FILED
DES MOINES, IOWA
01 MAR 19 AM 10: 26
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JOHN & MARY DOE as Parents and John & Mary Doe as Guardians on behalf of John Doe, Jr.,	)	Civil No. 4-96-CV-10738
Plaintiffs,	)	
vs.	)	
BAXTER HEALTHCARE CORPORATION, et al.,	)	ORDER
Defendants.	)	
CUTTER BIOLOGICAL, a Division of Miles, Inc., et al.,	)	
Intervenors-Defendants.	)	

JOHN & MARY DOE as Parents and John & Mary Doe as Guardians on behalf of John Doe, Jr.,	)	Civil No. 4-96-CV-10843
Plaintiffs,	)	
vs.	)	
CUTTER BIOLOGICAL, a Division of Miles, Inc., et al.,	)	ORDER
Defendants.	)	

This matter was consolidated into one action by order of Magistrate Judge Ross A. Walters on January 6, 2000. Before the Court now are cross-motions for summary judgment on the limited issue of whether plaintiffs' parental claims are barred by the applicable statute of limitations.

All defendants filed their motion for summary judgment on December 13, 2000, arguing that plaintiffs' claims for medical expenses and loss of consortium under Iowa Rule of Civil Procedure 8 are time barred. Plaintiffs filed a resistance on January 12, 2001, and defendants then replied on February 8, 2001.

Plaintiffs filed their cross motion for summary judgment on January 12, 2001. Plaintiffs argue the Court should find, as a matter of law, that the Rule 8 causes of action were brought in a timely fashion. Defendant filed a resistance on February 8, 2001, to which plaintiffs replied on February 26, 2001.

The parties requested oral argument, and a hearing was held March 9, 2001. The motions are fully submitted.

I. BACKGROUND

The following facts either are not in dispute, or, because of the Court's resolution of the motions in favor of defendants, have been viewed in a light most favorable to plaintiffs. John Doe, Jr. and his parents, John Doe, Sr. and Mary Doe, are plaintiffs in this matter. Plaintiffs are citizens of the state of Iowa. Defendants are corporations who were involved in the manufacture and/or distribution of blood factor concentrates during the 1980s. The jurisdiction of this Court is derived from the diverse citizenship of the parties.

John Doe, Jr. was born in 1978. In the summer of 1979, he was diagnosed with hemophilia A, a specific type of bleeding disorder. This variation of the disorder means John Doe, Jr. lacks blood factor VII, which is necessary for blood coagulation and clotting. In order to treat this problem, he was prescribed factor concentrates which would be administered

whenever he bled. The concentrates are a blood plasma product.

In 1987, John Doe, Jr. was tested for HIV, the virus which progresses to become the AIDS disease.[1] In July of that year, John Doe, Sr. and Mary Doe met with medical personnel and were informed that John Doe, Jr. had tested positive for HIV. For purposes of the current pending motions, the parties do not dispute that the disease was transmitted to John Doe, Jr. through HIV infected factor concentrates.

Prior to the time that John Doe, Jr. tested positive for HIV, in 1985, Mary Doe and John Doe, Sr. became involved in both national and state organizations which supported individuals with hemophilia and their families. Through their involvement in these organizations and through their own independent research, both Mary and John Doe, Sr. were aware by July 1987 that it was possible for a hemophiliac to contract HIV or AIDS through infusion of factor concentrates. *See* Defendants' Joint Appendix to Motion for Summary Judgment, Exh B at 160-61 (Deposition of Mary Doe) and Exh. C at 64 (Deposition of John Doe, Sr.). They were also aware that HIV leads to AIDS, and that AIDS is a terminal illness. *See* Defendants' Joint Appendix to Motion for Summary Judgment, Exh. C at 64. However, John Doe, Jr.'s parents state that their relationship with their son "was unaffected by his HIV infection" from July of 1987 through December 3, 1993. "He was very healthy during this time period and we enjoyed the same parent-child relationship which had been present prior to July of 1987." *See* Exhibits Attached to Plaintiff's Memorandum of Authorities in Support of Plaintiff's Resistance to Defendant's Motion for Summary Judgment, Exh. A and B (affidavits of Mary Doe and John

---

[1] The Court does not deem it necessary to give a detailed explanation of HIV or AIDS as a result of the general familiarity our culture has gained regarding this tragic disease progression over the past twenty years.

Doe, Sr.).

