

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
JESSICA R. MAYER, J.S.C.  
JUDGE



MIDDLESEX COUNTY COURT HOUSE  
P.O. Box 964  
NEW BRUNSWICK, NJ 08903-0964

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE COMMITTEE ON OPINIONS

**Memorandum of Decision on Defendants'  
Motion For Summary Judgment**

Skala v. Johnson & Johnson Company, et al., Docket No. MID-L-6820-06  
(In re: Risperdal®/Seroquel®/Zyprexa® Litigation, Case No. 274)

Defendants: Jodi Sydell Rosenzweig, Esq., Drinker Biddle & Reath LLP

Plaintiff: Fletch V. Trammell, Esq., Bailey Perrin Bailey  
Robert W. Cowan, Esq., Bailey Perrin Bailey

Dated: November 18, 2011

Plaintiff Gary Skala ("Mr. Skala" or "Plaintiff") filed a complaint on August 30, 2006, asserting multiple causes of action against Defendants Johnson & Johnson and Janssen Pharmaceutical, Inc. (collectively "Janssen" or "Defendants") for damages allegedly caused by ingestion of Risperdal®. Defendants moved for summary judgment based on the statute of limitations on September 2, 2011. Plaintiff filed opposition on September 16, 2011. Defendants filed a reply brief to Plaintiff's opposition papers on September 23, 2011. The court heard the arguments of counsel on October 25, 2011. The court has considered the written submissions and arguments of counsel regarding Defendants' motion for summary judgment. The following memorandum sets forth the court's disposition of Janssen's motion.

## STATEMENT OF MATERIAL FACTS

Defendants filed a summary judgment motion based on the statute of limitations. Janssen asks the court to apply the limitation laws of Nebraska, rather than the statute of limitations laws of New Jersey. Defendants' Brief in Support of Motion for Summary Judgment ("Defs. Br.") at 5. Janssen argues that Nebraska has a far greater interest in applying its own statute of limitations laws than New Jersey has in applying its laws. Id. at 6-7. Defendants note that "Plaintiff resides and underwent medical treatment; was prescribed, purchased and used Risperdal®; and . . . suffered injury" in Nebraska. Id. at 5.

Defendants contend that Plaintiff's complaint is time barred by Nebraska's statute of limitations. Id. at 16. Nebraska has a four-year statute of limitations, which begins to run on "the date on which the death, injury, or damage complained of occurs." Neb. Rev. Stat. § 25-244(1). Under that state's laws, a cause of action accrues when an individual is injured; not when he learns of who is responsible for causing his injury. Thomas v. Countryside of Hastings, Inc., 246 Neb. 907, 909 (Neb. 1994). Defendants argue that Mr. Skala first learned of his diabetes on July 5, 2002. Defs. Br. at 19. Nebraska's statute of limitations laws allowed Mr. Skala to commence a suit before July 5, 2006. Ibid. Since Mr. Skala did not file suit until August 30, 2006, Janssen argues that Plaintiff's complaint is time barred and should be dismissed. Ibid.

Plaintiff alleges wrongdoings by Defendants related to the marketing, distributing and selling of Risperdal® undertaken at the corporate level. Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Pl. Opp.") at 2. According to Plaintiff, the alleged tortious conduct occurred at Janssen's corporate headquarters in New Jersey, not in Nebraska. Ibid. Further, Plaintiff claims that Defendants' interactions with the United

States Food and Drug Administration (“FDA”) and the medical community regarding Risperdal® originated in New Jersey. Ibid.

Plaintiff argues that New Jersey’s two-year statute of limitations applies. Id. at 23. In New Jersey, the “discovery rule centers upon an injured party’s knowledge concerning the origin and existence of his injuries as related to the conduct of another person.” Lynch v. Rubacky, 85 N.J. 65, 70 (1981). In the alternative, if Nebraska law applies, Plaintiff argues that he satisfies an exception created under that state’s statute of limitations laws based upon the doctrines of fraudulent concealment and the continuous tort theory. Pl. Opp. at 24.

