

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN B. DUFF, *et al.* : CIVIL ACTION
: :
v. : :
: :
AI DIVESTITURES, INC., *et al.* : No. 05-3091

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 20, 2006

Defendant has filed a motion for summary judgment, to which Plaintiffs have not responded. I have considered the merits of the motion and will grant it.

Stephen Duff worked for Defendant from 1978 until 1984. Mr. Duff alleges that during his employment Defendant exposed him to harmful chemicals, causing him to develop porphyria (a rare condition related to enzyme deficiency). He was diagnosed with porphyria in January 1999. Plaintiffs (Mr. Duff and his wife) filed suit in state court in May 2005; the case was removed to this Court on the basis of diversity jurisdiction. Because Mr. Duff was injured more than two years before filing suit, his case is barred by Pennsylvania's limitations period for personal injury cases unless he can establish "the inability to know of the injury despite the exercise of reasonable diligence." Dalrymple v. Brown, 701 A.2d 164, 167 (Pa. 1997).

As noted, Plaintiffs filed no opposition to the motion, and therefore have not met their burden. In any event, from the

documents submitted by Defendant, it is clear that Mr. Duff was aware of his injury and its possible relationship to his former employment long before May of 2003 (two years before the suit was filed). Certainly by July of 2002, when his physician encouraged him to look into occupational exposure as a cause of his condition, Mr. Duff "was aware of sufficient critical facts to put him on notice that he had been injured and that he needed to investigate his health problem and its cause." Vitalo v. Cabot Corp., 399 F.3d 536, 543 (3d Cir. 2005). Plaintiffs filed this lawsuit too late.

An order follows.

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O R D E R

AND NOW, this 20th day of November 2006, upon consideration of Defendant's Motion for Summary Judgment,

IT IS hereby ORDERED that the Motion is GRANTED. JUDGMENT is hereby entered IN FAVOR OF DEFENDANT, AI DIVESTITURES, INC. (formerly known as ANZON, INC.), and AGAINST PLAINTIFFS, STEPHEN B. DUFF and DIANA BROOKS. The Clerk is directed to mark the case file CLOSED.

BY THE COURT:

/s/ John P. Fullam
Fullam, Sr. J.