Between 1987 and 1993, John Doe Jr. was part of a clinical study in which he participated at no charge. As a part of this study, his T-cell counts were monitored to track the progression of the HIV disease. Beginning in November 1993, John Doe, Jr. underwent medical examination and procedures. His parents state these were the first expenses they had with respect to John Doe Jr.'s HIV condition. On December 3, 1993, John Doe, Jr. was diagnosed with T-cell non-Hodgkins lymphoma.[2]

On October 6, 1995, plaintiffs commenced this action in state court.[3] It was then removed to federal court. At issue in the pending cross-motions for summary judgment are the claims of the parents, John Doe, Sr. and Mary Doe, for medical expenses and loss of consortium under Iowa Rule of Civil Procedure 8.

II APPLICABLE LAW & DISCUSSION

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Walsh v. United*

---

[2] Defendants dispute whether John Doe, Jr.'s T-cell non-Hodgkin's lymphoma was related to his HIV infection, and whether the cancer indicated that HIV had developed into the AIDS disease.

[3] This matter has a complicated procedural history involving the filing of more than one petition or complaint by plaintiffs, and was before the Judicial Panel on Multidistrict Litigation for a period of time. *See In re "Factor VIII or IX Concentrate Blood Products" Products Liability Litigation*, 853 F.Supp. 454 (MDL No. 986) (1993). The full procedural history is not relevant to the issues now before this Court. At the hearing, the parties indicated they are in agreement that the relevant date that these claims were filed for statute of limitations purposes was October 6, 1995.

States, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity that there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis added). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material. . . . Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

Rule 8 of the Iowa Rules of Civil Procedure states: "A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child." Claims by parents under Rule 8 are "independent and distinct cause[s] of action wholly separate from any cause of action otherwise available to the child itself." *Craig v. IMT Ins. Co.,* 407 N.W.2d 584, 586 (Iowa 1987) (citing *Irbeck v. Pomeroy*, 210 N.W.2d 831, 833 (Iowa 1973)). A claim for the child's medical expenses under this rule may be assigned from the parent to the child. *See Gookin v. Norris*, 261 N.W.2d 692, 693 (Iowa 1978). There has been no assignment in this case. A parent's right to recovery for loss of consortium is also under Rule 8 of the Iowa Rules of Civil Procedure. *See E.L.K. v. Rohlwing*, 760 F. Supp. 144, 145 (N.D. Iowa 1991).[4] The recovery of parents for loss of consortium is normally limited to the child's time as a minority, *id.*, and parents cannot recover for the loss of consortium of their

---

[4] Iowa Code section 613.15 is the general statement of Iowa's consortium law, but it does not cover losses suffered when a parent's child is injured or dies. *See Kulish v. West Side Unlimited Corp.*, 545 N.W.2d 860, 863 (Iowa 1996) (citation omitted).

adult children. *See id.* at 147; *Ruden v. Parker*, 462 N.W.2d 674, 676-77 (Iowa 1990) (parents equal protection rights are not violated because they do not have a loss of consortium claim for injury or death to their adult children in Iowa); and *Kulish v. West Side Unlimited Corp.*, 545 N.W.2d 860, 863 (Iowa 1996) (same). A parent's right to a child's consortium is a "valuable property right[] entitled to protection." *Gail v. Clark*, 410 N.W.2d 662, 669 (Iowa 1987) (citing *Madison v. Colby*, 348 N.W.2d 202, 206 (Iowa 1984)).

Iowa Code section 614.1(2) states: "Those [actions] founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, [may be brought] within two years [and not afterwards]." The discovery rule is an exception to statutes of limitations, including the above-noted statute that is applicable to this case. *See Chrischilles v. Griswold*, 150 N.W.2d 94, 100 (1967). Under the rule, "a statute of limitations is tolled until the time when a plaintiff *knew or should have known* of the injury and the injury's cause." *Frideres v. Schiltz*, 113 F.3d 897, 899 (8th Cir. 1997) (addressing Iowa law). While the burden is on defendants to make its statute of limitations defense, *see Ranney v. Parawax Co., Inc.*, 582 N.W.2d 152, 154 (Iowa 1998), the burden is on plaintiffs to show that the discovery rule applies. *Id.* (citing *Borchard v. Anderson*, 542 N.W.2d 247, 249 (Iowa 1996)).[5]

It is undisputed that John Doe, Sr. and Mary Doe learned that their son was HIV positive in July 1987. Defendants argue that the statute of limitations began to run from this time, or

---

[5] John Doe, Jr.'s claims are not at issue in the motions now before the Court. His claims appear to have been brought in a timely fashion, *see* IOWA CODE § 614.8 (setting forth that minors have one year from the time their disability ceases – the time that they reach majority age – to commence an action), as he would not have reached the age of majority in Iowa until 1996.

sooner, and that it was not tolled on either of plaintiff's claims now at issue.

