Filed 4/16/18 Tsaturyan v. GlaxoSmithKline, LLC CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SOFIK TSATURYAN et al., Plaintiffs and Appellants, v. GLAXOSMITHKLINE, LLC et al., Defendants and Respondents.	B275168 (Los Angeles County Super. Ct. No. JCCP4578)

APPEALS from judgments of the Superior Court of Los Angeles County, Elihu M. Berle, Judge. Reversed and remanded with directions.

Terence J. Mix for Plaintiffs and Appellants Sofik Tsaturyan, Andranek Vardanyan, Sarkis Tatevosian, Madlena Madzharian, Manvel Hunanyan and Anna Guyumdzhyan.

Reed Smith, Sonja S. Weissman, Raymond A. Cardozo, David J. de Jesus, Michael K. Brown and Kevin G. Lohman for

Defendants and Respondents GlaxoSmithKline LLC and McKesson Corp.

Sofik Tsaturyan, Sarkis Tatevosian, Manvel Hunanyan and Anna Guyumdzhyan each started taking Avandia, a drug manufactured by GlaxoSmithKline LLC (formerly SmithKline Beecham Corp.)(GSK) to help adults with type 2 diabetes control their blood sugar, between 2002 and 2007. Each of them was diagnosed with cardiovascular injury before or during 2007. In 2011 Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan sued GSK for failure to warn of Avandia's alleged cardiovascular risks, asserting causes of action for negligence, strict liability and fraud. In January 2016 the trial court granted GSK's motion for summary judgment, ruling the publicly available information regarding Avandia and any associated cardiovascular risks was sufficient to put Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan on notice of possible causes of action against GSK no later than December 31, 2007.

On appeal Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan argue the court erred by imputing to them knowledge of the widespread media coverage of Avandia's health risks, applying a purely objective, reasonable person standard, rather than considering these ethnic Armenian plaintiffs' inability to speak or understand English and their lack of access to English-language media. They also contend GSK failed to address the three-year statute of limitations governing their fraud cause of action and thus failed to carry its initial burden of persuasion on summary judgment. Finally, they argue GSK's motion violated Code of Civil Procedure section 437c,

subdivision (f)(2),[1] as to Tsaturyan and Tatevosian because GSK had previously sought summary judgment on statute of limitations grounds in their cases.

Because triable issues of material fact exist whether Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan were aware, or should have become aware, of sufficient facts to put a reasonable person on inquiry notice that their cardiovascular injuries may have been caused by Avandia more than two years before filing their lawsuits, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Avandia and Publicly Available Information Concerning Its Potential Cardiovascular Risks*

GSK submitted a new drug application to the United States Food and Drug Administration in November 1998 seeking approval of Avandia (generic name, rosiglitazone maleate) to help control blood sugar in adults with type 2 diabetes. The FDA approved Avandia for that use in May 1999. GSK began marketing Avandia shortly thereafter.

In May 2007 the New England Journal of Medicine published a study that concluded Avandia increased the risk of myocardial infarction (heart attack) by 43 percent. The same day the FDA issued a safety alert, warning there was a potentially significant increase in heart attack risk for individuals taking Avandia and advising Avandia patients with known heart risks to consult their physicians. In August 2007 the FDA approved a revision to the warning box in Avandia's product labeling that stated the drug could cause or exacerbate congestive heart failure in some patients. The FDA issued a press release announcing

---

[1] Statutory references are to this code.

the new warning. In November 2007, after it had convened an advisory committee to assess the available cardiovascular safety data on Avandia, the FDA directed GSK to again revise the Avandia product labeling to include a black box warning for myocardial ischemia (obstructed blood flow to the heart), including myocardial infarction. In September 2010, following further review of Avandia's cardiovascular safety, the FDA determined the availability of Avandia should be limited through a restricted access program that required physicians to prescribe Avandia only after other medications and treatments for type 2 diabetes had been tried.

The New England Journal of Medicine study and subsequent actions by the FDA regarding Avandia's cardiovascular risks were widely reported in newspaper articles, including in The New York Times, Los Angeles Times, The Wall Street Journal and USA Today, and on network and local television news programs. The study also prompted congressional hearings regarding Avandia's safety, which, in turn, produced additional print and broadcast media coverage.

