

Exposure to Liability

Effect of Transition Rules Beginning June 1, 2013

The following explanation discusses exposure to liability as a result of the transition rules in the new *Limitation Act* ("new Act"). Organizations make their own policies regarding record retention based on their claims experience and risk assessment. The ministry understands that many professionals formerly retained records for 30 years starting on the date of the act or omission. From a liability perspective, liability exposure can span beyond that period since the former *Limitation Act* ("former Act") began its ultimate limitation period from the date of "accrual" of the cause of action (i.e., when all the elements of the legal claim had accrued). For example, in a claim for negligence, time started to run in the ultimate limitation period from the date of damage, while in a breach of contract claim, time started to run from the date of the breach.

The transition rules in the new Act govern claims where the act or omission has occurred prior to the effective date of the new Act but discovery has occurred on or after the effective date (June 1, 2013).

The transition rules apply to pre-existing claims where:

- the former 30-year ultimate limitation period or 6-year medical ultimate limitation period has not yet expired;
- the act or omission (on which the legal claim is based) occurred before June 1, 2013; and
- discovery of the legal claim occurred on or after June 1, 2013.

If these criteria are met, there are rules that govern two situations:

- 1) If the claim is governed by the 30-year ultimate limitation period under the former Act, the new 15-year ultimate limitation period applies, running from the later of:
 - June 1, 2013; or
 - the day the act or omission takes place under s. 21(2) of the new Act. (Section 21(2) sets out special ultimate limitation period start dates for claims involving conversion, fraud, fraudulent breach of trust, future interest in trust property, demand obligations, security realization or redemption, contribution or indemnity, a minor, or a person under a disability. **For the purposes of this discussion, we are assuming the 15-year ultimate limitation period starts to run on June 1, 2013).**

The two-year basic limitation period applies, running from the date of discovery, unless the new Act specifies otherwise.

- 2) If the claim is against a doctor, hospital or hospital employee and was governed by the 6-year medical ultimate limitation period under the former Act, the 6-year medical ultimate limitation period continues to apply, running from the accrual date (i.e., in a medical negligence claim, the date of damage).

The two-year basic limitation period applies, running from the date of discovery, unless the new Act specifies otherwise.

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A person who has sought out and relied upon legal advice prior to the new Act coming into effect should not be prejudiced by the new law, or have his or her right to bring a claim statute-barred. To protect this interest the transition to the new Act will take several years.

Assuming the date exposure to liability begins is the “act or omission” date, the transition rules apply to acts or omissions that occurred prior to June 1, 2013. For acts or omissions that occurred on or after June 1, 2013 the transition rules do not apply.

The following discussion of exposure to liability assumes that the postponement rules for adult disability, minority, fraud etc. do not apply. It is meant to be illustrative only.

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For claims subject to the 30-year ultimate limitation period under the former *Limitation Act*.

Date of Act/Omission	Maximum Exposure to Liability (if former Act applies)	Maximum Exposure to Liability (if new Act applies)	New Act End of Exposure to Liability
1982 and earlier...	No certainty. 30 years from the date of accrual which could be many years later than the date of the act or omission.	1979 = 49 years 1980 = 48 years 1981 = 47 years 1982 = 46 years	2028
1983	No certainty.	45 years	2028
1984	No certainty.	44 years	2028
1985	No certainty.	43 years	2028
1986	No certainty.	42 years	2028
1987	No certainty.	41 years	2028
1988	No certainty.	40 years	2028
1989	No certainty.	39 years	2028
1990	No certainty.	38 years	2028
1991	No certainty.	37 years	2028
1992	No certainty.	36 years	2028
1993	No certainty.	35 years	2028
1994	No certainty.	34 years	2028
1995	No certainty.	33 years	2028
1996	No certainty.	32 years	2028
1997	No certainty.	31 years	2028
1998	No certainty.	30 years	2028
1999	No certainty.	29 years	2028
2000	No certainty.	28 years	2028
2001	No certainty.	27 years	2028
2002	No certainty.	26 years	2028
2003	No certainty.	25 years	2028
2004	No certainty.	24 years	2028
2005	No certainty.	23 years	2028
2006	No certainty.	22 years	2028
2007	No certainty.	21 years	2028
2008	No certainty.	20 years	2028
2009	No certainty.	19 years	2028
2010	No certainty.	18 years	2028
2011	No certainty.	17 years	2028
2012	No certainty.	16 years	2028
2013	No certainty.	15 years	2028
2014	No certainty.	15 years	2029
2015	No certainty.	15 years	2030
2016 and later...	No certainty.	15 years	2031 and later...

