

## DAVALOO V. STATE FARM INSURANCE CO.

California Court of Appeal, Second District, 2005.

135 Cal.App.4th 409, 37 Cal.Rptr.3d 528.

PERLUSS, PRESIDING JUSTICE.

Code of Civil Procedure section 340.9 revives certain time-barred claims for policy benefits against insurers for losses caused by the January 17, 1994 Northridge earthquake and provides a cause of action on a such a claim may be commenced within one year of the statute's January 1, 2001 effective date. On December 31, 2001, at the end of section 340.9's revival period, the insureds in the instant coordinated cases, Homie Davaloo and Maurice and Suzie Abdel-Messih, filed complaints against State Farm Insurance Company purporting to seek relief for alleged damage to their [Los Angeles] properties caused by the Northridge earthquake. The complaints, prepared by the same counsel, are identically worded, with the exception of the captions, which contain the name of the plaintiff or plaintiffs and identify State Farm as the defendant. The complaints list numerous, generic allegations against "Defendants" based on the insurance company's alleged failure to pay policy benefits for Northridge earthquake damage but contain no allegations as to a particular dispute between Davaloo or the Abdel-Messihs and State Farm.<sup>3</sup>

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On June 2, 2003, long after the expiration of section 340.9's revival period, Davaloo and the Abdel-Messihs filed first amended complaints in response to demurrers by State Farm, attempting to correct obvious deficiencies in their original complaints. State Farm demurred to the first amended complaints. The trial court sustained the demurrers without leave to amend, finding that, because the original complaints are devoid of factual allegations, the first amended complaints do not relate back to the filing of the original complaints and thus the actions are time-barred and not revived by section 340.9. Davaloo and the Abdel-Messihs appealed. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

#### *1. The Original Complaints*

On December 31, 2001 Davaloo and the Abdel-Messihs filed identically-worded complaints alleging causes of action for breach of contract and bad faith against State Farm for damage to their properties caused by the Northridge earthquake. Although the complaints were filed on December 31, 2001, at the end of section 340.9's revival period, they do not mention the statute, let alone allege that Davaloo's and the Abdel-Messihs'

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<sup>3</sup> At least 10 identically worded complaints prepared by the same counsel were filed against State Farm on December 31, 2001. \* \* \*

claims satisfy the requirements for revival.<sup>5</sup> Each complaint alleges, “Plaintiffs suffered insured losses as a result of the earthquake and its aftershocks and made timely claims to or had contact with the Defendants in regard to their damages.” Aside from the caption, the complaints do not mention the parties by name, instead referring to them generically throughout as “Plaintiff” or “Plaintiffs” and “Defendants.”<sup>6</sup> The complaints do not provide the address of Davaloo’s or the Abdel-Messihs’ property, stating only the property at issue is located in California. They do not set forth the policy limits, deductible or any other terms of the insurance policy sued upon, attach a copy of the policy or even give the policy number but merely allege the policy consists of “a written contract as orally amended.”<sup>a</sup> The complaints contain a multitude of allegations against “Defendants” regarding the failure to pay policy benefits for damages caused by the Northridge earthquake. No specifics are given with respect to a claim for policy benefits made by Davaloo or the Abdel-Messihs or any action taken by State Farm in response to such a claim.

State Farm filed demurrers to Davaloo’s and the Abdel-Messihs’ complaints, contending they were uncertain and failed to allege facts sufficient to state a cause of action for breach of contract or bad faith.

## *2. The First Amended Complaints*

On June 2, 2003, before the hearing on State Farm's demurrers, Davaloo and the Abdel-Messihs filed first amended complaints against State Farm, again alleging causes of action for breach of contract and bad faith. (See § 472 [complaint may be amended once before hearing on demurrer without leave of court].) The body of each first amended complaint, while still similar to one another, identifies Davaloo or the Abdel-Messihs as the plaintiff or plaintiffs and State Farm as the defendant and provides the address of the property and the insurance policy number at issue, omitting the allegation the policy was amended orally. The first amended complaints again do not mention section 340.9 but allege Davaloo and the Abdel-Messihs “suffered insured losses as a result of the earthquake and its aftershocks and made timely claims to or had contact with the Defendants in regard to their damages, within one year immediately following the earthquake.”

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<sup>5</sup> Section 340.9 provides, “(a) Notwithstanding any other provision of law or contract, any insurance claim for damages arising out of the Northridge earthquake of 1994 which is barred as of the effective date of this section solely because the applicable statute of limitations has or had expired is hereby revived and a cause of action thereon may be commenced provided that the action is commenced within one year of the effective date of this section. This subdivision shall only apply to cases in which an insured contacted an insurer or an insurer's representative prior to January 1, 2000, regarding potential Northridge earthquake damage. [¶] (b) Any action pursuant to this section commenced prior to, or within one year from, the effective date of this section shall not be barred based upon this limitations period.”

<sup>6</sup> Indeed, although Davaloo’s name and the Abdel-Messihs’ names are specified in the caption of his and their respective complaints, the body of each complaint alleges uncertainty as to the identity of the plaintiffs: “The exact identity of the plaintiffs may not be known due to defendants calculated decision in not providing the identities of such Plaintiffs to them or their counsel.”

