



The Discovery Rule under *Childs v. Haussecker*

In *Childs v. Haussecker* and *Humble Sand & Gravel, Inc. v. Martinez*, the Texas Supreme Court addressed the correct formulation and application of the “discovery rule” in the latent occupational disease context noting that latent injuries or diseases are by nature often undiscoverable within the applicable limitations period. Both plaintiffs in these separate cases eventually discovered they had contracted silicosis as result of on-the-job inhalation of silica dust over time. Stating that the determination of when the plaintiffs' causes of action accrued is usually fact dependent, the Supreme Court held that questions of fact existed, precluding the summary judgments granted by the trial courts.

In the first case, Haussecker knew he was ill as early as 1968, but there existed a question of fact as to when he connected or should have connected his illness to his work. Although he filed a workers' compensation claim in August 1968 and knew co-workers had been diagnosed with silicosis in 1965, his diagnosis of silicosis was not made until April 1990. He filed a suit, with the assistance of Childs (an attorney), which was dismissed for want of prosecution in 1972. He consulted with Childs again on April 26, 1990 and was told that too much time had passed. He consulted with another lawyer in 1992 and filed suit in April 1993. (*Childs v. Haussecker* is a legal malpractice action against the first attorney).

In the other case, Martinez filed suit on August 13, 1992, alleging that he contracted silicosis while working as a sandblaster. He had filed a workers' compensation claim alleging a lung injury in September 1989 and knew as early as 1985 that his brother, also a sandblaster, had silicosis. Nonetheless, Martinez was idle for a year before seeking medical advice. His diagnosis of silicosis was made on October 7, 1991. Facts indicated that a reasonably diligent person in this situation would have sought information about his injuries and its causes, as required by the discovery rule, but the defendant did not offer any evidence that a diligent investigation would have led Martinez to discover his occupational illness earlier than August 13, 1990, which would have triggered the two-year statute of limitations and precluded this suit.

Both plaintiffs argued that the causes of action accrued at the time of their respective medical diagnoses. Both defendants, on the other hand, argued that the causes of action accrued when the plaintiff filed a workers' compensation claim or lawsuit alleging he suffered from an occupational injury. The lower court in both cases tied the limitations to the time the plaintiff becomes aware of the permanent nature of the injury. The Supreme Court rejected all of these arguments.

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After balancing concerns that plaintiffs be diligent in seeking meritorious claims with the need to prevent premature or speculative claims, the Supreme Court held that a cause of action for a latent occupational disease case does not accrue until (1) the plaintiff's symptoms manifest themselves to a degree or for a duration that would put a reasonable person on notice that he or she suffers from some injury and (2) he or she knows, or in the exercise of reasonable diligence should have known, that the injury is likely work-related.

A plaintiff may know he or she suffers from an occupational injury before the medical diagnosis is made. Certainly, a diagnosis would start the limitations period, but lack of a diagnosis would not necessarily prevent its commencement, especially where the absence of diligence on the part of the plaintiff is the reason for the deficiency. The plaintiff's filing of a workers' compensation claim or lawsuit may commence the limitations, but not always. Some such claims and suits are filed by overly cautious plaintiffs and may be speculative or premature and should not form the basis of a lawsuit. It held that a cause of action accrues when a plaintiff's symptoms manifest themselves to a degree or for a duration that would put a reasonable person on notice that he or she suffers from an injury and knows or with the exercise of reasonable diligence should have known that the injury is work-related.

In reversing the summary judgments, the court noted that inquiries involving the discovery rule usually entail questions for the trier of fact. The existence of a fact issue as to when the plaintiff should have connected symptoms of a latent disease to a work-related injury will preclude summary judgment on the basis of statute of limitations. However, the limitations period may be determined as a matter of law if reasonable minds could not differ about the conclusion to be drawn from facts in the record. Therefore, to prevail on a statute of limitations motion for summary judgment a defendant must present enough evidence to establish as a matter of law that plaintiff could have reasonably discovered that he or she had a work-related injury had he or she conducted a diligent investigation.

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