

Tolling applies also when active-duty servicemember is defendant

By SYLVIA ADCOCK, Staff Writer
sylvia.adcock@nc.lawyersweekly.com

When Vance Barron Jr. was hired to represent a client who had filed a personal-injury claim one day after the statute of limitations had run, his first thought was to try to get around that one extra day. But when he started to track down the defendant for service of process, he learned some news that turned out to be good for the case.

The defendant was a reservist who had been on active duty during part of the time between the accident and the filing of the claim. "When you start trying to track somebody down, you find all sorts of things, old addresses and where people used to live," Barron said.

The defendant's military status was important because Barron was able to use the federal Servicemembers' Civil Relief Act to keep his client's claim alive. The act, 50 U.S.C.A. App. § 501, provides that a servicemember's military service may not be included in computing any time limit for bringing any action before a court by — or against — the servicemember.

The act is often used for the benefit of servicemembers so that the clock

stops on a statute of limitations while they are on active duty. But as the N.C. Court of Appeals ruled Nov. 16, the act has the same effect when a civilian is trying to bring a claim against a member of the military.

The case, *Beaver v. Fountain* (Lawyers Weekly No. 10-07-1085, 7 pp.), presented an issue of first impression for North Carolina appellate courts. While the defendant claimed that the benefits of the tolling provision should not be afforded to a civilian, the court disagreed.

The court's ruling "lines North Carolina up with the prevailing interpretation of the law," Barron told Lawyers Weekly. "I think it's good in that more people will become aware of the impact of the Servicemembers' Civil Relief Act. A lot of lawyers may not be aware of it."

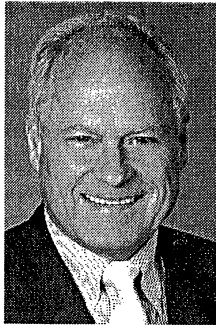
Although the issue had not been addressed in North Carolina, a number of federal courts have ruled that the provision applies to civilians suing military servicemembers. "Federal courts have uniformly held that the plain language of the statute provides for the tolling of the statute of limitations in actions 'by and against' members of the military," Judge Sanford A. Steelman Jr.

wrote in the unanimous opinion.

Barron said the case illustrates an important point, given the number of military installations in the state. "Just because somebody comes into your office and says the statute of limitations

has run out, it doesn't mean all is lost."

And he noted it is up to the plaintiff's lawyer to find out if the opposing party was in the military and raise the issue. "No one else will," he said.



Barron

OPINION BRIEF

Case name: *Beaver v. Fountain*

Court: N.C. Court of Appeals

Judges: Judge Sanford A. Steelman Jr.; Judges Wanda Bryant and Cheri Beasley, concurring

Date: Nov. 16, 2010

Appellee's attorney: Vance Barron Jr. of Barron & Berry (Greensboro)

Appellant's attorney: James B. Stephenson of Stephenson, Stephenson & Gray (Cary)

Issue: Does the federal Servicemembers' Civil Relief Act, which provides for the tolling of the statute of limitations for members of the military on active duty, provide tolling of the statute for civilians bringing claims against a military servicemember as well?

Holding: Yes, the plain language of the act, which says military service time may not be used in computing any period limited by law to bring an action by or against a servicemember, applies to claims filed by both military servicemembers and claims filed by civilians against servicemembers.

Noteworthy: Although the issue has been addressed in federal court, it is an issue of first impression in North Carolina appellate courts.

Opinion digest: See Page 8.