

WHEN SHOULD THE STATUTE OF LIMITATIONS BEGIN TO RUN IN TOBACCO LITIGATION?

*The problem of applying statutes of limitations in exposure cases, where there may be a substantial delay before symptoms manifest themselves and a series of different symptoms may emerge at different times, has vexed and divided the state courts. Existing statute of limitations doctrine, in the abstract, does not generally provide clear answers to the peculiar problem presented by the long-term exposure issue.*¹

Since the inception of tobacco litigation, the question of when the statute of limitations begins to run has vexed jurisdictions throughout the United States. Courts have answered this question in a variety of ways, and some answers have proven more practicable than others. This Comment will begin by examining the Alabama Supreme Court's recent answer to this question and will then discuss the tests applied in other jurisdictions. The goal of this writing is to determine, after a study of the strengths and weaknesses of prevalent tobacco statute of limitations doctrine, which rule is the most logical and workable.

I. THE ALABAMA RULE

In the summer of 2003, the Alabama Supreme Court handed down an opinion which will likely have a pronounced impact on Alabama tobacco cases and which also has the potential to open the courthouse doors to numerous newfound products liability claims. *Spain v. Brown & Williamson Tobacco Corp.*² establishes that the statute of limitations in tobacco cases begins to run at the time a smoker realizes that he or she has become addicted to nicotine.³ Furthermore, the court recognized addiction to nicotine as a compensable injury.⁴

The *Spain* case was decided by the Alabama Supreme Court in response to the Eleventh Circuit's certification of a number of issues relating to tobacco litigation.⁵ Among these issues was the question: "When does the statute of limitations for claims brought under the [Alabama Extended Manufacturer's Liability Doctrine] . . . begin to run in a smoking products

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1. *Nicolo v. Philip Morris, Inc.*, 201 F.3d 29, 39 (1st Cir. 2000).
 2. 872 So. 2d 101 (Ala. 2003).
 3. *Id.* at 115.
 4. *Id.* at 114.
 5. *Id.* at 103.

liability case?”⁶ The numerous concurrences and dissents accompanying the per curiam opinion in *Spain* indicate the complicated nature of this issue. The nine justices aligned themselves as follows with regard to the statute of limitations section of the opinion: three justices concurred, one concurred in the result, one concurred in part, one concurred in part and dissented in part, and three dissented.⁷ The division among the justices reflects the division among jurisdictions addressing this facet of the statute of limitations doctrine.⁸

The Alabama Supreme Court considered nicotine addiction to be a critical component in correctly applying the statute of limitations,⁹ and looked to other jurisdictions for guidance.¹⁰ The court acknowledged that other jurisdictions have recognized addiction as a key component of a cigarette products liability claim because proof of addiction is needed to establish causation.¹¹ The Alabama Supreme Court relied heavily on the Ninth Circuit’s holding in *Soliman v. Philip Morris, Inc.*¹² and stated that this opinion found addiction to nicotine to be the event that triggered the running of the limitations period.¹³

The “first injury rule” stipulates that the limitations period begins to run upon the occurrence of the first legal injury, even though the full extent of the injured party’s damages may not yet be apparent.¹⁴ The *Spain* court wanted to adhere to the first injury rule, and this policy of adherence compelled the court to conclude that addiction to nicotine is the first injury sustained by a smoker.¹⁵ The court buttressed this conclusion by pointing to the defendant cigarette manufacturer’s inability to find authority supporting its contention that addiction is not a compensable injury.¹⁶ The court believed that, at a minimum, nicotine addiction results in damages equivalent to the cost of supporting the addiction.¹⁷ In keeping with the first injury rule, the statute begins to run even though the full amount of damages is unknown.¹⁸

A critique of the *Spain* rule can be found in the dissenting opinions. The dissents attack the per curiam opinion’s recognition of addiction as a compensable injury.¹⁹ Former Chief Justice Moore asserted that addiction to nicotine is not a compensable injury and outlined several problems with using the moment of addiction as the event that triggers the running of the

6. *Id.*

7. *Id.* at 116-38.

8. *See infra* Part III.