#### CHOICE OF LAW

New Jersey applies its choice-of-law rules to lawsuits filed in the state. Erny v. Estate of Merola, 171 N.J. 86, 94 (2002). In personal injury suits, New Jersey courts apply the significant relationship test enunciated in the Restatement (Second) of Conflict of Laws (1971). See P.V. ex rel. T.V. v. Camp Jaycee, 197 N.J. 132 (2008). Such analysis involves a two-step process. Camp Jaycee, supra, 197 N.J. at 143. First, the court must “determine whether a conflict exists between the laws of the interested states.” Rowe v. Hoffman-La Roche, Inc., 189 N.J. 615, 621 (2007). Where there is no actual conflict, “then the choice-of-law question is inconsequential, and the forum state applies its own law to resolve the disputed issue.” Ibid. If there is a conflict, “the analysis in a personal injury case begins with the section 146 presumption that the local law of the state of injury will apply. Once the presumptively applicable law is identified, that choice is tested against the contacts detailed in section 145 and the general principles

outlined in section 6 of the Second Restatement. If another state has a more significant relationship to the parties or issues, the presumption will be overcome.” Camp Jaycee, supra, 197 N.J. at 136.

A. The Statutes of Limitations in New Jersey and Nebraska

The period of time within which a party may file a complaint is governed by the statute of limitations for that particular cause of action. The statute of limitations begins to run when “the right to institute and maintain a suit first arose, or more specifically, when the act or injury occur[ed].” White v. Mattera, 175 N.J. 158, 164 (2003). At issue in the present matter is whether the laws of New Jersey or Nebraska should apply to Plaintiff’s case. In making this determination, the court must first determine whether an actual conflict exists between the statute of limitations laws of New Jersey and Nebraska.

In New Jersey, the two-year statute of limitations begins to run when the plaintiff is aware of facts that would alert a reasonable person to the possibility of an actionable claim arising out of an injury due to the fault of another. Lapka v. Porter Hayden Co., 162 N.J. 545, 555-56 (2000). The discovery rule is an objective standard, namely whether a plaintiff “‘knew or should have known’ of sufficient facts to start the statute of limitations running.” Szczuvelk v. Harborside Healthcare Woods Edge, 182 N.J. 275, 281 (2005) (quoting Martinez v. Cooper Hosp., 163 N.J. 45, 52 (2000)). Knowledge of fault of another requires “the awareness of facts that would alert a reasonable person exercising ordinary diligence that a third party’s conduct may have caused or contributed to the cause of the injury and that the conduct itself might possibly have been unreasonable or lacking in due care.” Savage v. Old Bridge, 134 N.J. 241, 248 (1993). “[P]laintiffs who seek application of the discovery rule may be ‘divided into two classes:

those who do not know that they have been injured and those who know they have suffered an injury but do not know that it is attributable to the fault of another. A cause of action does not accrue until both of those factors exist.” Guichardo v. Rubinfeld, 177 N.J. 45, 52 (2003) (citing Gallagher v. Burdette-Tomlin Mem. Hosp., 163 N.J. 38, 53 (1998)). “The discovery rule is essentially a rule of equity” which balances the plaintiff’s interest in tolling the statute of limitations with the defendant’s interest in defending a lawsuit with stale or unobtainable evidence. Lopez v. Swyer, 62 N.J. 267, 273 (1973).

In Nebraska, the four-year statute of limitations begins to run on the date on which the party holding the cause of action discovers, or in the exercise of reasonable diligence should have discovered, the existence of the injury or damage. Neb. Rev. Stat. § 25-224; Countryside of Hastings, *supra*, 246 Neb. at 909 (citing Murphy v. Spelts-Schultz Lumber Co., 240 Neb. 275, 282 (1992) quoting Condon v. A. H. Robins Co., 217 Neb. 60 (1984)). “Discovery refers to the fact that one knows of the existence of an injury or damage, and not that one knows who or what may have caused that injury or damage.” Countryside of Hastings, *supra*, 246 Neb. at 909 (citing Ward v. City of Alliance, 277 Neb. 306 (1988); Condon, *supra*). However, one need not know the full extent of one’s damages before the limitations period begins to run, as a statute of limitations can be triggered at some time before the full extent of damages is sustained. Gordon v. Connell, 249 Neb. 769, 774 (1996).

In sum, under the New Jersey Products Liability Act (“NJPLA”), N.J.S.A. § 2A:14-1 et seq., a party may file a complaint within two years from the date of the incident, subject to the “discovery rule.” In Nebraska, product liability actions must be commenced within four years after the date on which the death, injury, or damage

complained of occurs. See Neb. Rev. Stat. § 25-224. Thus, the court concludes that the application of Nebraska versus New Jersey statute of limitations laws leads to different results regarding the timeliness of Plaintiff's complaint.

