

WORKERS' COMPENSATION — PREMISES RULE — AN EMPLOYER NEED ONLY HAVE THE CAPACITY TO CONTROL THE AREA WHERE THE ACCIDENT OCCURRED IN ORDER FOR THE INJURIES TO BE COMPENSABLE NOTWITHSTANDING THE FACT THAT THE ACCIDENT OCCURRED BEFORE EMPLOYMENT DAY HAD COMMENCED — *Ramos v. M & F Fashions, Inc.*, 154 N.J. 583, 713 A.2d 486 (1998).

Felipe Ramos, a native of Puerto Rico, worked as a laborer in the agricultural industry until he moved to New Jersey in 1984. *See Ramos v. M & F Fashions, Inc.*, 154 N.J. 583, 587, 713 A.2d 486, 488 (1998). Roughly one year after Ramos moved to New Jersey, he obtained employment as a presser at M & F Fashions, Inc. (M & F), a garment manufacturer. M & F was located in a five-story building in Newark, New Jersey. The building had only a freight elevator and stairs. Ramos's duties included transporting fabric from the ground floor to M & F's plant located on the fourth floor and transporting coats from the fourth floor to the ground floor for shipping. *See id.* at 588, 713 A.2d at 489. Ramos, as well as employees of other tenants in the building, used the freight elevator for their work duties. Most employees at M & F, however, did not use the elevator because the doors would occasionally remain open during use.

Ramos usually arrived at M & F at 7:00 a.m. despite the fact that he was not required to arrive until 8:00 a.m. nor could he begin work until that time. Upon his arrival, Ramos would take the elevator upstairs to "read the newspaper, drink coffee, and smoke a cigarette" before his work day began. Ramos's supervisors approved of his early arrival at M & F, although most employees typically arrived at 7:30 a.m.. On May 13, 1988, Ramos arrived at M & F at 7:00 a.m.. He proceeded to the elevator and opened the doors. Upon stepping into the elevator, Ramos fell down the open elevator shaft, approximately eight to ten feet, and incurred serious injuries, including a fractured pelvis, a spinal sprain and fracture, a wrist fracture, and a cerebral concussion. *See id.* at 589-90, 713 A.2d at 489.

After obtaining a \$100,000 settlement from the building's landlord, Ramos filed a workers' compensation claim against M & F. *See id.* at 589, 713 A.2d at 489. The Second Injury Fund (SIF) opposed the application because M & F was by that time defunct. *See id.* Between November 9, 1994, and September 13, 1995, the compensation court held hearings on Ramos's injuries. *See id.* The compensation court allowed testimony from Ramos and his doctors, who testified that he was permanently totally dis-

abled. *See id.* The SIF experts, however, testified that Ramos suffered only a permanent partial disability. *See id.* In finding that the injuries were compensable, the compensation court reasoned that because M & F used the elevator for business purposes, Ramos incurred his injuries during the course of his employment. *See id.* Furthermore, the compensation court noted that Ramos was reporting for work at the time of the accident, notwithstanding the fact that his scheduled work day did not begin until an hour later. *See id.* The compensation court further held that Ramos's injury had left him permanently totally disabled. *See id.*, 713 A.2d at 490.

The New Jersey Superior Court, Appellate Division, reversed the compensation court's determination and held that Ramos's injuries were not compensable because M & F did not control the freight elevator at the time of the accident. *See id.* at 590, 713 A.2d at 490. The appellate division stressed the fact that Ramos voluntarily chose to use the freight elevator and that he voluntarily arrived early for work. *See id.* The court also found that M & F did not have control of the elevator because it was in a common area and was used by several of the building's tenants. *See id.* The appellate division therefore held that Ramos's injuries were not compensable. *See id.*

The New Jersey Supreme Court granted certification and reversed the appellate division. *See id.* The court first explained that the "premises rule" distinguishes between an accident that occurs on an employer's premises and one that does not. *See id.* at 592, 713 A.2d at 491 (citing N.J. Stat. Ann. 34:15-36 (West 1988)). Writing for the majority, Justice Handler resolved the issue of whether or not M & F controlled the freight elevator at the time of Ramos's accident. *See id.* The justice opined that in order to constitute a compensable injury under the premises rule, the accident must occur after an employee reaches a place controlled by an employer. *See id.* The justice further articulated that control of an area "imports the notion of capacity, ability or power to occupy, possess or use" and that once an employer establishes control, potential liability will remain a threat until the employer forgoes use of the site. *Id.*