9. *Spain*, 872 So. 2d at 113.

10. *See id.*

11. *Id.* at 113 (citing *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 144 (3d Cir. 1998)).

12. 311 F.3d 966 (9th Cir. 2002).

13. *Spain*, 872 So. 2d at 113-15.

14. *Id.* at 114.

15. *Id.* at 114-15.

16. *Id.* at 112-13.

17. *Id.* at 114.

18. *Id.*

19. *Id.* at 116 (Moore, J., dissenting); *id.* at 117 (Johnstone, J., dissenting).

statute of limitations.²⁰ The two principal problems cited by Moore were (1) the difficulty associated with identifying the precise moment of addiction (thus resulting in an “amorphous and manipulable ‘standard’”), and (2) the potential for sparking many frivolous claims of compensable addiction to other products.²¹

Justice Johnstone echoed the Chief Justice’s concerns but offered a much more in-depth critique of the per curiam opinion.²² Two other justices supported Johnstone’s dissent.²³ Like Moore, Johnstone feared that recognition of nicotine addiction as a compensable injury would cause “profound mischief” in the form of frivolous and falsified claims.²⁴ Not only is addiction unverifiable, but “recognizing a cause of action for smoking addiction will create a disincentive for willpower and self-control in a society already wracked with blame-shifting.”²⁵ Johnstone rejected the per curiam opinion’s reliance on *Soliman* and asserted that the main opinion was “unsupported by authority.”²⁶ Johnstone interpreted the *Soliman* holding as expressly rejecting the recognition of addiction as an injury.²⁷

Finally, Johnstone attacked the per curiam opinion as violating the essence of the Alabama Extended Manufacturer’s Liability Doctrine (AEMLD).²⁸ Because an AEMLD action requires proof of the sale of a product, the limitations period for the action does not begin to run until “the date of the first legally recognizable injury caused by the specific product alleged and proven to have been the subject of an alleged and proven sale by the particular defendant.”²⁹ Therefore, a legally recognizable injury giving rise to an AEMLD action must be connected to a particular sale. Johnstone declined to address the question of whether nicotine addiction is a compensable injury; he classified this question as a purely academic inquiry that should not be answered by the judiciary.³⁰ He concluded that a Rule 12(b)(6) motion to dismiss should be granted when the date of the first tobacco injury cannot be identified for purposes of determining the relevant period of limitations.³¹

20. *Id.* at 116-17 (Moore, J., dissenting).

21. *Id.* at 117.

22. *Id.* (Johnstone, J., dissenting).

23. *Id.* at 138.

24. *Id.* at 120.

25. *Id.* at 118.

26. *Id.* at 117.

27. *Id.* at 119.

28. *Id.* at 125.

29. *Id.*

30. *Id.*

31. *Id.* at 126.

II. SUPPORT FOR THE ALABAMA RULE

The main opinion in *Spain* heavily relies on *Soliman v. Philip Morris, Inc.*³² However, Justice Johnstone and several other *Spain* dissenters questioned the wisdom of the Alabama Supreme Court's reliance on this precedent.³³ This Comment will therefore reexamine the *Soliman* holding and attempt to clarify the Ninth Circuit's precise determination of when the statute of limitations begins to run in tobacco litigation.

Like the Alabama Supreme Court, the Ninth Circuit adhered to the first injury rule and held that a claim accrues when an individual suspects that he or she has been wronged.³⁴ The commencement of the limitations period does not depend on a defendant's knowledge of culpability or of particular injuries.³⁵ The court held that "[t]he injury [the plaintiff] should have known about first is the one that starts the statute of limitations."³⁶

In the *Soliman* case, the plaintiff claimed addiction as an injury.³⁷ The court declined to determine whether addiction is a compensable injury under California law.³⁸ However, because addiction was the first injury alleged by the plaintiff, the court assessed whether the limitations period had run in light of when a reasonable person would have discovered his or her addiction.³⁹ The holding in *Soliman* is therefore more narrow than the holding in *Spain*. The *Soliman* court held that, when addiction is claimed as the first injury sustained, the statute of limitations begins to run at the time a reasonable person would have discovered the addiction,⁴⁰ whereas the *Spain* court held that, in any smoking products liability case, the statute of limitations begins to run at the actual moment of addiction.⁴¹

