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Writing Sample

BRIEF IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant X Corporation and individuals Y and Z, by and through their undersigned counsel, submit the following Brief in Support of their Motion for Partial Summary Judgment. Plaintiff individual A inexcusably delayed in filing her EEOC Charge until 381 days after the last day she worked at Defendant X Corporation, *well beyond* the applicable time periods for this mandatory administrative filing in Title VII, the ADEA, and the PHRA. For this reason, as explained more fully below, this Court must **ALLOW** summary judgment in Defendants' favor on Plaintiff's Title VII, ADEA, and PHRA claims.

INTRODUCTION AND MATERIAL, UNDISPUTED FACTS

Plaintiff's Complaint alleges gender and age discrimination, harassment, and retaliation against her former employer, Defendant X Corporation, under Title VII, 42 U.S.C. 2000e *et seq*., and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq*. (in Count I). Plaintiff also asserts corresponding state claims under the Pennsylvania Human Rights Act (PHRA), 43 Pa. C.S. § 951 *et seq*., against Defendant X Corporation and two of its employees, individual Defendants Y and Z, against the latter for "aiding and abetting" in the alleged discrimination and harassment under the PHRA, 43 Pa.C.S. § 955(e) (Counts II–IV, respectively). Finally, Plaintiff asserts a claim against

Defendant X Corporation under the Equal Pay Act, 29 U.S.C. § 206(d).[1] (also pled in Count I)

Nevertheless, the undisputed, material facts presented in Defendants' accompanying Concise Statement of Material, Undisputed Facts, show that Plaintiff inexcusably delayed in filing her EEOC charge until March 21, 2006, 381 days after the last day she worked at Defendant X Corporation, February 4, 2005 (See Aff., Exh. A; Plaintiff's EEOC Charge, Exh. B.)[2], and *well beyond* the mandatory time periods specified in Title VII, the ADEA, and the PHRA. Plaintiff attempts to excuse her clear failure to abide by these time periods by raising her mental condition between February 4, 2005 and March 21, 2006, specifically asserting that she was apparently diagnosed with a mental disorder, Type II bipolar disorder, in March 2005.[3] However, the following discussion demonstrates:

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[1] Because Plaintiff's remaining claim under the Equal Pay Act does not require the mandatory timely filing of an EEOC charge, *see* Ledbetter v. Goodyear Tire & Rubber Co., 2007 WL 1528298, at *13 (S. Ct. May 29, 2007), Defendants do not argue for summary judgment on that claim at this time.

[2] All Exhibits referenced herein are included in Defendants' Appendix in Support of their Motion for Partial Summary Judgment, filed concurrently with this Brief, Defendants' Motion, and their Concise Statement of Material, Undisputed Facts.

[3] No other argument as to these limitations periods is tenable. Indeed, even using Plaintiff's last day, February 4, 2005, as the starting date for counting these limitations periods may not be tenable, as Plaintiff's EEOC charge fails to provide specific dates for *any* of the alleged acts on which she apparently relies. *See* National Passenger Railroad Corp. v. Morgan, 536 U.S. 101, 115 (2002); Rush v. Specialty Gases, Inc., 113 F.3d 476, 484 (3d Cir. 1997); Sicalides v. Pathmark Stores, Inc., 2000 WL 760439, *5 (E.D. Pa. 2000) (plaintiffs *may not* rely on vague descriptions of allegedly connected adverse acts to prove that subsequent acts of discrimination and harassment automatically renew claims based on prior acts). "To allow a stale claim to proceed would be inconsistent with the administrative procedures established by Title VII [and the ADEA and PHRA], which contemplate[] prompt filing of charges that discrimination controversies may be resolved promptly." Rush, 113 F.3d at 484.

However, because Plaintiff never again attempted to return for work after February 4, 2005, she essentially alleges a constructive discharge, and we may assume that the acts she alleges occurred during the times she worked at Impro, between March 29, 2004 and February 4, 2005. Thus, Plaintiff's allegation in her EEOC charge (at pg. 1, ¶ 1), that, "[w]ithin a month of my start date…*until present* I have suffered and been subjected to a continuous and ongoing hostile work environment based upon sex, (female) sexual harassment, discrimination and retaliation for complaining about the same," (emphasis added), must be read in this context. Further, the only act that Plaintiff alleges after her last day at Defendant X Corporation, that she was told, sometime during the summer of 2005 by a former co-worker, that one of the individual Defendants had said that "he would make sure that [Plaintiff] would never work for Impro again" (Charge, at pg. 6), cannot, itself, give rise to any claim, in light of Plaintiff's constructive discharge

