IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROGER DANIELS and TAMMY LYNN WALLACE, Plaintiffs, v. OPTEK TECHNOLOGY, INC., JOHN DOE I, JOHN DOE II, JOHN DOE III, XYZ CORPORATION I, XYZ CORPORATION II, and XYZ CORPORATION III, Defendants.	)	C.A. No. 10C-10-002 JRJ

OPINION

Date Submitted: March 21, 2012
Date Decided: May 8, 2012

Upon Defendant Optek Technology, Inc.'s Motion for Summary Judgment:
DENIED

Ian C. Bifferato, Esquire, Richard S. Gebelein, Esquire, David W. deBruin, Esquire, and J. Zachary Haupt, Esquire, Bifferato, LLC, 800 North King Street, 1st Floor, Wilmington, Delaware, 19801, Steven J. Phillips, Esquire, (argued) *pro hac vice* and Nancy A. Perry, Esquire, *pro hac vice*, Levy, Phillips & Konigsberg, LLP, 800 Third Avenue, New York, New York, 10022, Attorneys for Plaintiffs.

R. Stokes Nolte, Esquire, Reilly, Janiczek & McDevitt, P.C., 1013 Centre Road, Suite 210, Wilmington, Delaware, 19805, Attorney for Defendant Optek Technology, Inc.

Jurden, J.

I. INTRODUCTION

Before the Court is Defendant Optek Technology, Inc.'s ("Optek") Motion for Summary Judgment. Defendant argues it is entitled to judgment as a matter of law because Plaintiffs' personal injury claims are time-barred pursuant to 10 *Del. C.* § 8119, and Plaintiffs have failed to establish any basis to toll the two-year statute of limitations. Plaintiffs concede that a two-year statute of limitations applies to their claims,[1] but argue that this case "falls squarely within the discovery exception for accrual of birth defect/toxic tort cases set forth in *Brown v. E.I. duPont de Nemours & Co., Inc.*,"[2] and thus the statute was tolled until plaintiffs were "reasonably on notice" of the cause of the injury.[3] Plaintiffs further argue that, separate and apart from the discovery exception, Plaintiffs' claims are timely as a result of defendant's fraudulent concealment. Finally, Plaintiffs assert that their claims are tolled by the state law limitations preemption provision of the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA").[4] For the reasons that follow, the Court finds that the discovery exception applies and Plaintiffs' claims are therefore not time-barred. Consequently, Defendant's Motion for Summary Judgment is **DENIED**.

[1] Plaintiffs' injuries were sustained 25 years before they filed this action in October, 2010.

[2] 820 A.2d 362 (Del. 2003).

[3] Plaintiffs' Brief in Opposition to Defendant Optek Technology, Inc.'s Motion for Summary Judgment (Trans. ID No. 39839747) (hereinafter "Pl. Ans. Br.") at 1.

[4] *See id*. at 3.

II. BACKGROUND

Plaintiff Tammy Wallace is the mother of Plaintiff Roger Daniels. Roger was born on December 31, 1985 with numerous severe birth defects, including ventricular septal defect, nystagmus and congenital scoliosis.[5] Optek owned and operated an electronic components manufacturing facility in McKinney, Texas, where Ms. Wallace, then 19 years old, began working in approximately March 1983.[6] Prior to working at Optek, Ms. Wallace had no prior experience working in a manufacturing setting or working with chemicals.[7]

Ms. Wallace worked as a "lead" operator in the "symbolization" area of the Optek facility, where ink stamping machines were used to label component parts, such as LEDs.[8] About six to eight workers were located in the symbolization area, which contained two or more stamping machines. Ms. Wallace and the other workers used large quantities of solvent-based inks and stand-alone solvents in their work. Isopropyl alcohol, acetone and a solvent product called "Markem," among other chemicals, were used extensively throughout the symbolization area.[9]

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[5] *Id*. at 5. Affidavits of Tammy Lynn Wallace (Exhibit A) and Roger Daniels (Exhibit B) annexed to Pl. Ans. Br.

[6] *Id*. at 5-6. During her employment at Optek, Ms. Wallace was known as Tammy Lynn Davis and/or Tammy Lynn Daniels. *Id*. at 6, n. 4.

[7] *Id*. at 6.

