

The Proverbial Clock Restart:

Executive Order No. 7G and Its Broad Approach to Tolling Time Requirements

By Shelby Dattilo

Although Governor Lamont issued Executive Order No. 7G well over two years ago on March 19, 2020, it has left a lasting mark on Connecticut practice. That order, in part, suspended the time requirements related to civil actions during the COVID-19 Public Health Emergency.¹ Specifically, Executive Order No. 7G, Section 2 suspended all time requirements concerning location and venue, civil process, service, and return, and blanketly suspended all statutes of limitations under Chapter 926 of the Connecticut General Statutes—including limitations of action on product liability, negligence, misconduct, and contract claims. All statutory requirements related to non-critical court operations such as deadlines for service of process, court filings, court proceedings, and issuance of notices were interrupted “for the duration of this public health and civil preparedness emergency.” Notably, nothing in the text of the Executive Order No. 7G sets conditions on the tolling of statutes of limitations.²

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On June 9, 2020, Executive Order No. 7YY restored all filing deadlines for the Connecticut Appellate Court and Supreme Court, but not for the superior courts.³ Executive Order No. 10A, Section 5⁴ extended provisions of Executive Order No. 7G, Section 2 related to court operations and statutes of limitations until March 1, 2021.

The suspension of these time requirements is unprecedented in Connecticut and has generated some confusion over calculating appropriate deadlines. This begs the question: did these time requirements expire on March 1, 2021, or were they tolled between the issuance of Executive Order No. 7G and 10A and thus began to run again after March 1, 2021?

No case law prior to the issuance of the executive orders is particularly instructive on this topic. Consequently, attorneys must look to recent superior court decisions when interpreting the executive orders' effects on statutes of limitations in civil actions. Thus far, Connecticut courts maintain that this tolling does not expand the time periods imposed by statute, but rather suspends the inevitable running of the statute. So, however much time was remaining on the clock when the suspension took effect on March 19, 2020 will now be applied after the suspension terminated on March 1, 2021.

The Hartford Superior Court analyzed the proper interpretation and application of Executive Orders No. 7G and 10A for the first time in *Capua v. Hill*.⁵ The defendant in that case filed a motion to strike asserting that plaintiff's negligence action was untimely pursuant to Connecticut General Statutes § 52584 because it was commenced more than two years after the date of the plaintiff's injury. The court denied the motion to strike concluding that the executive orders merely interrupted the statute of limitations applicable to the plaintiff's claims. Plaintiff's action accrued on February 12, 2019, which means that only 401 days had passed before the executive orders tolled the two-year statute of limitations beginning on March 19, 2020. The court concluded that, because the plaintiff had an additional 329 days remaining to bring the action on March 19, 2020, 329 days remained to bring the action and began running again on March 1, 2021.

In reaching its ruling, the *Capua* court relied on a similar interpretation from the Mashantucket Pequot Tribal Court on a Tribal Council Resolution that suspended a statute of limitation.⁶ In that case, the tribal court held that the resolution merely interrupted the running of the applicable statutory time period, "leaving the time remaining when the suspension took effect to run after the date that the suspension terminated."

Several superior courts have followed *Capua's* reasoning and determined that the time suspension applies to the time requirement for commencing an action under Connecticut General Statutes § 52584 for claims of negligence. The court in *Lindquist v. Wessels* ruled that the statute of limitations clock on plain-



tiff's negligence claim restarted on March 1, 2021 "based upon the widely accepted interpretation of the effect of the executive orders."⁷ Similarly, the court in *Arnett v. Donagher*⁸ concluded not only that the executive orders tolled the statute of limitations under § 52-584, but also that the interruption applied to the plaintiff's request to amend their complaint.