B. Contacts Identified in Restatement (Second) of Conflict of Laws

The significant relationship test presumes that the law of the place of injury governs, unless another state has a more significant relationship to the issue at bar. See Camp Jaycee, supra, 197 N.J. 132 (2008). However, "situations do arise...where the place of injury will not play an important role in the selection of the state of the applicable law." Restatement, supra, § 146 comment c. "The place of injury becomes less important when it is simply fortuitous." Fu v. Fu, 160 N.J. 108, 125-26 (1999). The place of the injury is fortuitous when "it bears little relation to the occurrence and the parties with respect to the particular issue." Restatement, supra, § 145 comment e.

Mr. Skala is a long-time Nebraska resident who received and filled all of his prescriptions for Risperdal® in Nebraska, ingested the medication in Nebraska and was diagnosed and treated for the alleged injury that resulted from ingestion of Risperdal® in that state. Thus, Nebraska is unquestionably where Mr. Skala suffered from his alleged injury. However, this mass tort litigation involves at least 179 plaintiffs from 35 states. Pl. Opp. 12 n. 42. The location of plaintiffs who were allegedly harmed by their ingestion of Risperdal® spans many states throughout the country. By contrast, responsibility for distribution of Risperdal® originates in one state - New Jersey. Thus, while the plaintiffs' place of injury varies in this mass tort, the location of Defendants remains the same in all cases. It is mere chance that the Plaintiff in this case is from

Nebraska. The location of the injury bears almost no relationship to Defendants alleged wrongful conduct. Therefore, the place of injury in this case is fortuitous.

Having assessed where the injury occurred, the court must examine the location of the conduct causing the injury, as well as the domicile of the parties involved and the place where the relationship is centered, in order to determine the state with the most significant relationship to the parties or issues in this case. Camp Jaycee, supra, 197 N.J. at 145 (citing Restatement (Second) of Conflict of Laws § 145).

#### 1. Place Where the Conduct Causing the Injury Occurred

This action is connected to New Jersey by the fact that decision-making related to the marketing of Risperdal® was done in this State. Defendants also interpreted data obtained from clinical trials and post-marketing reports at its corporate headquarters in this State. Pl. Opp. at 5. Further, communications between the company and the FDA, as well as between the company and prescribers, emanated from Defendants' New Jersey location. Ibid.

Unlike the primary case relied upon by Janssen in support of this motion, Defendants do not have a subsidiary located in another state that is vested with decision-making power. Cornett v. Johnson & Johnson, 414 N.J. Super. 365 (App. Div. 2010) certif. granted, 205 N.J. 317 (2011). In Cornett, the court found “the fact that Cordis’ parent company, Johnson and Johnson, is headquartered and incorporated in New Jersey is of tenuous relevance absent any showing that the subsidiary is merely its corporate parent’s alter ego and lacks a separate corporate existence.” Id. at 380. The Cornett plaintiff failed to show that any negligent conduct allegedly resulting in his injury occurred in New Jersey.

In the present case, all decision-making originated from Defendants' only headquarters located in New Jersey. In sharp contrast to the facts in Cornett, here there are "specific and identifiable activities" that occurred "in the New Jersey operation" that contributed to Mr. Skala's injury. Ibid. For example, the "Dear Doctor Letters" sent to physicians in 2003 were signed by a Janssen employee in New Jersey and mailed from an address in New Jersey. Pl. Opp. at 13. Thus, the court concludes that conduct allegedly causing Mr. Skala's injury occurred in New Jersey.

2. The Residence, Place of Incorporation and Place of Business of the Parties

Plaintiff is a life-long resident of Nebraska. Defendants' Statement of Undisputed Material Facts ("Defs. Statement of Material Facts") at ¶ 2. He currently resides in Geneva, Nebraska. Defs. Br. at 2. Janssen is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey. Defs. Statement of Material Facts at ¶ 1. The Restatement notes that "a corporation's principal place of business is a more important contact than the place of incorporation." Restatement, supra, § 145 comment e.