2. *Avandia-related Litigation*

Immediately after publication of the New England Journal of Medicine study, television, radio and internet advertising began in media markets throughout the country describing the potential risks of Avandia use and encouraging Avandia users who had suffered heart-related injuries to consult with counsel. Within days the first lawsuit was filed, and ultimately thousands of plaintiffs initiated product liability actions against GSK in federal and state courts across the country. By October 2007 a multidistrict litigation (MDL) proceeding for the federal lawsuits was established in the Eastern District of Pennsylvania. (See

Dabon v. GlaxoSmithKline, Inc. (*In re Avandia Mktg.)* (J.P.M.L. 2007) 528 F.Supp.2d 1339, 1340 [MDL No. 1871].) In California a Judicial Council Coordinated Proceeding was established in 2009 in Los Angeles Superior Court. By 2010 this coordinated proceeding involved thousands of plaintiffs.

3. *Tsaturyan's, Tatevosian's, Hunanyan's and Guyumdzhyan's Use of Avandia and Cardiovascular Problems*

Tsaturyan, now 67 years old, was born in Iran. She was prescribed the drug Avandamet, which contains Avandia, during 2005 and 2006. She began experiencing chest pain and pressure in May 2005. She again reported chest pain in June 2006 and was seen by a cardiologist. An angiogram in January 2007 showed blockage in her heart vessels. On April 10, 2007 she had quadruple heart bypass surgery. Several months after her surgery, her doctor prescribed Avandia to replace the medication she had been using since discontinuing Avandamet. She continued using Avandia until September 10, 2010 when her physician advised her to stop.

Tatevosian, now 76 years old, was born in Lebanon. He began using Avandia in July 2002 and continued until June 2007 when his physician changed his medication to a different diabetes drug. Tatevosian did not ask why the change was being made, and says the doctor gave him no explanation. Tatevosian began experiencing chest pain and shortness of breath in October 2002, which was diagnosed as angina pectoris. The pain persisted and became severe by mid-October 2008. He was diagnosed as having a possible myocardial infarction in December 2008. That diagnosis was thereafter confirmed by EKGs and other tests.

Hunanyan, now 58 years old, was born in Armenia. He was prescribed Avandia from December 7, 2006 through June 9,

2007 and again from September 19, 2007 through July 29, 2010 when it was discontinued by his primary care physician. By April 2007 Hunanyan was experiencing pain and tightness in his chest. A treadmill stress test was positive for ischemia. He was eventually diagnosed with acute coronary syndrome in July 2010; an angiogram at that time showed substantial arterial blockage.

Guyumdzhyan, now 70 years old, was born in Syria. She first used Avandia in June 2000 and continued to use the drug through December 1, 2004 and again from February 3, 2005 through August 15, 2007. She was diagnosed with angina pectoris on May 6, 2003 by her primary care physician. The pain persisted, and in January 2007 an abnormal EKG revealed a "possible inferior infarct" of undetermined age. She was hospitalized in March 2010 and again in June 2010, at which time she had a successful angioplasty to relieve her symptoms.

4. *The Instant Litigation and GSK's Summary Judgment Motions*

According to Tsaturyan, she first learned that Avandia could be harmful when she saw an advertisement on Armenian television in early September 2010. She made an appointment with her physician, and they discussed the information. The doctor recommended she switch to another drug to treat her diabetes at that time. Tsaturyan says she speaks only minimal English and did not read or hear any of the English-language media communications regarding Avandia at any time through 2010. She also states she had never been advised by her prescribing physician or any of her treating doctors that Avandia could damage her heart. Tsaturyan filed her lawsuit against GSK on June 20, 2011, alleging causes of action for negligence,

strict liability, conscious disregard of safety and fraud based on GSK's failure to warn of Avandia's cardiovascular risks.[2]

Tatevosian, Hunanyan and Guyumdzhyan do not speak English and, like Tsaturyan, assert they first learned of Avandia being harmful from Armenian television during 2010 and had not read or heard any of the English-language media communications regarding Avandia at any time through 2010. Tatevosian filed his lawsuit against GSK on June 20, 2011,[3] Hunanyan on April 28, 2011, and Guyumdzhyan on June 20, 2011. Their complaints also alleged causes of action for negligence, strict liability, conscious disregard of safety and fraud based on GSK's failure to warn. All four lawsuits are part of the Judicial Council Coordinated Proceeding.

