EFiled: Feb 04 2025 02:37PM EST
Filing ID 75574852
Case Number 470,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN SAUNDERS	)	
	)	
Plaintiff Below, Appellant	)	No. 470, 2024
	)	
v.	)	On appeal from
	)	C.A. No. N23C-05-120-PRW
LIGHTWAVE LOGIC, INC. and	)	in the Superior Court for
BROADRIDGE FINANCIAL	)	the State of Delaware
SOLUTIONS, INC.	)	
	)	
Defendants Below, Appellees	)	

BRIEF OF THE STATE OF DELAWARE, OFFICE OF UNCLAIMED PROPERTY AS AMICUS CURIAE IN SUPPORT OF AFFIRMATION OF THE DECISION BELOW

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Dated: February 4, 2025

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INTRODUCTION

This appeal presents a very important issue of Delaware law as Appellant attempts to expand the "inherently unknowable injury" exception (also known as the "discovery rule") to the tolling of a statute of limitations in matters involving negotiable instruments and commercial transactions, an extension which to date has been rejected.[1] The Delaware Office of Unclaimed Property ("OUP") agrees with the Superior Court's finding that extension of this exception in matters involving negotiable instruments "could disrupt the subsequent commercial transactions or expose a corporation to additionally liability when there is no suggestion that it has done anything but follow state law" Op. at 17. However, there are additional public policy implications which were not directly considered by the lower court, but which necessitate the upholding of the Superior Court's decision – namely the far-reaching effects of a holding that an injury can be 'inherently unknowable' where the actions which give rise to the alleged injury are mandated in a State statutory directive.

The OUP respectfully requests that the Delaware Supreme Court uphold the Superior Court's refusal to expand the "inherently unknowable injury" exception to allow tolling of a statute of limitations where, as here, the alleged injury was patently

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[1] *See* Memorandum Opinion and Order dated October 17, 2024 (hereinafter "Op. at___") at p. 15-17 (discussing Delaware's recognition of the inherently unknowable injury exception in medical and malpractice cases but noting other state and federal courts have declined to extend this exception to actions for conversion of negotiable instruments.).

knowable through minimal attendance to once's "personal financial affairs." Op. at 18. Indeed, minimal tending to one's personal financial affairs at least every three years, in addition to being 'easily done' (*id.*), will forestall escheatment under the Delaware Unclaimed Property Law (the "DUPL") codified in 12 *Del. C.* §1130 *et. seq*. Where one does not indicate an ownership interest at least once every three years in their property, the DUPL deems such property abandoned and mandates that holders of that property remit it to the State.[2]

The OUP is not unsympathetic to the outcome of the application of unclaimed property laws in certain cases such as this one. This Court's decision, however, has high significance to the operations and on-going viability of the OUP and state unclaimed property programs overall, particularly in light of a trend of litigation in Delaware[3] and nationwide challenging all aspects of these important consumer protection laws. If the inherently unknowable injury exception were to be permitted to toll the time for bringing a claim for an alleged injury under unclaimed property law, it would effectively nullify Delaware's adherence to the rule that the statute of limitations begins to run upon inquiry notice of an injury and would thus, have the

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[2] 12 *Del. C.* §1142, 1152 (requiring holders of property to report such property to the state once it has been dormant for the statutorily described time period and to remit such property to the state at the time of reporting).

[3] *See Light v. Davis*, 2024 WL 4144066 (3d Cir. Sept. 11, 2024); *Schramm v. Mayrack*, C.A. 22-1443-MN, 2024 WL 4299976 (D. Del Sept. 26, 2024); *Vial v. Mayrack*, C.A. No. 24-0313-MN (D. Del.).

effect of indefinitely tolling the statute of limitations until such time as a potential claimant had actual and concrete knowledge of the alleged injury.

The test is not, and should not be, in the context of the application of unclaimed property laws, whether actual notice is received.[4] Delaware has long recognized that even where a basis for tolling a statute of limitations exists, tolling stops when a claimant has inquiry notice of an alleged injury.[5] Specifically, the OUP is concerned with the extension of this exception to the tolling of claims related to property reported and remitted to the State through the process of escheat, a process which is mandated and codified, and during which the State acts in accordance with the DUPL. The DUPL, as a matter of law, puts the public on inquiry notice the moment the statute is codified and publicly available. To hold otherwise would be to conflate ignorance of the injury with ignorance of the law.