Janssen argues that its presence in New Jersey is of little import considering that the product allegedly injuring Mr. Skala was manufactured in Puerto Rico. Defs. Br. at 8. The court does not find this argument persuasive. In Cornett, the plaintiff attempted to bolster his ties to New Jersey by pointing to a New Jersey plant that manufactured the device alleged to have caused his injury. Cornett, supra, 414 N.J. Super. at 380. That court found the manufacturing location tenuous considering there were five other similarly situated manufacturing facilities located outside of New Jersey. Ibid.



In the present case, Janssen attempts to dilute its ties to New Jersey by arguing that Risperdal® is manufactured in Puerto Rico. Defs. Br. at 8. The number of ties that a company has to locations outside of this State is less significant. The court in Camp Jaycee held that a corporation's more important contact is the state in which the majority of business was conducted. Camp Jaycee, supra, 197 N.J. at 146. In this case, the majority of business decisions made by Janssen originated in New Jersey.

### 3. The Place Where the Relationship Between the Parties is Centered

“When there is a relationship between the plaintiff and the defendant and when the injury was caused by an act done in the course of the relationship, the place where the relationship is centered is another contact to be considered.” Restatement, supra, § 145 comment e. Janssen issued its warnings and warranties from New Jersey, while Mr. Skala and his physicians “received [warnings] or suffered from their omission” in Nebraska. Cornett, supra, 414 N.J. Super. at 380. In addition to communications between Janssen and prescribers emanating from the company's New Jersey office, Defendants also communicated with the FDA from this State. Pl. Opp. at 13. Janssen's communications with the FDA included warnings associated with Risperdal®. Since Plaintiff alleges that his injury is a result of Defendants' failure to adequately warn of Risperdal®'s risks, the fact that Janssen allegedly misled the FDA from its principal place of business, New Jersey, is significant. In sum, Mr. Skala allegedly suffered an injury as a result of Janssen's actions or inactions in New Jersey.

### C. Factors Identified in Section 6 of the Restatement

New Jersey recognizes that choice of law decisions must not to be based solely on the quantitative contacts enumerated in Restatement (Second) of Conflict of Laws § 146.

Therefore, the principles set forth in Restatement (Second) of Conflict of Laws § 6 must be taken into consideration to determine the quality of the contacts identified in the previous section.

#### 1. Interests of Interstate Comity

“The interests of interstate comity seek to ‘further harmonious relations between the states and facilitate commercial intercourse between them.’” Camp Jaycee, supra, 197 N.J. at 145 (quoting Restatement, supra, § 6 comment d). “It considers ‘whether application of a competing state’s law would frustrate the policies of other interested states.’” Ibid. (quoting Fu, supra, 160 N.J. at 122).

Nebraska curtails the amount of time parties have to file suit to protect against open ended liability and to limit the number of lawsuits filed within its court system. Nebraska can continue to protect persons and corporations within its borders from stale claims even if the law of New Jersey is applied in this case. The converse is not true. If Nebraska’s statute of limitations is applied in this case, Mr. Skala’s complaint is subject to dismissal absent an exception to that state’s statute of limitations. This substantially impairs New Jersey’s ability to regulate the conduct of companies who choose to operate within its borders. The court in Camp Jaycee noted that interstate comity is furthered when courts “defer [] to the rights of other jurisdictions to regulate conduct within their borders” especially when that conduct is continual and directed at both residents and non-residents. Camp Jaycee, supra, 197 N.J. at 153.

As articulated in the previous section, Defendants’ alleged negligent conduct occurred in New Jersey. Application of New Jersey’s statute of limitations laws will allow this State to monitor the conduct of the pharmaceutical companies. Residents and

non-residents of New Jersey will benefit from such oversight to ensure that allegedly unsafe medication will not be provided to them.

## 2. Interests of the Parties

“In examining the interests of the parties, particular focus is paid to the reasonable expectations and the need for a foreseeable result for plaintiff and defendant.” Meng v. Novartis Pharms. Corp., No. L-7670-07MT, 2009 N.J. Super. Unpub. LEXIS 3249 (Law Div. Nov. 23, 2009) at \*14. Mr. Skala has a strong interest in the application of New Jersey’s statute of limitations laws because there is a strong possibility that his cause of action would be barred if Nebraska’s statute of limitations laws are applied. Plaintiff has a strong interest in being compensated for injuries resulting from Defendants’ negligence. Further, Mr. Skala and other plaintiffs in this mass tort chose to file their claim against Defendants in New Jersey state court. In doing so, they have availed themselves of this State’s procedural and evidentiary laws and should reasonably expect this State’s procedural and evidentiary laws to apply. Similarly, a corporation, such as Janseen, with its principal place of business in New Jersey, should expect to be haled into court in this State and for this State’s laws to apply. Indeed, Mr. Skala’s lawsuit is one of 179 against Janssen in New Jersey state court. While Janssen has a strong interest in the enforcement of statute of limitations laws that reduce the company’s liability, the company will not be burdened by application of New Jersey statute of limitations laws as much as Plaintiff would be burdened by application of Nebraska statute of limitations laws.