Plaintiffs argue their claim for medical expenses did not begin to run until November 1993 when they incurred the first medical expenses related to John Doe Jr.'s HIV infection. Plaintiffs also argue their loss of consortium claim did not begin to run until December 3, 1993 when John Doe, Jr. was diagnosed with cancer.[6] They allege the cancer was directly related to his HIV infection, and also provided evidence that the HIV infection had become the AIDS virus. Plaintiffs allege that because they filed their claims on October 6, 1995 they were within the two year statute of limitations on both Rule 8 claims. In the alternative, if the Court finds that the parents' claims accrued prior to this time, they allege the discovery rule tolled the running of the statute of limitations.

A. Accrual of Parent's Rule 8 Claims

The parties are in agreement that Iowa's statute of limitations law is determinative of whether plaintiffs' claims were timely filed, and that the two-year statute set out in Iowa Code section 614.1(2) governs. As this case is in federal court based on diversity jurisdiction, the Court agrees. *See Fischer v. Iowa Mold Tooling Co., Inc.*, 690 F.2d 155, 156 (8th Cir. 1982) (holding the appropriate state's statute of limitations is to be applied in action based on diversity jurisdiction).

---

[6] The Court will reference November 1993 as the relevant time which plaintiff argues the statue of limitations commenced. The parents try to split their Rule 8 causes of action by arguing the clock on their loss of consortium claims started on December 3, 1993 while the clock on the medical expenses claim began in November 1993. The difference is non-consequential for purposes of this motion in light of the October 6, 1995 filing date.

Defendants argue that the time that John Doe, Jr.'s parents knew of their son's injury[7] was the point at which Iowa's two year statute of limitations accrued. Defendants cite *Schnelby v. Baker*, 217 N.W.2d 708, 718 (Iowa 1974) and other Iowa case law as primary support. Those cases state that the parents are only entitled to recovery "in consequence of the injury to the children." Defendants state that the parents' Rule 8 claims are tied to the time of John Doe, Jr.'s injury, and the statute of limitations on those claims began to run at the time he was diagnosed HIV positive. Plaintiffs argue that their claims did not accrue at this time. Plaintiffs argue they did not have any damages for lost medical expenses or loss of consortium before November 1993, and therefore their Rule 8 claims did not accrue until then.

Iowa law labels claims by parents for expenses related to a child's injury or death, and related loss of consortium claims, as claims for consequential damage. *See Schnelby v. Baker*, 217 N.W.2d 708, 717-18 (Iowa 1974) (reversing and remanding to trial court) (involving parents' claims for injury to child which occurred during birth).[8] It has long been held that "such consequential damage claims are founded on 'injury to the person' of the injured or deceased

---

[7] The Court will simply reference July 1987, the approximate date when John Doe, Jr. first was diagnosed as HIV positive, as the relevant time when John Doe, Jr.'s injury itself accrued. This is a separate issue from that before the Court – which is when did the parents' claims accrue. *But see Kaiser v. Memorial Blood Center of Minneapolis, Inc.*, 977 F.2d 1280, 1283 (8th Cir. 1992) (indicating that claim accrued to plaintiff who received HIV infected blood through transfusion at the point when she received the infected blood during a transfusion, not at the point she found out that she was HIV positive). The Court finds the statement by the Eighth Circuit in *Kaiser* is not a controlling statement of law. The primary issue before the court in *Kaiser* was not when plaintiff's claim accrued. Thus, this Court will not consider any argument that John Doe, Jr.'s or the parents' claims accrued at the time John Doe, Jr. was infected with HIV.

[8] *See also Schnelby v. Baker*, 221 N.W.2d 739 (Iowa 1974) (appeal following earlier *Schnelby* decision's remand, and only addressed the improper handling by the trial court of the entry of judgment upon remand).

child . . . and fall within statues corresponding to our two-year subsection relating to actions 'founded on injuries to the person.'" *Id.* at 718. In addressing when the parent's "consequential damage" claims accrued, the Iowa Supreme Court observed:

> The actual foundation of the consequential damage claim, without which it would not exist, is the injury or death of the child or spouse. The items recoverable on the consequential damage claim merely measure the damages and do not constitute the 'ground or cause of action upon which the suit is founded.'