This Court should uphold the Superior Court's holding that the inherently unknowable injury exception is not available to toll the statute of limitations (absent

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[4] As the Superior Court aptly stated, "the most salient facts on 'practical impossibility' would relate to the content, timing, and sending of notices provided by Lightwave, Broadridge, and OUP – not whether they were actually received." Op. at 19, n. 95.

[5] *Lehman Bros. Hldgs., Inc. v. Kee*, 268 A.3d 178, 194 (Del. 2021) ("according to long-standing Delaware case law…the discovery rule tolls the statute of limitations when the injury is inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of. But the state of limitations begins to run once the claimant is placed on inquiry notice of a potential claim or injury." (citations omitted)).

fraud or concealment) for claims related to conversion of negotiable instruments or, at a minimum, in the event of remittance of deemed abandoned unclaimed property via escheat.

STATEMENT AND IDENTITY OF AMICUS CURIAE, ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

The OUP, through the State Escheator, manages the unclaimed property program for the State of Delaware. Escheatment is a practice rooted in Anglo-American legal tradition which allows the State to take custody of property deemed abandoned.[6] Delaware law presumes property abandoned after a certain period of inactivity,[7] with securities presumed abandoned after three years of no interest shown by the owner.[8] Holders[9] transfer abandoned property to the State, which must liquidate it and deposit the proceeds into the State's general fund.[10] Claimants, or their heirs or successors in interest, can later recover the unclaimed property, shouldering the burden of proof as to identity and ownership, at any time, with claims allowed in perpetuity under 12 *Del. C.* §1165(a). In the event of securities liquidation, in addition to the right to recover the proceeds at any time, rightful owners have 558 days from the date the State mails a notification letter to receive the return of the security (which the State will repurchase if needed).[11] Individuals can file claims through a website maintained by the OUP by providing evidence of

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6 *See e.g.*, *Delaware v. Pennsylvania*, 598 U.S. 115, 119 (2023) and *Texas v. New Jersey*, 379 U.S. 674, 675 (1965).

7 12 *Del. C.* §1130(1)-(18).

8 *Id*. at §1133(13).

9 The "holder" of property is defined as "any person having possession, custody, or control of the property of another person…." 12 *Del. C.* §1130(10).

10 12 *Del. C.* §§1140, 1142, 1152, 1163.

11 *Id*. at §1160(a)(2).

identity and ownership. Claims are evaluated for reasonable ownership proof, balancing claimant accessibility with fraud prevention and other distribution safeguards.[12]

The OUP devotes considerable efforts to reuniting individuals with unclaimed property. In the last four years, the State Escheator has approved claims worth more than $1.7 billion.[13] And over 50% of the unclaimed property remitted to Delaware with a name, address, and social security number is returned to the owners, consistent with return rates in other states. The OUP strives to protect, preserve and return property to its owner thereby preventing businesses and financial institutions from having to either retain custody of abandoned property indefinitely, or from unlawfully converting the property and denying the rightful owner access to the property.

The OUP has a significant interest in this case − if the inherently unknowable injury exception were extended to claims of conversion of negotiable instruments, and more specifically claims arising from the escheatment of negotiable instruments and other property it would, the OUP avers, render the inquiry notice doctrine obsolete in this context and create an unbridled extension of the statute of limitations

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12 *Id.* at §1166(a).

13 Homepage, Delaware Office of Unclaimed Property, https://unclaimedproperty.delaware.gov/ (last visited January 31, 2025).

so long as a party ignores some portion of their personal financial affairs. Ignorance of the law has never been, and should not be, a vehicle for tolling.

The OUP seeks affirmation of the holding of the Superior Court that the inherently unknowable injury exception is not available to toll the statute of limitations for claims of conversion of negotiable instruments or, at a minimum, not available for claims related to the remittance and sale of negotiable instruments and other property in so far as they are reported to the State pursuant to the DUPL, a self-executing statute. Overturning the Superior Court decision would be a detriment to all entities following statutory directives and upholding the laws of the State of Delaware by effectively holding that ignorance of the law excuses the untimely filing of a lawsuit.