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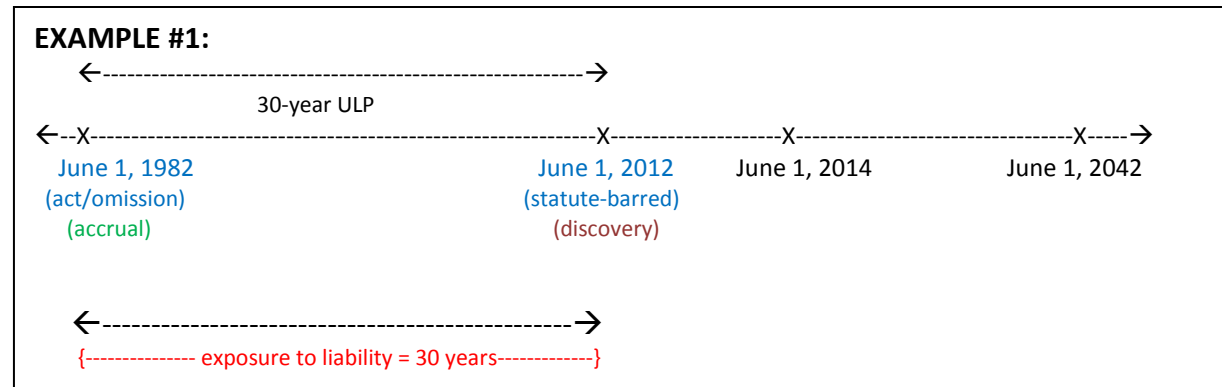
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1. Exposure to Liability under the Former Act

A. Uncertain Exposure – 30-year ULP

Under the former Act, a 30-year ultimate limitation period (“ULP”) applied to most claims, and started to run from “accrual” of the individual legal elements of the cause of action. The accrual date differed, depending on the cause of action (e.g., in a claim for negligence, accrual occurs on the date of damage, while in a claim for breach of contract, accrual occurs on the date of the breach). This discussion applies to defendants who are subject to the 30-year ULP under the former Act. A discussion of exposure to liability for medical defendants who are subject to the six-year medical ULP under the former Act is found below at example #3.

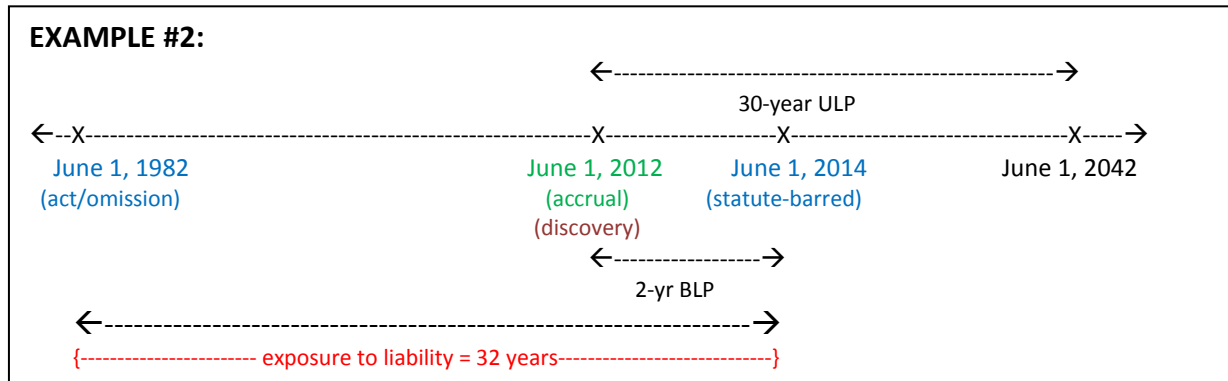
Example #1 illustrates a rare set of facts where the claim is discovered 30 years after the act or omission date. The act or omission and the accrual date in this example are the same date. The 30-year ULP started to run from the accrual date (June 1, 1982). Due to the fact that the 30-year ULP expires on June 1, 2012, and the date of discovery is June 1, 2012, the two-year basic limitation period (“BLP”) will not run. The claim will be statute-barred on June 1, 2012. In this example the maximum potential exposure to liability is **30 years**.



