

# NY Extension Of Court Deadlines May Have Long-Term Effects

By **Grant Cornehl**

On March 20, New York Gov. Andrew Cuomo issued Executive Order No. 202.8, which provides that “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state ... is hereby tolled from the date of this executive order until April 19, 2020.”[1] The statutory basis for this order is Section 29-a of the Executive Law, which authorizes the governor, subject to the state and federal constitutions and federal laws and regulations, to:



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temporarily suspend specific provisions of any statute, local law, ordinance, orders, rules or regulations, or parts thereof, of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.[2]

The express use of the word “tolled” in Executive Order 202.8 is a significant departure from prior executive orders that were issued by Gov. George Pataki following the Sept. 11 terrorist attacks[3] and by Cuomo after Hurricane Sandy,[4] and suggests that the statute of limitations has been tolled for at least 30 days in all actions statewide, regardless of when the statute of limitations would otherwise have expired during this period.

## Comparison With Prior Executive Orders

Prior executive orders issued after the Sept. 11 terrorist attacks and Hurricane Sandy made specific reference to Section 201 of the New York Civil Practice Law and Rules, or CPLR (which states that “an action must be commenced within the time specified by [CPLR Art. 2]”), and then temporarily suspended the effect of the statute “so far as it bars actions whose limitation period concludes during the period commencing from the date that the disaster emergency was declared ... until further notice.”[5]

Further notice was provided by subsequent executive orders that set an expiration date for each of these temporary suspensions.[6] State and federal courts interpreted each of these prior executive orders as granting a plaintiff whose limitations period would otherwise have expired during the period covered by the executive orders an additional “grace period” of time to commence the action until the expiration of the orders.

After the expiration of the grace period, these actions would again be time-barred. Thus, these executive orders did not toll the statute of limitations and applied only to those plaintiffs whose limitations period would have expired during the suspension period. They did not provide a grace period or extension of the statute of limitations in any other case.

In *Scheja v. Sosa*, for example, the Second Department held that the series of executive orders issued by Pataki in the wake of the Sept. 11 terrorist attacks gave plaintiffs “whose statute of limitations period expired between September 11, 2001 and November 8, 2001 ... a grace period of up until November 8, 2001, to satisfy the statute.”[7] The court expressly rejected the argument that the executive orders provided a “tolling period” by which “any litigant who was affected by the disaster emergency could have their period of limitations tolled for the number of days from September 11, 2001, to November 8, 2001, no matter when the statute of limitations expired.”[8]

A federal district court applying these executive orders reached the same conclusions.[9] Courts interpreted Cuomo's executive orders after Hurricane Sandy in the same manner, as granting a "grace period" to commence an action that would have expired during the suspension period rather than a "blanket toll" of the statute of limitations.[10] The benefits of these executive orders "applied only to those actions whose limitation period ended during the period from October 26, 2012 (when the disaster emergency was declared) through December 25, 2012." [11]

In comparison, Executive Order 202.8 expressly tolls time limits prescribed by the procedural laws of the state for a period of 30 days starting on March 20, including "any specific time limit for the commencement ... of any legal action" under the CPLR. This toll is not limited to cases where the limitations period would expire during the pendency of the order, but applies in all cases, apparently even to causes of action that will accrue during the pendency of the order.

In light of the prior case law discussed above, the express use of the term "tolled" in Executive Order No. 202.8 is significant. As the U.S. Supreme Court recently explained, the word "'tolled,' in the context of a time prescription ..., means that the limitations period is suspended (stops running)" during the tolling period and "then starts running again when the tolling period ends, picking up where it left off." [12]

This interpretation is consistent with the application of the word under New York law to suspend the statute of limitations for the duration of a period of disability (such as infancy or insanity) that would prevent the plaintiff from commencing his or her action.[13] Once the period of disability has ended, the statute of limitations begins to run.

Other statutory provisions tolling the statute of limitations have also been interpreted as "stopping the clock" for the duration of the tolling period.[14] This suggests that, under Executive Order 202.8, the statutes of limitations in all cases statewide are subject to a 30-day tolling period from March 20 until April 19 (and possibly longer if the order is extended), which effectively stops the clock from running until the order expires.

Moreover, the absence of any reference in the order to when the limitations period would otherwise end suggests that this tolling period should apply in all cases, regardless of whether the limitations period would otherwise expire during the period of the suspension or at some other time.

Executive Order No. 202.8 differs from the language of prior executive orders in two other minor respects. First, the executive orders issued in response to the Sept. 11 terrorist attacks and Hurricane Sandy applied retroactively to the dates when the disaster emergencies were first declared. The tolling period provided by Executive Order No. 202.8, however, runs from the date of the order (March 20) and is not retroactive to the date on which the coronavirus disaster emergency was first declared on March 7.

Second, prior executive orders temporarily suspended the effect of CPLR 201 "so far as it limits a court's authority to extend such time [to commence an action], whether or not the time to commence such an action is specified in Article 2 of the Civil Practice Law and Rules." [15] Executive Order 202.8 does not contain this provision and, accordingly, does not alter CPLR 201's limitation on a court's authority to extend the statute of limitations.[16]

## Application in Federal Courts

By its terms, the governor's executive order applies only to time limits "prescribed by the procedural laws of the state" and has no effect on statutes of limitations for causes of action that arise under federal law. It would, however, apply under the Erie doctrine to state law claims being heard by a federal court exercising diversity jurisdiction or supplemental jurisdiction.[17]

## Conclusion

As written, Executive Order No. 202.8 will have long-ranging effects well after the coronavirus disaster emergency has abated. For example, if a breach of contract occurred on March 20, 2020, the plaintiff would have until April 19, 2026, to commence an action (six years plus the additional 30-day tolling period). One might question whether Cuomo actually intended the order to have this effect, and this may be clarified by the governor in an amendment or subsequent executive order.