I. Under the United States Supreme Court's recent decision in Ledbetter v. Goodyear Tire & Rubber Co., 2007 WL 1528298 (May 29, 2007), adherence to the time periods for filing a charge is a mandatory requirement, and no legal basis exists upon which to disregard such periods;

II. Even if Ledbetter does not completely foreclose the existence of equitable grounds for tolling these time periods, lower federal courts ought no longer exhibit unwarranted activism in creating equitable considerations that support disregard of these mandatory time periods;

III. Even if it were legally permissible for a court to authorize permissible grounds for tolling these mandatory time periods based on a plaintiff's mental condition, the mere diagnosis of a mental disorder, which is all Plaintiff can show here, is clearly insufficient; and

IV. Plaintiff cannot offer anything beyond her apparent diagnosis, as all the experts who have examined Plaintiff agree that she was not incompetent, incapacitated, or otherwise unable to manage her legal rights and affairs between March 2005 and March 2006.

APPLICABLE SUMMARY JUDGMENT STANDARDS

As this Court has recognized in addressing Defendants' prior Motion to Dismiss on this same issue, the following standards under Fed. R. Civ. Proc. 56 will govern this Motion.

> Rule 56 mandates the entry of judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).
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> In considering a motion for summary judgment, the Court must examine the facts in the light most favorable to the party opposing the motion. *International Raw Materials, Ltd. v. Stauffer Chemical Co.,* 898 F.2d 946, 949 (3d Cir.1990). The burden is on the moving party to demonstrate that the evidence is such that a reasonable jury could not return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). Where the non-moving party will bear the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence,

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claim. Thus, Plaintiff's only argument to save her Title VII, ADEA, and PHRA claims is equitable tolling based on her mental condition after leaving Impro.

> would be insufficient to carry the non-movant's burden of proof at trial. *Celotex,* 477 U.S. at 322. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings, and designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue for trial. *Id.* at 324.

Heater v. Impro, 2007 WL 320810, *1-2 (W.D. Pa. Jan. 30, 2007). "A fact is material when it might affect the outcome of the suit under the governing law." Id. at *1, quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

ARGUMENT

I. Under the United States Supreme Court's recent decision in Ledbetter v. Goodyear Tire & Rubber Co., 2007 WL 1528298 (May 29, 2007), adherence to the time periods for filing a charge is a mandatory requirement, and no legal basis exists upon which to disregard such periods.

Title VII requires that, before filing a complaint in court, a plaintiff must file a timely charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or other corresponding state or local agency

> within one hundred and eighty days after the alleged unlawful employment practices occurred…except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice…such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practices occurred….

42 U.S.C. § 2000e-5(e)(1). Likewise, the ADEA requires a plaintiff to file an initial agency charge "(1) within 180 days after the alleged unlawful practice occurred; or (2) in a case to which section 633(b) applies, within 300 days after the alleged unlawful practice occurred[.]…" 29 U.S.C. § 626(d). The PHRA, in 43 Pa. C.S. § 959(h), also requires the initial, timely filing of an administrative charge: "Any complaint filed pursuant to this section must be so filed within one hundred eighty [180] days after the

alleged act of discrimination, unless otherwise required by the Fair Housing Act[]" (which is not relevant here). Under these statutes, plaintiff must have filed a timely agency charge within these time periods; otherwise, she is foreclosed from pursuing her corresponding claims in court.[4] Ledbetter v. Goodyear Tire & Rubber Co., 2007 WL 1528298, at *4, *9 (S. Ct. May 29, 2007). *See* Bailey v. United Airlines, 279 F.3d 194, 197 (3d Cir. 2002) (ADEA); Watson v. Eastman Kodak Co., 235 F.3d 851, 854 (3d Cir. 2000) (Title VII and ADEA); Vincent v. Fuller Co., 616 A.2d 969, 971, 972 (Pa. 1992) (PHRA); Barra v. Rose Tree Media Sch. Dist., 858 A.2d 206, 211, 213 (Pa. Cmwlth. Ct. 2004) (PHRA and Title VII).