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Example #2 shows a fact pattern where the act or omission date is June 1, 1982. The accrual date is 30 years later. Discovery also occurs 30 years later, on the same date (June 1, 2012). The two-year BLP started to run from discovery. The 30-year ULP started to run from the accrual date. In this example the maximum potential exposure to liability is 32 years.



If the facts were changed in example #2 so that the act or omission date was June 1, 1978 and the accrual date and discovery date were on June 1, 2012 (34 years later), the exposure to liability would be 36 years. This illustrates that there is no certainty in calculating exposure to liability under the former Act, as it depended on the accrual date, which is often unknown.

Summary:

If the act or omission date and the accrual date are the same, maximum exposure will be 30 years, as the 30-year ULP started to run from the date of accrual. If the act or omission date and the accrual date are several years apart, maximum exposure is unknown, and could potentially be longer than 30 years.

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2. Exposure to Liability under the Transition Rules

A. Potential Exposure Ends in 2028 – Former 30-year ULP

On June 1, 2013 the new Act was brought into force. As a result of the transition rules, for an act or omission date before June 1, 2013, and discovery on or after June 1, 2013, the maximum exposure to liability can be calculated due to the fact that the end of potential exposure will be June 1, 2028. This is because in most cases, the transition rules specify that the 15-year ULP runs from June 1, 2013 to June 1, 2028. (Under the transition rules, 15-year ULP runs from the later of: the effective date (June 1, 2013), and the day the act or omission takes place under section 21(2) of the new Act [special ULP start dates for claims involving conversion, fraud, fraudulent breach of trust, future interest in trust property, demand obligations, security realization or redemption, contribution or indemnity, a minor, or a person under a disability]. For the purposes of this discussion, we are assuming the 15-year ULP starts to run on June 1, 2013).

For example:

- For an act or omission that occurred in 1983, where the accrual date is unknown, potential exposure will end in 2028 with the expiry of the 15-year ULP (45 years exposure to liability due to the intersection of the former 30-year ULP and new 15-year ULP running from 2013).
- For an act or omission that occurred in 1998, where the accrual date is unknown, potential exposure will also end in 2028 with the expiry of the 15-year ULP (30 years exposure to liability due to the intersection of the former 30-year ULP and the new 15-year ULP running from 2013).