[8] *Id*. at 6. (citing Ex. A at ¶¶ 6, 7). LED's are light-emitting diodes, which are semi-conductor light sources. *See* Wikipedia http://en.wikipedia.org/wiki/Light-emitting_diode ("LEDs are used as indicator lamps in many devices and are increasingly used for other lighting . . . . Light-emitting diodes are used in applications as diverse as aviation lighting, automotive lighting, advertising, general lighting, and traffic signals. ").

[9] *Id*. (citing Ex. A at ¶¶ 7-10).

At this stage of the proceedings, Plaintiffs do not yet know the full range of chemicals to which Ms. Wallace was exposed at Optek.

Among other things, Ms. Wallace's job involved dispensing tubes of ink and applying the inks to the stamping machines. To do this, Ms. Wallace squeezed ink directly to her finger and applied it to the machine. Optek provided Ms. Wallace with a finger "cot," which Plaintiffs claim did not prevent the ink from smearing on her hand. Ms. Wallace also cleaned the stamping machines and the individual components by wiping them down with cloths soaked with Markem, acetone, and other solvents.[10] She also cleaned electronic components by placing them in a vat filled with isopropyl alcohol. Retrieving the components required her to insert her unprotected arms and hands directly into the vat of alcohol and lifting out the parts.[11] She filled the vat with isopropyl alcohol by manually pouring the chemical from the gallon jug containers.[12]

According to Plaintiffs, Ms. Wallace was subjected to inhalational exposure as well as dermal exposure to these chemicals.[13] Plaintiffs allege that the small room where she worked had no effective ventilation, and she was exposed to the constant presence of chemical vapors. Plaintiffs further allege that chemical spills

[10] *Id*. (citing Ex. A at ¶¶ 6-10)

[11] *Id*. (citing Ex. A at ¶ 10).

[12] *Id*. at 6.

[13] *Id*. at 7. (citing Ex. A at ¶¶ 8-13.).

occurred often, generating even higher concentrations of airborne chemicals, which sometimes resulted in evacuations of the workers from the area.[14] According to Plaintiffs, not only did chemical spills occur inside the workplace, but on at least two occasions, chemical spills that occurred outside the building produced fumes which infiltrated the work area and sickened the workers.[15] Plaintiffs claim that when they were instructed to go outside, the workers were sickened even further by these fumes.[16]

Plaintiffs allege that Optek failed to provide gloves or any other protective equipment to Ms. Wallace, and as a result, Ms. Wallace received "very heavy chemical exposures" through both dermal contact and inhalation.[17] Plaintiffs further allege that because Optek failed to provide work clothing, changing rooms or laundry services, Ms. Wallace was forced to wear her chemical-laden clothing home where it continued to release toxins into the environment through handling and laundering.[18]

When Ms. Wallace became pregnant with her son, she claims she asked her supervisor at Optek, Brian Stringer, whether it was safe to continue working with

[14] *Id*. (citing Ex. A at ¶¶ 12, 13).

[15] *Id*. (citing Ex. A at ¶ 13).

[16] *Id*.

[17] *Id*.

[18] *Id*. (citing Ex. A at ¶¶ 8, 11-14.).

and around the chemicals during her pregnancy.[19] According to Plaintiffs, Mr. Stringer assured Mrs. Wallace that the chemicals would have no affect whatsoever on her health or the health of her developing child.[20] Relying on those assurances, Ms. Wallace continued to work in the symbolization area during her pregnancy.[21]

Approximately six or seven months into her pregnancy, Ms. Wallace's doctor informed her that she had toxemia.[22] She asked Mr. Stringer whether the chemicals could be the cause of her toxemia. According to Ms. Wallace, Mr. Stringer reassured her that the chemicals could not cause toxemia and again told her that the chemicals would have no effect on her health or her pregnancy.[23] Ms. Wallace claims that when she questioned her physician as to whether her toxemia could be caused by her work, he advised her that there was no relationship between her work and her medical condition.[24] Because her Optek supervisor and her physician assured her that there was no connection between her work and her toxemia, Ms. Wallace continued to work in the symbolization area at Optek[25] up

[19] *Id*.

[20] *Id*. (citing Ex. A at ¶ 15).

[21] *Id*. (citing Ex. A at ¶ 16).

[22] *Id*.

[23] *Id*. (citing Ex. A at ¶ 17).

[24] *Id*. at 8 (citing Ex. A at ¶ 18).

