

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

MARIA SANCHEZ,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
WYETH-AYERST PHARMACEUTICALS	:	
INC.	:	
	:	
Defendant	:	
	:	NO. 04-01405

**MEMORANDUM**

Defendant’s Motion for Summary Judgment seeks a ruling that Plaintiff’s claims for breach of contract and violations of Pennsylvania’s Wage and Payment Collection Law are time-barred. Because I find that the statute of limitations should be equitably tolled, I will deny Defendant’s motion.

**I. BACKGROUND**

Plaintiff Maria Sanchez (“Sanchez”) was employed by Defendant Wyeth Pharmaceuticals Inc. (“Wyeth”)<sup>1</sup> at Wyeth’s Great Valley location in Chester County, Pennsylvania. In connection with a staff reduction, Wyeth offered Sanchez a severance package in exchange for her execution of a general release of any legal claims related to her employment and any then-existing or future claims “solely related to [Wyeth] sponsored benefit plans” (the “General Release”) on October 21, 1997. The General Release also provided that Sanchez would “timely enter into and obtain Workers’ Compensation Judge approval of a Compromise and Release by

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<sup>1</sup> Wyeth-Ayerst Pharmaceuticals Inc. changed its name to “Wyeth Pharmaceuticals Inc.” in March of 2002. The caption error has not yet been amended.

Stipulation.” Wyeth revoked the General Release in a letter dated October 27, 1997, because Sanchez had “actively sought and [] been awarded long term disability benefits,” a company-sponsored benefit. Sanchez, however, had executed the General Release on October 24, 1997. There is no evidence in the record that Sanchez disputed the revocation or otherwise sought to renegotiate the General Release. As of December 1998, Sanchez had received more than \$40,000 in Long Term Disability Benefits. She also continued to pursue her workers’ compensation claim, which was ultimately denied in January 2001.

Sanchez was represented throughout this time period by Gary Block, an attorney who was arrested in March 2003 and sentenced in January 2004 to 11 1/2 to 23 months in jail for embezzling from clients in unrelated actions. Mr. Block represented Ms. Sanchez in connection with her workers’ compensation claim, but never filed a complaint with respect to the General Release. Her current counsel filed a Praecipe for Writ of Summons in this action in Chester County on September 11, 2003. The Writ was ultimately served on Wyeth on December 30, 2003.

## **II. STANDARD FOR SUMMARY JUDGMENT**

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact....” FED. RULE CIV. PROC. 56(b). The moving party bears the initial burden of showing that there is no genuine issue of material fact. Highlands Ins. Co. v. Hobbs Group LLC, 373 F.3d 347, 350-51 (3d Cir. 2004). Once the moving party has carried its burden, the nonmoving party must come forward with specific facts to show that there is a genuine issue for trial. Williams v. West

Chester, 891 F.2d 458, 464 (3d Cir. 1989). A fact is “material” if its resolution will affect the outcome of a under the applicable law, and an issue about a material fact is “genuine” if the evidence is such that reasonable factfinder could return a verdict for the nonmoving party.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court must draw all justifiable inferences in favor of the nonmoving party. Highland, 373 F.3d at 351.

### **III. STATUTE OF LIMITATIONS AND THE AVAILABILITY OF EQUITABLE TOLLING**

Six years had passed between the time Wyeth made clear that it would not provide Sanchez the benefits outlined in the General Release and the time she filed this lawsuit. Under Pennsylvania law, the statute of limitations has expired with respect to both the Plaintiff’s breach of contract claim and the Wage Payment and Collection law. An action for breach of contract “must commence within four years” of the breach of contract, 42 Pa. Cons. Stat. § 5525(a)(8) (2004), and an action pursuant to the Wage Payment and Collection Law must commence within in “three years after the day on which such wages were due and payable.” 43 Pa. Stat. Ann. § 260.9a(g) (2004). Sanchez does not contest that the statute of limitations has expired, but rather argues that the limitations period should be equitably tolled because her attorney, Gary Block, misled her and abandoned her claims.

Equitable tolling is appropriate when principles of equity would make a rigid application of the limitations period unfair. Miller v. New Jersey State Dep’t of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). Nevertheless, “[t]he law is clear that courts must be sparing in their use of equitable tolling.” Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 239 (3d Cir. 1999). Tolling is permitted when “(1) the defendant has actively misled the plaintiff, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has timely

asserted his rights mistakenly in the wrong forum.” United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998). Sanchez argues that her attorney’s failure to take any action with respect to the General Release and the fact that he actively misled her regarding the status of her claim constitute “extraordinary circumstances” such that the statute of limitations should be equitably tolled.