Id. (citing similar statements of law from a number of other jurisdictions). In *Schnelby*, the Iowa Supreme Court found that the parents' actions for consequential damages was subject to the same period of limitations as the child's action and began to run at the same time, as the parents were aware of the injury and its cause in a timely fashion. *Id.* at 722-23.

Iowa law dictates that the two year statute of limitations begins to run from the time that a "reasonably prudent person" would begin investigating the problem and its cause. In *Estate of Montag v. T.H. Agriculture & Nutrition Co., Inc.*, 509 N.W.2d 469 (Iowa 1993), a worker found out in 1986 that he had cancer. He had been exposed through his employment in the 1960s to "Agent Orange," and in 1980 he was informed by a doctor that a number of his health problems were related to his exposure to "Agent Orange." *Id.* at 470. After the worker died, his estate maintained the suit which was originally filed in 1985. *Id.* The Court held that based on the knowledge the deceased worker had prior to learning that he had cancer in 1986 regarding "Agent Orange," he was on inquiry notice in 1986 after he discovered his injury. His estate's claim, therefore, accrued at that time for statute of limitations purposes. *Id.* at 471.

In this case, John Doe, Jr. tested HIV positive in July 1987. The deposition testimony of his parents describes their knowledge at that time regarding what this meant. Mary Doe testified

that as early as 1984 or 1985 they were aware that people were dying from AIDS and that hemophiliacs were getting the disease. *See* Defendants' Joint Appendix to Motion for Summary Judgment on the Parents' Claims, Exh. B at 44-45. Both parents testified that sometime prior to1989, they were aware that hemophiliacs had a higher probability of becoming HIV positive, that their son was HIV positive, and that he would develop AIDS. *See* Defendants' Joint Appendix to Motion for Summary Judgment on the Parents' Claims, Exh. B at 99-100 and Exh. C at 37, 64. The deposition testimony of both parents indicated throughout they were very active in finding out information about hemophiliacs and HIV/AIDS, especially Mary Doe. Therefore, the Court finds that the controlling statements of Iowa law found in *Schnelby* and *Estate of Montag* govern in this case.[9]

---

[9] The Court notes the case of *New v. Armour Pharmaceutical Co.*, 67 F.3d 716 (9th Cir. 1995). *See also* Jeffrey S. Crowe, New v. Armour Pharmaceutical Co. *and the Twilight Zone of Injury: Discussing the Statute of Limitations Role in Contemporary Wrongful Infliction of Aids and Toxic Tort Cases*, 22 WHITTIER L. REV. 91 (2000). Joseph New was a recipient of a blood coagulant that allegedly resulted in the development of AIDS. *Id.* at 717. New tested positive for HIV in 1988, and a suit was not filed until 1993. *Id.* at 717-18. California law controlled and it stated that the statute of limitations begins to run only when plaintiff possesses a true cause of action, something beyond an award of nominal damages and not just a chance of developing a disease or injury in the future. *Id.* at 720.

The *New* court went on to find that when New tested positive for HIV in 1988, he could not have known he would surely get AIDS. *Id.* at 720. The court cited numerous articles on AIDS in order to show that it was not a medical certainty in 1988 that someone with HIV would develop AIDS. *Id.* at 721. The Ninth Circuit concluded that:

> New did not have a cause of action for serious illness when he was diagnosed with a condition that later medical knowledge determined would lead to the serious illness. The statue of limitations started to run only when New had reason to believe he had a cause of action against Armour for the infliction of AIDS.

Id. at 722.

Like the court in *New*, this Court questions exactly what medical knowledge was in the late 1980's concerning the certainty of HIV patients developing the AIDS virus. Under Iowa law, as in *New*, "a showing of reasonable medical certainty is a predicate for recovery for future physical consequences." *See Wilber v. Owens-Corning Fiberglass Corp.*, 476 N.W.2d 74, 77

While Iowa law has stated "no cause of action accrues under Iowa law until the wrongful act produces loss or damage to the claimant," *Bob McKiness Excavating & Grading, Inc.*, 507 N.W.2d 405, 408 (Iowa 1993), this does not lead to the conclusion that the full extent of damages needs to be known by the parents before their causes of action accrue for statute of limitations purposes.