## 3. Interests Underlying the Field of Tort Law

“A purpose of tort law is to encourage reasonable conduct, and, conversely, to discourage conduct that creates an unreasonable risk of injury to others.” Gantes v.

Kason Corp., 145 N.J. 478, 489 (1996). Such a laudable goal can only be achieved by allowing claims to be determined on their merits. Application of New Jersey's statute of limitations would further this underlying goal of tort law by allowing Plaintiff to present evidence of Janssen's alleged misconduct. Implementation of Nebraska's statute of limitations laws would not deter purported misconduct because Mr. Skala and other similarly situated individuals might not have an opportunity to present evidence of Janssen's alleged wrongdoings.

The fundamental purpose of tort law is to compensate those injured by another party's negligent conduct. Being able to present claims on the merits and to compensate those deserving of restitution is a foundational principle of tort law. If Nebraska's law were to be applied in this case, Mr. Skala may not be permitted to pursue his claims and seek compensation. New Jersey's law allows Mr. Skala to proceed with his claim, allowing him the possibility of being compensated should the evidence so warrant. Therefore, the underlying principles of tort law favor application of New Jersey's statute of limitations.

#### 4. Interests of Judicial Administration

"The interests of judicial administration require courts to consider issues such as practicality and ease of application, factors that in turn further the values of uniformity and predictability." Camp Jaycee, *supra*, 197 N.J. at 154 (citing Fu, *supra*, 160 N.J. at 124). State courts are better able to interpret their own laws rather than applying the laws of a foreign jurisdiction. Therefore, applying the law of the presiding state court leads to more consistent and predictable decisions.

Further, Mr. Skala and other plaintiffs in this mass tort litigation chose to file their claim against Defendants in New Jersey state court. In doing so, they have availed themselves of this State's laws. Typically, the procedural laws of the forum state are applied. "The statute of limitations is ordinarily a matter of procedure, affecting the remedy and not the right." Heavner v. Uniroyal, Inc., 63 N.J. 130, 141 (N.J. 1973). Since statute of limitations issues are procedural in nature, the forum state's laws should apply.

Nebraska courts concur in applying procedural laws of the forum state. In Whitten v. Whitten, a Nebraska state court presided over a case involving a car accident that occurred in Colorado but plaintiff filed the claim in Nebraska. The court determined that Nebraska's statute of limitations laws applied because the "statute of limitations is a procedural matter and is governed by the law of the forum." Whitten v. Whitten, 250 Neb. 210 (1996). Thus, application of New Jersey statute of limitations laws in a New Jersey court best serves the interests of judicial administration.

##### 5. Interests of the States

In evaluating state interests, consideration must be given to "the governmental policies underlying the law of each state and how those policies are affected by each state's contacts to the litigation and to the parties." Fu, supra, 160 N.J. at 119 (quoting Veazey v. Doremus, 103 N.J. 244 (1986)). Nebraska and New Jersey have some common goals underlying their statutes of limitations. In Hullinger v. Board of Regents, the court explained that the Nebraska statute of limitations exists for a reason - to afford security against stale claims. "The mischief which a statute of limitations is intended to remedy is general inconvenience resulting from a delay in the assertion of a legal right

which it is practicable to assert.” Hullinger v. Board of Regents, 249 Neb. 868, 873 (1996). The purpose of New Jersey’s statute is to “encourag[e] the diligent and timely prosecution of claims.” Gantes, supra, 145 N.J. at 486. However, New Jersey does not apply statute of limitations laws in a rigid manner, instead it provides for a “discovery rule” allowing claims to be decided on their merits. See Savage, supra, 134 N.J. at 246-50. The goals of New Jersey’s statute of limitations “are two-fold: (1) to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims and (2) to penalize dilatoriness and serve as a measure of repose.” Rivera v. Prudential Property & Casualty Ins. Co., 104 N.J. 32, 39 (1986).