In October 2013 GSK moved for summary judgment on statute of limitations grounds in Tsaturyan's and Tatevosian's lawsuits, arguing those two plaintiffs had actual knowledge in 2007 of their injuries and the possible relationship between their cardiovascular problems and Avandia. The court denied the motions in January 2014, finding Tsaturyan's and Tatevosian's testimony regarding their belief Avandia may have caused their injuries was inconsistent and contradictory, which raised triable issues of fact as to their subjective knowledge.

In November 2015 GSK again moved for summary judgment against Tsaturyan and Tatevosian on the ground their lawsuits were time-barred, filing a joint motion against them, as

---

[2] Tsaturyan's husband, Andranik Vardanyan, joined in the action, alleging loss of consortium.

[3] Tatevosian's wife, Madlena Madzharian, joined in the action alleging loss of consortium.

well as Hunanyan and Guyumdzhyan.[4] By this time the federal court in the MDL proceeding had established December 31, 2007 as the "bar date" to start the limitations period for plaintiffs who had suffered a cardiovascular injury and took Avandia before that date; and the superior court in the Judicial Council Coordinated Proceeding had granted summary judgment motions on statute of limitations grounds against a large number of non-California plaintiffs (from 37 different states), finding that as of December 31, 2007 individuals exercising reasonable diligence who had used Avandia and had suffered a heart-related injury should have known that their injury may have been caused by Avandia.[5]

In its joint motion GSK urged the court to apply an objective discovery rule in determining when a cause of action accrues and the statute of limitations begins to run and argued, applying an objective standard, the applicable limitations periods began to run as to all four plaintiffs no later than December 31, 2007 because each had been diagnosed with heart-related injuries before that date and there was widespread publicity beginning in May 2007 regarding the possible connection between Avandia and cardiovascular risks. A reasonably prudent

---

[4] GSK's joint motion for summary judgment also argued its warning label for Avandia was adequate as a matter of law and the failure-to-warn claims were preempted based on various actions by the FDA regarding the label's contents. The court found triable issues of material fact and denied the motion on those grounds.

[5] Respondent's motion to augment the record with materials from the Judicial Council Coordinated Proceeding is denied.

person exercising reasonable diligence, GSK insisted, would have been on notice of these risks as of December 31, 2007.

Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan opposed the motion, presenting evidence that they had, at most, limited English-speaking and -reading skills, did not have direct access to any of the various English-language media identified by GSK in which information about Avandia's heart risks appeared (none of the local newspapers, such as the Torrance Daily Breeze served the neighborhoods in which they lived), and would not have understood them even if they were available to them. As discussed, each plaintiff also asserted he or she had first learned of the possible relationship between his or her cardiovascular symptoms and the use of Avandia while watching Armenian television in 2010, less than two years before filing the lawsuit against GSK. Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan argued the duty to investigate for purposes of the delayed discovery rule is triggered only when the plaintiff actually before the court had reason to know that his or her injury may have a wrongful cause—a subjective test—not when such information is generally available. Tsaturyan and Tatevosian also argued GSK's motion improperly sought reconsideration of the previous rulings on the statute of limitations in violation of section 437c, subdivision (f)(2).

The court rejected both arguments. Applying the two-year limitations period for injury to an individual caused by the wrongful act or neglect of another (§ 335.1) and an objective delayed accrual rule, the court found, "as a matter of law, the publicly available information regarding Avandia and any associated cardiovascular risk to patients was sufficient to put a reasonable person on notice to investigate no later than

December 31, 2007." The court explained, "In light of this objective standard, the Court is unpersuaded by plaintiffs' arguments regarding the subjective characteristics of plaintiffs, including their inability to speak or understand English. In light of the extensive coverage of the alleged cardiovascular risk factors of Avandia that this court has previously outlined, it finds such arguments insufficient to overcome the constructive knowledge that should appear to all parties asserting such claims."

The court also ruled GSK's previous summary judgment motions in *Tsaturyan* and *Tatevosian* had concerned those plaintiffs' actual knowledge of Avandia's risks. Accordingly, the current motions, which focused on the objective component of the delayed discovery rule—what the plaintiffs should have known through reasonable investigation of sources open to them—were not improperly seeking reconsideration of the earlier orders denying summary judgment.

DISCUSSION

1. *Standard of Review*

A motion for summary judgment is properly granted only when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (§ 437c, subd. (c).) We review a grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286; *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.) The evidence must be viewed in the light most favorable to the

nonmoving party. (*Ennabe v. Manosa* (2014) 58 Cal.4th 697, 703; *Schachter*, at p. 618.)