> [I]n many personal injury cases the statute of limitations period begins to run before the full depth of injuries are known. Plaintiffs are nonetheless required to bring suit within the limitations period and the problem of acquiring greater knowledge is dealt with through procedural mechanisms including protracted continuation of trial.

Woodroffe v. Hasenclever, 540 N.W.2d 45, 48 (Iowa 1995).

This is the law in Iowa – that while the parents may not have yet suffered damage in the form of medical expenses and loss of consortium prior to November 1993, their claims for consequential damages accrued at the time of the underlying injury to their son – July 1987.

B. Whether the Discovery Rule Exception Delayed the Running of the Two Year Statute of Limitations

The discovery rule is an exception to statutes of limitations in Iowa, and tolls the running of the applicable statute of limitations until a plaintiff knew or should have known of the injury and the injury's cause. The issue of the applicability of the discovery rule to Iowa's two year statute of limitations at Iowa Code section 614.1(2), in the context of litigation involving the

---

(Iowa 1991) (involving two separate diseases stemming from asbestos exposure). However, the deposition testimony of the parents in the case now before the Court indicates they believed from the time that their child was diagnosed with HIV in July 1987 that he would eventually develop the AIDS virus. Further, plaintiff has not presented an argument like the plaintiffs did in *New* regarding insufficient medical knowledge. Under Iowa law, the parents' statements in their depositions regarding what they knew at the time John Doe, Jr. was diagnosed HIV positive persuades the Court that the statute of limitations began to run at that time under Iowa law.

transmission of HIV, has been addressed by the Eighth Circuit. *See Doe v. American Assoc. of Blood Banks*, 79 F.3d 1151 (8th Cir. 1996) (unpublished opinion).[10] In that case, plaintiff had open heart surgery in 1984 and received a blood transfusion contaminated with HIV. *Id.* On May 4, 1990, plaintiff learned he had tested positive for the HIV virus. *Id.* Plaintiff filed suit on May 12, 1992, and as in the matter now before this Court, Iowa Code section 614.1(2) provided the governing statute of limitations. *Id.* The Eighth Circuit affirmed the district court's finding[11] that the discovery rule did not save plaintiff's claim. Plaintiff had argued that Iowa's discovery rule dictated that the statute of limitations did not start to run until plaintiff discovered defendants' possible wrongdoing, but this argument was rejected by the Eighth Circuit because of Iowa's concept of inquiry notice. *Id.* (citing *Woodroffe v. Havenclever*, 540 N.W.2d 45, 48 (Iowa 1995) (other citation omitted)).

In describing Iowa's discovery rule and its inquiry notice standard, the Iowa Supreme Court has stated that "the statute of limitations begins to run when a plaintiff first becomes aware of facts that would prompt a reasonably prudent person to begin seeking information as to *the problem* and its cause." *Estate of Montag v. T.H. Agriculture & Nutrition Co.*, 509 N.W.2d 469,

---

[10] The Court recognizes that *Amercian Assoc. of Blood Banks*, 79 F.3d at 1151, is an unpublished opinion. *See Rogerson v. Hot Springs Adver. and Promotion Comm'n*, 237 F.3d 929, 931 n.2 (citing *Anastasoff v. United States*, 223 F.3d 898, *vacated on reh'g en banc*, 235 F.3d 1054 (8th Cir. 2000)) (addressing the current status of unpublished opinions and constitutionality of the relevant procedural rule in the Eighth Circuit). The unpublished case is cited and discussed by the Court only to serve as an introduction to the discovery rule issue in the unique factual context of HIV / AIDS. Even if it were governing Eighth Circuit law, which it is not, it would not be controlling precedent in this case because this case involves the claims of parents for injury to their child.

[11] The district court submitted certain issues to a jury for its determination prior to making its findings regarding the statute of limitations. *Doe v. American Association of Blood Banks*, 79 F.3d 1151, 1151 (8th Cir. 1996).

470 (Iowa 1993). The Iowa Supreme Court has also stated that "'the duty to investigate does not depend on exact knowledge of the nature of the problem that caused the injury. It is sufficient that the person be aware that *a problem* existed.'" *Woodroffe v. Hasenclever*, 540 N.W.2d 45, 48-49 (Iowa 1995) (quoting *Franzen v. Deere & Co.*, 377 N.W.2d 660, 662 (Iowa 1985)) (involving claims for sexual abuse). The Court finds that the focus of these statements of law – on whether plaintiffs were aware that *a problem* existed – is more appropriate in the context of the parents' Rule 8 claims than focusing on whether plaintiffs were aware that *an injury* existed. That is the appropriate focus when the plaintiff is the person who was injured; but in light of the complicated relationship between parents' Rule 8 claims and a child's claims for his own injury, Iowa law indicates that the Court should determine whether the discovery rule applies by looking at whether the parents were aware that a problem existed.