Alabama is the only jurisdiction that evaluates the commencement of the limitations period for nicotine addiction claims in light of the "moment of addiction"; other jurisdictions have used a reasonableness standard.⁴² Because *Spain* is such a recent decision, little information is available as to the efficacy of Alabama's "moment of addiction" standard. However, the impracticalities of such a rule are readily apparent. How are plaintiffs, much less courts, supposed to accurately identify the moment of addiction to nicotine? Even if a plaintiff is able to recall a particular moment in which he or

32. 311 F.3d 966 (9th Cir. 2002).

33. 872 So. 2d at 118.

34. *Soliman*, 311 F.3d at 971.

35. *Id.*

36. *Id.* at 972.

37. *Id.* at 972-73.

38. *Id.*

39. *Id.* at 973.

40. *Id.*

41. *Spain*, 872 So. 2d at 115. Justice Johnstone's dissent in *Spain* supports this distinction between the two cases. *Id.* at 118-19.

42. In addition to *Soliman*, a Kansas district court applied a reasonableness standard in holding that the limitations period begins to run in a tobacco case when the plaintiff's addiction to smoking becomes "reasonably ascertainable." *Burton v. R.J. Reynolds Tobacco Co.*, 208 F. Supp. 2d 1187, 1210 (D. Kan. 2002).

she became cognizant of an addiction, who is to say that the actual moment of addiction did not occur sometime prior to that realization? How are the courts and the defendants supposed to identify fraudulent claims? Given the numerous difficulties associated with pinpointing a precise moment of addiction, perhaps Alabama would be wiser to follow the lead of other jurisdictions by applying a reasonableness standard.⁴³

III. RULES APPLIED IN OTHER JURISDICTIONS

Other jurisdictions apply several rules. All are similar to the Alabama rule in that they require a fact-intensive inquiry to determine when the statute of limitations begins to run. However, these rules differ from the Alabama rule in that the limitations period is not directly tied to nicotine addiction.

A. *The Causal Relationship Rule*

The causal relationship rule is the most prevalent rule applied to determine when the statute of limitations begins to run for a smoking products liability claim. This rule is not unique to smoking products liability actions; many jurisdictions have chosen to extend the rule applied in other products liability cases to tobacco litigation.

An early application of the causal relationship rule is found in *R.J. Reynolds Tobacco Co. v. Hudson*,⁴⁴ a Fifth Circuit case decided in 1963. This court rejected the “discovery of injury” rule⁴⁵ and reasoned that, in some cases, “pain and suffering and the physical manifestation of injury may not be sufficient to start prescription running, if the plaintiff has good cause for not having knowledge of the connection between the offense and the damages sustained.”⁴⁶ In such cases, the limitations period does not begin “until plaintiff discover[s] that he [has] sustained injury and that it . . . resulted from the negligence of defendant.”⁴⁷ In reaching this conclusion, the court referenced a trend in products liability litigation to delay the commencement of the limitations period in cases involving latent diseases until the plaintiff discovers or should have discovered the nature of his or her injury.⁴⁸

43. This Comment does not attempt to evaluate the wisdom of recognizing addiction as a compensable injury.

44. 314 F.2d 776 (5th Cir. 1963).

45. See *infra* Part II.B for a complete discussion of the discovery of injury rule. See also “Limitations of Actions—Accrual of Action—Knowledge of Causal Connection Between Injury and Defendant’s Conduct Required,” 77 HARV. L. REV. 1343 (1964) (analyzing the *Hudson* court’s integration of the “discovery of injury” rule into the causal relationship rule to accommodate plaintiffs harmed by gradually-occurring injuries and discussing the difficulties encountered by the trier of fact in applying both of these tests).

46. *Hudson*, 314 F.2d at 783.

47. *Id.* (emphasis added) (quoting *Perrin v. Rodriguez*, 153 So. 555, 556 (La. Ct. App. 1934)).

