

## What a Difference a Day Makes: Mississippi's Discovery Rule

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The discovery rule applies to latent injuries, such that the statute of limitations does not begin to run until the plaintiff knows of or should have known of the injury. In Western World Ins. Group v. KC Welding, LLC, No. 2022-CA-00527-SCT, 2023 Miss. LEXIS 278 (KC Welding), a majority of the justices on the Supreme Court of Mississippi (Supreme Court) affirmed the trial court's ruling that Western World Insurance Group (Insurer) filed its lawsuit one day late. Thus, the statute of limitations barred Insurer's lawsuit.

In KC Welding, on July 12, 2018, KC Welding, LLC (KC Welding) sent an employee to Sunbelt Shavings, LLC (Sunbelt) to repair the door of a box containing wood chips. Sunbelt's employees discovered that KC Welding employees were welding a storage bin that had not been emptied of wood chips and Sunbelt's employees asked KC Welding's employees to leave. After that, Sunbelt's employees attempted to soak the area with water. Later that night, a fire started on Sunbelt's property, apparently as the result of smoldering wood shavings, a fire that was extinguished on July 13, 2018.

On July 13, 2021, Insurer, proceeding as subrogee of Sunbelt and several other companies, filed suit against KC Welding for negligence and breach of contract. KC Welding filed a motion to dismiss the lawsuit as untimely, arguing that Insurer failed to file its lawsuit before the three-year statute of limitations period expired. In response, Insurer argued that "the injury was not discovered until the fire was extinguished on July 13, 2018" and, thus, the suit was timely. Insurer also argued that its insureds could not have discovered the full extent of their injuries until July 13, 2018, because the fire "continued raging" throughout the night of July 12, 2018, and into the morning hours of July 13, 2018. The trial court, finding that the cause of action accrued on July 12, 2018, granted KC Welding's motion and Insurer appealed.

Insurer raised two arguments on appeal: 1) that the trial court erred when it determined that the fire was not a latent injury to which the discovery rule applied; and 2) that the trial court erred by determining that the cause of action accrued on July 12, 2018, when the fire started and not on July 13, 2018, when the fire was extinguished. The Supreme Court disagreed.

Insurer argued that its inability to immediately know the cause of the fire created a latent injury. As stated by the court, Mississippi Code Section 15-1-49(1) states that "[a]ll actions for which no other period of limitation is prescribed shall commence within three (3) years next after the cause of such action accrued." In addition, Mississippi Code Section 15-1-49(2) discusses latent injuries and the discovery rule, stating that "[i]n actions for which no other period of limitation is prescribed, and which involve latent injury . . . the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury."

Discussing the discovery rule, the court held that causes of action accrue upon the discovery of the injury, not the discovery of the injury and its cause. In addition, it stated that for the discovery rule to apply, there must be a latent injury, such that the plaintiff is "precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question . . . [or] when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act." As noted by the court, the July 12, 2018, fire was not a latent injury as the insureds were not precluded from discovering the harm or injury. In addition, because Sunbelt's employees knew about KC Welding's negligent acts and the fire started later that evening, the Insurer – who stepped into Sunbelt's shoes – should have known that a negligent act occurred. As stated by the court, Sunbelt's knowledge of the fire and the facts surrounding KC Welding's actions earlier in the day provided the Sunbelt's subrogating insurer with the requisite knowledge for a cause of action to accrue. Thus, the Supreme Court affirmed the trial court's finding that the action accrued on July 12, 2018, and

Insurer filed its action one day late.

The [KC Welding](#) case is a good reminder to file cases before there are any questions about whether the statute of limitations has run. In addition, subrogation professionals proceeding in Mississippi should be aware of the statute dealing with the discovery rule, Mississippi Code Section 15-1-49(2), as well as how the Supreme Court applied the discovery rule in [KC Welding](#).

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