The Court is satisfied that the discovery rule does not apply to toll the statute of limitations in this case, as the parents were aware that a problem existed from the time that John Doe, Jr. was diagnosed HIV positive in July 1987. Even accepting the parents allegations that they did not incur medical expenses and did not have had their relationship with their son altered until November 1993, there is little doubt that they were aware a problem existed in light of their involvement during the 1980's in organizations that supported individuals with hemophilia and their families, and the information they learned about HIV and the AIDS virus through their involvement during this time.

C. Summary of When Statute of Limitations Began to Run on Parents' Claims

The purpose of statutes of limitations is "'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" *Leiberkneckt v. Bridgestone / Firestone, Inc.*, 980 F.Supp. 300, 305 (N.D. Iowa 1997) (citations omitted). Statutes of limitations protect the Court and all parties from having to involve themselves in "stale claims." *Id.* at 306. In this instance, the Court doubts that these laudatory goals are promoted. Even defendants do not appear to argue that evidence or testimony relating to the parents' Rule 8 claims has eroded through the passage of time. However, the Court must adhere to Iowa law even though it may unfairly bar meritorious claims.[12] The parents' Rule 8 claims in this case accrued when they discovered their son was HIV positive in July 1987, and were not tolled.

---

[12] While this Court will not compare Iowa law with that of all other states, it will note that juxtaposed with Iowa law is that in Idaho and New York.

Idaho's statute of limitations would not have run in the case now before the Court until the parents incurred damages. *See Doe v. Cutter Biological*, 844 F.Supp. 602 (D. Idaho 1994) (involving hemophiliac who tested HIV positive) and *Hawley v. Green*, 860 P.2d 1 (Idaho Ct. App. 1993) (action for medical malpractice for failure to diagnose). Idaho law has clearly stated "that a cause of action does not accrue at the time of the act complained of unless some damage has occurred," and "[t]he statute of limitation will not begin to run until the damages become objectively ascertainable." *Hawley*, 860 P.2d at 6 (citations omitted). In the Idaho *Doe* case, 844 F.Supp. at 608, the Idaho court found that an individual infected with HIV suffered damage at the time he discovered he was HIV positive. In a case like that before the Court now, however, it seems likely that a parent's claims would not accrue under Idaho law until they had suffered damage themselves in the form of loss of consortium or medical expenses.

In New York, the legislature has "recognized the injustice in time-barring plaintiffs from bringing suit for the wrongful infliction of AIDS" and passed a statute reviving actions to recover damages for injury caused by blood products relating to the wrongful infliction of HIV or AIDS. *See* Jeffrey S. Crowe, New v. Armour Pharmaceutical Co. *and the Twilight Zone of Injury: Discussing the Statute of Limitations Role in Contemporary Wrongful Infliction of Aids and Toxic Tort Cases*, 22 WHITTIER L. REV. 91, 112 (2000) (referencing N.Y. Civ. Prac. L. & R. § 214-3 (McKinney 1997)).

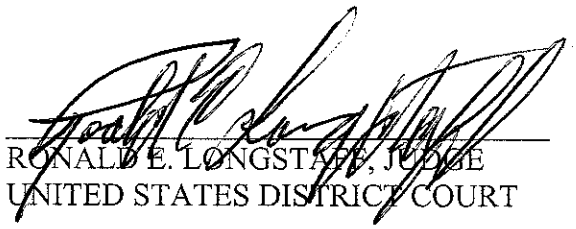
III. CONCLUSION

For the aforementioned reasons, the Court finds that the parents' claims accrued in July 1987 under Iowa law, and the discovery rule did not apply to toll the running of the applicable two year statute of limitations, Iowa Code section 614.1(2). The parents' claims are time barred.

The Court grants defendants' motion for summary judgment on John Doe, Sr. and Mary Doe's claims for medical expenses and loss of consortium under Rule 8 of the Iowa Rules of Civil Procedure. Plaintiffs' cross-motion for summary judgment is denied.

IT IS SO ORDERED.

Dated this 19th day of March, 2001.



RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT