

Texas Court of Appeals Confirms That, in Order to “Bring Suit” Within the Statute of Limitations Period, a Plaintiff Must Exercise Due Diligence to Serve the Complaint

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In *Molina v. Gears*, 2018 Tex. App. LEXIS 1978 (March 20, 2018), the Texas Court of Appeals addressed the issue of whether a plaintiff who timely-filed a complaint exercised due diligence with respect to serving the complaint. The court held that, to “bring suit” within a statute of limitations period, a plaintiff must file the complaint within the statutory timeframe and use due diligence to serve the defendant with process.

In *Molina*, Christina Molina (Molina) was involved in a car accident with defendant John Gears (Gears) on November 8, 2011, and she had two years from that date to file suit. Molina sued Gears for negligence on September 5, 2013, and requested service “by attorney pickup.” The record has several discrepancies after this point. Although the process papers were listed as being picked up by her attorney on January 27, 2014, the attorney’s process server, Jon Manning (Manning), reportedly attempted service several times beginning on November 25, 2013, at 14223 Eagle Pass, Houston, TX 77015. Manning subsequently attempted service at the same residence and at another address several dozen times. Another process server, Reginald Branch, attempted service on Gears as well. Branch reported he ultimately served Gears on September 22, 2014, at the Eagle Pass address.

Gears filed a motion for summary judgment, asserting a statute of limitations defense and alleging that he was not served with Molina’s complaint. Gears argued that Molina (1) failed to serve him, or (2) failed to exercise diligence in serving him on or before the expiration of the statute of limitations. The lower court granted Gear’s motion and Molina appealed the decision.

The Appellate Court stated that, in order to commence a lawsuit within the applicable statute of limitations period, a plaintiff must file suit within the statute of limitations period and then exercise due diligence to serve the complaint. In addition, the court stated that, once the defendant pleads the statute of limitations as a defense and shows evidence that service was not accomplished within the statutory period, the burden shifts to the plaintiff to present evidence that reasonable efforts were made to serve the complaint during each period of delay.

In this case, the court held that the plaintiff could not sufficiently account for several long periods of delay in service after the statute of limitations had run. It also deemed plaintiff’s repeated attempts to serve the defendant at the same addresses while taking no steps to use alternative means of service as a lack of due diligence.

The court’s ruling in *Molina* clarifies the service rule in Texas with respect to the tolling of statutes of limitations. While plaintiffs are not beholden to a clear rule that service must be accomplished within the statute’s time frame, they must meet the high burden of accounting for all periods of delay thereafter. Although every state has different laws addressing service of a complaint after the statute of limitations runs, subrogation professionals should be aware that diligence in service is often an important factor in ensuring that a complaint is timely filed.

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