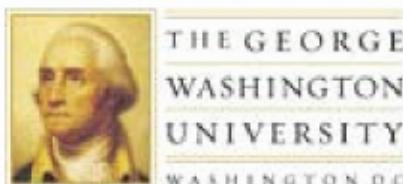


The Burger Court Opinion Writing Database

United States v. Kubrick
444 U.S. 111 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 3, 1979

Re: 78-1014 - U.S. v. Kubrick

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

October 30, 1979

RE: No. 78-1014 United States v. Kubrick

Dear Byron:

I will await the dissent in the above.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 9, 1979

RE: No. 78-1014 United States v. Kubrick

Dear John:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 30, 1979

Re: No. 78-1014, United States v. Kubrick

Dear Byron,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
P.J.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 29 OCT 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

Mr. JUSTICE WHITE delivered the opinion of the Court.

Section 2401 (b) of the Federal Tort Claims Act (~~the~~Act)¹ bars any tort claim against the United States unless it is presented in writing to the appropriate federal agency "within two years after such claim accrues." The issue in this case is whether claim "accrues" within the meaning of the Act when the plaintiff knows both the existence and the cause

¹ Title 28 § 2674 provides in part:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Title 28 U. S. C. § 1334 (b) provides that the District Courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Title 28 U. S. C. § 2401 (b), the limitations provision applicable to tort claims against the United States, provides:

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."²

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 8, 10-12

From: Mr. Justice White

Circulated: _____

1 NOV 1979

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

Mr. JUSTICE WHITE delivered the opinion of the Court,

Section 2401 (b) of the Federal Tort Claims Act (Act)¹ bars any tort claim against the United States unless it is presented in writing to the appropriate federal agency "within two years after such claim accrues." The issue in this case is whether the claim "accrues" within the meaning of the Act when the plaintiff knows both the existence and the cause

¹ Title 28 § 2674 provides in part:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Title 28 U. S. C. § 1334 (b) provides that the District Courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Title 28 U. S. C. § 2401 (b), the limitations provision applicable to tort claims against the United States, provides:

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 8

From: Mr. Justice White
Circulated: _____

3rd DRAFT

Recirculated: 2 NOV 1979

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, } On Writ of Certiorari to the United
v. William A. Kubrick. } States Court of Appeals for the
Third Circuit.

[November —, 1979]

Mr. JUSTICE WHITE delivered the opinion of the Court.

Section 2401 (b) of the Federal Tort Claims Act (Act)¹ bars any tort claim against the United States unless it is presented in writing to the appropriate federal agency "within two years after such claim accrues." The issue in this case is whether the claim "accrues" within the meaning of the Act when the plaintiff knows both the existence and the cause

¹ Title 28 § 2674 provides in part:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Title 28 U. S. C. § 1334 (b) provides that the District Courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Title 28 U. S. C. § 2401 (b), the limitations provision applicable to tort claims against the United States, provides:

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Page 10

Circulated: _____

41n
3rd DRAFT

Recirculated: 6 NOV 1979

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

Mr. JUSTICE WHITE delivered the opinion of the Court.

Section 2401 (b) of the Federal Tort Claims Act (Act)¹ bars any tort claim against the United States unless it is presented in writing to the appropriate federal agency "within two years after such claim accrues." The issue in this case is whether the claim "accrues" within the meaning of the Act when the plaintiff knows both the existence and the cause

¹ Title 28 § 2674 provides in part:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Title 28 U. S. C. § 1334 (b) provides that the District Courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Title 28 U. S. C. § 2401 (b), the limitations provision applicable to tort claims against the United States, provides:

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES: 9, 10, 12

^{5th}
 4th DRAFT

From: Mr. Justice White

Circulated: _____

Recirculated: 13 NOV 1979

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
 v. | States Court of Appeals for the
 William A. Kubrick. | Third Circuit.

[November —, 1979]

Mr. JUSTICE WHITE delivered the opinion of the Court.

Section 2401 (b) of the Federal Tort Claims Act (Act)¹ bars any tort claim against the United States unless it is presented in writing to the appropriate federal agency "within two years after such claim accrues." The issue in this case is whether the claim "accrues" within the meaning of the Act when the plaintiff knows both the existence and the cause

¹ Title 28 § 2674 provides in part:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Title 28 U. S. C. § 1333 (b) provides that the District Courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Title 28 U. S. C. § 2401 (b), the limitations provision applicable to tort claims against the United States, provides:

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 8, 1979

Re: No. 78-1014 - United States v. Kubrick

Dear Byron:

I will wait for the dissent.

Sincerely,

T.M.
T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1979

Re: No. 78-1014 - United States v. Kubrick

Dear John:

Please join me in your dissenting opinion.