<sup>a</sup> A Complaint is demurrable if in “an action founded upon contract, it cannot be ascertained from the pleading whether the contract is written, [or] is oral \* \* \* .” CCP § 430.10(g).

The first amended complaints contain another list of generic allegations, some repeated from the original complaints and some different, regarding State Farm's failure to pay policy benefits for damages caused by the Northridge earthquake and further provide, "While each [referenced] action may not have been employed by State Farm Insurance Company in the case of this particular plaintiffs [sic], these actions as a whole constituted a pattern of practices evidencing that defendant's actions were in bad faith." As with the original complaints, the first amended complaints fail to provide any details regarding a claim for policy benefits made by Davaloo or the Abdel-Messihs or State Farm's [specific] response.

### *3. State Farm's Demurrers and the Trial Court's Ruling*

State Farm filed demurrers to Davaloo's and the Abdel-Messihs' first amended complaints, contending they are time-barred because they were filed after section 340.9's revival period and do not relate back to the filing of the original complaints. According to State Farm, because the original complaints were "sham" pleadings lacking specific factual allegations, the amended pleadings are not based on the same set of operative facts as the original complaints and thus do not satisfy the requirements for application of the relation-back doctrine.

The trial court sustained the demurrers without leave to amend finding in each case, "The original complaint was a sham pleading not containing specific information. The first amended complaint does not relate back and is [therefore] time-barred." The trial court dismissed the actions.

## CONTENTIONS

Davaloo and the Abdel-Messihs contend the causes of action against State Farm for breach of contract and bad faith in the original complaints were sufficient and, therefore, the trial court erred by sustaining the demurrers to the first amended complaints without leave to amend on the ground they are time-barred.

## DISCUSSION

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### *2. The Trial Court Properly Sustained State Farm's Demurrer to the First Amended Complaints on the Ground They Are Time-barred Because They Do Not Relate Back to the Filing of the Original Complaints*

#### *a. Pleading requirements and the relation-back doctrine*

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The requirement that the complaint allege ultimate facts forming the basis for the plaintiff's cause of action is central to the relation-back doctrine and the determination whether an amended complaint should be deemed filed as of the date of the original

pleading. An amended complaint relates back to a timely filed original complaint, and thus avoids the bar of the statute of limitations, only if it rests on the same general set of facts and refers to the same “offending instrumentalities,” accident and injuries as the original complaint.

The relation-back doctrine, therefore, requires courts to compare the factual allegations in the original and amended complaints. For example, a third amended complaint alleging a cause of action for age discrimination under the Fair Employment and Housing Act (FEHA) (Gov.Code, § 12900 et seq.) did not relate back to the filing of the original complaint because the wrongful conduct described in the discrimination claim did not arise out of the same set of facts alleged in the original complaint to support claims of breach of contract and Labor Code violations. And [in] an amended complaint alleging the decedent was electrocuted \* \* \* by one entity did not relate back to an original complaint alleging the electrocution was caused by a \* \* \* different manufacturer because, although the pleadings related to a single death at a single location, they alleged different accidents and instrumentalities. On the other hand, an amended complaint substituting a party for a fictitiously named [Doe] defendant and alleging the same accident and injuries but a different cause of action and legal theory from the original complaint related back to the filing of the original complaint, and thus was not barred by the statute of limitations, because the two complaints referred to the same general set of facts.

*b. Because the original complaints do not come close to satisfying the basic fact-pleading requirement, the first amended complaints do not relate back to the filing of the original complaints*

Just as a plaintiff who changes the essential facts upon which recovery is sought is not entitled to the benefits of the relation-back doctrine, so too a plaintiff who files a complaint containing no operative facts at all cannot subsequently amend the pleading to allege facts and a theory of recovery for the first time and claim the amended complaint should be deemed filed as of the date of the original, wholly defective complaint: Going from nothing to something is as much at odds with the rationale for allowing an amended pleading to relate back to the filing of the original documents as changing from one set of facts to a different set. (See *Austin v. Massachusetts Bonding & Insurance Co.*, 56 Cal.2d [596] at pp. 601-602 & fn. 2, 15 Cal.Rptr. 817, [820], 364 P.2d 681 [explaining similarity between notice aspect of “modern” rule permitting relation back of an amendment if “recovery is sought on the same general set of facts as those alleged in the original complaint” and Fed. Rules of Civ. Proc., rule 15(c) [now rule 15(c)(2)], which permits relation back when the claim or defense asserted in the amended pleading “ ‘arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading’ ”].

In the instant cases the original complaints are so devoid of factual allegations they fail to meet section 425.10, subdivision (a)’s minimal fact-pleading requirement and are the functional equivalent of no complaint at all. Other than in the caption, the original complaints do not name either of the plaintiffs or the defendant; do not identify the property at issue by address or otherwise, merely averring it is within California (not even Southern California); and do not provide the number of the applicable insurance

policy, let alone describe its terms. The complaints contain a number of generic allegations describing the full range of improper actions any insurer theoretically could have taken in response to a claim for policy benefits for damages caused by the Northridge earthquake but give no specifics of any kind as to a dispute between the plaintiff(s) specified in the caption and State Farm. Under the most liberal construction of the pleadings, the body of each of the original complaints at bottom alleges nothing more than the Northridge earthquake caused harm to a resident or residents of Los Angeles County. Such an allegation falls far short of apprising State Farm of the factual basis of the claim. Because of the complete lack of factual allegations in the original complaints, it is impossible to conclude the first amended complaints are based on the same general set of facts as the original complaints.

