Legal Matters®

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Injury victims often must act quickly to get compensation

Many people who are injured don't talk to a lawyer right away about obtaining compensation. Sometimes they're not sure how badly they're hurt, or what the long-term consequences of their injury will be. Sometimes they believe (mistakenly) that they can't be recompensed for their medical bills, lost wages or pain and suffering. Sometimes they're just scared of the legal system, or so busy dealing with the injury itself that they put off pursuing their rights.

But that's a problem, because the law often gives people only a short time in which to act. People who wait to talk to a lawyer risk not being able to receive the compensation to which they're entitled.

If you or someone you know has been injured, it's always best to speak with a lawyer right away…even if you're not sure how serious the injury is, or whether someone else was at fault.

Mike Albano

Lawsuits are subject to a "statute of limitations" – a period of time in which a suit must be filed, after which you lose all your rights.

Time limits for lawsuits exist so that people don't have to worry about being sued over things that happened in the distant past, after evidence has disappeared and witnesses have moved away or forgotten the details.

But the problem for injury victims is that in most cases, the time limit for them is very short – often only a few years. The limit is usually much shorter for injury cases than it is for lawsuits over a broken contract or a real estate deal gone bad.

Keep in mind that a lawsuit has to be *filed* within that brief window – which means not only that an injury victim has to talk with a lawyer, but that the lawyer has to investigate the case, interview witnesses, research the fac-

continued on page 2

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The time limit in which injury victims have to bring a lawsuit is often very short – and much less than for a lawsuit over a broken contract or a real estate deal gone bad.

continued from page 1

tual and legal issues, determine everyone who may be legally at fault, etc., before the suit can be filed.

Certain types of injury lawsuits have even shorter deadlines. This is often the case with lawsuits for medical malpractice, lawsuits for libel or slander, lawsuits against a local government – such as for a slip-and-fall on city property, or an accident resulting from poor road maintenance – or a lawsuit for job discrimination.

On the other hand, the time limit for injuries to children often doesn't begin to run until the child turns 18 or 21. So if you know of a young person who was injured as a child, you might want to speak with a lawyer even if the accident occurred many years ago.

When the clock starts ticking

Usually, the time limit for filing a lawsuit begins to run at the time the injury occurs. It's usually obvious when that is, but not always, which is another good reason to speak with an attorney as soon as possible.

For instance, a doctor in Oklahoma claimed she developed multiple sclerosis as a result of problems with a series of Hepatitis-B vaccinations. In her particular case, the statute of limitations was three years. But a court determined that the three-year clock started ticking as soon as the doctor had her first "medically recognized symptom" of the disease. Because the doctor waited until the disease had progressed before she looked into seeking compensation, she missed the deadline and wasn't able to recover anything for her harm.

On the other hand, sometimes people are allowed to sue even though an injury occurred a long time ago. There is often a rule that says the time limit doesn't start running until an injury victim knows who is responsible for the harm, or at least until the victim should have been able to figure out who was responsible.

For instance, a woman in Illinois had shoulder surgery in 2001, and afterward she suffered severe pain and loss of motion. At first she thought it was her surgeon's fault. It wasn't until 2008 that experts determined the problem was caused by a defect in a pain pump that was installed in her shoulder during the surgery.

The woman then sued the manufacturer of the pump. Although the suit was brought many years after the injury, a court said it was okay because the woman couldn't have reasonably determined who was responsible for the harm until seven years after she was injured.

Bus company held accountable for not having seatbelts

Passengers who were injured when a bus slid off an embankment and rolled over several times could hold the bus company liable for not installing seatbelts, New York's highest court recently decided.

The court upheld a jury's verdict ordering the company to pay damages to the passengers because it was careless and didn't do enough to protect them.

The bus company argued that federal regulations require seatbelts only for bus drivers…not passengers. Therefore, it said, it didn't have a legal obligation to provide belts for passengers.

But the court noted that the federal regulations didn't *prohibit* seatbelts for passengers. The bus company could certainly have installed seatbelts without violating the federal rules, it said.

