



Alert: Certificate of Merit Law Gets Teeth!

Under California law, in order to file a lawsuit for negligence against a design professional an attorney has long been required to consult with another design professional and receive an (anonymous) opinion that the design professional was negligent. (Code of Civil Procedure 411.35.) Despite some improvements in recent years, it has traditionally been a soft requirement with Courts frequently allowing late or marginal Certificates of Merit. That trend and history turned decisively yesterday when the Fourth District Court of Appeal held that failure to file such a Certificate of Merit contemporaneously with the Complaint or Cross-Complaint (or at least within the sixty-day limited extension of CCP 411.35(b)(1)), can be the basis to bar the entire claim based on the statute of limitations. (See *Curtis Engineering Corp. v. Superior Court* (D072076) (October 23, 2017)). In that case, the Plaintiff's attorney sought to file a belated Certificate of Merit in conjunction with an Amended Complaint against the engineer in a personal injury claim. The trial court originally allowed the belated filing. The Court of Appeal reversed and refused to apply the "relation back" doctrine. As a result, the claim against the engineering company is to be dismissed based on the time limits of the statute of limitations.

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