48. *Id.* at 785.

*Carter v. Brown & Williamson Tobacco Corp.*⁴⁹ is one of the better known tobacco cases. The *Carter* court did not frame the statute of limitations issue in a manner that applied exclusively to tobacco litigation. Instead, the court addressed the issue of “when the statute of limitations begins to run in a product liability cause of action involving a latent or ‘creeping’ disease.”⁵⁰ The court held that the claim accrues when the effects of the injurious product manifest themselves such that the claimant has some evidence of a causal relationship between the injury and the product.⁵¹ Unlike the *Spain* opinion, the *Carter* court did not express concern over the first injury rule or the need to establish addiction. However, the court was concerned exclusively with the plaintiff’s cancer claim, and the facts did not indicate that the plaintiff was negatively affected by cigarettes prior to developing lung cancer.⁵²

*Liggett Group, Inc. v. Engle*⁵³ is another well-known Florida tobacco case, and unlike *Carter*, a footnote in this opinion briefly addresses an addiction claim in light of the limitations period.⁵⁴ The court cited *Carter* for the principle that a claim accrues when the plaintiff discovers a smoking-related injury.⁵⁵ The court determined that, as far as one plaintiff was concerned, all claims were time-barred because the plaintiff had actual or constructive knowledge—outside of the valid limitations period—of his smoking addiction and of the possibility that his cancer was caused by smoking.⁵⁶ Although the court did not state whether this plaintiff had claimed addiction as an injury, the opinion allows the inference that, like Alabama, Florida recognizes addiction as a critical factor in smoking products liability cases.⁵⁷ However, there is no explicit indication that Florida considers addiction to be a compensable injury.

Several tobacco cases have dealt with statute of limitations issues in the absence of addiction claims. *Barnes v. American Tobacco Co.*⁵⁸ is a frequently cited tobacco case. The *Barnes* court held that “the statute of limitations begins to run when the plaintiff knows, or in the exercise of reasonable diligence should have known, (1) that he has been injured, and (2) that his injury has been caused by another’s conduct.”⁵⁹ Like the *Soliman* and *Burton* courts, the *Barnes* court applied a reasonableness standard.⁶⁰

49. 778 So. 2d 932 (Fla. 2000).

50. *Id.* at 934.

51. *Id.*

52. *Id.* at 934-35.

53. 853 So. 2d 434 (Fla. Dist. Ct. App. 2003).

54. *Id.* at 454 n.23.

55. *Id.*

56. *Id.*

57. *Id.*

58. 161 F.3d 127 (3d Cir. 1998).

59. *Id.* at 136 (internal quotation marks and citation omitted). Although the court labels this test as the “discovery rule,” the substance of the rule is analogous to the causal relationship rules applied elsewhere. Therefore, discovery rule as used by this court should not be confused with the “discovery of injury rule” as defined and outlined in Part II.B.

60. *Id.* at 137.

Other state court cases support the causal relationship rule. In *DeLuca v. Liggett Myers, Inc.*,⁶¹ an Illinois district court held that the benchmark date for the commencement of the limitations period is the date when a claimant becomes aware of a smoking-related injury.⁶² Realization of “the full extent of the injury” is unnecessary.⁶³ *Arnold v. R.J. Reynolds Tobacco Co.*⁶⁴ is a Rhode Island case holding that “a cigarette product liability cause of action does not accrue until the plaintiff has knowledge, or reasonably should have knowledge, of an injury and a possible causal connection between the injury and the plaintiff’s use or exposure to cigarette smoke.”⁶⁵ Knowledge of all facts supporting the claim, such as the defendant’s negligence and wrongful conduct, is unnecessary.⁶⁶

The causal relationship test has even extended as far as Puerto Rico. *Cruz Vargas v. R.J. Reynolds Tobacco Co.*⁶⁷ held that a claim accrues at “the moment the aggrieved party learned or had knowledge of the damage and could institute the action.”⁶⁸ Knowledge is composed of two elements: “notice of the injury and notice of the person who caused it.”⁶⁹ “Notice of the injury” arises upon the occurrence of “some outward or physical signs through which the aggrieved party may become aware . . . that he . . . has suffered an injurious aftereffect.”⁷⁰ Knowledge of the extent of the injury is not required.⁷¹