One month after the ruling in *Capua*, the superior court in *Dreher v. Dreher*, relying on appellate court case law and the dictionary definition of the word "suspend," came to a similar conclusion stating that a "suspension has been interpreted as being synonymous with an interruption."⁹ On this basis, the *Dreher* court ruled that an appeal of probate court decrees issued during the period between the issuance of Executive Order No. 7G and when the interruption period was lifted by Executive Order No. 10A on March 1, 2021 was timely because it was filed within 45 days of March 1, 2021. Effectively, Executive Order No. 7G tolled the 45-day statute of limitations appeal period as to probate court decrees.

Subsequent superior court decisions have followed suit with the same interpretation as applied to other time requirements and statutes of limitations. For example, in *Komoroski v. Columbia Dental, P.C.*, the court analyzed the governor's choice to use the word "suspend" in Executive Order No. 7G instead of the word "toll" as he did in Executive Order No. 7M.¹⁰ Defendants asserted that the governor intended to distinguish "toll" from "suspend." The court disagreed and instead relied on appellate authority, the ruling in *Capua v. Hill*, and the rules of statutory

interpretation to apply the plain meaning of “suspend.” Thus, the terms “toll” and “suspend” as they relate to the executive orders effects on deadlines may be used interchangeably.

Although it is not explicitly stated in Governor Lamont’s executive orders, the superior court has broadly applied the executive orders’ suspension of time requirements under the Dram Shop Act, Connecticut General Statutes § 30-102. Pursuant to § 30-102, plaintiffs must provide notice to the defendant of their intent to bring an action within 120 days of the alleged injury. In *Silvestro v. Roper*,¹¹ the court turned to other superior court’s descriptions of written notice as falling under the category of “time requirements.” It concluded that Executive Order No. 7G was intended to apply to all “time requirements” because the phrases “time requirements” and “statutes of limitation” “neatly stand independent from other limitations or deadlines related to service of process, court proceedings or court filings.”¹² Thus, the notice requirement under the Dram Shop Act was deemed a “time requirement” and is thereby suspended pursuant to the executive orders.

The courts have similarly applied this interpretation to other statutory notice requirements. In *Cormack v. City of New Haven*, the plaintiff brought claims of negligence against the city alleging she fell outside of the New Haven Police Department.¹³ Plaintiff gave written notice of her alleged injury 110 days after the alleged incident. Under Connecticut General Statutes § 13a-149, the town must receive written notice of such an injury within 90 days of the incident. The court in this case relied on the ruling in *Silvestro v. Roper* in which the superior court determined that the 120-day notice requirement of the Dram Shop Act served as a “time requirement” similar to that of Connecticut General Statutes § 13a-149. Executive Order No. 7G extends to time requirements unrelated to the operations of the Judicial Branch. Therefore, the time required for notice under § 13a-149 was suspended.

Connecticut General Statutes § 52-102b provides for the addition of a person as a defendant for apportionment purposes and requires that apportionment complaint’s under the statute be served within 120 days of the return date of the operative complaint. The apportionment statute falls under Chapter 925 and is therefore not explicitly listed under Executive Order No. 7G. However, the superior court concluded that the list of statutes of limitations affected by Executive Order No. 7G is not comprehensive and applies to effectuate tolling of the apportionment statute as well.¹⁴

Notably, multiple courts have also ruled in favor of applying the executive orders to other time requirements outside of Chapter 926.¹⁵ For example, in *PennyMac Corp. v. Carusillo*, the court (Litchfield, J.D.) ruled that the 120-day time limitation for the issuance of a post-trial decision was suspended by the executive orders.¹⁶ However, the same court declined to apply Executive Order No. 7G to the Practice Book rules.¹⁷ Additionally, the re-

quirement under Connecticut General Statutes 52-102a(c) that a plaintiff assert a claim against a third-party defendant within 20 days of the third-party defendant’s appearance has also been held to be tolled by Executive Order No. 7G.¹⁸

These rulings indicate that few, if any, time requirements are immune to the powers of the executive orders and that the courts will likely continue to apply the executive orders broadly in the coming months and years. ■