In the present case, Justice Handler found that M & F employees, including Ramos, used the elevator for business purposes, mainly to transport fabric between floors. *See id.* The justice further elaborated that M & F allowed its employees to use the elevator for ingress and egress rather than using the stairs. *See id.* Justice Handler then concluded that M & F had the capacity to control the elevator. *See id.* The court declared that the fact that Ramos was not using the elevator for business purposes at the time of the accident was irrelevant. *See id.* Additionally, the justice determined that in order to meet the requirements under the "premises rule," the employee does not need to establish that the employer had exclusive

control of the area where the accident occurred. *See id.* Justice Handler, however, then noted that the evidence established that M & F used the elevator for business purposes and, thus, M & F had the capacity to control the elevator. *See id.* Therefore, the justice declared that Ramos satisfied the “premises rule.” *See id.*

The justice then addressed whether Ramos’s employment had commenced at the time of the accident. *See id.* at 594, 713 A.2d at 492. Justice Handler recalled that Ramos contended that his early arrival at M & F was habitual and that the compensation court had found this explanation credible, despite SIF’s contention that Ramos arrived early for personal reasons. *See id.* The justice then explained that courts must give substantial deference to the factual findings of the compensation court and, thus, the appellate court should have limited its inquiry to whether the record contained sufficient credible evidence to support the compensation court’s conclusion. *See id.* Furthermore, the justice declared that it is the duty of the compensation court to evaluate the credibility of witnesses. *See id.* The justice acknowledged that Ramos’s testimony before the compensation court indicated that he arrived at M & F at 7:00 a.m. because he liked to be early for work and because his supervisors praised his promptness. *See id.* at 595, 713 A.2d at 492. Further, the justice recalled that the compensation court determined that Ramos’s lack of proficiency in English coupled with his limited work experience and previous work-related injuries, suggested that he would have had difficulty finding other employment if terminated. *See id.* Thus, the justice inferred that the compensation court’s determination suggested that by arriving early, Ramos felt secure in his employment position with M & F. *See id.* Justice Handler determined that the record contained enough evidentiary support to conclude that Ramos was reporting for work when the accident occurred. *See id.* at 594, 713 A.2d at 492.

The majority then analyzed whether the evidence in the record, namely the testimony of doctors who examined Ramos four and one-half years prior to the hearing, was sufficient to support the compensation court’s finding that Ramos was permanently totally disabled. *See id.* at 595-96, 713 A.2d 492-93. Justice Handler noted that SIF contended that the examinations were too old to justify a finding that Ramos’s injuries left him permanently totally disabled. *See id.* at 596, 713 A.2d at 493. The court acknowledged Ramos’s contention that a recent examination was not required because “a permanent total disability cannot be found unless no fundamental or marked improvement in such condition can be reasonably expected.” *Id.*

Justice Handler then opined that a recent medical examination is only warranted in a situation in which a person has suffered a permanent partial disability, rather than a permanent total disability. *See id.* at 597, 713 A.2d

at 493. The justice reasoned that because a person suffering from a permanent total disability has no reasonable chance of improvement, a court may presume that the disability had not significantly improved since the diagnosis. *See id.* The justice further noted that Ramos was diagnosed with a permanent total disability thirty months prior to the hearing and, therefore, a recent medical examination was not necessary because the diagnosis was made after permanency occurred. *See id.* Justice Handler concluded that the compensation court's finding that Ramos suffered a permanent total disability was supported by credible evidence from the record. *See id.*, 713 A.2d at 493-94.

Writing for the dissent, Justice Pollock, joined by Justice Garibaldi, commented that the Legislature's 1979 amendments to the Workers' Compensation Act abrogated the "going and coming" exception and prohibited employees from recovering for injuries that occurred as employees traveled to and from work, but permitted certain exceptions. *See id.* (Pollock, J., dissenting). The justice proffered that the Legislature intended its amendment to limit the class of employees who were eligible for compensation. *See id.* Justice Pollock characterized the majority opinion as a return to the "going and coming rule." *See id.* Justice Pollock then noted that M & F did not control the freight elevator at the time of the accident because Ramos was using the elevator for personal passage between the first and fourth floors. *See id.* at 601, 713 A.2d at 495 (Pollock, J., dissenting). Additionally, the dissent posited that the evidence revealed that Ramos voluntarily chose to use the elevator and that M & F did not require its use. *See id.*