The causal relationship test has thus gained widespread acceptance, and the extension of this products liability limitations standard to tobacco litigation seems logical. By delaying the accrual of the claim until a reasonable person would have recognized the relationship between his or her injury and smoking cigarettes, plaintiffs are not forced to bring premature claims. Because the plaintiff need not have knowledge of the full extent of the injury before the claim accrues, manufacturers are protected from suits by plaintiffs who have chosen to ignore earlier tobacco-related injuries. The causal relationship test thus seems to strike a balance between fairness to plaintiffs and fairness to defendants, and the incorporation of a reasonableness element allows the trier of fact to tailor the application of the test to the intricacies of individual fact patterns.

61. No. 00 C7781, 2003 WL 1798940 (N.D. Ill. Apr. 4, 2003).

62. *Id.* at *11.

63. *Id.*

64. 956 F. Supp. 110 (D.R.I. 1997).

65. *Id.* at 115.

66. *Id.* at 117.

67. 218 F. Supp. 2d 109 (D. Puerto Rico 2002).

68. *Id.* at 114 (quoting *Sanchez v. Antoridad de Energia Electrica*, 142 P.R. Dec. 880, 883 (P. R. 1997)).

69. *Id.* (internal quotation marks omitted) (quoting *Colon Prieto v. Geigel*, 115 P.R. Dec. 232, 247 (P.R. 1984)).

70. *Id.* at 115 (quoting *Delgado Rodriguez v. Nazario de Ferrer*, 21 P.R. Offic. Trans. 342, 356 (P.R. 1988)).

71. *Id.*

B. The Discovery of Injury Rule

The court in *Mitchell v. American Tobacco Co.*⁷² applied the discovery of injury rule in 1960, and Mississippi and South Carolina have used it more recently. In *Mitchell*, the decedent died from lung cancer, and the plaintiff-administratrix claimed that the death was attributable to cigarette smoking.⁷³ The court held that the statute of limitations should begin to run at "such time as the plaintiff learns or by the exercise of reasonable diligence could have learned of the negligent act."⁷⁴ The limitations period under this standard accounts for both a plaintiff's actual knowledge of injury, as well as the knowledge the plaintiff reasonably should have had under the circumstances. The court stated that "[t]he injury is done when the act heralding a possible tort inflicts a damage which is physically objective and ascertainable."⁷⁵ Thus, the *Mitchell* court was only concerned with the plaintiff's awareness of an injury and, unlike courts applying the causal relationship rule, was not concerned with the plaintiff's ability to make a connection between the injury and an alleged wrongdoer.

In *Schiro v. American Tobacco Co.*,⁷⁶ the Mississippi Supreme Court stated that "with regard to a claim based on negligence arising out of an injury allegedly sustained as a result of cigarette smoking . . . [w]e hold that the statute commences upon discovery of an injury."⁷⁷ Mississippi courts had previously applied this standard in negligence actions in products liability cases involving latent injuries such as asbestosis,⁷⁸ and the court declared the application of the standard in the other products cases "dispositive" of the instant case.⁷⁹

Like *Mitchell*, the *Schiro* court also discussed the reasonableness element of the discovery of injury rule, which has been codified by the Mississippi legislature.⁸⁰ Mississippi law states that "[i]n actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury."⁸¹ The reasonableness component in the discovery of injury rule, like that in the causal relationship rule, gives the court more flexibility to consider all relevant factors before determining when the limitations period begins.

The application of the discovery of injury rule in the *Schiro* case is particularly interesting because the court demonstrated a willingness to recognize a products liability cause of action, notwithstanding the fact that the

72. 183 F. Supp. 406 (M.D. Pa. 1960).

73. *Id.* at 409.

74. *Id.* at 410 (citing *Ayers v. Morgan*, 154 A.2d 788, 791 (Pa. 1959)).

75. *Id.* at 411.

76. 611 So. 2d 962 (Miss. 1992).