The OUP believes that it can provide a unique perspective regarding the issues presented and the consequences of tolling the statute of limitations as the OUP is well-versed in, and administers, the provisions of the DUPL. Additionally, because the parties to this matter have not discussed the application of the inherently unknowable injury exception in the context of a self-executing statute like the DUPL, important policy implications would escape consideration by this Court absent the OUP's filing. As such, pursuant to Supreme Court Rule 28, the OUP asks that the Court accept this brief of the *amicus curiae,* which has been authorized and approved by the State Escheator.

SUMMARY OF ARGUMENT

1. This Court should uphold the decision of the Superior Court because the decision properly declines to extend the "inherently unknowable injury" exception to the tolling of a statute of limitations for conversion of negotiable instruments and, more particularly, remittance and sale of property under the law of escheat.

2. The Superior Court's holding that the elements of the inherently unknowable injury exception, namely that discovery of the injury is a practical impossibility and that the injured party is blamelessly ignorant, cannot be met as a matter of law should be upheld where the alleged injury is related to events which occur pursuant to a publicly available and self-executing statute.

3. The Superior Court properly declined to extend the inherently unknowable injury exception where facts demonstrated that Appellant possessed the tools necessary to learn of the alleged injury and Appellant's own omissions or actions contributed to his failure to learn of the alleged injury within the applicable statute of limitations period.

ARGUMENT

I. THE SUPERIOR COURT'S HOLDING SHOULD BE AFFIRMED AS THE INHERENTLY UNKNOWABLE INJURY EXCEPTION SHOULD NOT BE EXTENDED TO TOLL THE STATUTE OF LIMITATIONS FOR INJURIES ALLEGED TO HAVE RESULTED FROM EVENTS WHICH OCCUR PURSUANT TO A PUBLICLY AVAILABLE STATUTORY DIRECTIVE AS A MATTER OF LAW.

The inherently unknowable injury exception is a well-settled exception to statute of limitation requirements for injury claims where, (i) the injury was "practically impossible" to discover, and (ii) the movant is "blamelessly ignorant"[14] of the wrongful act and injury. If the above two conditions are met, the inherently unknowable injury exception will operate to toll the statute of limitations, but only until such time as a claimant had actual or inquiry notice of the injury.[15] Inquiry notice arises where facts are discovered "*or* [facts exist] sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery of such facts."[16] The burden is on the party seeking the tolling of the statute

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14 *See ISN Software Corp. v. Richards, Layton & Finger*, 226 A.3d 727, 733 (Del. 2020).

15 *See In re Dean Witter P'ship Litig*., 1998 WL 442456, at *5 (Del. Ch. July 17, 1998) *aff'd*, 725 A.2d 441 (Del. 1999) ("For the limitations period to be tolled under this doctrine, there must have been no observable or objective factors to put a party on notice of an injury, and plaintiffs must show that they were blamelessly ignorant of the act or omission and the injury.")(citation omitted).

16 *See Coleman v. Pricewaterhousecoopers, LLC,* 854 A.2d 838, 842 (Del. 2004) (emphasis in the original); *see also Davis v. 24 Hour Fitness Worldwide, Inc*., 2014 WL 4955502, at *4 (D. Del. Sept. 30, 2014) ("Once a plaintiff is in possession of facts that 'make him suspicious, *or that ought to make him suspicious,* he is deemed to be on inquiry notice.'" (emphasis in original) (citing *Pomeranz v.*

of limitations to plead facts which demonstrate that an exception applies and tolling is warranted.[17]

A. An injury cannot be practically impossible to discover where a self-executing statute informs a potential plaintiff of the exact consequences which will occur based upon plaintiff's actions or, as is the case in escheat law, inaction.

The discovery rule was originally promulgated in the context of medical malpractice injuries and later, extended to other areas of the law.[18] That extension, however, is "narrowly confined" to those injuries which are, under the first prong, inherently unknowable.[19] In order to satisfy the first prong of the inherently unknowable injury exception, a plaintiff must show that the discovery of the injury was 'practically impossible.' In the unique realm of escheat/unclaimed property law, where the events which give rise to alleged injury are codified and statutorily mandated, a claimant cannot meet the burden of proof required to demonstrate an inherently unknowable injury. As a matter of public policy, the law is inherently knowable.