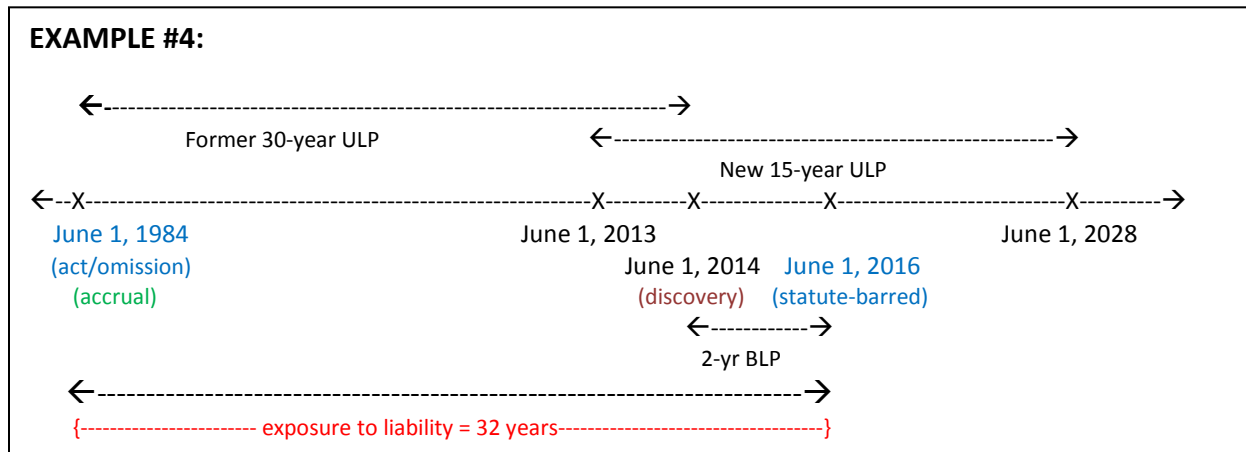
This can be explained as follows:

- the former 30-year ULP has not expired and runs from the accrual date;
- the legal claim is “discovered” between June 1, 2013 and June 1, 2028 (before the former 30-year ULP expires);
- the new 15-year ULP runs from June 1, 2013 to June 1, 2028;
- the two-year BLP runs from the discovery date; and
- the end of potential exposure to liability is June 1, 2028 due to the expiry of the new 15-year ULP under the transition rules.

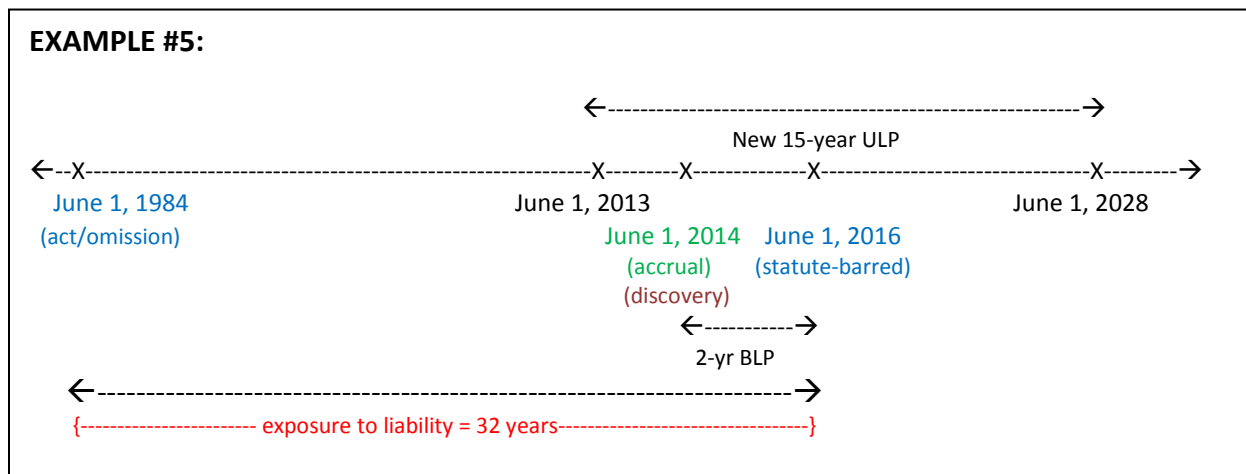
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Example #4 illustrates a rare set of facts where the claim is discovered 30 years after the act or omission date, accrual occurs on the act or omission date, and the transition rules apply. In this example the former 30-year ULP has not yet expired as it started to run from the date of accrual (i.e., in a negligence claim, from the date of damage), however, due to the intersection of the transition rules, the new 15-year ULP runs from June 1, 2013 to June 1, 2028. The two-year BLP runs from discovery and can add two years onto the duration of exposure. This is why the maximum exposure to liability in this example is **32 years**.



