

EZRA J. DONER
ATTORNEY-AT-LAW
119 Fifth Avenue, 3rd Floor
New York, NY 10003

Direct Tel: (212)258-2424
Mobile: (917) 209-3700
E-Mail: edoner@donerlaw.com
www.donerlaw.com

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Client Alert: Glen Larson TV Profits Dispute: If You Wait to Sue, How Long is Too Long?

By Ezra Doner*

Glen Larson produced some of the most successful television shows of the 1970s and 80s, including *Quincy M.E.*, *McCloud*, *Knight Rider* and *Battlestar Galactica*. In 2011, he sued Universal Television, claiming that despite Universal's having made "hundreds of millions of dollars" on shows which he produced, the company hadn't paid him a penny in profits. But had Larson waited too long?

That question was addressed in a recent court decision, *Glen Larson Prods. v. Universal City Studios Prods.*, No. BC465172 (Super. Ct. Cal. Sep. 2, 2015).

Multiple Choice Question

Per the Court's decision, just how long could Larson wait without unequivocally losing his right to sue?

- A) one year
- B) 33 months
- C) four years
- D) 20+ years

For the answer, keep reading.

No Audit / Timeliness

Larson didn't audit Universal's accounts prior to suing and claimed he wasn't aware of reporting issues until 2010, after Jack Klugman, the star of *Quincy, M.E.*, took Universal to court over profits of that series. Universal, while denying that it did anything wrong, responded that Larson could and should have brought his claims years before, and having failed to do so, his claims were timed out.

Sitting On Your Hands

In general, the law doesn't permit an aggrieved person to sit on his or her hands indefinitely. If you have a claim but don't act on it, at some point, under statutes of limitation and related common law principles, you'll be "time-barred", meaning you will have lost the right to sue. Frequently, entertainment industry agreements expressly limit claims periods even further.

*Ezra Doner is an entertainment and copyright lawyer who focuses on the film, TV and other content sectors. He has worked both as an in-house business and legal executive and as a private lawyer. He did not represent any of the parties in this case. © Ezra Doner / All Rights Reserved

The rationale behind limitations periods is that over time, memories fade, business records are lost, and at some point the books should be closed. While statutes of limitations vary by jurisdiction and type of claim, typical periods range from one to six years.

When Does the Clock Start?

Of course, the length of a statutory limitations period isn't necessarily the real question. In many cases, it isn't when the period ends, it's when it *begins*.

Suppose, for example, that a plaintiff failed to act because he or she didn't know they had a claim? In that scenario, applying the so-called "discovery rule", the limitations period wouldn't start to run until the plaintiff "discovered" the wrong. That might be the date the plaintiff actually knew of the wrong, or suspected it, or should have suspected it, or was on inquiry notice. The discovery rule can thus serve as a counterbalance to harsh and mechanical application of limitations principles.

Suspicious?

Determining when a plaintiff should have known or suspected something, though, can be fact-intensive and complicated. In the *Larson* case, Universal claimed that between 1983 and 1994, it issued six accounting statements to Larson, each reporting zero profits, using the very methods of calculation to which Larson objected in the lawsuit. For his part, Larson didn't acknowledge receipt of *any* of these statements.

The Judge's Decision

In response to Universal's motion for summary judgment, the judge in the *Larson* case ruled that whether Larson had waited too long should be decided by a jury as a question of fact and not simply by the court as a matter of law. In particular, the judge declined to hold that Larson was under a legal obligation to "verify" Universal's accountings via audit or otherwise. Using forceful language, the judge wrote:

A defendant cannot expect relief from its own alleged deceit and punish the plaintiff for not discovering the lie earlier . . . A failure to discover falsity is excusable as reasonable when the falsity is not clear on the face of the representations made to the plaintiff.

Answer to Multiple Choice Question

So the answer to the question of just how long Larson could wait, without unequivocally losing his right to sue as a matter of law, is –

D: 20+ years.

But to be clear, the judge in the *Larson* case didn't definitively decide that Larson's lawsuit was timely. She merely ruled that the case wouldn't end solely by reason of the date suit was filed, and that timeliness could go to a jury along with other questions of fact. Trial is now scheduled for January 2016.

Sadly, Glen Larson died in November 2014, so the jury won't have the benefit of his in-person testimony.

How Much Money is Involved?

In the case files I've seen, there's no information as to how much Glen Larson's shows generated in total license fees, how much the shows cost to produce, or the difference between the two. But in 2008, Jack Klugman told a reporter that on \$250 million in license fees for *Quincy, M.E.*, Universal reported to him a net loss of \$66 million. Query whether Universal's internal financial (as opposed to participant) reporting yielded the same results.

What This Case Means for You

If you're a distributor or other company which is accounting to a revenue participant, the more you disclose, the less vulnerable you may be to a claim that the participant didn't know or couldn't discover key facts. If you're a participant, don't wait the way Larson did. Best advice: audit early, and often.