[25] *Id*. (citing Ex. A, at ¶¶ 17, 18).

until she was ordered by her doctor to cease work altogether and to go on bed rest.[26] She did not return to Optek until after Roger was born.[27]

Plaintiffs claim that although Optek required Ms. Wallace to work with and around dangerous chemicals, it never provided safety training with respect to those chemicals, and further, the meager personal protective equipment Optek provided was "woefully inadequate" to prevent either dermal exposure or inhalational exposure to those chemicals.[28] Additionally, Plaintiffs claim that not only did Optek allegedly fail to provide adequate warnings about the adverse health affects of exposure to these chemicals, but when Ms. Wallace inquired about the potential effects of these chemicals on her developing child, Optek "falsely assured" her of the safety of the workplace.[29] As a result, allege Plaintiffs, Ms. Wallace was unaware of the reproductively toxic properties of the chemicals at Optek and was unable to protect herself and her child from these harmful exposures.[30]

As noted above, Plaintiffs allege that as a consequence of the chemical exposure, Roger was born with a number of severe birth defects. He was

[26] *Id*. (citing Ex. A at ¶ 18).

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*.

diagnosed with ventricular septal defect and nystagmus at birth[31] and later, as he was beginning to walk, he was diagnosed with congenital scoliosis, tipped hips and turned-in feet.[32] At approximately age seven, he was diagnosed with severe depression and bi-polar disorder.[33] Roger has received continuing medical treatment for his injuries, including two unsuccessful surgeries to repair his nystagmus. Plaintiffs allege that his injuries are serious and debilitating, particularly his painfully deformed spine which renders him unable to pursue meaningful work or recreational activity.[34]

According to Plaintiffs, Ms. Wallace asked Roger's treating physicians what caused her son's injuries. All of Roger's doctors advised Ms. Wallace that the cause of his injuries was not known.[35] Plaintiffs allege that none of Roger's physicians ever told Mrs. Wallace that there was a potential causal relationship between her chemical exposure at Optek and her son's birth defects.[36]

Ms. Wallace is not scientifically or medically trained.[37] Plaintiffs allege that she had no reason to doubt or question Roger's doctors. According to Plaintiffs,

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[31] *Id*. (citing Ex. A at ¶ 20).

[32] *Id*. at 8-9.

[33] *Id*. at 9.

[34] *Id*.

[35] *Id*. (citing Ex. A, ¶¶ 22, 23).

[36] *Id*. (citing Ex. A, ¶ 23).

[37] *Id*. (citing Ex. A, ¶¶ 3-4; Ex. B, ¶ 3).

like most parents, Ms. Wallace relied upon the doctors and accepted their representations that the cause of Roger's injuries was not known.[38] She then turned her energy and attention on caring for Roger and meeting his medical and emotional needs rather than pursuing an explanation she was told simply did not exist.[39]

Plaintiffs allege that up until the time they retained counsel, they never saw or heard any reports of "semiconductor" litigation or any other litigation involving exposure to industrial chemicals and birth defects.[40] They further allege that they never researched or read scientific articles or studies involving birth defects and toxic exposures.[41] Roger claims he did not even know his mother worked with chemicals during her pregnancy until October 23, 2008, when Ms. Wallace contacted counsel regarding their claims.[42] According to Plaintiffs, because they were told by the doctors there was no known cause for Roger's birth defects, and because Optek assured Ms. Wallace that her work place was safe, they did not consult an attorney or search attorney websites after Roger's birth.[43]

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[38] *Id*.

[39] *Id*. (citing Ex. A, ¶ 24).

[40] *Id*. (citing Ex. A, ¶ 28; Ex. B, ¶ 18).

[41] *Id*. (citing Ex. A, ¶¶ 28-30; Ex. B, ¶¶ 3, 18, 19).

[42] *Id*. (citing Ex.. B, ¶ 16).

[43] *Id*. at 9-10 (citing Ex. A, ¶¶ 24, 30; Ex. B, ¶ 15).

