



Mr. Patel's employment was terminated in 1976, and he has since filed several Pennsylvania Worker's Compensation Claim Petitions.<sup>1</sup> His first petition was brought in 1977, and it was determined that his disability did not continue when he was terminated, and that his alleged tuberculosis was not work-related. That determination was upheld on administrative appeal and by the Pennsylvania Commonwealth Court. Patel v. Sauquoit Fibers Company, 424 A.2d 621 (1981). Mr. Patel has attacked that initial determination three times, each unsuccessfully. His second attempt, the Commonwealth Court again rejected his assertions and also rejected his assertion that defendants committed fraud on his claim. "Patel II," 488 A.2d 1177 (1985). Undeterred, Mr. Patel filed a third petition, which was also denied. "Patel III," 520 A.2d 525 (1987). There, the Commonwealth Court held, for the second time, that Mr. Patel's claims were barred by res judicata and collateral estoppel, and that, notwithstanding the res judicata bar, his petitions were time-barred. 77 P.S. § 602. His fourth petition has also been rejected. In that fourth petition, the worker's compensation judge found that:

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1. Neither the procedural history of Mr. Patel's worker's compensation claims nor the factual and legal determinations made in those proceedings are contained in the Complaint. As is proper on a motion to dismiss, I have taken judicial notice of the information contained in the Worker's Compensation Judge's February 1st, 1996 decision, which has been submitted by Defendants Anthony J. Bilotti and Duane, Morris and Hecksher, LLP.

Any allegations of prejudice as a result of failing to receive the employment file are entirely without merit. [ ] Any alleged failure by the defendant to provide [Patel] with this employment file, therefore, is entirely irrelevant since [Patel] had access to this information at the time he litigated his first Petition. [ ] The alleged entry in the medical records referenced by [Patel] regarding the positive tine [i.e., tuberculosis] test is dated April 7, 1976. This is over two years prior to Judge Simon's original decision in the original Petition, which was not rendered until May 19, 1978. Accordingly, therefore, [Patel] had over two years after this record was entered to bring this to the attention of Judge Simon. [Patel] was represented by counsel in the original claim petition, which was filed on July 16, 1977. [ ] There is not a scintilla of evidence that the employer in anyway [sic] barred him access to the doctor's records. . . . [Patel] has had a full opportunity to litigate the tubercular condition issue. . . . [Patel] argues than an alleged fraud was performed in the failing to inform him of the tine test [and that t]herefore, such fraud tolls the statue of limitations. . . . [S]ince this tine test was taken over twenty years ago, and [Patel] had knowledge of this test and access to medical records which were referenced as [a] tine test as early as 1976, clearly [Patel] should have discovered this alleged concealment in 1976. . . . [E]ven if the three years limitations [period] of the [Workers' Compensation] act should began [sic] to run in 1976, [Patel]'s instant Petition would still be barred.<sup>2</sup>

Most of the defendants have moved to dismiss this Complaint for failure to state a claim upon which relief may be granted. Federal Rule of Civil Procedure 12 (b)(6).<sup>3</sup> The Patels

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2. These findings are taken from the Worker's Compensation Judge's February 1, 1996 Decision. See supra n. 1.

3. The following defendants have so moved: John Scott; Sydney Levy; John Lenahan; Kathleen Lenahan; Anthony J. Bilotti; Duane, Morris and Heckscher, L.L.P.; Carl Steindel; PMA Insurance; and Howard M. Ellner. The following defendants were served with the Complaint, but did not move to dismiss it: Rohm & Haas Company; Sauquoit Fibers Co; David Reynolds, Sauquoit's personnel manager; Robert Milgram, M.D.; A.S. Eisner, M.D.; Sander Levinson, M.D. I will nevertheless dismiss the Complaint in its entirety against all defendants, as I am satisfied that the allegations do not and could not sustain viable claims against these other defendants. Sauquoit Fibers is no longer in business. It was owned by Rohm & Haas, but neither has employed Patel since 1976, and there are no timely employment claims that could be brought against them. Though Reynolds and Mr. Patel have not had an