In Ledbetter, the United States Supreme Court very recently reaffirmed the mandatory character of these time constraints. The Supreme Court explained that the requirement to timely file an administrative charge under Title VII and the ADEA is the initial and most important step in the "integrated, multistep enforcement procedure" laid out by Congress in the text of these statutes. Ledbetter, 2007WL 1528298, at *7, quoting Occidental Life Ins. Co. of Cal. v. EEOC, 432 U.S. 355, 359 (1977). Indeed, Ledbetter counsels steadfast textual adherence to these legislatively mandated time constraints. In denying the plaintiff's arguments that her discriminatory pay claim accrued anew with each paycheck after the original discriminatory pay decision, the Supreme Court admonished courts to "'give effect to the statute as enacted[,]" so that they are properly respectful of the legislative compromises that underlay Title VII's enactment. Id.,

[4] The applicable limitations period for Plaintiff's Title VII and ADEA claims is 300 days. Bailey, 279 F.3d at 197. Moreover, contrary to Plaintiff's prior assertion in Supporting Brief in Response to Defendants' Motion to Dismiss (at 4), the statutory 180-day limitations period for Plaintiff's PHRA claims is unaffected by the presence of other federal claims. Vincent, 616 A.2d at 971. *See, e.g.*, Graham v. Avella Sch. Dist., 2006 WL 1669881, *3 (W.D. Pa. 2006); Whelan v. Teledyne Metalworking Products, 2005 WL 2240078, *10-11 (W.D. Pa. 2005); Capriotti v. Chivukula, 2005 WL 83253, *2 (E.D. Pa. 2005).

quoting Mohasco Corp. v. Silver, 447 U.S. 807, 819 (1980). The Ledbetter Court also reinvigorated prior cases in which it has "repeatedly rejected suggestions [to] extend or truncate Congress' deadlines." Id. at *7. *See*, *e.g.,* Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151 & n.6 (1984) (rejecting equitable tolling of requirement in 42 U.S.C. § 2000e-5(f)(1) that complaint must be filed within 90 days after receiving agency's right-to-sue letter)[5]; Electrical Workers v. Robbins & Myers, Inc., 429 U.S. 229, 236-240 (1976) (union grievance procedures do not toll EEOC filing deadline); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47-49 (1974) (arbitral decisions do not foreclose access to court following a timely filed EEOC complaint).

These time periods thus "serve a policy of repose." Ledbetter, 2007 WL 1528298, at *7, citing American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 554-55 (1974) and "'represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them."'" Id. at *8, quoting United States v. Kubrick, 444 U.S. 111, 117 (1979) (quoting Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 349 (1944)). Thus, "[t]he EEOC filing deadline 'protect[s] employers from the burden of defending claims arising from employment decisions that are long past.'" Id. *8, quoting Delaware State College v. Ricks, 449 U.S. 250, 256-57 (1980). "'[B]y choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of

[5] Although the plaintiff had sent her right to sue letter directly to the District Court, the Supreme Court in Baldwin County Welcome Center refused to accept the right-to-sue letter in place of the Complaint ordinarily required to initiate a lawsuit under the Federal Rules of Civil Procedure. Id. at 150-52. In so holding, the Supreme Court stated, "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." Id. at 152.

employment discrimination.'" Id. *8, quoting Mohasco Corp., 447 U.S. at 825. "This short deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation[,]" id. *8, citing Occidental Life Ins., 432 U.S. at 367-68 and Alexander, 415 U.S. at 44, which obviously cannot occur if the administrative process is eschewed altogether or, as here, unduly delayed. In summary, the Ledbetter Court announced an unequivocal mandate that Courts enforce these time periods without exception, stating: "'Ultimately, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee to even handed administration of the law.'" Id. *9, quoting Mohasco Corp. 447 U.S. at 826. *See* Baldwin County Welcome Center, 466 U.S. at 152, also quoting Mohasco Corp.

Contrary to the teaching of Ledbetter, Plaintiff's argument for equitable tolling eviscerates Congress' short time deadlines, promotes disregard for these statutory requirements, and portends unlimited time periods for the filing of charges. Prior to the Supreme Court's decision in Ledbetter, there was only scant authority to support judicial disregard of these statutorily mandated time periods. In Zipes v. Transworld Airlines, Inc., 455 U.S. 385, 393 (1982), the Supreme Court held that the administrative filing deadlines in 42 U.S.C. 2000e-(5)(e)(1) were not jurisdictional prerequisites, but rather, similar to statutes of limitations and thus subject to waiver, equitable tolling, and estoppel. However, Zipes itself dealt only with the doctrine of waiver, strictly holding only that these limitations periods could be waived if not raised as an affirmative defense. Id. at 392-93. Thus, the language in Zipes recognizing "equitable tolling" under Title VII was actually *dicta* which the Supreme Court has never explicitly, affirmatively, endorsed