Shortly after learning of an attorney advertisement, Ms. Wallace contacted her attorneys on October 23, 2008.[44] According to Plaintiffs, it was not until then that Ms. Wallace learned of the existence of a scientific basis to causally link her chemical exposure at Optek and Roger's injuries.[45] Plaintiffs allege that this is when they first became aware that Defendant's tortious conduct was a proximate cause of Roger's injuries.[46]

As Plaintiffs point out, this case does not involve a "signature disease," such as mesothelioma, whose unique cause, exposure to asbestos, is widely known and can be readily discovered on the internet or at the public library.[47] Nor does this case involve the ingestion of a pharmaceutical drug which carries the risk of a known adverse health outcome published directly to physicians and the users of the drug.[48] Rather, this case involves a "complex cause and effect relationship involving multiple chemicals and chemical mixtures, multiple routes of exposures, and a unique array of adverse health outcomes specific to this particular plaintiff."[49]

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[44] *Id*. at 10 (citing Ex. A, ¶ 24; Ex. B ¶ 15).

[45] *Id*. (citing Ex. A, ¶¶ 26-27; Ex. B, ¶ 15).

[46] *Id*.

[47] *Id*.

[48] *Id*.

[49] *Id*.

Plaintiffs allege that they acted reasonably and diligently in attempting to discover the cause of Roger's injuries, and despite their reasonable efforts, Plaintiffs "remained blamelessly ignorant" of a causal relationship between Ms. Wallace's chemical exposures and Roger's injuries until a time within two years of the filing of the complaint in this action.[50]

III. DISCUSSION

A. *Standard of Review*

Summary judgment may be granted only if the facts, viewed in a light most favorable to the plaintiff, "predominate toward the conclusion that the plaintiff is chargeable with knowledge that his harmful physical condition was attributable" to defendant's wrongful conduct.[51] When either plaintiff's knowledge or the reasonableness of his actions is in dispute in light of conflicted evidence in the record, the determination is for the jury not the trial court.[52] Consequently, only when the record is uncontroverted that the plaintiff discovered his injury more than two years prior to the filing of suit is summary judgment appropriate.[53]

[50] *Id*. at 11. Plaintiffs filed their complaint on October 1, 2010, alleging negligence, premises liability, strict liability, ultrahazardous activity, and willful and wanton conduct. *Id*; Plaintiffs' Complaint ("Pl. Comp.") (Docket Item #1) (Trans. ID. No. 33580325).

[51] *Brown*, 820 A.2d at 366 (quoting *In re Asbestos Litig.*, 673 A.2d 159, 163 (Del. 1996)).

[52] *In re Asbestos Litig.*, 673 A.2d at 163.

[53] *Id*.

B. ***The Time of Discovery Exception***

The "time of discovery" exception, sometimes referred to as the "inherently unknowable injury" doctrine provides that "when an inherently unknowable injury…has been suffered by one blamelessly ignorant of the act or omission and injury complained of, and the harmful effect thereof develops gradually over a period of time, the injury is 'sustained'…when the harmful effect first manifests itself and becomes physically ascertainable."[54] In such a case, the statute of limitations is tolled until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, his injury. As this Court noted in *Burrell v. Astrazeneca, LP*,[55] the Delaware Supreme Court appears to have extended the time of discovery exception in cases where the plaintiff remains "blamelessly ignorant" of a potential claim "even after a latent injury reveals itself through physical ailments."[56] The Supreme Court held that in those circumstances, the statute of limitations begins to run when the plaintiff is "on notice of a potential tort

[54] *McClements v. Kong*, 820 A.2d 377, 380 (Del. Super. 2002) (citing *Layton v. Allen*, 246 A.2d 794, 798 (Del. 1968)).

[55] *Burrell v. Astrazeneca LP*, 2010 WL 3706584, at *7, n. 48 (Del. Super.) (*Ryan v. Gifford*, 918 A.2d 341, 359 (Del.Ch.2007). *See also Becker v. Hamada, Inc.*, 455 A.2d 353, 356 (Del.1982) (quoting *Omaha Paper Stock Co. v. Martin K. Eby Constr. Co.*, 193 Neb. 848, 230 N.W.2d 87, 89-90 (Neb.1975) ("Even in malpractice and fraud cases where a discovery rule is applied it is not the actual discovery of the reason for the injury which is the criteria.... [D]iscovery means discovery of facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery.")).