77. *Id.* at 962.

78. *Id.* at 964 (citing *Owens-Illinois, Inc. v. Edwards*, 573 So. 2d 704 (Miss. 1990)).

79. *Id.*

80. *Id.* at 965.

81. *Id.* at 965 (emphasis added) (citing MISS. CODE ANN. § 15-1-49 (1990)).

plaintiff had suffered numerous prior injuries from the same product but had not brought claims for any of these injuries. In this cigarette products liability case, the plaintiff had previously been diagnosed with emphysema, had suffered several other smoking-related injuries, and had been warned repeatedly by doctors that she should stop smoking.⁸² However, the Mississippi Supreme Court (unlike the Alabama Supreme Court) chose to ignore the first injury rule in deciding when the limitations period began. Applying the discovery of injury rule, the *Schiro* court held that the limitations period began to run when the plaintiff was diagnosed with lung cancer.⁸³ The court thus rejected the first injury rule and concluded that the running of the limitations period should be based on the particular injury of which the plaintiff complains.

South Carolina has also adopted the discovery of injury rule and incorporates a reasonableness element into its standard. In *Little v. Brown & Williamson Tobacco Corp.*,⁸⁴ the facts did not allow for the pronounced rejection of the first injury rule that is found in *Schiro*. But, the *Little* court did distinguish the discovery of injury rule from the causal relationship rule by stating that the former does not require the plaintiff to make a connection between the injury and the identity of the alleged wrongdoer before the statute of limitations begins to run.⁸⁵ The court also noted that the plaintiff need not know the full extent of her injuries before the statute begins to run.⁸⁶

The discovery of injury rule seems more favorable to the plaintiff because plaintiffs can bring claims for later injuries even though the limitations period has expired for earlier smoking-related complaints.⁸⁷ Plaintiffs in discovery of injury jurisdictions are constrained only by their ability to make a causal connection between the injury and the defendant within the limitations period. However, if plaintiffs continue to smoke despite cigarette-related ailments and warnings to stop smoking, and if these plaintiffs later bring claims for more severe smoking-related injuries such as cancer, defendant manufacturers will likely be more successful in raising contributory negligence and assumption of the risk defenses even though they will be less able to avail themselves of the statute of limitations defense.

At first glance, the discovery of injury rule seems to be similar to Alabama's "moment of addiction" rule when nicotine addiction is claimed as an injury. However, the distinction remains that the discovery of injury rule incorporates a reasonableness element and depends upon a plaintiff's recognition of his or her addiction injury, whereas the moment of addiction rule

82. *Id.* at 963. The plaintiff also told doctors that she feared she had throat cancer, and she complained of coughing up blood. *Id.*

83. *Id.* at 965.

84. 243 F. Supp. 480 (D.S.C. 2001).

85. *Id.*

86. *Id.*

87. A similar scenario may arise when any court chooses to reject the first injury rule. Although the case law in this Comment is limited to the rejection of the first injury rule in exchange for the application of the discovery of injury rule, a court could theoretically reject the first injury rule and apply the causal relationship rule.

depends solely on identifying the precise moment of addiction. The flexibility of the reasonableness element seems to make the discovery of injury rule easier to apply, but a trier of fact may actually be forced to incorporate a reasonableness element into the moment of addiction rule to make the rule workable. Furthermore, the argument could be made that the Alabama Supreme Court has provided grounds for a Rule 12(b)(6) dismissal of all nicotine addiction claims, since the commencement of the limitations period cannot be precisely identified.⁸⁸

C. *The Inquiry Notice Rule*

The inquiry notice rule has been applied in limited circumstances. Although the Ninth Circuit used the first injury rule in *Solimon*,⁸⁹ one California state court had previously applied the inquiry notice rule in *Barker v. Brown & Williamson Tobacco Corp.*⁹⁰ *Barker* involved a wrongful death suit brought by a son on behalf of his father, who died from lung cancer and several other smoking-related ailments.⁹¹ The court classified this case as one involving “delayed discovery” and held that, in such cases, “the limitations period begins to run once the plaintiff has notice or information about circumstances sufficient to put a reasonable person on *inquiry notice*, i.e., the limitations period begins to run once the plaintiff has a suspicion of wrongdoing.”⁹²