by allowing a claim to be equitably tolled on *any* basis. *See also* Ledbetter, 2007 WL 1528298, at * 7, discussed *supra* at page 6 (citing prior Supreme Court cases that repeatedly rejected suggestions [to] extend or truncate Congress' deadlines[]" under Title VII). Indeed, from the discussion in Ledbetter, it appears that a majority of the Court would not now recognize the existence of *any* potential grounds for equitable tolling as the Court in Ledbetter rejected her equitable "policy arguments in favor of giving alleged victims of pay discrimination more time before they are required to file a charge with the EEOC" by stating, "[I]t is not our prerogative to change the way in which Title VII balances the interests of aggrieved employees against the interest in encouraging the 'prompt processing of all charges of employment discrimination' and the interest in repose."[6] Id. at *14, quoting Mohasco Corp., 447 U.S. at 825.

Against this backdrop, those lower courts that have developed a body of law allowing for tolling of untimely filed charges based on equitable grounds have apparently been overzealous. There is no textual foundation for such tolling in Title VII or the ADEA, and the jurisprudence allowing for such considerations was *dicta* and, now, in light of Ledbetter, of dubious vitality. Indeed, it is difficult to reconcile the apparently unbridled development of federal decisional law regarding circumstances that disregard these statutory time periods with the many flat statements repeated in Ledbetter, the strongest of which is that, "'[u]ltimately, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee to even handed

[6] From this discussion in Ledbetter, it is also questionable whether the question of waiver may even be an appropriate inquiry for courts to explore, given that the time periods are statutory, and the effects of a complainant's failure to follow them transcend that party's actions. If these time periods are not followed, the employer is not properly notified of claims against it, and the EEOC is compelled to investigate stale claims, in derogation of Congress' statutory commands. Courts, likewise, should enforce Congress' intent as dictated by the statutory language it uses. Thus, given the holding in Ledbetter, Zipes may no longer be good law even as to its strict holding on the issue of waiver.

administration of the law.'" Id. *9, quoting Mohasco Corp. 447 U.S. at 826. *See* Baldwin County Welcome Center, 466 U.S. at 152, also quoting Mohasco Corp. In this light, this Court has neither mandate nor discretion to stray from the text of Title VII and the ADEA that a charge must be timely filed; otherwise, a plaintiff is foreclosed from pursuing such claims in court. Given Plaintiff's clear failure to follow these time periods, summary judgment is warranted on her Title VII and ADEA claims, and those claims must be dismissed.

II. Even if Ledbetter does not completely foreclose the existence of equitable grounds for tolling these time periods, lower federal courts ought no longer exhibit unwarranted activism in creating equitable considerations that support disregard of these time periods.

Even if, despite Ledbetter and the mandatory foregoing analysis, there remains room for tolling of these statutory time periods based on equitable grounds, lower courts federal courts ought no longer exercise creativity and activism in recognizing considerations that would support disregard of Congress' statutorily mandated deadlines. Significantly, there is no Supreme Court precedent that allows for equitable tolling based on a plaintiff's mental condition, or suggests that a plaintiff's mental state is a reason to disregard the statutory requirement that an administrative charge must be timely filed.

Somewhat similarly, the PHRA, while allowing for equitable tolling of its 180-day limitations period, does not mention any specific allowable grounds for such tolling. *See* 43 Pa.C.S. § 959(a) & (j). Moreover, no Pennsylvania Supreme Court precedent exists allowing tolling for discrimination claims based on a plaintiff's mental condition. Indeed, Pennsylvania law generally is quite hesitant to allow tolling based on a plaintiff's mental condition. *See* 42 Pa.C.S. § 5533 ("*Except as otherwise provided by statute*, insanity…does not extend the time limited by this subchapter for the commencement of a

matter."). *See also* Riddick v. Workers Compensation Appeal Bd., 499 A.2d 694, 697 (Pa. Cmwlth. Ct. 1985) (Court cannot toll time limits for workers compensation action without usurping legislators' lawmaking function). Not only is this reluctance statutorily supported, it has also been justified by the Pennsylvania Supreme Court, which has stated, in considering whether a common law negligence claim should be tolled,

> We believe that the established procedures for the appointment of guardians afford sufficient protection to individuals who are *non compos mentis* that their claims will be instituted within the permissible period and thereby diminishes the risk that the rights of incompetents will be impaired by our holding that their disability does not toll the running of the statute of limitations….

Walker v. Mummert, 146 A.2d 289, 291 (Pa. 1958) (italics in original).

In the field of employment discrimination, one should also ponder the logic of recognizing a plaintiff-former employee's depleted mental condition as grounds for equitable tolling, given that that plaintiff was previously well enough to function at work, suggesting that he/she should otherwise be able to act to protect his/her rights.

These considerations further buttress the conclusion that District Courts have no warrant for creating equitable grounds for tolling the mandatory time deadlines under Title VII, the ADEA, and the PHRA, based on a plaintiff's mental condition, where there is neither statutory language nor judicial precedent allowing for such tolling. Rather, the absence of such language or precedent simply leaves the ground infertile for such considerations, and warrants entry of summary judgment for Defendants and dismissal of Plaintiff's Title VII, ADEA, and PHRA Claims.

III. Even if it were legally permissible for a court to authorize permissible grounds for tolling these mandatory time periods based on a plaintiff's mental condition, the mere diagnosis of a mental disorder, which is all Plaintiff can show here, is clearly insufficient.

If there is any room for equitable tolling, despite the additional foregoing considerations, then especially with regard to a plaintiff's mental condition, it must be applied "'sparingly,'" with the burden resting heavily on the plaintiff to prove sufficient grounds for equitable tolling. *See* Podobnik v. U.S. Postal Serv., 409 F.3d 584, 591 (3d Cir. 2005), quoting National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002), and citing Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990) and Courtney v. LaSalle Univ., 124 F.3d 499, 505 (3d Cir. 1997). Only then would this Court appropriately recognize the stringent standards required to permit an exception to otherwise mandatory statutory language. Put another way, as this Court alluded in ruling on Defendants' Motion to Dismiss, Plaintiff must prove that, "in some *extraordinary* way[, she] has been prevented from asserting his or her rights." Heater v. Impro, 2007 WL 320810, *2 (W.D. Pa. Jan. 30, 2007) (emphasis added). Here, however, Plaintiff plainly cannot demonstrate such extraordinary circumstances, and therefore cannot withstand summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). *See* Podobnik, 409 F.3d at 591, citing Courtney, 124 F.3d at 505.

Of those courts that considered, prior to Ledbetter, the issue of whether and under what circumstances a plaintiff's mental condition may constitute sufficient grounds for tolling the mandatory time periods under federal statutes prohibiting employment discrimination, it must be noted at the outset that at least one federal court has refused to recognize even "physical or mental incapacitation" as grounds for equitable tolling under Title VII. Steward v. Holiday Inn, Inc., 609 F. Supp. 1468, 1469 (E.D. La. 1985). Other federal courts have recognized as insufficient mere "emotional and mental shock," Quina v. Owens Corning Fiberglass Corp., 575 F.2d 1115, 1118 (5th Cir. 1978), upset, Thaxton

v. Runyon, 1995 WL 128031, *3 (E.D. Pa. 1995), and a purported fear of retaliation.[7] Carter v. West Publg. Co., 225 F.3d 1258, 1266 (11th Cir. 2000). *See* Arizmendi v. Lawson, 914 F. Supp. 1157, 1162 (E.D. Pa. 1996); Platt v. Burroughs Corp., 424 F. Supp. 1329, 1333 (E.D. Pa. 1976). Likewise, a "conclusory and vague claim" of mental illness, lacking "a particularized description" of how the condition "adversely affected" the Plaintiff's "capacity to function generally" or "in relationship to [the Plaintiff's] pursuit of legal rights" does not justify further inquiry. Boos v. Runyon, 201 F.3d 178, 185 (2d Cir. 2000). Clearly, then, in summary, the mere diagnosis of a mental illness is insufficient.

Generally, where federal courts have applied a standard to determine whether a mental illness may be grounds for equitably tolling the time periods under federal statutes prohibiting employment discrimination, the standard they have applied is whether "the illness *in fact prevents* the sufferer from managing his affairs and thus from

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[7] The Third Circuit has not addressed whether or under what standard a mental condition might provide grounds for equitably tolling a filing deadline under Title VII, but has addressed the issues of whether a mental condition may constitute equitable grounds for tolling 1) AEDPA prisoner claims, *see* Nara v. Frank, 264 F.3d 310, 320 (3d Cir. 2001) (evidentiary hearing warranted to consider possibility of tolling where plaintiff "presented evidence of ongoing, if not consecutive, periods of mental incompetency[;]" applying standard that mental incompetence must somehow *affect* ability to file timely habeas petition); 2) § 1983 claims, *see* Lake v. Arnold, 232 F.3d 360, 371 (3d Cir. 2000) (plaintiff's mental illness not reason for tolling limitations period on § 1983 claim, but tolling warranted because plaintiff's claim involved failure of guardian to protect her from injuries she claimed); and 3) Federal Tort Claims Act (FTCA) claims, *see* Barren v. United States, 839 F.3d 987, 992, 994 (3d Cir. 1988) (refusing to hold mental infirmity *per se* ground for tolling FTCA claim, even where it resulted from alleged malpractice).