Museum Partners, L.P., 2005 WL 217039, at *13 (Del. Ch. Jan. 24, 2005) ("At the very least, the September financials ought to have raised plaintiffs' suspicions, and this is all that is required for inquiry notice.")).

17 *In re Dean Witter,* 1998 WL 442456, at *6.

18 *See Kaufman v. C.L. McCabe & Sons, Inc.*, 603 A.2d 831, 835 (Del.1992).

19 *Id*. ("The time of discovery exception, in cases other than those of medical malpractice, is narrowly confined in Delaware to injuries which are both: (a) "inherently unknowable"; and (b) sustained by a "blamelessly ignorant" plaintiff.") (citing *Isaacson, Stopler & Co. v. Artisan's Savings Bank*, 330 A.2d 130, 133 (Del 1974)).

The parties to this action fail to address an important maxim: "The maxim is, of course, that every one is presumed to know the law[.]"[20] "All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them[.]"[21] Simply put, all individuals are charged with knowing, and conforming their conduct to the law, including the provisions of the DUPL.

The DUPL is a self-executing statute. Self-executing statutes apply with uniformity to all affected persons within the state.[22] They are those statutes "which are mandatory in nature and require no further legislative action in order to become effective."[23] Within the DUPL, the legislature has clearly mapped out the course of events which will occur when property is abandoned in this state. The holders of property, and the OUP, are required to act on those mandates with no further action by the legislature. 12 *Del. C.* §1142 mandates that the holder of property presumed abandoned under §1133[24] ***shall*** file a report with the State Escheator, and §1152 mandates that the holder contemporaneously pay or deliver the property in the report to the State Escheator. (Emphasis added). The DUPL applies uniformly to property

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20 *New York Trust Co. v. Riley*, 16 A.2d 772, 781 (Del. 1940); *see also In re Real Estate of Marta*, 1995 WL 130758, at *15 (Del. Ch. Mar. 16, 1995) ("…as a matter of hornbook law everyone is supposed to know the law[.]").

21 *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283 (1925).

22 S*ee Texaco v. Short*, 454 U.S. 516, n. 14 (1982).

23 *Success Against All Odds v. Dep't of Pub. Welfare*, 700 A.2d 1340, 1351 (Pa. Cmwlth. Ct. 1997).

24 Section 1133 describes the number of years any particular property must remain dormant in order to be presumed abandoned.

deemed abandoned within the state of Delaware and its provisions and mandates are codified and readily available to the public.

Delaware courts have previously held that information which is publicly available cannot satisfy the first prong of the inherently unknowable injury exception.[25] "The standard for equitable tolling is objective; it looks to whether the [movant] should have been aware of the [injury] upon its public disclosure even if they subjectively were not."[26] In *Brown v. Ct. Sq. Capital Mngm't, L.P.*,[27] the defendants argued that the inherently unknowable injury doctrine should be applied to toll the statute of limitations on their counter-claim where a former employee conducted a transaction pursuant to new employment which the defendants averred was in violation of a non-compete clause. However, the transaction which gave rise to the claim was publicly advertised nearly four years prior to the filing of the counterclaim.[28]

The Court of Chancery held that "the [claimant] cannot show that it was practically impossible to discover a publicly disclosed fact."[29] This same reasoning is applicable herein where, the information alleged to be 'practically impossible' to

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25 *See generally Brown v. Ct. Sq. Capital Mngm't, L.P.*, 2022 WL 841138 (Del. Ch. Mar. 22, 2022).

26 *Id.* at *3.

27 *Id.*

28 *Id.*

29 *Id.*

discover is the existence of a law − publicly available, statutorily mandated, and posted on the State's website. There are no factual variables to be determined. If an owner does not indicate any statutorily defined interest in property,[30] that property is deemed abandoned by operation of law after the statutorily defined time period has passed,[31] and the holder of that property is required to report that property and deliver it to the State Escheator.[32] Such clear legislative directives by their very nature cannot be 'practically impossible' to discover.