A defendant may move for summary judgment on the ground there is an affirmative defense to the action. (§ 437c, subds. (o)(2), (p)(2); see also *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 [statute of limitations is an affirmative defense].) Once the defendant meets the burden of establishing all the elements of the affirmative defense, the burden shifts to the plaintiff to show there is one or more triable issues of material fact regarding the defense. (*Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1484-1485 [when a defendant moves for summary judgment, "the burden shifts to the plaintiff to show there is one or more triable issues of material fact regarding the defense after the defendant meets the burden of establishing all the elements of the affirmative defense"]; *Mirzada v. Department of Transportation* (2003) 111 Cal.App.4th 802, 806-807 [once defendant establishes the existence of an affirmative defense, burden on summary judgment shifts to the plaintiff to produce evidence establishing a triable issue of material fact refuting the defense]; see *Huynh v. Ingersoll-Rand* (1993) 16 Cal.App.4th 825, 830; cf. *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112 (*Jolly*) ["[w]hile resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper"].)

2. *Delayed Accrual of a Cause of Action and the Reason-to-know Standard*

"The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues.

[Citations.] Traditionally at common law, a 'cause of action accrues "when [it] is complete with all of its elements"—those elements being wrongdoing, harm, and causation.' [Citation.] This is the 'last element' accrual rule: ordinarily, the statute of limitations runs from 'the occurrence of the last element essential to the cause of action.'" (*Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1191; accord, *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.)

An exception to the general rule of accrual is the discovery rule, "which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807 (*Fox*).) "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." (*Jolly*, *supra*, 44 Cal.3d at p. 1110.) "A plaintiff need not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Id.* at p. 1111; accord, *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191-192.) Ignorance of the identity of the defendant responsible for the wrongful act does not delay accrual of a cause of action, but ignorance of a generic element of the cause of action—that the injury was

caused by a wrongful act—does. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399 (*Norgart*); see *Fox*, at p. 813.)[6]

"The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. . . . [P]laintiffs are required to conduct a reasonable investigation after becoming aware of an injury and are charged with knowledge of the information that would have been revealed by such an investigation." (*Fox*, *supra*, 35 Cal.4th at pp. 807-808;[7] accord, *Jolly*, *supra*, 44 Cal.3d at p. 1114 ["the limitations period begins when the plaintiff suspects, or should suspect, that she has been wronged"]; *Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 359.)

"When a plaintiff reasonably should have discovered facts for purposes of the accrual of a cause of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence . . . can support only one reasonable conclusion." (*Stella v. Asset Management*

---

[6] As the Supreme Court explained in *Fox*, *supra*, 35 Cal.4th at page 813, "Although the identity of the manufacturer-wrongdoer is not an essential element of a products liability cause of action, and therefore ignorance of its identity will not delay the running of the statute of limitations [citation], a plaintiff's ignorance of wrongdoing involving a product's defect will usually delay accrual because such wrongdoing is essential to that cause of action."

[7] The *Fox* Court explained, "[a]t common law, the term 'injury,' as used in determining the date of accrual of a cause of action, 'means both "a person's physical condition *and* its 'negligent cause."'" (*Fox*, *supra*, 35 Cal.4th at p. 808, fn. 2.) "Thus, physical injury alone is often insufficient to trigger the statute of limitations." (*Ibid*.)

Consultants, Inc., *supra*, 8 Cal.App.5th at p. 193; accord, *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921.)

3. *Triable Issues of Material Fact Exist Concerning When Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan Should Have Become Aware of Sufficient Facts To Put Them on Inquiry Notice*

It is undisputed that Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan took Avandia and each was diagnosed with a serious heart condition in or before 2007. It is also undisputed, in the words of GSK, that, in the wake of the New England Journal of Medicine report in mid-2007, "public dissemination of Avandia's cardiovascular risks was immediate, widespread and unrelenting" and "[t]he plaintiffs' bar saturated the public with advertisements soliciting plaintiffs to file lawsuits over Avandia's cardiovascular risks." Yet GSK introduced no evidence that the extensive news coverage and plaintiffs' attorney advertising demonstrated by its moving papers extended to Armenian-language broadcasting or print media. Nor did it dispute Tsaturyan's, Tatevosian's, Hunanyan's and Guyumdzhyan's assertions that they are not English-literate and first learned of Avandia's heart-related risks in mid-2010 when they saw advertisements on Armenian-language television.

Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan argue the court erred in applying a wholly objective standard of constructive notice of GSK's allegedly wrongful conduct, imputing to them knowledge of media coverage of Avandia's cardiovascular risks in a language they do not understand. They maintain the proper test is in part subjective: Did each of these plaintiffs possess information that would cause a reasonable person to

inquire into the cause of his or her injuries? Because there are triable issues of fact that must be resolved to answer that question, Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan urge us to reverse the order granting summary judgment.

In support of the trial court's order, GSK argues it is immaterial that Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan do not speak English. Delayed accrual of their products liability causes of action ceased no later than December 31, 2007, GSK insists, because, as of that date, a reasonable person who had been taking Avandia upon being diagnosed with a serious heart condition should have suspected his or her injury was caused by that drug (and, therefore, by GSK's wrongdoing): "[T]he appropriate question is whether upon being diagnosed with a serious medical condition, a reasonable person conducting a reasonable inquiry into the potential causes of injury would have discovered facts leading to a suspicion of wrongdoing."

Neither formulation of the delayed accrual standard is correct. As discussed, *Fox*, *supra*, 35 Cal.4th at pages 807 through 808, and *Jolly*, *supra*, 44 Cal.3d at pages 1110 through 1111, hold that the statute of limitations begins to run under the discovery rule when "the plaintiff," not a hypothetical "reasonable person," has (a subjective test), or should have (an objective standard), inquiry notice of the cause of action—that is, of an injury and its negligent or other wrongful cause. (See *Norgart*, *supra*, 21 Cal.4th at p. 397 ["[u]nder *Jolly* . . . the plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least 'suspects

. . . that someone has done something wrong' to him"];[8] cf. § 340.8, subd. (a) [civil action for injury based upon exposure to hazardous material or toxic substance must be brought no later than two years after "the plaintiff becomes aware of, or reasonably should have become aware of, (1) an injury, (2) the physical cause of the injury, and (3) sufficient facts to put a reasonable person on inquiry notice that the injury was caused by or contributed to by the wrongful act of another"].)[9]

---

[8] To the extent GSK suggests that, even without any reason to suspect Avandia's link to cardiovascular risk, an individual diagnosed with a serious heart condition after taking Avandia should have investigated the potential cause of his or her injury, GSK fundamentally misperceives the scope of the discovery rule. As discussed, physical injury alone, without some basis for suspecting its negligent or wrongful cause, is insufficient to trigger a duty to investigate. (See *Fox*, *supra*, 35 Cal.4th at pp. 808 & fn. 2; *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 99 ["the word 'injury' had come to be used in the cases to denote both a person's physical condition *and* its 'negligent cause'"].)

[9] "[T]he language of section 340.8 is not intended to create a special discovery rule of accrual for claims predicated on exposure to hazardous substances but rather to clarify that California's traditional discovery rule applies to such claims." (*Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1252; see Stats. 2003, ch. 873, § 2, p. 6399 ["[i]t is the intent of the Legislature to codify the rulings of *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, *Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th 383, and *Clark v. Baxter Healthcare Corp.* (2000) 83 Cal.App.4th 1048, in subdivisions (a) and (b) of Section 340.8 of the Code of Civil Procedure, as set forth in this measure . . ."].)

Thus, Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan are wrong to argue the trial court should have determined whether the undisputed facts established they were actually aware of information that would have put a reasonable person on inquiry notice regarding Avandia's link to the risk of cardiovascular injury. But GSK is also wrong when it asserts that Tsaturyan's, Tatevosian's, Hunanyan's and Guyumdzhyan's inability to understand English is irrelevant because what a reasonable person, not these particular plaintiffs, should have known as of December 31, 2007 determines the date of accrual of their products liability causes of action. (Cf. *Ward v. Westinghouse Canada, Inc.* (9th Cir. 1994) 32 F.3d 1405, 1407 [citing *Jolly*, *supra*, 44 Cal.3d 1103 and applying California law, "under the delayed discovery rule, the statute begins to run when a reasonable person in the plaintiff's position is on 'inquiry notice' of 'potential wrongdoing'"].)