New Jersey has a substantial interest in deterring allegedly unsafe products. This interest can only be realized if claims are resolved on their merits. Many pharmaceutical companies have their principal place of business in New Jersey. As the Court in Camp Jaycee reasoned, if New Jersey’s “tort law is to have any deterrent impact and protect” individuals from harm, “it must be applied in situations where tort-feasors repeatedly perform their tasks within the state.” Camp Jaycee, supra, 197 N.J. at 152.

Nebraska courts have an interest in limiting the burden placed on their judicial system by curtailing the number of claims filed. Nebraska’s interest is less significant in this case because the litigation was filed in New Jersey and not in Nebraska. Thus, the Nebraska courts’ case load will not be affected by allowing this claim to proceed in New Jersey.

Finally, application of New Jersey law will not undermine Nebraska’s interest in compensating its injured residents because that interest is not actually implicated or

compromised by allowing a products-liability action brought by a Nebraska resident to proceed against a non-Nebraska manufacturer. If Nebraska law is applied in this case, there is a possibility that Plaintiff would not be compensated. Application of New Jersey law allows the possibility that Plaintiff could be compensated for an injury.

In sum, analysis of the quantity and quality of contacts in New Jersey and Nebraska favor implementation of New Jersey's statute of limitations. The relationship between the parties stems from conduct occurring in this State. Decision-making relevant to the manufacturing, selling, distributing and marketing of Risperdal® was made at Janssen's principal place of business in New Jersey. Further, New Jersey has a strong interest in regulating the products that emanate from this State and are prescribed throughout the country. New Jersey has a substantial interest in deterring the availability of allegedly unsafe products within the State. This is especially true because many pharmaceutical companies are headquartered in New Jersey.

#### **SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. The determination of whether genuine issues of material fact exist requires the court to consider whether the competent evidential materials presented are sufficient to permit a rational fact-finder to resolve the disputed issue in favor of the non-moving party. Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995). In making this determination, the court must accept as true all

evidence supporting the position of the non-moving party, and must accord the defending party the benefit of all legitimate inferences which can be deduced therefrom. Id. at 535.

### STATUTE OF LIMITATIONS

Defendants argue that Plaintiff's claims are time barred under New Jersey's statute of limitations and equitable tolling doctrine. The statute of limitations applicable to personal injuries is two years. N.J.S.A. § 2A:58C-1. Thus, a plaintiff must commence suit within two years. Wanner v. Philip Carey Mfg. Co., 243 N.J. Super. 516, 518 (App. Div. 1989). In certain instances, however, the statute of limitations may be equitably tolled by the "discovery rule." Lopez, supra, 62 N.J. at 273. The "discovery rule" delays the running of the statute of limitations until a plaintiff discovers, or should discover, that he or she has a basis for an actual claim. Staub v. Eastman Kodak Co., 320 N.J. Super. 34 (App. Div. 1999), certif. denied, 161 N.J. 334 (1999). The limitations period begins running as soon as "plaintiff is aware of facts that would lead a reasonable person to the possibility of an actionable claim; medical or legal certainty is not required." Lapka, supra, 162 N.J. at 555. Thus, after learning of an actionable injury, or of facts that would lead a reasonable person to believe they have an actionable injury, a plaintiff has two years in which to bring a claim. Staub, supra, 320 N.J. Super. at 45-46.

Defendants argue that Plaintiff's claim is barred because he received actual notice of his potential action when he was diagnosed with type 2 diabetes mellitus on or about July 5, 2002. Defs. Br. at 3; December 13, 2007 Transcript of Deposition of Gary Skala ("Skala Dep.") at 90:3-91:1. Plaintiff did not file his complaint until August 30, 2006, thus placing him outside the two-year statute of limitations. Defs. Br. at 4. Plaintiff argues that when he was diagnosed with diabetes in 2002, he did not realize that the



occurrence of diabetes could have been related to the use of Risperdal®. Pl. Opp. at 24. In fact, Mr. Skala did not become aware of Risperdal®'s association with the development of diabetes until he saw an advertisement on the internet at the "end of 2004 or beginning of 2005." Skala Dep. at 127:10-13.

