

PA Superior Court Applies Discovery Rule as of Date Plaintiff Advised of the Possibility of Lyme Disease Rather than Date of Actual Diagnosis

The Superior Court in *Nicolaou v. Martin* 2016 Pa. Super. 300, 2016 Pa. Super. LEXIS 784 (Pa. Super. 2016) has once again addressed the often litigated "discovery rule," which is a concern in various types of litigation, but often appears in the medical malpractice context where there are allegations of a missed or delayed diagnosis. In short, the discovery rule asks whether the statute of limitations is tolled for a period of time in a given cause of action where, after the exercise of reasonable diligence, the plaintiff could not be expected to learn of an injury or its cause.

In *Nicolaou*, the Court affirmed the trial court's entry of summary judgment in favor of healthcare defendants and against the plaintiff where the plaintiff argued that the discovery rule should have tolled the statute of limitations in her lawsuit as the healthcare defendants failed to timely diagnose Lyme disease. While the plaintiff did not receive an official diagnosis until February 13, 2010, a nurse practitioner informed the plaintiff on July 20, 2009, that she may have Lyme disease and prescribed medication for treatment of Lyme disease on that date, which was effective in treating her symptoms. However, the plaintiff did not institute her lawsuit until February 10, 2012, more than two years after the applicable statute of limitations.

In rejecting the plaintiff's argument, the Court used the date the plaintiff was first told she *might* have Lyme disease and prescribed treatment for the same as the date the statute of limitations began to run, and not the date of the actual diagnosis as confirmed by testing. In doing so, the Court noted that the discovery rule "is tied to the actual or constructive knowledge of at least some form of significant harm and of a factual cause linked to another's conduct, without the necessity of notice of the full extent of the injury, the fact of actual negligence, or precise cause." Based on this, the Court stated that "reasonable minds would not differ that [plaintiff] should have known as early as July 2009, and could have proven at that time, that she suffered from Lyme disease," and therefore there were no genuine issues of material fact for trial and summary judgment was entered.

Comment: The Superior Court's holding in *Nicolaou* is consistent with Pennsylvania Courts' approach to the discovery rule, which places a heightened burden on the plaintiff to establish that the rule applies when compared to other jurisdictions, as explicitly stated in the *Nicolaou* opinion. Here, when establishing the date the statute of limitations would start running, the Court found it important that the plaintiff was placed on notice of the possibility that she had Lyme disease, that she has responded to treatment for Lyme disease and that she had waited to get the confirming test for seven months.

For more information, please contact Noah E. Katz at nkatz@wglaw.com or 570.961.2706, or Ryan R. McBride at rmcbride@wglaw.com or 570.961.2527.