[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	:	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. ARGUED: May 16, 2019
IN RE: RISPERDAL LITIGATION JOSHUA WINTER, Appellant v. JANSSEN PHARMACEUTICALS, INC., JOHNSON & JOHNSON COMPANY, JANSSEN RESEARCH AND DEVELOPMENT, LLC, Appellees	:	No. 23 EAP 2018 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. ARGUED: May 16, 2019

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.