Finally, additional publicly available information regarding property remitted to and in the custodial care of the State, including name and last known address of persons believed to be entitled to receive unclaimed property,[33] is posted on OUP's searchable website as quickly as one business day after reconciliation and remains published on the website until such time as a claim is filed and approved.[34]

B. A claimant cannot be blamelessly ignorant of events which occur as the result of a publicly available self-executing statute.

Likewise, a claimant cannot be blamelessly ignorant of events which occur pursuant to the publicly available laws of this State. As discussed *supra*, individuals

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30 12 *Del. C.* §1136.

31 *Id*. at §1133.

32 *Id*. at §1142, §1152.

33 *Id*. at §1150(f).

34 *See* Ex. A, Mayrack Dep. 117:13-23; *see also* 128:13-17 confirming that Appellant's property which is the subject of this matter would have appeared on the searchable website from approximately February 2017 through September 2021.

are assumed to and thus required to know the law. The DUPL is a publicly available, self-executing statute. It is incumbent upon a property owner to be aware of the law and to understand that if they do not take reasonable steps to ensure that their property is not left dormant such that it will be subject to escheatment.[35] As the Superior Court aptly stated, Appellant "could and should" have easily discovered the remittance and sale of his stock pursuant to the law of escheatment through the "ordinary tending of his personal affairs." Op. at 18. "[A]s a matter of public policy, one ought not to be able to avoid the application of the laws."[36] Just as the mandatory provisions of the DUPL create a situation which, as a matter of law, results in a *knowable* injury (if indeed an injury occurs), the same principle applies here – ignorance of the law cannot be blameless.

The OUP asks this Court to affirm the lower Court's decision to decline to extend the availability of the inherently unknowable injury exception as a tool to toll the statute of limitations − as a matter of law − for actions for conversion of negotiable instruments, absent fraud or concealment, where such actions are born from the self-executing provisions of the DUPL relating to the remittance and sale of abandoned property pursuant to the law of escheat in the State of Delaware.

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35 *See Texaco*, 454 U.S. at 792 ("…private property may be deemed to be abandoned and to lapse upon the failure of its owner to take reasonable actions imposed by law[.]").

36 *In re Estate of Hart*, 1993 WL 1501284, at * 3 (Del. Ch. Nov. 22, 1993).

II. THE SUPERIOR COURT PROPERLY DECLINED TO EXTEND THE INHERENTLY UNKNOWABLE INJURY EXCEPTION WHERE FACTS DEMONSTRATED THAT APPELLANT'S OWN ACTIONS IMPEDED ACTUAL NOTICE AND THAT APPELLANT WAS ON INQUIRY NOTICE OF THE ALLEGED INJURY MORE THAN THREE YEARS PRIOR TO FILING HIS ACTION.

The mandatory provisions of the DUPL create a situation where no factual determination need be made – an alleged injury which is born from the escheatment of abandoned property is *knowable* as a matter of law. Thus, the decision of the lower court should be affirmed.

A. An injury cannot be inherently unknowable, and claimant cannot be blamelessly ignorant where claimant's own actions impeded the receipt of notice.

The Superior Court undisputably found that Appellant never informed Lightwave or Broadridge of his change of address.[37] Simply stated, not changing one's address with known holders of one's investments or custodians of property cannot be a blameless act. To hold otherwise would be to allow a potential plaintiff to intentionally (or at least negligently), impede actual notice. It would open the door for every claimant to toll the statute of limitations by behaving in this fashion.

Here, in particular, Appellant created a situation where his ability to receive notice was entirely dependent on an unrelated third party – the purchaser of the home where he resided when he first bought the stock. OB at 8,9. Unfortunately, the

[37] Op. at 3; *see also* OB at 44 "It is undisputed that Dr. Saunders did not update his address."

decision to rely on a third party ostensibly resulted in (based upon Dr. Saunders' statements) Appellant not receiving various documents and notices sent by the holder and the OUP. Op. at 4-5; OB at 9. Had Appellant reached out to Lightwave or Broadridge with a timely address change, one of three things would have happened: (i) Appellant would have demonstrated an interest in his property under 12 *Del. C.* §1136 within the 3-year period prior to the escheatment of the property,[38] thereby preventing the escheatment, or (ii) Appellant would have received notices sent of the impending escheatment at the address where he resided, and could have taken steps to prevent it, or (iii) Appellant would (perhaps) have been able to demonstrate blameless ignorance.[39] However, Appellant did not change his address, timely or otherwise, and a holding that one could be "blameless" under this set of facts is too far reaching.

