

THE KIND OF, SORT OF, DEPOSITION TIME LIMIT

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Every good lawyer knows that there is an exception to every rule. The rules of California Civil Procedure are riddled with exceptions to rules, and exceptions to those exceptions. California Code of Civil Procedure section 2025.290 is a prime example.

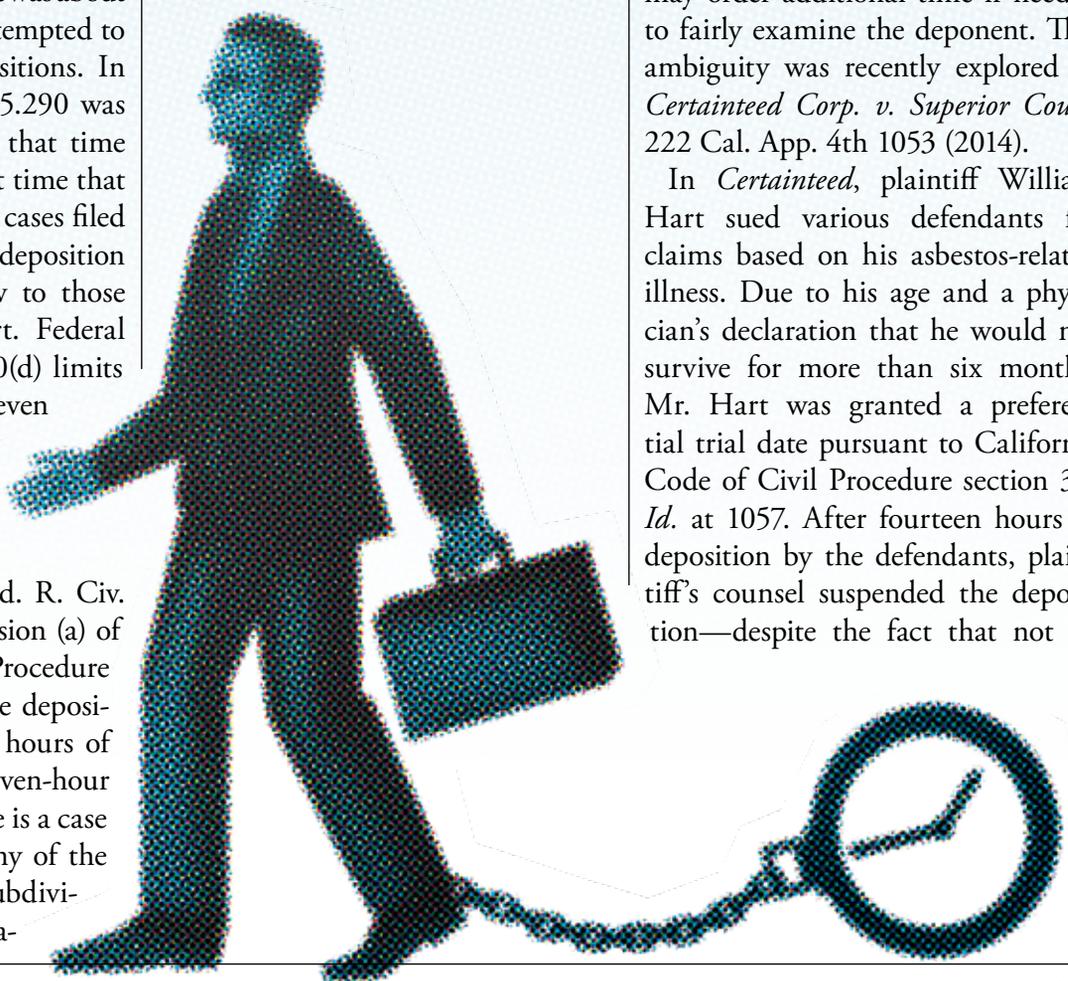
Anyone who has taken part in a seemingly endless deposition in a California case knows that it was about time that the legislature attempted to put a time limit on depositions. In January 2013, section 2025.290 was enacted to finally provide that time limit. While this is the first time that time limits were applied to cases filed in California state court, a deposition time limit is nothing new to those practicing in federal court. Federal Rule of Civil Procedure 30(d) limits depositions to one day of seven hours, unless otherwise stipulated or ordered by the court if additional time is needed to fairly examine the deponent. Fed. R. Civ. P. 30(d). Similarly, subdivision (a) of California Code of Civil Procedure section 2025.290 limits the deposition of a witness to seven hours of total testimony. This seven-hour limit does not apply if there is a case management order or if any of the numerous exceptions in subdivision (b) exist (*e.g.*, stipula-

tion of parties, depositions of expert witnesses, depositions of “persons most qualified”).