In holding the amended complaints do not relate back, we are relying on the totality of the deficiencies in the original complaints, rather than any single defect alone, or even a combination of several such defects: It is not simply that the original complaints do not identify the parties (except in the caption), property or insurance policy or that they fail to allege any specifics of Davaloo's or the Abdel-Messihs' dispute with State Farm. Rather, the totality of these material deficiencies leaves nothing to which the first amended complaints can be compared or to which they can relate back. Although there can be no bright-line rule as to when a complaint is so deficient to preclude relation back \* \* \*, the original complaints here—with all their deficiencies—are plainly insufficient.<sup>8</sup>

Notwithstanding Davaloo's and the Abdel-Messihs' characterization of the shortcomings in their original complaints as procedural and technical, the defects are both substantive and material. The original complaints fail to provide any information to State Farm on the nature of Davaloo's or the Abdel-Messihs' claims (other than they concern the Northridge earthquake). \* \* \*

Davaloo's and the Abdel-Messihs' reliance on the inclusion of the names of the parties in the caption to suggest the complaints adequately informed State Farm of the necessary elements of their dispute is unpersuasive. As an initial matter, the allegations in the body of the complaint, not the caption, constitute the cause of action against the defendant.

Indeed, the \* \* \* original complaints do not set forth any essential facts regarding the particular dispute between Davaloo or the Abdel-Messihs and State Farm, let alone provide sufficient facts to state a cause of action. For example, from the original complaints State Farm cannot ascertain whether it denied policy benefits entirely for earthquake damages to Davaloo and the Abdel-Messihs based on its conclusion the damages were less than the specific policy deductible or by finding the damages reported were not earthquake related at all, or whether it actually paid policy benefits for earthquake damages but simply in an amount less than Davaloo and the Abdel-Messihs now contend they were entitled to as determined by a further evaluation of the damage to

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<sup>8</sup> The first amended complaints add the names of the parties, the address of the property at issue and the number of the insured's policy to the body of the complaint but still contain a list of generic allegations against State Farm regarding its actions in response to claims of earthquake damage. Although there is no doubt the first amended complaints are less deficient than the original complaints, we do not decide whether such allegations, if contained in the original complaints, would be sufficient to apply the relation-back analysis to a subsequent, amended complaint because the issue is not before us.

their properties. Thus, nothing in the original complaints “ ‘acquaint[s]’ ” State Farm with the “ ‘nature, source, and extent’ ” of Davaloo’s and the Abdel-Messihs’s claims against it.<sup>9</sup>

Nor does the fact that Davaloo and the Abdel-Messihs filed their original, defective complaints within section 340.9’s revival period support a more expansive interpretation of pleading requirements and the relation-back doctrine. Although section 340.9 revives specified earthquake claims by preventing insurers from relying on a limitations defense, it does not preclude insurers from using other available defenses. Section 340.9 provided policyholders an absolute one-year period in which to properly initiate a lawsuit asserting earthquake claims, not an open-ended period subject only to the filing of [what was effectively] a notice-of-intent-to-sue \* \* \* .

In fact, enforcing the limits of section 340.9’s one-year revival period is especially important because the statute’s constitutionality was upheld in part on the ground its filing window was open for the specified one-year period only. To allow an insured to file a complaint at the very end of section 340.9’s revival period lacking any factual allegations specific to the dispute with his or her insurer and then use the relation-back doctrine to make amendments to the wholly deficient complaint “would contravene the Legislature’s express directive that \* \* \* section 340.9 operate to revive certain earthquake claims for a period of one year only.”<sup>10</sup>

In sum, because the relation-back doctrine cannot be used to find the first amended complaints timely filed as of the date of filing of the original complaints, the first amended complaints, filed long after the end of section 340.9’s revival period, are time-barred.

#### DISPOSITION

The orders of dismissal are affirmed. State Farm is to recover its costs on appeal.

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<sup>9</sup> Because the original complaints are so deficient that the relation-back doctrine cannot be applied to find the first amended complaints timely, we need not determine whether the trial court was correct to conclude in the technical sense that the original complaints were "sham" pleadings.

<sup>10</sup> The Davaloos and Abdel-Messihs argue the trial court abused its discretion by failing to grant them leave to amend their original complaints. Their argument misses the point. They did amend their original complaints. As explained, the first amended complaints are time-barred because they were filed after section 340.9’s revival period and do not relate back to the filing of the original complaints. Because the defects in the original complaints are so substantial, there is simply no set of facts to which an amended complaint can relate back. Accordingly, any amendment to the original complaints, including, as the trial court found, the first amended complaints, would be time-barred. Granting leave to amend in any respect, therefore, would be futile and is unwarranted.