



plaintiff or decedent exercised reasonable diligence and learned on a date less than two years prior to filing suit that their injuries had been wrongfully caused.

On June 12, 2023, Vantage Specialty Chemicals, Inc., filed a motion to dismiss the 13 complaints. The other defendants joined, in part, Vantage's motion. Vantage argues that the 13 plaintiffs filed their complaints after the two-year statute of limitations applicable to personal injury and wrongful death lawsuits had expired and, as a result, the complaints are barred. *See* 735 ILCS 5/13-202. The defendants ground their argument on the United States Environmental Protection Agency's August 22, 2018, publication of the 2014 National Air Toxics Assessment ("NATA") report. That report identified extremely high cancer risks for persons living near facilities operated by Vantage and Medline Industries, LP. According to the defendants, the NATA report provided each plaintiff with, at a minimum, constructive notice of the causal link between their or their decedent's cancer diagnosis such that any complaint filed after August 22, 2020, is time barred. In support of their argument, the defendants point out that two thirds of the plaintiffs who filed lawsuits in these consolidated actions did so within two weeks before August 22, 2020. Each of the 13 plaintiffs subject to the motion to dismiss filed their complaint after August 22, 2020.

The 13 plaintiffs filed a consolidated response brief. The plaintiffs argue that each of their complaints alleges that at the time they or their decedent received a cancer diagnosis, none knew that their medical condition had been wrongfully caused by the defendants' EtO emissions. The defendants filed a reply brief.

### Analysis

The defendants bring their motion pursuant to the Code of Civil Procedure. *See* 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

Section 2-619 explicitly authorizes the dismissal of a complaint "[t]hat . . . was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5). The harshness of the bar imposed by statutes of limitations is balanced by the common-

law discovery rule that delays the start of a limitations period. See *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360 (1995); *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981). The discovery rule may extend a statutory filing period if: (1) a plaintiff has actual knowledge of an injury and that it was wrongfully caused; or (2) a person in the plaintiff's position should have reasonably known the injury was wrongfully caused and, at that point, had a duty to investigate further. See *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011); *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 23. The point at which a plaintiff learns of facts sufficient to trigger the discovery rule may, itself, be a disputed question of fact. *Witherell*, 85 Ill. 2d at 156. If, however, "it is apparent from the undisputed facts . . . that only one conclusion can be drawn, the question becomes one for the court" and may be resolved as a matter of law. *Id.*

The discovery rule is not concerned with a plaintiff's knowledge "of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." *Young v. McKieue*, 303 Ill. App. 3d 380, 388 (1st Dist. 1999) (emphasis added) (citing cases). Rather, "the limitations period begins to run when the plaintiff becomes aware that the cause of his problem stems from another's negligence and not from natural causes." *Castello v. Kalis*, 352 Ill. App. 3d 736, 744-45 (1st Dist. 2004) (quoting *Saunders v. Klungboonkrong*, 150 Ill. App. 3d 56, 60 (1st Dist. 1986)). Thus, this phrase "wrongfully caused" does not mean a plaintiff must know of the defendant's negligent conduct before the statute is triggered. See *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416-17 (1981).

To rely on the discovery rule, a plaintiff must plead specific facts supporting the late discovery of the injury. *Ogle v. Hotto*, 273 Ill. App. 3d 313, 323 (5th Dist. 1995). The plaintiff also has the burden of proving the date of discovery. See *Solis v. BASF Corp.*, 2012 IL App (1st) 110875, ¶ 28. In this instance, each of the 13 plaintiffs alleges in their complaint either that: (1) they or their decedent had no knowledge at the time of their diagnosis that their medical condition was wrongfully caused; or (2) they or their decedent exercised reasonable diligence and learned that the defendants had wrongfully caused the injuries on a date less than two years before filing suit. Those factual allegations must be considered true at this stage of the pleadings. See *Calloway*, 168 Ill. 2d at 324.

Despite the presumed truth of each plaintiff's factual allegations, Vantage argues that the NATA report provided each plaintiff with sufficient constructive notice that their cancer or that of their decedent was wrongfully caused and, therefore, the statute of limitations bars their cause of action. Vantage points out that approximately two thirds of the plaintiffs who filed complaints did so within two weeks before August 20, 2022. This court finds that the date of the NATA report is significant because it unquestionably permits the inference that the plaintiffs who filed before August 20, 2022, had received actual or constructive

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notice from the report pointing to the defendants as the wrongful cause of their or their decedent's cancer.

Yet Vantage asks this court to take the next inferential step and find that the plaintiffs who filed their complaints after August 20, 2022, received the same actual or constructive notice from the NATA report as those who filed their complaints before that date. That is one inferential step too far. It is certainly possible that the post-August 20, 2022, complaints are late filed, but it is equally possible that those plaintiffs filed their complaints within the statutory period applicable in their particular case. As noted above, Illinois law recognizes that the start of a limitations period may be a question of fact and that the plaintiff has the burden of proving the date of discovery. While each plaintiff could have provided an allegation identifying the specific date the plaintiff or decedent gained actual or constructive notice, such exacting pleading is unnecessary given that, at a minimum, each party alleges its complaint is timely filed. This court acknowledges that written and oral discovery may show that a particular complaint was late filed. If so, Vantage and the other defendants will have every opportunity to file a dispositive motion based on a far more complete record than the one currently available.

Conclusion

For the reasons presented above, it is ordered that:

The motion to dismiss each complaint identified in the caption is denied.

  
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John H. Ehrlich, Circuit Court Judge

**Judge John H. Ehrlich**

**AUG 07 2023**

**Circuit Court 2075**