Example #5 shows a fact pattern where the act or omission date and the accrual date (i.e., in a negligence claim, date of damage) are 30 years apart, and the accrual date and discovery are the same. In this example the former 30-year ULP has not yet expired as it started to run from the date of accrual, however, due to the intersection of the transition rules, the new 15-year ULP runs from June 1, 2013 to June 1, 2028. The two-year BLP runs from discovery. As a result, the two-year BLP can add two years onto the duration of exposure. This is why the maximum exposure to liability in this example is **32 years**.

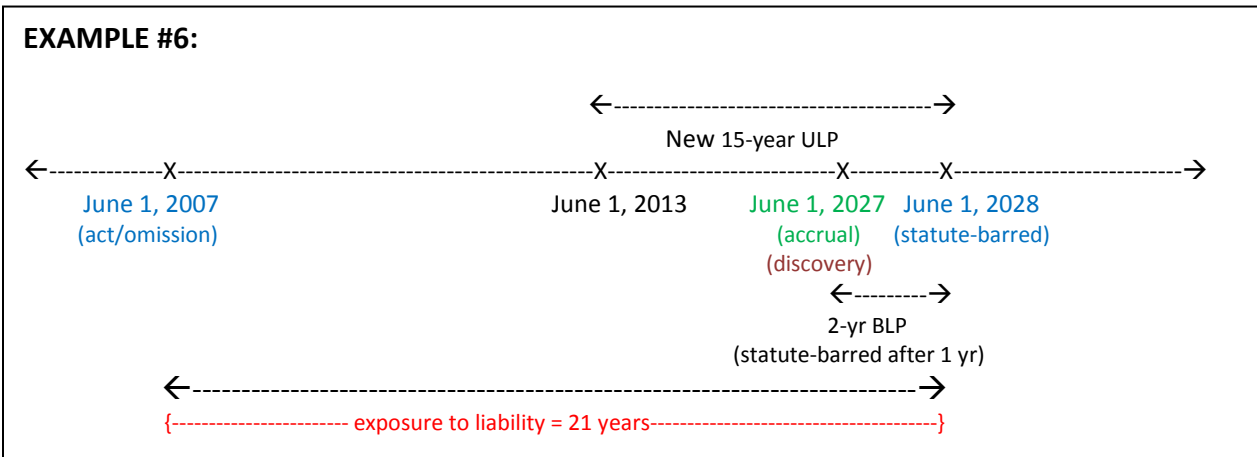


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If the facts were changed in example #5 so that the act or omission date was June 1, 1978, but the accrual date was June 1, 2008 (i.e., assume this is a negligence claim where damage occurs 30 years after the act or omission date), and discovery remained the same (June 1, 2014), the exposure to liability would be 38 years, from June 1, 1978 to June 1, 2016. (Under the former Act the 30-year ULP would run from June 1, 2008 to June 1, 2038). This illustrates how there could be an extremely long window of exposure to liability under the transition rules. However, due to the expiry of the 15-year ULP on June 1, 2028, there is a definite end date to exposure.

Example #6 shows a fact pattern where the act or omission date and the accrual date (i.e., in a negligence claim, date of damage) are 20 years apart, and the accrual date and discovery are the same. In this example the former 30-year ULP has not yet expired as it started to run from the date of accrual, however, due to the intersection of the transition rules, the new 15-year ULP runs from June 1, 2013. The expiry of the 15-year ULP on June 1, 2028 acts to statute-bar the claim. This illustrates the definite end date to exposure of June 1, 2028. In this example the maximum exposure to liability is 21 years.



Summary:

As a result of the transition rules, for an act or omission date before June 1, 2013 and discovery on or after June 1, 2013:

If the act or omission date and the accrual date (i.e., in a negligence claim, date of damage) are the same, and the former ULP has not expired, maximum exposure to liability will be 32 years for acts or omissions that occurred between 1983 and 1996 (see Example #4). For acts or omissions that occurred in 1997 or later, the maximum exposure will be less than 32 years as a result of the expiry of the 15-year ULP on June 1, 2028.