As a general rule, “attorney errors will be attributed to their clients,” but in some narrow circumstances attorney misbehavior may merit equitable relief. Id. at 240. In such cases, the attorney’s error or misconduct must be more than a “garden variety excusable neglect, and the party seeking to equitably toll the limitations period must show that it exercised reasonable diligence in investigating and bringing its claims. See id.; see also Schlueter v. Varner, 384 F.3d 69, 77 (3d Cir. 2004). Mere inadvertence or neglect by an attorney is insufficient to toll the statute of limitations. See Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001) (noting that “attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the ‘extraordinary’ circumstances required for equitable tolling”). However, “[e]quitable tolling may be justified in extreme cases of attorney misbehavior such as outright abandonment of a client after undertaking representation or affirmatively misrepresenting that a case is being prosecuted when it is not.” Buckalew v. EBI Co. et al., 2002 U.S. Dist. LEXIS 10843 (E.D. Pa. June 5, 2002).

In Seitzinger v. Reading Hospital and Medical Center, 165 F.3d 236 (3d Cir. 1999), the Third Circuit held that equitable tolling was appropriate in a Title VII case, where an attorney blatantly misrepresented that he had filed a complaint with the EEOC when in fact he did not do so until considerably later--one day after the limitations period had passed--and the plaintiff was

diligent in pursuing her claim. The Seitzinger court noted that counsel “affirmatively lied to his client,” and found this “level of misbehavior went well beyond the garden variety.” Id. at 241. The court also concluded that the plaintiff appeared to be “extremely diligent in pursuing her claim,” noting that she hired an attorney, called him prior to the deadline to verify that he had filed the complaint, repeatedly contacted him to request a copy of the complaint and to obtain information about the progress of her case. Id. at 241. The court also observed that the plaintiff “continued to be diligent after she learned that her attorney had effectively abandoned her,” by picking up her files from her former attorney, contacting the court to check on the status of her case, consulting with numerous lawyers regarding reinstatement of her claims, and ultimately, successfully moving the court to vacate the previous dismissal. Id. at 241, n.2. The Third Circuit therefore concluded that the plaintiff had adduced sufficient facts to overcome summary judgment and remanded the case to the district court to determine whether to apply equitable tolling. Id. at 242.

In this case, Gary Block represented Sanchez--who has a ninth grade education--for at least ten years. See Pl.’s Brief Opp. Summ. J., Ex. 9, at 11; Ex. 1, at 107. He served as her attorney in connection with her employment termination, her workers’ compensation case, and her social security disability claim. See id. Ex. 9, at 12-13. In his deposition, Block admitted that he did not seek to enforce or otherwise take any action with respect to the General Release, largely as a result of depression, which interfered with his ability to perform his job. Id. at 16. He also admitted that although Sanchez routinely asked about the status of her severance package, he avoided directly answering any of her questions. In his deposition, Mr. Block testified:

Q: Did Ms. Sanchez ever ask you why she didn't receive severance?

A: On a regular basis?

...

Q: What was your response?

A: We're working on it, I'm taking care of it, don't worry about it.

Id. at 89.

Mr. Block was arrested in March 2003 and arraigned on charges of forgery, theft, and other related offenses. See id. Ex. 10. On June 23, 2003, Block sent Sanchez a letter indicating that he was no longer practicing law. Id. Ex. 9, at 48. Sanchez stated that she had accepted Block's explanations regarding the status of her severance package because she trusted him, but that she became suspicious approximately a year before he was arrested for stealing funds from other clients. See id. Ex. 1, at 121-22. When Block sent Sanchez a letter withdrawing his representation, she went to the courthouse to investigate the status of her claims. Id. at 122. She then hired another attorney and filed her complaint.

Mr. Block affirmatively misrepresented his efforts with respect to Ms. Sanchez's severance package case. I find that this conduct rises above "garden-variety neglect," thereby providing a basis to support tolling the limitations period. Although the statute of limitations had long since lapsed when Ms. Sanchez filed her claim, the evidence nevertheless indicates that she was in regular contact with Mr. Block, repeatedly questioned him about the progress of her case, and immediately contacted the court and retained another attorney when she learned that he had withdrawn his representation. Though not as compelling as the facts in Seitzinger, the facts in this case show that Ms. Sanchez has exercised reasonable diligence in pursuing her claim, thereby satisfying the requirements for equitable tolling.

#### **IV. CONCLUSION**

For the foregoing reasons, I find that the statute of limitations should be equitably tolled.

I therefore will deny Defendant's motion for summary judgment.

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Plaintiff	:	CIVIL ACTION
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	:	
Defendant	:	NO. 04-01405
	:	

**ORDER**

AND NOW, this            day of May, 2005, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's response thereto, it is hereby ordered that the motion is DENIED.

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LAWRENCE F. STENGEL, J.