Justice Pollock then likened the present case to *Novis v. Rosenbluth Travel*, in which the employee was injured while walking on a sidewalk between a parking lot that the building tenants shared and the entrance of the employer's building. *See id.*, 713 A.2d at 496 (Pollock, J., dissenting) (citing *Novis v. Rosenbluth Travel*, 138 N.J. 92, 649 A.2d 96 (1994)). Justice Pollock noted that the *Novis* court found that the employer did not control the parking lot at the time of the employee's injuries. *See id.* The dissent further asserted that courts should require the evidence to show that the employer had a greater degree of control over the accident site before the injuries are deemed compensable. *See id.* at 602, 713 A.2d at 496 (Pollock, J., dissenting).

In reversing the appellate division, the New Jersey Supreme Court has created a previously non-existent exception under the premises rule, which allows an otherwise ineligible person, such as Ramos, to receive compensation for an otherwise noncompensable injury. Ramos's proper theory of recovery would have been under tort law, a theory which Ramos had successfully raised against the building's landlord. This decision, however,

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opens the door to workers' compensation claims by all employees injured on the fringes of their employer's premises or near the time they were scheduled to commence or terminate work. Thus, employees who sustain injuries either before or after their scheduled work day will undoubtedly claim, as Ramos did, that they arrived early or stayed late in order to impress their supervisor and gain job security.

By amending the Workers' Compensation Act, the Legislature intended to eliminate the "going and coming" exception to the premises rule and relieve employers from high compensation costs. *See id.* at 599, 713 A.2d at 494 (Pollock, J., dissenting). With this decision, the court has interpreted the premises rule to accomplish a just outcome for an admittedly sympathetic individual rather than to enforce the Legislature's intent. In light of the court's holding, it would not be surprising if the Legislature again amended the Workers' Compensation Act to exclude compensation in precisely this type of case.

Scott Carbone

TORTS — STATUTE OF LIMITATIONS — TWO-YEAR STATUTE OF LIMITATIONS BEGINS TO RUN FOR MEDICAL MALPRACTICE AND INFORMED CONSENT WHEN INJURED PARTY KNEW OR SHOULD HAVE KNOWN OF SUFFICIENT FACTS TO STATE A CLAIM — *Baird v. American Med. Optics*, 155 N.J. 54, 713 A.2d 1019 (1998).

In 1983, Plaintiff Eleanor Baird began to experience blurred vision in her left eye. *See Baird v. American Med. Optics*, 155 N.J. 54, 58, 713 A.2d 1019, 1021 (1998). Plaintiff sought medical attention from defendant, Dr. Frederick Newman, an ophthalmologist, on September 23, 1983. During the initial consultation, Dr. Newman determined that Baird required cataract surgery. Dr. Newman suggested that the cataract be removed and replaced with an implant. At the end of the initial consultation, Baird signed a four-page consent form for this procedure. Dr. Newman removed the cataract at defendant Valley Hospital on November 8, 1983. Dr. Newman then implanted an intraocular lens (IOL) designed by American Medical Optics (AMO) into Baird's eye.

In 1976, Congress amended the Food, Drug and Cosmetic Act (FDCA), 21 U.S.C. §§ 301-95, to include Medical Device Amendments (MDA), which allowed the Food and Drug Administration (FDA) to regulate the use of IOLs. At the time of Baird's surgery, however, AMO had not received FDA approval for marketing its lens. Instead, the FDA had granted AMO an Investigational Device Exemption (IDE). In addition to providing exemptions from certain MDA requirements, an IDE allows a manufacturer to conduct clinical investigations of unapproved devices. *See id.* at 59, 713 A.2d at 1021. In performing Baird's surgery, Dr. Newman conducted the clinical investigation of the IOL. *See id.*

FDA requirements mandate that doctors obtain the informed consent of participating patients prior to any clinical investigation using a device subject to an IDE. Moreover, the investigator must provide the patient with a thorough description of the treatment and discuss potential treatment options with the patient. *See id.*, 713 A.2d at 1022. The consent form that Baird signed fulfilled the FDA's minimum standards because it discussed alternative treatments, disclosed that the operation was an experimental clinical investigation to research IOLs, and presented the procedure's risks and possible complications. While conceding that she signed the form, Baird claimed that no one explained the contents of the

form to her and that she was unaware that she was partaking in an investigational study. *See id.* at 61, 713 A.2d at 1023.