The First Circuit adopted a similar rule in *Nicolo v. Philip Morris, Inc.*⁹³ In this case, the plaintiff smoked for many years and experienced various health problems, “including asthma, emphysema, and chronic obstructive pulmonary disease,” as a result of her smoking.⁹⁴ However, she did not bring claims against cigarette manufacturers until she was diagnosed with lung cancer.⁹⁵ The court sought to determine whether the plaintiff’s claim accrued at the onset of the earlier illnesses or whether the statute began to run when the plaintiff was diagnosed with lung cancer, the particular illness that formed the basis of the plaintiff’s suit.⁹⁶ The court approached its task from an interesting perspective, phrasing the issue as whether “cancer [was] so clearly foreseeable by a person exercising reasonable diligence that she should have filed her complaint within [the limitations period] when she was diagnosed as suffering a series of significant respiratory diseases?”⁹⁷

The *Nicolo* court held that, in light of the plaintiff’s total disability due to other smoking-related illnesses, “the development of lung cancer was a

88. See *supra* note 31 and accompanying text.

89. See *supra* Part II.

90. 105 Cal. Rptr. 2d 531, 537 (Cal. Ct. App. 2001).

91. *Id.* at 536.

92. *Id.* at 537 (emphasis added).

93. 201 F.3d 29 (1st Cir. 2000).

94. *Id.* at 30.

95. *Id.*

96. *Id.*

97. *Id.* at 31.

readily foreseeable, if not inevitable, consequence of her initial injury and continued smoking.⁹⁸ The court then explained that the foreseeability of an injury must be examined in light of the particular facts of an individual case, and courts must consider such factors as the severity of symptoms and the knowledge of the plaintiff (based on materials read, discussions with doctors, and other information available).⁹⁹ The court rejected the implementation of a more rigid standard that would put a plaintiff on inquiry notice after his or her condition progressed to a specific point,¹⁰⁰ reinforcing the principle that application of the inquiry notice standard requires a fact-intensive, individualized inquiry.

Although the *Nicolo* court was not concerned with the first injury rule and did not recognize addiction as a compensable injury, the court did conclude that the plaintiff's knowledge that "her addiction was attributable to [the] defendants" was sufficient to put her on inquiry notice.¹⁰¹ The court thus incorporated elements of the first injury and causal relationship rules into the inquiry notice standard. Nonetheless, the inquiry notice rule is a rejection of the first injury rule and is therefore more beneficial to plaintiffs, because they are not forced to turn to the courts following the onset of their first tobacco-related injury. However, they are instead burdened with evaluating those early harms and determining the foreseeability of later, more severe injuries.

Unlike the causal relationship rule, the inquiry notice rule does not expressly require a plaintiff to make a connection between her injury and the wrongdoing of a specific defendant before the limitations period begins to run. However, recognizing a causal relationship seems to be a critical factor in determining whether a plaintiff should have foreseen a particular injury. The inquiry notice rule yields different results from the discovery of injury rule. In an inquiry notice jurisdiction, a claim by a plaintiff like *Schiro*¹⁰² would have been barred by the statute of limitations because inquiry notice jurisdictions do not give plaintiffs the luxury of ignoring warnings and earlier tobacco-related illnesses but then filing suit after the onset of a more severe disease.

IV. CONCLUSION

"[T]he traditional purposes of statutes of limitations . . . conventionally require the assertion of claims within a specified period of time after notice of the invasion of legal rights."¹⁰³ Plaintiffs should not be punished for

98. *Id.* at 33. The court did not deny the plaintiff's claim but instead remanded the case for further consideration. *Id.* at 38-40.

99. *Id.* at 35.

100. *Id.* at 36.

101. *Id.* at 39.

102. *See supra* Part III.B.

103. *Mitchell v. Am. Tobacco Co.*, 183 F. Supp. 406, 410 (M.D. Pa. 1960).