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NOTES

- Executive Order No. 7G, Protection of Public Health and Safety During COVID-19 Pandemic and Response—Presidential Primary Postponement and Additional Public Health Measures (March 19, 2020).
- See *Abbott v. Connecticut Tank Removal, Inc.*, No. FBT-CV21-6109940-S, 2022 WL 1018431, at *3 (Conn. Super. Ct. Feb. 10, 2022) (Stewart, J.).
- Executive Order No. 7YY, Protection of Public Health and Safety During COVID-19 Pandemic and Response—Resumption of Supreme and Appellate Court Requirements and Deadlines; Changes to DMV Operations to Reduce the Need for In-Person Visits (June 9, 2020).
- Executive Order No. 10A, Protection of Public Health and Safety During COVID-19 Pandemic—Extension of COVID-19 Orders, Expiration of Healthcare Facility Immunity and of Certain Orders Affecting Court Operations
- Capua v. Hill*, No. HHD-CV-216140492-S, 2021 WL 4906017, at *6-7 (Conn. Super. Ct. Sept. 24, 2021) (Sicilian, J.) (examining tolling impact of 7G in context of two-year statute of limitations under § 52-584).
- Prekpalaj v. Mashantucket Pequot Gaming Enterprise, Mashantucket Pequot Tribal Court*, No. CV-PI-2020-156, 2021 WL 1346073 (Jan. 13, 2021) (Thomas, J.).
- Lindquist v. Wessels*, No. CV 21-6066073, 2022 WL 1060736, at *2 (Conn. Super. Ct. March 3, 2022) (Weise).
- Arnett v. Donagher*, No. HHB-CV-20-6062469-S, 2022 WL 1059866, at *2 (Conn. Super. Ct. March 1, 2022).
- Dreher v. Dreher*, No. WWM-CV-216021624-S, at *9-10 (Conn. Super. Ct. Oct. 27, 2021) (applying forty-five-day period for probate appeals under General Statutes § 45a-186 (b)).
- Komoroski v. Columbia Dental, P.C.*, No. CV-21-6113578-S, 2022 WL 2131783, at *8 (Conn. Super. Ct. June 13, 2022) (Wilson, J.).
- Silvestro v. Roper*, No. HHD-CV-216137760-S, 2021 WL 3487722 (Conn. Super. Ct. July 13, 2021) (Noble, J.).
- Id.* at *3.
- Cormack v. City of New Haven*, No. NNH-CV-216112038-S, 2021 WL 6101172 (Conn. Super. Ct. Nov. 30, 2021) (Kamp, J.), *reconsideration granted*, No. NNH-CV-21-6112038-S, 2022 WL 1580947 (Conn. Super. Ct. May 19, 2022) (Kamp, J.).
- DeMatteo v. 65 Messina Drive, LLC*, No. NNH-CV-206106442, 2021 WL 4898219, at *5 (Conn. Super. Ct. Sept. 15, 2021) (Kamp, J.).
- Krzeminski v. DUBY*, No. HHD-CV-21-6140073-S, 2022 WL 374845 (Conn. Super. Ct. Jan. 24, 2022) (Rosen, J.) (applying 7G to toll time requirements under General Statutes §§ 52-592 and 52-594).
- PennyMac Corp. v. Carusillo*, No. LLI-CV-16-6013370-S, 2021 WL 2593878 (Conn. Super. Ct. June 7, 2021) (Moore, J.).
- Larruiz v. Lofgren*, No. UWY-CV-196046299-S, 2021 WL 832506, at *3 (Conn. Super. Ct. Jan. 13, 2021) (Gordon, J.) (declining to apply Executive Order No. 7G to Practice Book § 10-60).
- Strileckis v. Intercontinental Holding Co., Inc.*, No. UWY-CV-196048260-S, 2021 WL 2302601, at *2 (Conn. Super. Ct. Apr. 19, 2021) (Gordon, J.).