Following surgery, Dr. Newman informed Baird of complications that required her to remain in the hospital for three days. As a result of her continuing difficulties, Dr. Newman performed laser surgery on Baird on March 9, 1984. *See id.* at 62, 713 A.2d at 1023. Following the laser surgery, however, Baird's eyesight worsened and she experienced further eye pain and infections.

After a referral by Dr. Newman, Baird began to see Dr. James Bastek, a retinal specialist. During an initial consultation on June 5, 1984, Dr. Bastek determined that Baird suffered from cystoid macular edema and pseudopathic vitritis in her left eye. Dr. Bastek informed Baird that a vitrectomy was necessary, but that initially she would receive injections in an effort to enhance her vision. Dr. Bastek recommended that Baird return to Dr. Newman's care for one month. However, she never returned to Dr. Newman's care. Baird explained that she was very disillusioned by her entire experience and was discouraged with the results of Dr. Newman's procedures.

On April 15, 1985, Dr. Bastek performed the vitrectomy on Baird. The procedure, however, resulted in little improvement in Baird's vision. Approximately two months later, Baird discontinued her visits to Dr. Bastek, and she consulted three other ophthalmologists between 1989 and 1993. *See id.* at 63, 713 A.2d at 1023.

In early 1991, Baird discovered a newspaper advertisement that discussed potential causes of action for people who suffered injuries as a result of cataract surgery. Baird recognized that her problematic experiences were strikingly similar to those described in the advertisement. Shortly thereafter, Baird met with the law firm that placed the advertisement in the newspaper. At this meeting, Baird allegedly was informed for the first time that the IOL she had received was an experimental model. *See id.*, 713 A.2d at 1023-24. Portions of Baird's testimony, however, revealed that prior to this meeting she was aware of the source of her medical complications. During her deposition, Baird revealed that she "just knew" that the implanted IOL was the source of her discomfort, complications, and continuing need for surgery. Immediately following the initial cataract surgery, Baird determined that the procedure was the starting point of all her problems. Throughout her testimony Baird commented, "I felt that my problems started right from the very beginning when he first did my cataract surgery." *Id.*, 713 A.2d at 1024.

Baird filed a complaint on February 6, 1992, against Dr. Newman, AMO, and Valley Hospital. *See id.* at 57-58, 713 A.2d at 1021. Baird's allegations included the failure of Dr. Newman and Valley Hospital to ob-

tain her informed consent for the cataract surgery. *See id.* at 63, 713 A.2d at 1024. Further, Baird's complaint against AMO was premised on numerous tort claims, as well as failure to secure her consent. *See id.* at 64, 713 A.2d at 1024.

Defendants AMO and Dr. Newman subsequently filed summary judgment motions. *See id.* On April 20, 1994, the New Jersey Superior Court, Law Division, granted AMO's motion and found that the MDA, 21 U.S.C. § 360(k), preempted the common law claims resulting from IOLs that had been granted IDEs by the FDA. *See id.* As such, the court concluded that AMO, as a manufacturer, had met the requirements of the statute and was immune from common law claims. *See id.* The court, however, denied Dr. Newman's similar motion, reasoning that the federal statute applied only to manufacturers. *See id.* Dr. Newman then submitted a new motion for summary judgment and argued that the applicable statute of limitations had expired. *See id.*

Following a hearing, the court held that Baird's complaint was in fact barred by the statute of limitations and therefore granted Dr. Newman's motion. *See id.* The court emphasized that Baird knew or should have known of her cause of action no later than 1985, and, thus, 1987 was the last year in which she could have filed a claim. *See id.* Finally, Valley Hospital filed a motion for summary judgment on May 12, 1994, claiming that it did not have a duty to obtain Baird's informed consent but, rather, that Dr. Newman had such a duty. *See id.* The law division found that Valley Hospital had no duty and, therefore, granted Valley Hospital's motion for summary judgment on July 8, 1994. *See id.*

The appellate division reversed the lower court's holding and remanded the matter to the law division. *See id.* First, the appellate division found that the statute of limitations was not a bar to Baird's informed consent claim against Dr. Newman. *See id.* The appellate division then concluded that Baird did not learn of her potential claim until 1991 when the attorneys informed her of IOL's experimental status. *See id.* Further, the court noted that the factual record was insufficient to determine whether Valley Hospital possessed a duty to obtain informed consent. *See id.* at 65, 713 A.2d at 1024. Finally, the appellate division explained that the MDA preempts state common law claims only when the FDA has adopted a regulation that conflicts with the state law. *See id.* Thus, the court determined that AMO had failed to demonstrate evidence of an actual conflict between the FDA regulations and state law requirements, thus precluding a favorable summary judgment award. *See id.*

