

Tolling Statutes of Limitations in Products Liability Cases: Latent Injury or Unknown Cause?

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Consider a hypothetical person named Jane, who bought a chair twenty years ago. The chair was designed to help relieve back pain, but it actually made it worse. Because Jane was trying many different remedies, she did not associate the chair with the new pain. Additionally, the problems with the chair were not discovered for many years, when a newspaper reported that the company had known this was a possibility. However, Jane had stopped using the chair after just a couple months, when she underwent a medical procedure that relieved her pain. Jane wants to bring a products liability claim for personal injury and negligent design, but are her claims time-barred? The answer may depend on the state in which Jane brings the action.

Causes of action accrue when all elements of the cause of action exist. This is a simple enough legal statement, and it is obviously true. However, sometimes potential plaintiffs are not aware that one of the elements is present. To account for this, many states have adopted a “discovery rule” that tolls the statute of limitations until the injury has been “discovered.” (E.g., [*Jolly v. Eli Lilly & Co.*](#) (“The discovery rule provides that the accrual date of a cause action is delayed until the plaintiff is aware of her injury and its negligent cause.”).) The most common illustration is in toxic torts; in asbestos cases, for example, individuals are exposed many years before they may fall ill. Because the discovery rule tolls the statute of limitations until the injury manifests, plaintiffs can still bring claims decades after the exposure.

But what happens if the injury is obvious but the cause is not? In asbestos cases, the injury does not appear until much later, so the statute of limitations is tolled. In our example above, though, Jane's back pain increased while she used the chair, but the connection between the pain and the chair was not generally known until many years later. In some states, the statute of limitations is tolled until that cause is discovered. California, for example, "provides that the accrual date of a cause of action is delayed until the plaintiff is aware of her injury *and its negligent cause*." (*Id.* (emphasis added).) The result of this is that if the chair caused an injury, the statute of limitations is tolled until Jane should reasonably have known that the chair caused the injury.

Because Jane used the chair so long ago, her product liability claim would normally be time-barred. However, California's discovery rule would allow her to bring a claim as long as the cause of the injury was not reasonably knowable. (*Id.* ("A plaintiff is held to her actual knowledge as well as knowledge that could reasonably be discovered through investigation of sources open to her.")) In our hypothetical, even though the back pain itself was immediately apparent, the cause of the pain was not and thus the statute of limitations was tolled.

Not all states have this rule, however. New York's discovery rule applies only to exposure and not to products. ([N.Y. C.P.L.R. § 214-c](#); [Giordano v. Market Am., Inc.](#)) As a result, because the pain caused by the chair was apparent twenty years ago, the statute of limitations had expired – even though Jane did not know she had an actionable claim.

The consequence is that identical fact patterns create opposite outcomes in different states, depending on the operative rule. States often have different legal standards and statutes of limitations, so this is not a unique situation. However, some states have not fully addressed this issue. For example, North Carolina is one such state. A federal court analyzing this issue was forced to rely on a construction defect case, as there are no state appellate court decisions addressing this set of circumstances. (See [Garner v. Vradelis](#).) As a result, it is an issue that needs to be researched and considered in certain products liability cases.

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