[56] *Brown v. E.I. DuPont*, 820 A.2d 362, 366 (Del. 2003).

claim."[57] The standard is *inquiry* notice, not *actual* notice.[58] The statute of limitations is tolled until the plaintiff discovers facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry, which, if pursued, would lead to the discovery of such facts.[59] According to the Delaware Supreme Court, to apply the discovery exception, the Court must conduct a fact-intensive inquiry to determine whether a plaintiff was blamelessly ignorant of a potential claim or dilatory in pursuing the action. A plaintiff may remain blamelessly ignorant of the potential claim even after a latent injury reveals itself through physical ailments. The limitations period for a toxic tort does not begin immediately upon the onset of physical problems if the symptoms are reasonably attributable to another cause and the plaintiff is not on notice of the tortious cause.[60] Contrary to Plaintiffs' assertion, Plaintiffs bear the burden of establishing the facts necessary to invoke a

[57] *Id.* As Judge Slights noted in *Burrell*, Supra, at n. 54 on *Brown*, the Supreme Court "found persuasive a line of authority that emerged in the toxic tort context, particularly *In re Asbestos Litig*., 673 A.2d 159, 163 (Del. 1996)." In *In re Asbestos Litig*., the Court held that plaintiff's injury was not "physically ascertainable (even though plaintiff n. 57 continued . . . had suffered from asbestos-like symptoms for more than twelve years) until it was medically diagnosed, because plaintiff's doctors continued to assure him that he was not suffering from an asbestos-related disease.

[58] Plaintiffs here argue that the standard is actual notice. This argument is not supported by the case law. *See Burrell*, 2010 WL 3706584, at *6 (citing *Brown*, 820 A.2d at 368, n. 21); *Wal-Mart Stores, Inc. v. AIG Life Ins. Co*., 860 A.2d 312, 319-20 (Del. 2004); *See King v. Beebe Med. Ctr*., 2003 WL 22410777, at *1 (Del. Super. 2003) ("In the absence of actual notice, plaintiffs are on inquiry notice when they are chargeable with knowing that their rights have been violated.").

[59] *Wal-Mart Stores, Inc.*, 860 A.2d at 319-20.

[60] *Brown*, 820 A.2d at 368 (other citations omitted).

tolling exception.[61] In the affidavit plaintiff Tammy Wallace submitted in opposition to Defendant's summary judgment motion,[62] she avers several facts which the Court finds relevant in its analysis of whether the time of discovery exception applies here. First, Ms. Wallace has only a high school education, and no education, training or experience in medicine, toxicology, epidemiology or any other scientific discipline.[63] Second, when Ms. Wallace became pregnant with Roger, she asked her supervisor whether it was safe to continue to work with certain chemicals during her pregnancy. Her supervisor assured her that it was safe to continue working with the chemicals and that they would have no effect whatsoever on her baby.[64] Third, when Ms. Wallace developed toxemia in her sixth or seventh month of pregnancy, she asked that same supervisor whether working around the chemicals could be the cause of the toxemia. The supervisor advised her that the chemicals were not the cause of the toxemia.[65] Fourth, when Ms. Wallace asked her doctor whether her work at Optek could be the cause of her toxemia, she was told it was not.[66] Fifth, because of Roger's numerous birth

[61] *See Burrell*, 2010 WL 3706584, at *4; *In re Tyson Foods, Inc. Consol. S'holder Litig.*, 919 A.2d 563, 585 (Del. Ch. 2007).

[62] Pl. Ans. Br., Ex. A.

[63] *Id.* at ¶ 4.

[64] *Id*. at ¶ 15.

[65] *Id*. at ¶ 17.

[66] *Id*. at ¶ 18.

defects and medical issues, Ms. Wallace asked Roger's doctors "what the cause of his birth defects could be." Each doctor she asked told her they did not know the cause of Roger's birth defects. She had no reason to disbelieve or distrust these doctors and thus accepted that there was no medical or scientific explanation for Roger's birth defects.[67] Because Roger's doctors told her the cause of his birth defects was not known, she "did not continue to inquire into the possible causes of Roger's birth defects" and instead focused on addressing Roger's medical and emotional disabilities.[68] Sixth, the first time Ms. Wallace learned there was a potential causal relationship between her chemical exposure and Roger's birth defects was from her attorney in October 2008. At no time before this did she suspect that the cause of the birth defects was known, or that Roger's problems could potentially be attributed to chemicals she worked with at Optek.[69] Seventh, she never saw or heard any reports in the media or elsewhere about litigation involving cleanrooms, semiconductors, chemicals or birth defects.[70]

The facts here are similar to those in *Brown*, where the minor plaintiff's injuries were apparent at birth, although the cause was not apparent.[71] When the

[67] *Id*. at ¶ 22.

[68] *Id*. at ¶ 24.

[69] *Id*. at ¶ 27.