“blameless ignorance,”¹⁰⁴ nor should manufacturers be forced to defend themselves against stale claims. Each of the statute of limitations standards has strengths and weaknesses, and each of the standards requires the trier of fact to make complex, fact-intensive evaluations on a case-by-case basis. The courts differ in their resolution of the issue of when the limitations period begins in tobacco cases, and the incorporation of a reasonableness element is a key component in several of the standards applied.¹⁰⁵

The Alabama rule—stipulating that the statute of limitations begins to run at the time of addiction—imposes an unrealistic burden upon triers of fact. Individual plaintiffs will be hard-pressed to pinpoint the moment they became addicted to cigarettes, and triers of fact have even fewer means of identifying the moment of addiction and will thus be dependent upon their assessment of the plaintiff’s credibility. This standard has the potential to bar claims from many plaintiffs who became addicted to cigarettes long before they learned of the adverse effects the habit would likely have on their health. Additionally, this standard does not incorporate a reasonableness element and thus does not give the trier of fact the flexibility to determine when a reasonable person in the plaintiff’s position would have recognized the potential for, or the existence of, a tobacco-related injury. Furthermore, the recognition of addiction as a compensable injury has serious ramifications that are not discussed in this Comment.

The first injury rule seems to be skewed in favor of defendants because they are able to raise a statute of limitations defense whenever a tobacco-related injury to the plaintiff can be identified that falls outside of the limitations period. This rule punishes plaintiffs who do not run to the courts at the first sign of harm. However, it also forces smokers to take more responsibility for their actions, as they will not obtain relief in the courts if they have exacerbated early tobacco-related injuries by continuing to smoke.

The discovery of injury rule seems illogical and has the potential to be unjust towards both plaintiffs and defendants. First, why should a claim accrue when a person has been injured but does not know whom to blame for the injury? What if that person does not even suspect that the injury is the result of wrongdoing? Commencing the limitations period before a person realizes he or she has been wronged is surely unfair to that person. Conversely, the discovery of injury rule can be applied in a manner that is unfair to defendants. When a person has suffered a series of tobacco-related injuries but has never filed suit and has continued to smoke, should that person still be permitted to bring a claim against cigarette manufacturers for a subsequent injury?¹⁰⁶ Of course, the clear advantage of the discovery of injury rule is the ease of application; both parties to the litigation and triers of fact

104. *Id.*

105. *See supra* Part III.B.

106. Many of these claims would likely be barred because of assumption of the risk or contributory negligence.

should be able to determine when the plaintiff discovered, or should have discovered, the particular injury at issue.

The inquiry notice rule is particularly complex because of the foreseeability element. The trier of fact must determine what a particular plaintiff should have foreseen and when that plaintiff should have achieved such foresight. This rule also suggests that plaintiffs can recover for injuries that have not yet been sustained, a proposition that has not been widely accepted in the field of products liability. Conversely, a plaintiff might also be barred from bringing a claim for an injury before it occurs.

The widespread application of the causal relationship test to tobacco litigation reflects the choice made by many jurisdictions to extend the limitations standards previously applied to latent injuries in other products liability cases.¹⁰⁷ This test appears to be fair to both parties; individual smokers are not pushed towards the courts at the onset of any injury that *might* be caused by cigarettes, and manufacturers are not forced to defend themselves against claims by plaintiffs who have been consciously injuring themselves for years. The trier of fact may utilize the flexibility of the reasonableness standard to account for the particular facts of the case.

After examining the application of the various standards that have been applied to the limitations issue in the context of tobacco litigation, the Alabama “moment of addiction” standard seems particularly unworkable. The test set out in *Spain*, unlike other tests used in American courts, does not incorporate a reasonableness element. The test also does not take into account the time at which the plaintiff should have become aware of the addiction. *Spain* demands a precise determination, yet identifying a specific “moment of addiction” is seemingly impossible. Given the increase in tobacco litigation, the Alabama Supreme Court will likely be asked to revisit this issue at some point, and the numerous concurrences and dissents in the *Spain* opinion suggest that the court will be willing to reevaluate its recent conclusion.

Rebecca Crawford Eubanks

107. See *supra* Part III.A.

