

**[J-52A-2019 and J-52B-2019] [MO: Donohue, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: RISPERDAL LITIGATION
JONATHAN SAKSEK,

Appellant

v.

JANSSEN PHARMACEUTICALS, INC.,
JOHNSON & JOHNSON COMPANY,
JANSSEN RESEARCH AND
DEVELOPMENT, LLC,

Appellees

IN RE: RISPERDAL LITIGATION
JOSHUA WINTER,

Appellant

v.

JANSSEN PHARMACEUTICALS, INC.,
JOHNSON & JOHNSON COMPANY,
JANSSEN RESEARCH AND
DEVELOPMENT, LLC,

Appellees

: No. 22 EAP 2018
:
: Appeal from the Judgment of Superior
: Court entered on November 13, 2017
: at No. 576 EDA 2015 (reargument
: denied January 16, 2018) affirming
: the Judgment entered on February
: 12, 2015 in the Court of Common
: Pleas , Philadelphia County, Civil
: Division at No. 00183 February Term,
: 2014, No. 296 March Term, 2010.
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: ARGUED: May 16, 2019
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: No. 23 EAP 2018
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: Appeal from the Judgment of Superior
: Court entered on November 13, 2017
: at No. 590 EDA 2015 (reargument
: denied January 16, 2018) affirming
: the Judgment entered on February
: 10, 2015 in the Court of Common
: Pleas , Philadelphia County, Civil
: Division at No. 01170 March Term,
: 2014, 296 March Term, 2010.
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: ARGUED: May 16, 2019
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CONCURRING OPINION

JUSTICE BAER

DECIDED: NOVEMBER 20, 2019

I join the majority opinion reversing the Superior Court's affirmance of the trial court's grant of summary judgment to Janssen Pharmaceuticals, Inc., Johnson & Johnson

Company, and Janssen Research and Development, LLC (collectively, Janssen). I write separately to reiterate my concerns regarding Pennsylvania's continued adherence to the narrow approach to the discovery rule.

The majority correctly summarizes Pennsylvania jurisprudence regarding the discovery rule as utilizing a "narrow approach" involving "inquiry notice," which tolls the statute of limitations until a plaintiff has "actual or constructive knowledge" of the injury and awareness that the injury was caused by another. Maj. Op. at 11. This paradigm places a greater burden on plaintiffs as compared with the so-called "liberal" approach applied by most of our sister states. See *Nicolaou v. Martin*, 195 A.3d 880, 892-93 (Pa. 2018); *Wilson v. El-Daief*, 964 A.2d 354, 363-65 (Pa. 2009). The liberal approach looks to a plaintiff's actual or constructive knowledge of the existence of a cause of action, which tolls the statute of limitations until a reasonable plaintiff would have knowledge not only that an injury was caused by another but that the injury resulted from the negligence of another. *Id.*

As I have previously expressed, I question whether this Court should align our discovery rule jurisprudence with the liberal approach adopted by the majority of our sister states. See *Wilson*, 964 A.2d at 371-372 (Baer, J., concurring and dissenting). Nevertheless, I recognize that the issue is not before the Court in this case. Accordingly, as was true in our recent decision in *Nicolaou*, 195 A.3d at 892 n.14, "we await a future case" to consider whether to adopt the liberal approach.

Justice Donohue joins this concurring opinion.