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Limitation of Actions - Ignorance of Cause of Action - Does Ignorance of a Cause of Action Toll the Statute of Limitation

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Liability, therefore, hinges on whether there is a foreseeable requirement or whether the producers are responsible for all possible injuries caused by the use of their product.

The instant case dispensed with any requirement of foreseeability in holding that the wholesomeness of a product should be determined by no other standard than safety.[14] Prior cases have indicated that strict liability may be extended this far.[15] The principal case, in holding that tobacco merits the strict liability theory and that liability is exclusive of "human skill and foresight", has significantly extended liability. The supplier in effect becomes an insurer as to defects unknown and undetectable.[16]

It is submitted that the real value of the decision lies in its warning. Faced with a dilemma, the producers and distributors of tobacco products have failed to handle the problem in a way to which the public is entitled. The impact of this decision should force them to seek a solution to the problem. Failure to respond will bring upon the tobacco industry an immediate threat of an increased financial loss via lawsuits similar to this and a future crowded with regulatory legislation.

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LIMITATION OF ACTIONS — IGNORANCE OF CAUSE OF ACTION — DOES IGNORANCE OF A CAUSE OF ACTION TOLL THE STATUTE OF LIMITATION?—While plaintiff was hospitalized in 1944, a product manufactured by defendant was injected into his nasal sinuses for the purpose of making them perceptible in X-rays. In 1957 plaintiff learned that this substance had caused a cancerous condition in his nose and he brought an action based on negligence and breach of warranty. The New York Court of Appeals *held*, two justices

14. Green v. American Tobacco Co., **supra** note 13 at 173.

15. Pietrus v. Watkins Co., **supra** note 5, at 802 quoting 46 Am. Jur. **Sales** § 806 (1943). ". . . the manufacturer as a rule will be charged with notice of the quality of the article that he himself has made, and cannot excuse himself upon the ground that he did not know its dangerous qualities."

16. See Perlmutter v. Beth David Hosp., 308 N.Y. 100, 123 N.E.2d 792, 795 (1954) (bad blood); See generally 1 Frumer & Friedmann, PRODUCTS LIABILITY, § 16.03(4) (1961).

dissenting, that the action was barred by the statutes of limitation applicable to actions for negligence and breach of warranty. The dissent thought it unreasonable to hold that plaintiff's cause of action had expired before it was possible for him to learn of the wrong. *Schwartz v. Heyden Newport Chemical Corp.*, 12 N.Y.2d 212, 188 N.E.2d 142 (1963).

The general rule is that mere ignorance of one's rights will not toll statutes of limitation, but they begin to run from the moment the cause of action accrues.[1] Some courts believe the occasional hardship resulting from the application of this rule is outweighed by the advantage of outlawing stale claims.[2]

Because of the harshness of the general rule, several jurisdictions have suspended the running of the statute in cases of fraudulent concealment,[3] continuing trespass,[4] infancy[5] and insanity.[6] One or more of these exceptions have been codified in many states.[7] A few jurisdictions hold that statutes of limitation do not run until actual notice of the wrongful act.[8] This extension of the general rule is based on two propositions; (1) it is inequitable to prevent relief to an injured party who was without notice of any negligent act that could cause injury,[9] and (2) legislatures did not intend such consequences to be reconciled with the traditional purpose of statutes of limitation.[10] In support of these propositions one court has held statutes of limitation do not begin to run until knowledge of the *damage* is acquired.[11]

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1. Cristiane v. City of Sarasota, 65 So. 2d 878 (Fla. 1953); Richmond Redev. & Housing Authority v. Laburnum Const. Corp., 195 Va. 827, 80 S.E.2d 574 (1954).

2. Kennedy v. Johns-Manville Sales Corp., 135 Conn. 176, 62 A.2d 771, 773 (1948); Schmidt v. Merchants Despatch Transp. Co., 270 N.Y. 287, 200 N.E. 824 (1936).

3. Scarborough v. Atlantic C. L. R.R., 178 F.2d 258 (4th Cir. 1949).

4. Speth v. City of Madison, 248 Wis. 492, 22 N.W.2d 501 (1946).

5. Hansen v. Lindell, 14 Wash. 643, 192 P.2d 234 (1942).

6. **In re** Goldberg's Estate, 288 Ill. App. 203, 5 N.E.2d 863 (1937).

7. **E.g.,** Cal. Civ. Proc. Code Ann. §§ 328, 338 (1954); Mass. Ann. Laws c. 260 §§ 12, 25 (1959); N.D. Cent. Code §§ 28-01-24, 25 (1961).

8. Urie v. Thompson, 337 U.S. 163 (1949) where a disease was caused by dust inhalation over a period of years; City of Miami v. Brooks, 70 So. 2d 306 (Fla. 1954) where the statute was tolled until the discovery of an old x-ray injury; Sharon v. Kansas City Granite & Monument Co., 233 Mo. App. 547, 125 S.W.2d 959 (1939) which suspended the statute until the conversion of the stock was discovered.

9. City of Miami v. Brooks, **supra** note 8, at 309.

10. Urie v. Thompson, **supra** note 8, at 170.

11. Sylvania Elec. Prods. v. Barker, 228 F.2d 842 (1st Cir. 1955).

Generally where the warranty is as to suitability of the product sold, the limitation runs from the date of sale.[12] If the warranty relates to a future event by which its truth can be ascertained, the statute begins to run as of the time of that event.[13] However, there are a few cases treating a false warranty as a fraud and holding that the running of the statute is postponed until the fraud is discovered or might be discovered in the exercise of ordinary diligence.[14]

It is submitted that the general rule is too harsh and should be liberalized. By postponing the running of the statute of limitation until notice of the negligent act or the breach of warranty is acquired, parties who, through no fault of their own are ignorant of their rights, would be accorded more equitable treatment.

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12. Brackett v. Martens, 4 Cal. App. 249, 87 Pac. 410 (1906); Liberty Mut. Ins. Co. v. Sheila-Lynn, 185 Misc. 689, 57 N.Y.S2d 707 (1945); Thurston Motor Line, Inc. v. General Motors Corp., 258 N.C. 323, 128 S.E.2d 413 (1962).

13. Aced v. Hobbs-Sesack Plumbing Co., 55 Cal. App. 2d 573, 360 P.2d 897 (1961); Inglalls v. Angell, 76 Wash. 692, 137 Pac. 309 (1913) Herein there was a warranty that fruit trees would bear a certain type of fruit. The warranty was breached when it was demonstrated the trees did not bear such fruit, and limitations ran from that time.

14. Dye v. Farm Mortgage Inv. Co. of Topeka, Kan., 74 F.2d 395 (10th Cir. 1934); Anding v. Perkins, 29 Tex. 348 (1867); Cunningham v. Frontier Lumber Co., 245 S.W. 270 (Tex. 1922).