

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 3, 2009 Session

VICTORIA DUTTON ET AL. v. FARMERS GROUP, INC., ET AL.

**Appeal from the Circuit Court for Knox County
No. 3-278-08 Wheeler A. Rosenbalm, Judge**

No. E2009-00746-COA-R3-CV - FILED JUNE 22, 2010

CHARLES D. SUSANO, JR., J., concurring.

I agree with the majority that, given the present state of the record in this case, summary judgment is not appropriate. As the record now stands, “[w]hether the plaintiff[s] exercised reasonable care and diligence in discovering the injury or wrong is . . . a fact question for the [trier of fact] to determine.” *Wyatt v. A-Best Company*, 910 S.W.2d 851, 854 (Tenn. 1995). In other words, there is a genuine issue as to this material fact. At trial, the finder of fact must determine if the plaintiffs filed suit within one year of the point in time when they¹ first knew, or, in the exercise of reasonable diligence, should have known that an actionable injury had occurred. *Id.* at 856-57.

CHARLES D. SUSANO, JR., JUDGE

¹While I have used the plural “they,” it is clear that each claim must be separately evaluated as to this issue.