sought and received an extension of time during which to find an attorney and to respond to Defendants' motions. They then sought a second extension of time, again to obtain counsel. Unlike the first request, Defendants objected, and I denied it, primarily because the Patels have made no showing that they are actually likely to obtain counsel or that they could put forth any meritorious opposition to the motions to dismiss. The Patels nevertheless filed three responses as well as motions to amend or replead, each of which merely restate the allegations of the original Complaint. Although the Patels' failure to timely respond provides an adequate basis to dismiss their Complaint, I am mindful of their pro se status, and I write briefly to outline some of the fatal and irremediable flaws in their Complaint.

## II. DISCUSSION

The court may grant a 12(b)(6) motion to dismiss only if a complaint alleges no set of facts which, if proved, would entitle the plaintiff to relief. Hayes v. Gross, 982 F.2d 104, 106 (3d Cir. 1992). The burden is on the defendant to make such a showing. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406,

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employment relationship since 1976, he is alleged -- albeit in a scattershot manner -- to have obstructed Mr. Patel's quest for benefits as recently as 1996. Because these allegations have been specifically found to be both meritless and immaterial, see infra, I find that the Patels cannot state a viable claim against Reynolds, and by extension, Rohm and Haas. Finally, none of the three doctors is alleged to have treated Mr. Patel since 1980, and thus, even assuming the truth of the allegations, any claims against them would be time-barred. Although the statute of limitations is an affirmative defense, a court may raise it sua sponte, where, as here, the time bar is obvious from the face of the complaint.

1409 (3d Cir. 1991). The court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).

Defendants correctly note that the Patels' claims are time-barred. They filed the Complaint in September 1997. Applying Pennsylvania's statute of limitations, the Patels had two years to bring any tort claims and four years to bring contract claims. The limitations period began when Mr. Patel either knew or should have known of his injuries, and, whether the injury is viewed as his 1975 workplace injury; his 1976 termination; or the 1976 genesis of his belief that he had been exposed to tuberculosis in the workplace, the Patels' claims have expired.

The only claims of recent vintage are that various defendants have conspired to withhold records relevant to his ankle injury and alleged workplace exposure to tuberculosis, thus hampering his ability to obtain worker's compensation benefits. These allegations, however, do not state a viable claim sounding

in tort or contract.<sup>4</sup> Mr. Patel has litigated his workers' compensation claims several times, and the Pennsylvania Worker's Compensation Board has repeatedly rejected them, specifically finding, along the way, that Defendants did not fail to hand over any documents, and that even if they had it could not have affected his claim, as he was seized by the belief that his claims were being thwarted well before his more recent attempts at gaining benefits. That competent Pennsylvania adjudicative bodies have determined the substance of the Patels' allegations to be at worst meritless and, at best, immaterial, raises serious federalism and res judicata concerns. The two are related; simply put, this Court should not act in an appellate role over Pennsylvania's legal system by rehearing and redetermining legal issues which have been extensively litigated in Pennsylvania, nor should it grant an opportunity for a de novo determination of the underlying factual allegations.

Accordingly, because I find that the Patels cannot demonstrate an entitlement to legal relief from this Court under

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4. As no employment relationship has existed since 1976, any claims of workplace discrimination on the basis of Mr. Patel's status as an Indian immigrant are time-barred. (Mr. Patel's contention that he has only recently received a right to sue letter from the Equal Employment Opportunity Commission are unavailing, as he did not file with the EEOC until 1990, fourteen years after his termination). Moreover, none of the Defendants are state actors, so that any claims Mr. Patel may be attempting to advance under 42 U.S.C. § 1983 must fail. While an indulgent reading of the Complaint might reveal a conspiracy claim under 42 U.S.C. § 1985, there is no allegation that any Defendants conspired with state actors to hinder or defeat Mr. Patel's worker's compensation claims, and even an amended claim containing such an allegation would only be relevant to Mr. Patel's first petition and therefore time-barred.

any set of facts, I will dismiss their Complaint in its entirety as to all Defendants.

An order follows.