If the act or omission date and the accrual date (i.e., in a negligence claim, date of damage) are several years apart, and the former ULP has not expired, maximum exposure to liability could potentially be longer than 32 years (see Example #5). However, potential exposure to liability will end on June 1, 2028 with the expiry of the 15-year ULP.

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B. Uncertain Exposure - Former 6-year medical ULP

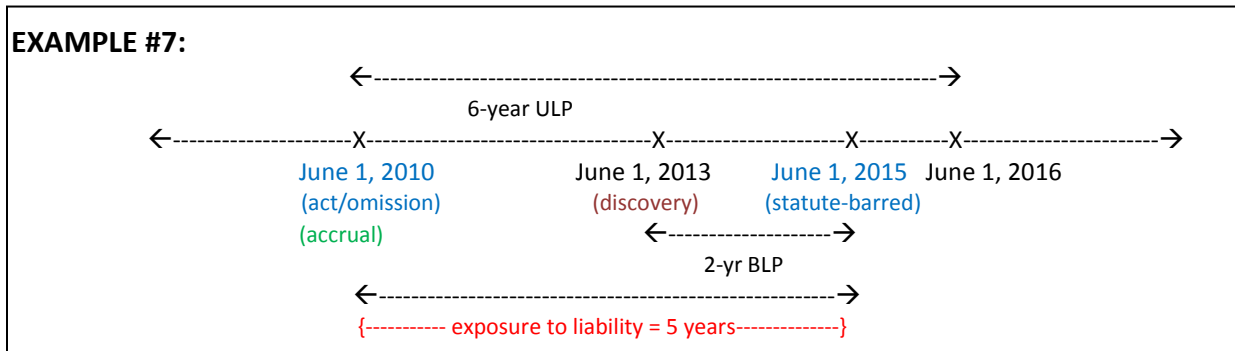
The following examples apply to claims against doctors, hospitals or hospital employees subject to the 6-year medical ULP under section 8(1)(a) or (b) of the former Act.

The transition rules apply to pre-existing claims where:

- the former six- year medical ULP has not yet expired;
- the act or omission occurred before June 1, 2013; and
- discovery of the legal claim against a doctor, hospital or hospital employee occurred on or after June 1, 2013.

If these criteria are met, the former six-year medical ULP under the former Act continues to apply, running from the date of accrual (i.e., in a medical malpractice or negligence claim, date of damage). The two-year basic limitation period applies, running from the date of discovery, unless the new Act specifies otherwise.

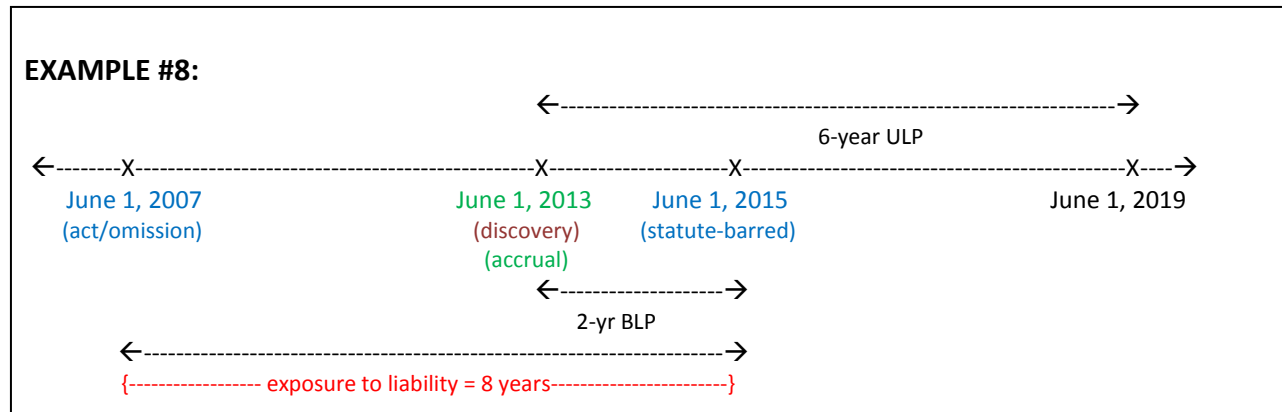
Example #7 shows a fact pattern where the act or omission date and accrual date (date of damage) are the same and discovery is three years later. The six-year medical ULP runs from the accrual date. The two-year BLP runs from the date of discovery. This illustrates that there is no change from the former law under the transition rules for these claims. In this example the maximum exposure to liability is **five years**.