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Therefore, the company could be held liable if it didn't fulfill its legal responsibility to provide for the passengers' safety…which is what the jury decided happened here.

Employee hurt in car crash collects from employer's auto insurer

If you're injured in an auto accident, there's a chance that the person who caused the accident won't have enough insurance to cover your injuries. Your own insurance policy might provide "underinsured motorist" (UIM) benefits to help you out in these situations.

UIM insurance provides for some or all of the difference between the amount of your injuries and the amount that's covered by someone else's insurance policy.

And if you drive as part of your job, your employer's auto insurance policy might also provide for UIM benefits to cover injuries you suffer as a result of a work-related car accident.

An interesting case arose recently in Pennsylvania, when a police officer was severely hurt in a car crash while on duty. The person who caused the accident had only $25,000 in coverage. The officer's injuries were far more serious, so he sought UIM benefits from the police department's insurer.

But the insurance company denied the benefits…because the department's insurance policy said it wouldn't cover any accidents if the injured employee was also eligible for workers' compensation (which the officer was).

Does that seem fair to you?

It sure didn't seem fair to the officer, and he took the case all the way to the Pennsylvania Supreme Court, which sided with him and ordered the insurance company to pay the benefits anyway.

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The insurance policy was basically a trick, the court ruled. Virtually any employee who was injured on the job would be eligible for workers' comp, it noted. So while the policy said it would provide UIM coverage to injured workers, in fact any time a worker was injured, the insurance company could simply deny coverage because of the workers' comp rule.

That meant that the police department was paying a premium for UIM coverage but not getting anything in return, which was unfair, the court said. Since the department had paid a premium for UIM coverage, the insurance company had to provide it and couldn't hide behind the workers' comp exclusion.

Many women claim 'pelvic mesh' devices are causing harm

Hundreds of thousands of women have had mesh devices implanted in their pelvic area to prevent pelvic prolapse – a condition caused by weakened structures around the bladder and intestines.

But several hundred of these women have now gone to court, claiming that some of the devices are defective and have caused severe complications.

Some women say that as a result of the devices, they are unable to sit, lie down or walk for extended periods of time. Others claim that they've suffered genital deformities, loss of control over bowel functions, and debilitating pain during sex.

Some women have had multiple surgeries to try to have the devices removed.

The lawsuits claim that various manufacturers of the devices, including C.R. Bard, Johnson & Johnson, American Medical Systems, Inc. and Boston Scientific, pushed the products through the federal government's approval process with minimal research and testing. They claim the companies took advantage of a special fast-track procedure by claiming that the products were substantially equivalent to existing products, such as hernia mesh devices.

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Are property owners responsible for 'obvious' dangers?

In general, a landowner can be held legally accountable for an injury caused by a dangerous condition on a property that should have been fixed. However, there's often an exception to this rule, which says that a landowner isn't responsible if a danger on the property is so "open and obvious" that the injured person should have seen it and avoided it.

The problem, though, is that sometimes the question of whether a particular danger is "open and obvious" is…well, not so obvious.

For example, a deliveryman in Maryland slipped and fell on a patch of black ice covered by a shallow stream of water in the parking lot of an office complex. He sued the owner for failing to keep the parking lot safe.

The owner argued that the deliveryman was at fault for trying to cross an obviously icy parking lot.

Maryland's highest court sided with the deliveryman. It said that although he saw ice in certain areas of the lot, he didn't see the ice – or suspect that there would be ice – under the stream of water. It's obvious that ice is slippery, the court said, but because you can't detect black ice until you make contact with it, the danger in this case wasn't truly "open and obvious."

Meanwhile, in Hawaii, a guest sued a hotel for injuries she suffered when she slipped and fell on a wet veranda after a rainstorm.

The hotel argued that it wasn't responsible because the danger of slipping on a wet veranda is obvious.

Not so fast, the Hawaii Supreme Court said. The case should go to trial and a jury should decide how to apportion the fault between the guest and the hotel.

A jury can take the obviousness of the danger into account in parceling out everyone's fault, the court ruled, but the hotel shouldn't automatically be able to get out of any responsibility, even if the danger of slipping on a wet surface is common knowledge.

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