The Supreme Court of New Jersey granted certification, modified the appellate court's ruling, and remanded the matter. *See id.* at 58, 713 A.2d at 1021. The court held that the two-year statute of limitations for a pa-

tient's informed consent claim begins to run when numerous complications occur shortly after surgery and alert the patient that he or she has suffered an injury. *See id.* at 68, 713 A.2d at 1026. As a result, the supreme court determined that Baird's claims, which were brought more than eight years after her surgery, were time barred. *See id.* at 72, 713 A.2d at 1028.

Justice Pollock, writing for the majority, initially explained that, although the Legislature announced that the statute of limitations on personal injury actions is two years, it is the court's duty to determine the accrual date of a cause of action. *See id.* at 65, 713 A.2d at 1025. The justice stated that a cause of action for medical malpractice usually begins to accrue on the date that the act or omission occurred. *See id.* Justice Pollock acknowledged that the discovery rule was designed to ameliorate the harsh results caused by strict adherence to the statute of limitations. *See id.* at 65-66, 713 A.2d at 1025. The court explained that the discovery rule provides that the statute of limitations should begin to run when parties know or reasonably should know that they have been injured through the fault of a particular party. *See id.* Thus, the court mentioned that by focusing on the awareness of parties, the discovery rule prevents an action from accruing when a party is unaware of any injury or unaware of the party at fault. *See id.*

Justice Pollock then analyzed when Baird realized or reasonably should have realized that Dr. Newman's act of inserting the IOL and his failure to obtain her informed consent were the causes of her injuries. *See id.* The court examined Baird's testimony transcribed at the hearing and focused on Baird's statements that she knew that something was wrong with her IOL from the beginning. *See id.* at 67, 713 A.2d at 1025. The court emphasized that Baird's testimony indicated that she first realized there was a problem when Dr. Newman referred her to Dr. Bastek. *See id.* Thus, the court concluded that Baird's testimony revealed that she knew no later than 1985 that she might have a cause of action. *See id.* at 68, 713 A.2d at 1026.

The court next addressed Baird's contention that she did not discover the pertinent legal theory until reading the advertisement in 1991 that addressed causes of action for lack of informed consent. *See id.* Justice Pollock agreed with the law division in reasoning that the statute of limitations does not begin to run upon consultation with a lawyer, but rather begins when the plaintiff discovers, or reasonably should discover, indications that she has been injured through the fault of a particular party. *See id.* The justice concluded that Baird's realization of her injuries led her to inquire whether she had a worthwhile claim. *See id.* at 69, 713 A.2d at 1026.

Next, Justice Pollock challenged the appellate court's reliance on *Lombardo v. Borsky*, 298 N.J. Super. 658, 690 A.2d 150 (App. Div. 1997),

certif. granted, 150 N.J. 28, 695 A.2d 671 (1997), and *appeal dismissed*, 513 N.J. 44, 707 A.2d 149 (1998). *See id.* The justice questioned *Lombardo's* premise that the statute of limitations for medical malpractice and lack of informed consent claims should begin to run on different days because the two claims are fundamentally different. *See id.* at 70, 713 A.2d at 1027 (citing *Lombardo*, 298 N.J. Super. at 667, 690 A.2d at 150). The court denounced the *Lombardo* principle and stated that both claims are rooted in negligence because the negligence in a lack of informed consent claim is the doctor's failure to disclose sufficient information to the patient in order to secure the patient's consent. *See id.* at 71, 713 A.2d at 1027. Further, Justice Pollock emphasized that a claimant should not be allowed to delay the filing of a timely action by selecting a more convenient theory of recovery. *See id.*

The court rejected *Lombardo* and explained that the appellate court mistakenly focused its inquiry on when the claimant became aware of all potential theories of recovery rather than on the time when the claimant discovered that he was injured by a particular person. *See id.* Justice Pollock condemned the *Lombardo* rule, which would split the claims by allowing distinct limitation periods. *See id.* at 71, 713 A.2d at 1028. The court remanded the case to the law division to allow Valley Hospital and AMO to move for dismissal pursuant to the statute of limitations, as the court set forth. *See id.* at 72, 713 A.2d at 1028.

