

AN EXCEPTION TO EVERY RULE

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When you have an accident and are injured by the fault of another person, you have one year from the date of that injury or damage to file a suit in court. After a year, your rights are said to have prescribed. However, in certain cases, there are exceptions that allow you to file your suit after the one year date.

The law recognizes an interruption in the one year deadline if the one that caused your damage admits or acknowledges that they were wrong. This acknowledgment does not have to be in writing, it can be by actions. The Court feels that in these cases the injured party is “lulled into believing” that the other party will not contest payment of the claim.

CASE 1:

Michael is injured in an automobile accident that was not his fault on May 12, 2003. The insurance company calls him and tells him that their insured is liable. The insurance company agrees to pay for the damage to his car and for his medical expenses. Michael’s car is promptly fixed and the insurance company pays him back for his medical expenses as he receives them. Michael is still under medical treatment one year from the accident. He does not file a lawsuit because everything is being paid. Michael goes to the doctor on May 15, 2004. The insurance company refuses to pay this bill because it over one year past his injury. Michael files suit against the insurance company on May 20, 2004. The insurance company files an Exception of Prescription which says that Michael is too late. The judge rules that the insurance company is wrong. By paying these medical bills, the insurance company has “acknowledged” or admitted the debt and stopped the clock on the date of filing the claim.

There is also an interruption in the one year deadline for a personal injury suit when a workers’ compensation claim has been filed. Do not confuse this exception with a case where the employer pays the workers’ compensation without filing a claim.

CASE 2:

Jane is injured in an automobile accident on April 12, 2004. Jane was driving to pick up supplies for the office. She was also driving a company car. Jane’s company pays her medical bills and loss of wages for two months. Jane is still injured and still going to the doctor. She files a claim against her employer on June 12, 2004. She does not file a suit against the driver of the car that hit her until May 12, 2005. The driver files an Exception of Prescription claiming that Jane is too late to file her suit. The Judge rules that Jane is on time. Her claim against her employer “stopped the clock” on her personal injury claim.

CASE 3:

Jane was injured as in Case 2 above. Jane’s employer paid her medical bills and her lost wages until she was ready to go back to work on May 12, 2005. Jane filed a suit against the driver on that same day, May 12, 2005. Jane is too late. In this case, there was no workers

compensation claim filed so the clock was never stopped. Her suit against the driver should have been filed by April 12, 2005.

Please be aware that the clock begins ticking again after the workers' compensation claim is settled or the last payment by the insurance company is paid.

Remember that these are exceptions not the rule. Nevertheless, if you feel you have been led to believe that your claim will be paid and then it is not, call us. You might still be able to file your suit.

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