[70] *Id*. at ¶ 28.

[71] *Brown*, 820 A.2d at 366.

parents in *Brown* sought an explanation for their child's injuries, they were told by their child's doctors that the cause was unknown.[72] Relying on what the doctors told them, the parents in *Brown* failed to file a claim within the two-year statute of limitations set forth in 10 *Del. C.* § 8119. The Delaware Supreme Court in *Brown* reversed the trial court, holding that the time of discovery exception tolled the statute until an expert informed the parents that their child's injuries might be attributable to defendant's product, Benlate.[73] The Delaware Supreme Court stated that "the trial judge should have determined that the statute of limitations did not start to run until the children's parents were on notice that a *legally actionable injury* existed."[74]

In *Burrell v. AstraZeneca LP*,[75] plaintiffs claimed that defendant's antipsychotic medication, Seroquel®, caused them to develop Type II diabetes. AstraZeneca moved for summary judgment, arguing plaintiffs' claims were time-barred and that no tolling doctrines applied. As noted by the Court in *Burrell*, where a party moves for summary judgment based on a statute of limitations defense, the Court must grant the motion if the record reveals that no genuine issues of fact regarding the date on which the applicable statute of limitations

[72] *Id*. at 365.

[73] *Id*. at 365-66.

[74] *Id*. at 366 (emphasis added).

[75] 2010 WL 3706584 (Del. Super. 2010).

began to run, the date to which the statute of limitations may have been tolled, and the date on which the plaintiff filed her complaint with the court.[76] There was no dispute in *Burrell* that the plaintiffs were diagnosed with diabetes more than two years prior to the date they filed their complaints, and there was nothing in the record to suggest the plaintiffs were "somehow put off the path of inquiry into the causal connection between their injuries and Seroquel® by a treating doctor or otherwise."[77] The record in *Burrell* established that both medical and lay sources published information regarding the link between Seroquel® and diabetes as early as 2003.[78] Moreover, by January, 2004, at the direction of the Food and Drug Administration, AstraZeneca had changed its label for Seroquel® to include a warning about diabetes.[79]

In this case, although Roger's physical injuries were apparent at birth and in early childhood, Plaintiffs did not know the cause of his injuries. Optek argues that medical journals and articles published by USA Today and the New York Times should have put Plaintiffs on inquiry notice.[80] However, Plaintiffs claim they did not know of the link between Roger's injuries and Ms. Wallace's

[76] *Id*. at *2.

[77] *Id*. at *7, n 55.

[78] Plaintiffs' complaints were not filed until 2007. *Id*. at 1.

[79] The actual warning read: "WARNING…Hyperglycemia and Diabetes Mellitus." *Id*. at *6.

[80] *See* Defendant's Motion for Summary Judgment and Support Thereof ("Def. Mot. for SJ") (Trans. ID. No. 37927747) at ¶ 13, Exhibits B, C, D, E, and F.

chemical exposure because Roger's doctors, upon whom they reasonably and understandably relied, told them that they did not know the cause. Viewing the facts in a light most favorable to Plaintiffs, because Plaintiffs' knowledge and the reasonableness of their actions are in dispute in light of conflicting evidence in the record, the jury must ultimately decide the validity of that dispute – not the Court.[81] The discovery exception starts the limitations period only when a "legal injury" is sustained.[82] Thus, the statute of limitations did not begin to run on Plaintiffs' claims until they were on notice of a potential claim against Optek.[83] As in *Asbestos Litigation* and *Brown*, Roger:

> suffered a physical condition that could not be attributed to a tortious injury until someone from the scientific community found and revealed publicly a link between the physical condition and the exposure to the toxic substance.[84]

Viewing the facts in the light most favorable to Plaintiffs, the Court finds that the time of discovery exception applies to toll the statute of limitations in this case. Thus, Plaintiffs' claims are not time-barred, and Optek's Motion for Summary Judgment is therefore **DENIED**.[85]

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[81] *In re Asbestos Litig.*, 673 A.2d at 163.

[82] *Brown*, 820 A.2d at 368.

[83] *Id*. at 368-69.

[84] *Id*. at 368; *In re Asbestos Litig.*, 673 A.2d at 163.

[85] Because the Court finds a genuine issue of material fact exists as to Plaintiffs' time of discovery, the Court need not address Plaintiffs' fraudulent concealment or CERCLA arguments.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

cc: Prothonotary