The OUP has a vested interest in the outcome of this matter as the OUP is required by law to send hundreds of thousands of notices on a continuing and

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[38] This statement is based upon the information contained with the Superior Court's Opinion and Appellant's Opening Brief which confirms: (i) Appellant purchased the shares of stock on July 8, 2013 (Op. at 2), (ii) in April of 2014 he moved to a new address in Wilmington, Delaware (OB at 8), and (iii) his stock was escheated on January 10, 2017 (OB at 10), less than 3 years after his move.

[39] A potential claimant cannot be blamelessly ignorant, as a matter of law, of actions arising in accord with events outlined in publicly available, codified statute as discussed *supra*. The OUP also avers that Appellant cannot be blameless under the facts herein.

unending basis.[40] Holders lacking a correct address for an account owner often precedes the owner inactivity that then requires holders to remit the property to the State. If this Court were to hold that the inherently unknowable injury exception is available to a claimant who fails to provide accurate and updated address information, this would effectively alter the requirement under 12 *Del. C*. §1148 and §1150 that the Holder and the OUP (where required) send notice to the last known address of the owner contained in the Holder's records, to a requirement that the Holder and OUP insure *receipt* of the communication. This would infinitely increase the cost of administering the unclaimed property program in the State and expose the OUP and the Holder reporting the property to an indefinite tolling of the statute of limitations until such time as a potential claimant had actual and concrete knowledge of the alleged injury, even though the only person who knows where the property owner resides or can be found, is the owner. This was not the intent of the legislature in enacting unclaimed property laws, and the inherently unknowable injury exception cannot be expanded to allow such an absurd result.

[40] *See* 12 *Del. C.* §1150.

B. The Superior Court properly found that Appellant was on inquiry notice more than three years prior to the filing of the Complaint and therefore, the inherently unknowable injury exception was unavailable to toll the statute of limitations.

The Superior Court properly found that Appellant was on inquiry notice the entirety of the three years following the sale of his stock because he could have discovered the remittance and sale easily through the "ordinary tending of his personal financial affairs." Op. at 18. Inquiry notice requires only that the "plaintiff is objectively aware of the facts giving rise to the wrong."[41] Here, at the time Appellant's stock was escheated he knew he had stock in a safe in his home (OB at 8), knew he had not provided an updated address to the Holder (Op. at 8), knew that he had not received any communications from Lightwave (OB at 9), and knew that under Delaware law, unclaimed property was escheated to the state, held by the OUP, and how to file a claim.[42] The OUP avers Appellant was aware of this process as he filed and had claims paid to him by the OUP in 2008 and again in 2010.[43] As such, Appellant was generally familiar with – and thus on inquiry notice of – unclaimed property laws, the OUP, and the claims process at the time the stock was purchased 2013, at the time the stock was escheated in 2017, and at the time he filed

41 *Jepsoco, Ltd. v. B.F. Rich Co., Inc*., 2013 WL 593664 (Feb. 14, 2013).
42 *See* A0760, Mayrack Dep. 130:13 through 131:3.
43 *Id*.

his claim in 2021. "An injury is not 'inherently unknowable' where a plaintiff possesses all the tools to discover it, but simply waits a while."[44]

[44] *Smith v. Donald L. Mattia, Inc.*, 2012 WL 252271, at *3, n.18 (Del. Ch. Jan. 13, 2012).

CONCLUSION

The OUP requests that the limitations placed on the inherently unknowable injury exception to the tolling of a statute of limitations adopted by the Superior Court below, namely that the exception is not available to toll the statute of limitations for injuries alleged to have arisen from the escheatment of abandoned property absent fraud or concealment, be affirmed.

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Dated: February 4, 2025