LEE ROY SEPULVADO : NUMBER: 567,708, “B”

VERSUS : FIRT JUDICIAL DISTRICT COURT

PRENTISS WILSON and

LOUISIANA FARM BUREAU

MUTUAL INSURANCE CO. : CADDO PARISH, LOUSIANA

**REASONS FOR JUDGMENT ON PEREMPTORY EXCEPTION**

**OF PRESCRIPTION (FILED 5/20/13 BY PRENTISS WILSON AND**

**LOUISIANA FARM BUREAU MUTUAL INSURANCE COMPANY)**

 Trial on the Peremptory Exception of Prescription was held on July 24, 2013. The Court heard testimony from Christian Harris, a senior adjustor for Louisiana Farm Bureau Mutual Insurance Company, and Lee Sepulvado, Plaintiff. Numerous exhibits were admitted into evidence, notably the claim log notes and letters from Mr. Harris to Boyd Family Practice and Mr. Sepulvado. The Court has also thoroughly reviewed the memoranda filed by counsel and in particular the cases which were cited in post hearing briefs: *Mallett v. McNeal,* 05-2289 (La. 2006) 939 So.2d 1254, *Guthrie & Associates v. Stone,* 89-1733 (La. App. 4 Cir. 1990) 562 So.2d 1072, *Waller v. Stuckey,* No. 24578, (La. App. 2d Cir. 1993) and *Lima v. Schmidt,* 91-1848, *(*La. 1992) 595 So.2d 624.

 After thorough consideration, and for reasons that follow, the Court concludes that there was no acknowledgment sufficient to interrupt liberative prescription, and accordingly, the Peremptory Exception of Prescription is sustained.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The accident at issue occurred on July 15, 2011.
2. Plaintiff Lee Sepulvado filed his lawsuit on April 16, 2013, approximately one year and nine months after prescription.
3. On or about August 12, 2011 (less than a month after the accident), Christian Harris sent a letter to Mr. Sepulvado requesting contact “as soon as possible to discuss this matter”.
4. On or about November 22, 2011 (more than four months after the accident), Mr. Harris reissued the same letter.
5. On March 6, 2012, Mr. Harris issued a letter to Boyd Family Practice requesting billings and medical notes pertaining to the plaintiff’s treatment.
6. On or about February 8, 2012, a check for property damage was tendered by Louisiana Farm Bureau to Mr. Sepulvado in “full payment for tender of total loss value minus salvage…”
7. On or about February 8, 2012 (more than six months after the accident) Mr. Harris issued another letter to Mr. Sepulvado indicating that “it has been quite some time since I have been able to speak with you…”, that “we have received no information…”, and that “your cooperation in this matter [is requested] so that I may evaluate our claim…”
8. On April 17, 2012 (more than nine months after the accident), Mr. Harris issued a letter to Mr. Sepulvado indicating that he needed “clarification” from Dr. Boyd so that “we can continue in the settlement of your claim”, that Medicare has a lien on the plaintiff’s claim and that Mr. Sepulvado’s claim “cannot be settled until we receive and protect Medicare’s lien” and that he “will be able to begin processing your claim after receipt of further documentation”.
9. On April 17, 2012, Mr. Harris issued a letter to Dr. Boyd (with a copy to Mr. Sepulvado) stating, in pertinent part, “once I have received the [requested] information I will be able to begin processing Mr. Sepulvado’s claim…”
10. On June 25, 2012, roughly 25 days before prescription, Mr. Harris issued another letter to Dr. Boyd with a copy mailed to Mr. Sepulvado requesting additional documentation, and writing, “once I receive the above information I will begin processing Mr. Sepulvado’s claim…and… this request is time sensitive”.
11. The log notes provide a brief summary of contact between Messrs. Harris and Sepulvado, however, the notes do not reveal sufficient detail or any real corroboration to the in court testimony of either Harris or Sepulvado.
12. More particularly, while Mr. Sepulvado’s testimony provides more detail of the conversations between him and Mr. Harris, there is no corroboration from any documentary evidence supporting any reasonable inference or conclusion that the prescriptive time had been interrupted. In fact, at the close of his testimony, Mr. Sepulvado stated that Christian Harris advised him “both in writing and verbally” that his claim would be settled. The Court does not find any writing by Mr. Harris that conveys that statement - which undermines Mr. Sepulvado’s testimony - and leads the Court to believe that Mr. Sepulvado simply made an inference that the claim would be settled.
13. Specifically, the letters issued by Mr. Harris emphasize the need for “clarification”, more documents and explanation “before we will be able to begin processing” the claim and that the request (for more documentation) is “time sensitive”.
14. There was no act of reparation (other than property damage reimbursement-which is distinguishable), no unconditional offer of payment nor any act by Harris that can reasonably be said to have lulled Mr. Sepulvado into believing that a money settlement was forthcoming. In fact, the evidence is that Louisiana Farm Bureau recognized the claim; it paid property damage; and it continually requested additional medical documentation as to causation. None of the above acts constitute (even tacit) acknowledgment under our jurisprudence.
15. There is no ethical or legal duty of a claims adjuster to advise a claimant of the liberative prescriptive period of a year.

**CREDIBILITY AND SINCERITY OF MR. SEPULVADO**

 The Court is impressed with Lee Roy Sepulvado. He has a military background; he has been employed for 26 years at GE and has been a faithful member of St. John’s Catholic Church for many years. The Court believes that Mr. Sepulvado, who has never filed a lawsuit prior to April 16, 2013, honestly believed that his claim against Louisiana Farm Bureau would be settled. However (and notwithstanding that he is a first class gentleman), there is insufficient objective evidence in the record to support Mr. Sepulvado’s inference, which has now become his legal position in response to the exception.

**CONCLUSION**

 After concluding that there has been no acknowledgement, suspension, interruption or renunciation of prescription, the Court concludes that the Peremptory Exception of Prescription is sustained.

 Counsel shall submit a formal Judgment consistent with this ruling and in accordance with La. Dist. Ct. R. 9.5.

Signed this 26th day of July, 2013 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

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