Sincerely,

J. M.

T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-1014 - United States v. Kubrick

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-1014 - United States v. Kubrick

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White
cc: The Conference

[P.S. to Justice White only]

Dear Byron:

We have one or two minor suggestions about the opinion.
My clerk will discuss them with your clerk. In any event,
I join.

H. A. B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 30, 1979

78-1014 U.S. v. Kubrick

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice Powell

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 30, 1979

Re: No. 78-1014 United States v. Kubrick

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 29, 1979

Re: 78-1014 - United States v. Kubrick

Dear Byron:

In due course, I will circulate a dissent in
this case.

Respectfully,



Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

PP. 2, 4

From: Mr. Justice Stevens

Circulated: NOV 8 '79

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

MR. JUSTICE STEVENS, dissenting.

Normally a tort claim accrues at the time of the plaintiff's injury. In most cases that event provides adequate notice to the plaintiff of the possibility that his legal rights have been invaded. It is well settled, however, that the normal rule does not apply to medical malpractice claims under the Federal Tort Claims Act. The reason for this exception is essentially the same as the reason for the general rule itself. The victim of medical malpractice frequently has no reason to believe that his legal rights have been invaded simply because some misfortune has followed medical treatment. Sometimes he may not even be aware of the actual injury until years have passed; at other times, he may recognize the harm but not know its cause; or, as in this case, he may have knowledge of the injury and its cause, but have no reason to suspect that a physician has been guilty of any malpractice. In such cases—until today—the rule that has been applied in the federal courts is that the statute of limitations does not begin to run until after fair notice of the invasion of the plaintiff's legal rights.

Essentially, there are two possible approaches to construction of the word "accrues" in statutes of limitations: (1) a claim might be deemed to "accrue" at the moment of injury without regard to the potentially harsh consequence of barring a meritorious claim before the plaintiff has a reasonable chance to assert his legal rights, or (2) it might "accrue" when a diligent plaintiff has knowledge of facts sufficient to put him

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

7p-2-5

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT

Recirculated: NOV 13 79

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

MR. JUSTICE STEVENS, dissenting.

Normally a tort claim accrues at the time of the plaintiff's injury. In most cases that event provides adequate notice to the plaintiff of the possibility that his legal rights have been invaded. It is well settled, however, that the normal rule does not apply to medical malpractice claims under the Federal Tort Claims Act. The reason for this exception is essentially the same as the reason for the general rule itself. The victim of medical malpractice frequently has no reason to believe that his legal rights have been invaded simply because some misfortune has followed medical treatment. Sometimes he may not even be aware of the actual injury until years have passed; at other times, he may recognize the harm but not know its cause; or, as in this case, he may have knowledge of the injury and its cause, but have no reason to suspect that a physician has been guilty of any malpractice. In such cases—until today—the rule that has been applied in the federal courts is that the statute of limitations does not begin to run until after fair notice of the invasion of the plaintiff's legal rights.

Essentially, there are two possible approaches to construction of the word "accrues" in statutes of limitations: (1) a claim might be deemed to "accrue" at the moment of injury without regard to the potentially harsh consequence of barring a meritorious claim before the plaintiff has a reasonable chance to assert his legal rights, or (2) it might "accrue" when a diligent plaintiff has knowledge of facts sufficient to put him

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

PP. 15
From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT Recirculated: NOV 26 1979

SUPREME COURT OF THE UNITED STATES

No. 78-1014

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William A. Kubrick. | Third Circuit.

[November —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN |
and MR. JUSTICE MARSHALL join, dissenting. |

Normally a tort claim accrues at the time of the plaintiff's injury. In most cases that event provides adequate notice to the plaintiff of the possibility that his legal rights have been invaded. It is well settled, however, that the normal rule does not apply to medical malpractice claims under the Federal Tort Claims Act. The reason for this exception is essentially the same as the reason for the general rule itself. The victim of medical malpractice frequently has no reason to believe that his legal rights have been invaded simply because some misfortune has followed medical treatment. Sometimes he may not even be aware of the actual injury until years have passed; at other times, he may recognize the harm but not know its cause; or, as in this case, he may have knowledge of the injury and its cause, but have no reason to suspect that a physician has been guilty of any malpractice. In such cases—until today—the rule that has been applied in the federal courts is that the statute of limitations does not begin to run until after fair notice of the invasion of the plaintiff's legal rights.

Essentially, there are two possible approaches to construction of the word "accrues" in statutes of limitations: (1) a claim might be deemed to "accrue" at the moment of injury without regard to the potentially harsh consequence of barring a meritorious claim before the plaintiff has a reasonable chance to assert his legal rights, or (2) it might "accrue" when a diligent plaintiff has knowledge of facts sufficient to put him