Applying the correct rule of law—whether these plaintiffs should have been aware of information that would have put a reasonable person on inquiry notice—summary judgment was improperly granted. It may well be that GSK will develop persuasive evidence that, notwithstanding their own language limitations, through English-speaking medical professionals, family or friends who were aware of their diabetes and heart conditions in 2007, Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan had a reasonable opportunity to obtain information concerning Avandia's link to cardiovascular risks. (See *Fox*, *supra*, 35 Cal.4th at pp. 807-808 [plaintiffs are charged with presumptive knowledge if they have the opportunity to obtain information from sources open to their investigation]; *Fuller v. First Franklin Financial Corp*. (2013) 216 Cal.App.4th

955, 962 ["if the party has notice of facts that would put a reasonable person on inquiry, or has the reasonable opportunity to obtain information from sources open to investigation, the limitations period begins to run"]; cf. *Guerrero v. Carleson* (1973) 9 Cal.3d 808, 813 [due process does not require that the State give notice of a reduction in welfare benefits in Spanish to recipients who are literate only in Spanish; the government may "reasonably assume that such individuals experience strong and repeated incentives . . . to develop a reliance on bilingual persons who can translate for them when necessary . . . [and] that the non-English speaking individual will act promptly to obtain such assistance when he receives the notice in question"].) At this point, however, the record is devoid of any such evidence.

Rather, in support of its joint motion for summary judgment, GSK established only that the publicly available information regarding Avandia and associated cardiovascular risks was sufficient to put English-speaking individuals on notice of causes of action against it no later than December 31, 2007. Triable issues of fact remain as to whether Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan, who speak and understand only Armenian, should have been aware of that informationn.

Notwithstanding Tasturyan, Tatevosian, Hunanyan and Guyumdzhyan's inability to speak or understand English and lack of meaningful exposure to the extensive publicity concerning Avandia's health risks in 2007, at oral argument counsel for GSK argued the Supreme Court in *Norgart*, *supra*, 21 Cal.4th 383, had held plaintiffs in products liability lawsuits against pharmaceutical companies are charged with knowledge of package inserts prepared for the drugs involved in their cases.

Accordingly, counsel argued, knowledge of the 2007 FDA-ordered package inserts for Avandia warning of possible cardiovascular risks should be imputed to Tasturyan, Tatevosian, Hunanyan and Guyumdzhyan. That argument, not presented in GSK's brief on appeal, significantly misstates *Norgart*'s holding.

Norgart involved a lawsuit against Upjohn, the manufacturer of Halcion, filed in late 1991 by the parents of a woman who had committed suicide in October 1985. In holding the lawsuit was untimely, the Supreme Court explained that the parents had stipulated that prior to-mid 1986 Leo Norgart, the decedent's father, formed a belief that an individual or individuals had done something wrong to his daughter that caused her to take her own life. (*Norgart*, *supra*, 21 Cal.4th at p. 408.) As the Court described, soon after the child's death, her parents had learned of her depression and suicide attempts dating back to April 1984 and her depression and suicide by overdose of prescription drugs, including Halcion, on October 16, 1985. (*Id.* at p. 407.) The Court then stated, "And soon after her death, Leo having undertaken an investigation into its cause, they had reason to learn of a possible connection to Halcion and Upjohn. For such a possible connection was disclosed by the package insert that the company had prepared for the drug . . . ." (*Id.* at p. 407.) That is, because Leo Norgart had suspicions of wrongdoing and initiated an investigation into the cause of his daughter's death, he was chargeable with information from the package insert, which was reasonably available to him during that investigation.

Nothing in *Norgart*'s analysis suggests, as GSK's counsel argued, that an injured party who does not independently suspect a connection between that injury and some individual or

company's wrongdoing, like each of the plaintiffs here, is charged with knowledge of a pharmaceutical package insert. In sum, GSK failed to establish, as a matter of law, that Tasturyan, Tatevosian, Hunanyan and Guyumdzhyan were on notice of a possible cause of action against GSK no later than December 31, 2007.[10]

DISPOSITION

The judgments are reversed. The matter is remanded to the trial court with directions to vacate its order granting summary judgment, to enter a new order denying GSK's joint motion and to conduct further proceedings not inconsistent with this opinion. Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J. FEUER, J.*

---

[10] Because we reverse the order granting GSK's joint motion for summary judgment based on the trial court's erroneous application of the discovery rule, we need not reach the additional grounds for reversal advanced by Tsaturyan, Tatevosian, Hunanyan and Guyumdzhyan.

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.