The New Jersey Supreme Court has held that "mechanistic" application of statutes of limitations would inflict unnecessary harm upon plaintiffs. White v. Violent Crimes Compensation Board, 76 N.J. 368, 378 (1978). The discovery rule was adopted as an equitable means of avoiding harsh results in statute of limitations cases. Lopez, supra, 62 N.J. at 273. In applying the discovery rule, the question of when a plaintiff's cause of action accrued turns on when he or she "discovered or should have discovered, by exercise of reasonable diligence and intelligence," that another could have been legally responsible for their injury. Wanner, supra, 243 N.J. Super. at 519 (quoting Vispiano v. Ashland Chemical Co., 107 N.J. 416, 427 (1987)). Viewing the facts in the light most favorable to Plaintiff, the statute of limitations did not begin to run until Mr. Skala conducted the internet search sometime between the end of 2004 and the beginning of 2005. Skala Dep. at 127:10-13.

During oral argument, Defendants suggested that the facts of this case were similar to those in Blessing v. Johnson & Johnson in which the court found Plaintiff's claims were barred by the statute of limitations. Blessing v. Johnson & Johnson, No. A-3561-08T33561-08T3 (App. Div. March 5, 2010). In that case, the court found that Plaintiff was not entitled to application of the discovery rule. The facts in Blessing are pertinent to the court's decision in this case. In that case, Ms. Blessing was repeatedly told by her treating physician that the sutures used during her cesarean section were

faulty, resulting in her developing an infection. Nevertheless, Ms. Blessing waited more than two years to file a claim against the manufacturer after seeing a commercial on television in which a woman had suffered similar injuries to those suffered by Ms. Blessing. When a party is put on clear notice that an injury was suffered as a result of negligence, as was Ms. Blessing, there is no need to invoke the equitable doctrine of the discovery rule. The discovery rule is “designed to mitigate the harshness that sometimes results from a rigid application of a statute of limitations.” Lopez, supra, 62 N.J. at 273-74. The doctrine is invoked when a party is unaware that his injury is attributable to the “fault or neglect of another” until after the statute of limitations has run. Id. A plaintiff in Ms. Blessing’s position, who knows that her injury is attributable to a faulty product yet fails to pursue a claim for years, is not the type of plaintiff the discovery rule was meant to protect. Neither party alleges that Mr. Skala was told by a treating physician, on multiple occasions, that Risperdal® was the cause of his diabetes. Thus, the court’s decision in Blessing is not persuasive.

### CONCLUSION

For the foregoing reasons, the court finds that New Jersey’s statute of limitations laws are applicable to this case. Mr. Skala filed his complaint in a timely manner under New Jersey law. Therefore, Defendants’ motion for summary judgment based on the statute of limitations is **DENIED**. The court will enter an order accordingly.

  
JESSICA R. MAYER, J.S.C.

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f/k/a Janssen Pharmaceutica Inc.)

**FILED**  
NOV 18 2011  
JUDGE JESSICA R. MAYER

IN RE: RISPERDAL/SEROQUEL/ ZYPREXA LITIGATION	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION : MIDDLESEX COUNTY
THIS ORDER APPLIES TO:	:	CASE NO. 274
<i>Gary D. Skala v. Johnson &amp; Johnson Company, Janssen Pharmaceutica Products, L.P. a/k/a Janssen, L.P., a/k/a Janssen Pharmaceutica, L.P., a/k/a Janssen, Pharmaceutica, Inc.</i>	:	CIVIL ACTION
Docket No. MID-L-6820-06	:	ORDER

THIS MATTER having been brought before the Court by Drinker Biddle & Reath LLP, attorneys for defendants Johnson & Johnson and Janssen Pharmaceuticals, Inc. (f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., f/k/a Janssen Pharmaceutica Inc.); the Court having heard and considered the moving papers, ~~any~~ opposition papers, ~~any~~ reply papers, and the arguments of counsel, and good cause having been shown;

IT IS on this 18<sup>th</sup> day of November, 2011,

ORDERED that defendants' Motion for Summary Judgment be and is hereby granted; ~~for~~  
the reasons set forth in the court's memorandum dated  
November 18, 2011;

**DENIED**

**IT IS FURTHER ORDERED** that plaintiff's Complaint be and is hereby dismissed with prejudice;

**DENIED**

**IT IS FURTHER ORDERED** that a copy of this Order shall be served upon plaintiffs' counsel within seven (7) days of the date of this Order.

  
JESSICA R/MAYER, J.S.C.

This motion was:

Opposed

Unopposed

**OPPOSED**