



## Recent Developments regarding the Discovery Rule and the Fraudulent Concealment Doctrine

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### INTRODUCTION/SUMMARY

- The Discovery Rule and the Fraudulent Concealment Doctrine are two exceptions to statutes of limitations.
- Between 1998 and 2015, Texas Supreme Court repeatedly narrowed the circumstances in which plaintiffs can invoke these exceptions.
- Focus of Court: what plaintiffs could have learned through exercise of “*reasonable diligence.*”
- *Hooks* decision in 2015 provided an avenue for applying these exceptions in oil and gas cases.
- But, the trend is still clearly against applying Discovery Rule and Fraudulent Concealment Doctrine.

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## ACCRUAL OF CAUSE OF ACTION

- Plaintiff's claim typically occurs when facts come into existence authorizing plaintiff to seek a judicial remedy.
  - *Exxon v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 209 (Tex. 2011)
- Statutes of limitations typically begin to run when the claim accrues.
- “even if the fact of injury is not discovered until years later”
- “even if all resulting damages have not yet occurred”

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## EXCEPTIONS TO THE GENERAL RULE

- Discovery Rule: defers accrual of cause of action for certain **categories of injuries** because “it is otherwise difficult for the injured party to learn of the wrongful act”.
- Fraudulent Concealment: **fact-specific, equitable doctrine** that tolls limitations based on defendant's active suppression of facts that would have revealed plaintiff's injury or failure to disclose despite having duty to do so.
- Both serve to extend the time in which plaintiffs can file their claims, but only “until the plaintiff knew or in the exercise of **reasonable diligence** should have known of the wrongful act.”

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## 1996 WAS A BIG YEAR FOR THE DISCOVERY RULE

- 2 important cases in 1996:
  - *Computer Associates Int'l, Inc. v. Altai*
  - *S.V. v. R.V.*
- *Altai*: reaffirmed that application of the Discovery Rule is on a “categorical basis.”
- *S.V.*: articulated “two unifying principles” of the Discovery Rule:
  - Nature of the injury must be ***inherently undiscoverable***
  - The injury itself must be ***objectively verifiable***

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## ***HECI EXPLORATION CO. v. NEEL***

982 S.W.2d 881 (Tex. 1998)

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