD - Personal Injury OR Death Claim: 75 DAYS

If the case involves Apersonal injury@ or Adeath@ of a resident and the case is against a Anursing home@ or Aassisted-living facility,@ an affidavit by an expert is not required. The claimant=s attorney provides a Anotice of intent,@ via certified mail, to the potential defendant and must Acertify@ the basis of the claim which delineates the negligence and identifies which statutory rights under Chapters 400.022(1) and 400.023(2) & (3) of the Florida Statutes were violated. This certification should include language that states the alleged injuries based on information Areasonably identifiable@ at the time of the presuit notice. [' 400.0233(2)]

The presuit notice period is **75 days** from date of return Areceipt.@ However, the presuit notice certification is Awaived@ if defendant facility fails to timely provide the resident=s records. ['400.0234]

MEDIATION FOLLOWING PRESUIT: 30 DAYS

Pursuant to the statute, mediation shall take place A**within 30 days**@ after the claimant=s receipt of the defendant=s response to the presuit claim. The 30 day limitation, however, may be extended by agreement of the parties. ['400.0233(11)] To prevent any ambiguity, formalize the agreement in writing.

TOLLING OF STATUTE OF LIMITATIONS: AN ADDITIONAL 60 DAYS

Upon completion of mediation, claimant has **60 days** or remainder of statute period, whichever is greater, to file a civil complaint. ['400.0233(11)]. Also, at time of serving complaint, Plaintiff must serve a copy of the complaint alleging violation of Chapter 400 to the Agency for Health Care Administration (AAHCA@) in Tallahassee. ['400.023(6)]