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Example #8 shows a fact pattern where the act or omission date and accrual date (date of damage) are six years apart, and discovery occurs on the accrual date. The six-year medical ULP runs from the accrual date. The two-year BLP runs from the date of discovery. This illustrates that there is no change from the former law under the transition rules for these claims. In this example the maximum exposure to liability is eight years.



Summary:

As a result of the transition rules, for an act or omission date before June 1, 2013 and discovery on or after June 1, 2013:

If the act or omission date and the accrual date (date of damage) are the same, maximum exposure will be six years, as the six-year medical ULP runs from the date of accrual (see Example #7).

If the act or omission date and the accrual date (date of damage) are several years apart, maximum exposure could potentially be longer than six years (see Example #8).

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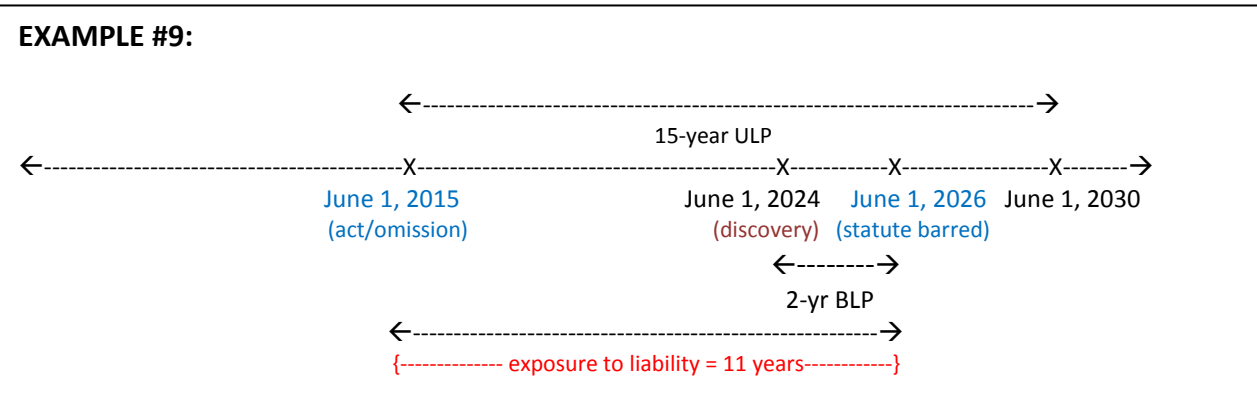
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3. Exposure to Liability under the New Act

A. New Act - 15 Year Exposure

For acts or omissions that occur on or after June 1, 2013, the new Act applies. The transition rules do not apply. The 15-year ULP will run from the date of the act or omission. This means that for acts or omissions that occur on or after June 1, 2013 the maximum exposure to liability will be 15 years, unless the new Act specifies otherwise. The two-year BLP runs from the date of discovery, which can occur up to 15 years after the act or omission (unless the postponement rules in the new Act apply).

Example #9 shows a fact pattern where the act or omission date and the discovery date are nine years apart. It does not matter when accrual occurs for the purposes of calculating when time starts to run in the ULP, as the ULP runs from the act or omission date. The two-year BLP runs from the date of discovery. In this example the maximum exposure to liability is **11 years**.



Summary:

For acts or omissions that occur on or after June 1, 2013, the new Act applies. The 15-year ULP will run from the date of the act or omission. This means that for acts or omissions that occur on or after June 1, 2013 the maximum exposure to liability will be 15 years, unless the new Act specifies otherwise. The two-year BLP runs from the date of discovery, unless the postponement rules in the new Act apply.