Finally, the court seized the opportunity and commented on the question of federal preemption. *See id.* Although declining to render a decision on the issue, Justice Pollock voiced the court's agreement with the appellate division in its determination that the MDA did not preempt Baird's claims against AMO. *See id.* at 72-73, 713 A.2d at 1028. Following a careful reading of the relevant statutes and opinions on the subject, Justice Pollock declared that Congress, the FDA, and the United States Supreme Court have not proposed that federal legislation such as MDA should preempt state law claims, but, rather, that it should elucidate their interpretation. *See id.* at 76, 713 A.2d at 1030. Finally the justice urged Congress, the FDA, and the Court to present more lucid regulations, if the goal of MDA is to eliminate any remedy for injured consumers, so as to cure potential future uncertainties. *See id.*

Justice O'Hern, joined by Justice Stein, dissented from the court's opinion. *See id.* at 77, 713 A.2d at 1030 (O'Hern, J., dissenting). The justice began by accusing the majority of impermissibly joining the two fundamentally different claims of medical malpractice and informed consent in an attempt to avoid the dispute over the timing of the lack of informed consent claim. *See id.*, 713 A.2d at 1031 (O'Hern, J., dissenting). Justice O'Hern emphasized that no jurisdiction has dismissed an informed consent

claim before determining whether the experimental nature of the procedure at issue had been disclosed to the patient. *See id.* Justice O'Hern then criticized the court for fusing the claims of informed consent and medical malpractice. *See id.* at 79, 713 A.2d at 1031 (O'Hern, J., dissenting). The justice noted the difference between informed consent and medical malpractice and explained that the former does not require proof of physical damage, whereas the latter does require such proof. *See id.*, 713 A.2d at 1032 (O'Hern, J., dissenting). Justice O'Hern then instructed that the claims are factually different in that a lack of informed consent claim emanates from a doctor's failure to disclose, whereas medical malpractice emanates from the procedure itself. *See id.* The justice concluded the initial portion of the dissent by agreeing with the appellate division's reasoning that the cause of action should accrue from the moment that the patient learns of the experimental nature of the treatment, rather than from the time that the patient discovers an injury. *See id.* at 80, 713 A.2d at 1032 (O'Hern, J., dissenting).

Next, Justice O'Hern admonished the majority for its analysis of the legal effect of the consent form that Baird signed. *See id.* at 81, 713 A.2d at 1033 (O'Hern, J., dissenting). The justice argued that a mere signature on a form does not bind a person if the signature was procured absent a thorough explanation or if the provisions contained therein were misleading. *See id.* The dissent emphasized the existence of a factual dispute concerning the plaintiff's awareness of the experimental nature of the procedure. *See id.* Accordingly, Justice O'Hern proffered that the majority erroneously dismissed Baird's claim against Dr. Newman. *See id.* at 82, 713 A.2d at 1033 (O'Hern, J., dissenting). Finally, Justice O'Hern chided the majority for denying a trial given the factual discrepancies in existence, and opined that a trial should be elementary in a case in which investigational surgery resulted in the loss of a woman's eyesight. *See id.*

In rejecting *Lombardo v. Borsky*, the New Jersey Supreme Court has set forth a unifying principle that the statute of limitations cannot be manipulated for the sake of convenience. Displaying strict adherence to the discovery rule, the court placed significant weight upon the signed consent form. Although the result may appear to yield a harsh result for Baird, the benefits of uniformity and consistency in applying the discovery rule to tort cases will far outweigh the disadvantages that such adherence may yield for claimants such as Baird.

It is imperative that defendants be held accountable for their transgressions, but plaintiff diligence in filing claims is equally important. As the majority noted, Baird's own testimony revealed that she was aware of her cause of action well within the two-year statute of limitations period. *See id.* at 68, 713 A.2d at 1026. Accordingly, public policy dictates that an

eight-year delay in filing a claim for lack of informed consent is unacceptable. Active inquiry into possible claims is required of a plaintiff when it becomes apparent that his or her injury was caused through the fault of another. Consultation with an attorney should take place at that time. The tolling effect of the discovery rule provides ample opportunity for a plaintiff to seek legal advice. To permit a plaintiff to delay filing a claim based on nothing more than convenience contravenes the consistency and uniformity that the discovery rule seeks to provide.

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