One of the exceptions in subdivision (b) is for cases deemed “complex” pursuant to Rule 3.400 of the California Rules of Court, and where a licensed physician has declared that the deponent will not survive for more than six months—very common in asbestos-related cases. In these cases,

the deposition is limited to fourteen total hours. Cal. Civ. Proc. Code § 2025.290(b)(3). Further, while section 2025.290(a) provides, “The court shall allow additional time, beyond any limits imposed by this section, if needed to fairly examine the deponent . . .,” subdivision (b), does not include a similar provision for additional time. Thus, subdivision (b) is ambiguous as to whether the court may order additional time if needed to fairly examine the deponent. This ambiguity was recently explored in *Certainfeed Corp. v. Superior Court*, 222 Cal. App. 4th 1053 (2014).

In *Certainfeed*, plaintiff William Hart sued various defendants for claims based on his asbestos-related illness. Due to his age and a physician’s declaration that he would not survive for more than six months, Mr. Hart was granted a preferential trial date pursuant to California Code of Civil Procedure section 36. *Id.* at 1057. After fourteen hours of deposition by the defendants, plaintiff’s counsel suspended the deposition—despite the fact that not all



defendants had an opportunity to ask the plaintiff any questions. *Id.* Upon filing a motion for additional time by several defendants, the trial court ruled that section 2025.290(b)(3) limited defendants' deposition to fourteen hours. *Id.* While the trial court recognized the due process concerns of defendants, it found that section 2025.290 was ambiguous as to whether the provision in subdivision (a), which allows a court to grant additional time over the seven-hour limit, also applies to subdivision (b)(3) which limits depositions to fourteen hours. *Id.* at 1057-58.

The appellate court in *Certainfeed* analyzed the statute and determined that both the seven-hour limit and the fourteen-hour limit in section 2025.290 are merely presumptive. *Id.* at 1060-62. The court further held that the provision in subdivision (a) that gives the trial court discretion to allow for additional deposition time applies both to subdivision (a) and subdivision (b)(3). *Id.* In reaching this holding, the court first found that the plain meaning of the language in subdivision (a) was unambiguous, and thus, "any court order in conflict with a seven-hour limit supersedes the statutory seven-hour limit." *Id.* at 1060. The court next analyzed subdivision (b), which does not have similar language regarding a court's discretion to order additional time. *Id.* In finding that the fourteen-hour limit of subdivision (b)(3) is also presumptive and subject to the additional-time exception of subdivision (a), the court held that the exception applied to *any* limit in section 2025.290. *Id.* at 1061. The court's finding hinged on use of the words "this section" rather than "this subdivision," and "any limits" rather than "the limit." *Id.* As a result, the appellate court interpreted the statute to require a trial court to allow additional time beyond fourteen hours if needed to

fairly examine a witness. *Id.* at 1062.

Deposition time limits are both a gift and a curse. For those lawyers practicing in complex litigation, toxic torts, construction defect, or similar practice areas with multiple parties, there is a constant and delicate balance between preserving a client's interests and keeping the litigation moving forward. When a plaintiff, such as Mr. Hart, sues seventy-plus defendants, encompassing thirty-plus years of alleged exposure, it is nearly impossible to conduct a deposition in only fourteen hours. After covering general background topics, each

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defendant is likely left with approximately fifteen minutes in which to conduct its entire examination related to specific claims made against its client. Furthermore, depositions become even more important when the deponent is predicted to no longer be alive for trial. The deposition then becomes the only opportunity for the parties to elicit testimony to present to a jury, so the examination must be thorough. On the other hand, parties cannot prolong the exhausting and stressful deposition process of a terminally ill plaintiff. It is a delicate balance that must be

examined in each case, depending on the individual's health, as well as the claims made in the suit.

Therefore, the complicated debate regarding deposition limits will continue, and lawyers on both sides will seek to find exceptions to both add to and lessen the deposition time limit. From the outset, section 2025.290 had numerous exceptions to the seven-hour limit expressly provided in the statute. It only took a year after section 2025.290 was enacted for an exception-to-the-exception to come to light. With so many exceptions to the seven-hour limit, it remains to be seen whether this section will actually help streamline depositions or whether so many exceptions will be carved out that the entire section will be rendered powerless. At this time, following the court's interpretation in *Certainfeed*, the time limits imposed by section 2025.290 are not as absolute and unyielding as they initially appeared.



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