However, if this was indeed the intent of the executive order, one may question whether the order exceeds the governor's authority under the Executive Law, at least with respect to causes of action in which the expiration of the limitations period is not imminent and would occur, even without the order, long after the coronavirus emergency has passed. Executive Law § 29-a authorizes the governor to temporarily suspend specific provisions of existing statutes, but only "if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster."

It is not clear how a blanket toll of the statutes of limitations in all cases, including cases where the expiration of the limitations period is not imminent, is necessary to cope with the scope of the present coronavirus disaster. These are questions beyond the scope of this article that may have to be addressed by the courts in future cases.

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*Grant R. Cornehlis is counsel at Warshaw Burstein LLP.*

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[1] A temporary suspension under the statute cannot exceed 30 days but may be extended for additional periods of not more than 30 days "upon reconsideration of all of the relevant facts and circumstances." N.Y. Exec. Law § 29-a.

[2] Pursuant to Section 28 of the Executive Law, Cuomo declared a disaster emergency for the entire state of New York on March 7. See N.Y. Exec. Order No. 202 (March 7, 2020).

[3] N.Y. Exec. Order No. 113.7 (Sept. 12, 2001); N.Y. Exec. Order No. 113.28 (Oct. 4, 2001).

[4] N.Y. Exec. Order No. 52 (Oct. 31, 2012).

[5] N.Y. Exec. Order No. 113.7 (Oct. 4, 2001); N.Y. Exec. Order. No. 52 (Oct. 31, 2012).

[6] The temporary suspension of CPLR 201 pursuant to Executive Order No. 113.7 was extended until 11:59 p.m. on Oct. 12, 2001, for all cases, and to 11:59 p.m. on Nov. 8, 2001, for litigants or their attorneys who were directly affected by the disaster emergency. N.Y. Exec. Order No. 113.28 (Oct. 4, 2001). The temporary suspension of CPLR 201 pursuant to Executive Order No. 52 was continued through December 25, 2012. N.Y. Exec. Law No. 81 (Nov. 20, 2012).

[7] [Scheja v. Sosa](#), 4 A.D.3d 410, 411 (2d Dep't 2004); see also [Deltoro v. Arya](#), 305 A.D.2d 628 (2d Dep't 2003) ("any statute of limitation that was set to expire between Sept. 11, 2001, and Oct. 12, 2001, at 11:59 P.M., would be extended to the latter date and time.").

[8] Scheja, 4 A.D.3d at 412.

[9] [Randolph v. CIBC World Mkts.](#), 219 F. Supp. 2d 399, 402 (S.D.N.Y. 2002).

[10] See [Williams v. MTA Bus. Co.](#), 44 Misc. 3d 673, 684-85 (Sup. Ct. N.Y. County 2014); [Song v. NYCTA](#), 43 Misc. 3d 1201(A) (Sup. Ct. N.Y. County 2014); [Matter of Serota Smithtown LLC v. Town of Smithtown](#), 43 Misc.3d 1206(A) (Sup. Ct. Suffolk County 2014).

[11] Williams, 44 Misc.3d at 684.

[12] [Artis v. Dist. of Columbia](#), 583 U.S. \_\_\_, 138 S. Ct. 594, 602 (2018).

[13] [Henry v. City of N.Y.](#), 94 N.Y.2d 275, 278 (1999) ("CPLR 208 tolls a Statute of Limitations for the period of infancy"); [Rosenfeld v. Schlecker](#), 5 A.D.3d 461, 461 (2d Dep't 2004) ("CPLR 208 provides for a toll of the statute of limitations where the person entitled to commence an action is under a disability for, among other conditions, insanity.").

[14] [Serravillo v. NYCTA](#), 42 N.Y.2d 918, 919 (1977) (CPLR 204(a) "provides that where the commencement of an action is stayed by statutory prohibition, the Statute of Limitations is tolled for the duration of the stay"); [Lubonty v. U.S. Bank N.A.](#), \_\_\_ N.Y.3d \_\_\_, 116 N.Y.S.3d 642, 649 (2019) (under CPLR 204(a), where bankruptcy stays prevented defendant from commencing a foreclosure action for at least 1,651 days, those days would be added to the six-year statute of limitations applicable to foreclosure actions); [Morris v. Attia](#), 7 Misc.3d 1001(A) (Sup. Ct. N.Y. County 2005) (statutory toll after service of notice of claim under CPLR 214-d(3) was intended "to 'toll,' in other words, to stop the clock, for 120 days subsequent to service of the notice.").

[15] N.Y. Exec. Order No. 113.7 (Oct. 4, 2001); N.Y. Exec. Order. No. 52 (Oct. 31, 2012).

[16] CPLR 201 provides that "No court shall extend the time limited by law for the commencement of an action."

[17] See [Wallace v. Kato](#), 549 U.S. 384, 394 (2007) ("We have generally referred to state law for tolling rules, just as we have for the length of statutes of limitations.").