



## Pennsylvania Superior Court Relaxes Statute of Limitations in Sexual Abuse Case

By Pamela D. Hans\*

**T**he Pennsylvania Superior Court may have done what New Jersey and New York did by statute: opened the door to claims that would otherwise be time-barred.

The Superior Court recently issued a decision in *Rice v. Diocese of Altoona-Johnstown* that permitted three otherwise time-barred claims to proceed. The claims arose from harassment and abuse that allegedly took place decades ago, with the last alleged act of abuse happening in 1981. Plaintiff Renee Rice alleged fraud, constructive fraud, and civil conspiracy.

The Blair County trial court had dismissed the plaintiff's claims as barred by the statute of limitations, which would have required Ms. Rice to file her claims within two years of her eighteenth birthday (assuming the statute of limitations was not otherwise tolled). *See* 42 Pa.C.S.A. 5533 (b)(1). Ms. Rice did not file her claims when she was 20 — she filed them 35 years later, after alleging she learned of a cover-up through the issuance of a grand jury report in 2016.

On appeal, Ms. Rice argued three different but related reasons why her claims were not time-barred. First, she argued that the trial court misapplied the discovery rule, which holds that the clock starts running on a statute of limitations when a plaintiff discovers the injury in question. The Superior Court agreed with Rice and, following a state Supreme Court decision in *Nicolaou v. Martin* (2018), reversed the trial court's decision. Importantly, the Superior Court noted that *Nicolaou* prohibits courts from “view[ing] facts in a vacuum when determining whether a plaintiff has exercised the requisite diligence as a matter of law to preclude a plaintiff's invocation of the discovery rule.” *Rice* at 12 citing *Nicolaou* at 894. More to the point, the court concluded that it is for a jury to decide whether a plaintiff may rely on the discovery rule to toll the statute of limitations; a court cannot sit as finder of fact and make that determination following *Nicolaou*.

Ms. Rice also argued that the fraudulent concealment doctrine prevents the defendants from asserting statute of limitations as a defense to her claims. As the court in *Rice* explained, when a defendant, through fraud or concealment, causes the plaintiff to relax their vigilance or deviate from their right of inquiry into the facts, the defendant may not raise a statute of limitations as a defense. *Rice*, at 17. Ms. Rice asserted she had a special,

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confidential relationship with the defendants that created a fiduciary duty on their part to disclose their plans to shield and protect their priest's reputation and their own, and that the defendants breached that duty by concealing the facts of the prior abuse and molestation.

The court determined that parishioners with "specialized circumstances" could assert confidential relationships, which relationships could give rise to a duty to disclose for the defendants; and a jury is permitted to determine whether there was a breach of the duty to disclose. *Rice* at 19.

### What Does This Mean for Insurance Claims?

Pennsylvania policyholders and insurance companies should pay careful attention to *Rice* and *Nicolaou*, particularly the Superior Court's interpretation and application of the statute of limitations to abuse claims. While policyholders and their insurance companies alike may have taken comfort in the fact that the Pennsylvania legislature had not passed legislation that would open the door to previously time-barred claims, the courts, through their decisions in *Rice* and *Nicolaou*, have given prospective plaintiffs an opportunity to bring claims that may have otherwise been time-barred to a jury.

Policyholders should not ignore claims that are based on events alleged to have happened decades before the complaint was filed. Putting insurance companies on notice of all claims, even those that may be time-barred, is prudent, and is a way to avoid having coverage defenses raised based on late notice.

Policyholders should not take no for an answer when an insurance company refuses to defend and indemnify a policyholder for claims that are perceived to be time-barred. As the decisions in *Rice* and *Nicolaou* reveal, whether a claim is time-barred may be a question for the jury. Policyholders should read their insurance policies and consult with their brokers and trusted counsel to determine the extent of an insurance company's obligation to defend the claims. ▲

#### ENDNOTES

\* *Marshall Gilinsky, Arthur Armstrong and Robert Chesler, who are also members of the firm's Sexual Harassment and Abuse Insurance Recovery Group, contributed to this article.*