Significantly, in Barren, 839 F.2d at 990, 992, the Third Circuit ruled that there could be no "subjective applica[tion]" of the rule "refus[ing] to toll the limitations period for plaintiffs who possess the necessary facts to pursue a claim." "Allowing Barren to file later than an objectively reasonable person would be tantamount to ruling that a plaintiff's mental infirmity can extend the statute of limitations. Such extensions have uniformly been rejected by this and other courts of appeals." Id. at 992, citing cases, including Accardi v. United States, 435 F.2d 1239, 1241 n.2 (3d Cir. 1970) ("Insanity does not prevent a federal statute of limitations from running."), *reaffirmed by* Hedges v. United States, 404 F.3d 744, 753 (3d Cir. 2005) *("[M]ental incompetence, even rising to the level of insanity, does not toll a federal statute of limitations for claims against the Government."*) (emphasis added). This unwillingness to recognize mental illness as adequate grounds for tolling the limitations periods on other federal claims suggests that District Courts within the Third Circuit should be similarly disinclined to recognize circumstances where mental illness may constitute sufficient equitable grounds for tolling the time limits in federal claims prohibiting employment discrimination.

understanding his legal rights and acting upon them."[8] Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996) (emphasis added). Indeed, in Miller, the United States Court of Appeals for the Seventh Circuit held that the plaintiff's Rehabilitation Act claim must be dismissed because of his failure to timely file the appropriate administrative charge. In so holding and applying this standard, the Seventh Circuit wrote:

> Any other conclusion would perpetuate the stereotype of the insane as raving maniacs, or gibbering idiots and impair their employment opportunities, thus stigmatizing Miller's own class. Most mental illnesses today are treatable by drugs that restore the patient to at least a reasonable approximation of normal mentation and behavior. When [the plaintiff's] illness is controlled, he can work and attend to his affairs, including the pursuit of any legal remedies that he may have.

Id. at 192. Similarly, in Biester v. Midwest Health Services, Inc., 77 F.3d 1264, 1268 (10th Cir. 1996), the United States Court of Appeals for the Tenth Circuit declined to toll the additional limitation period in 42 U.S.C. § 2000 e-5(f)(1) to file a complaint within 90 days after receipt of an agency right-to-sue letter for three reasons, including that Biester had not been adjudged incompetent or institutionalized and thus could not demonstrate the "exceptional circumstances" required to toll the limitations period. Id. For this sufficient reason, among others, the Tenth Circuit also affirmed the District Court's

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[8] In stating and relying on this standard, Miller, 77 F.3d at 191-92, cites case law considering the issue of tolling based on a mental condition for federal workplace discrimination claims, and for § 1983 claims – as to which 42 U.S.C. § 1988 explicitly requires drawing on local or state law standards for guidance in determining the applicable statute of limitations and tolling rules. *See* Lake v. Arnold, 232 F.3d 360, 368-71 (3d Cir. 2000). Case law from other federal circuits has also drawn on state or local standards for guidance in determining the appropriate standard for tolling a federal discrimination claim based on a mental condition. *See, e.g.,* Nunnally v. MacCausland, 996 F.2d 1, 5 (1st Cir. 1993); Speiser v. U.S. Dept. of Health and Human Services, 670 F. Supp. 80, 384-85 (D. D.C. 1986), *aff'd w/o opinion*, 818 F.2d 95 (D.C. Cir. 1987); Bassett v. Sterling Drug, Inc., 578 F. Supp. 1244, 1246 (S.D. Ohio 1984); Lloret v. Lockwood Greene Engineers, Inc., 1998 WL 142326, *2 (S.D.N.Y. 1998); Decrosta v. Runyon, 1993 WL 117583, *3 (N.D.N.Y. 1993). Here, notably, as discussed above, *supra* at pages 9-10. Pennsylvania law is quite hesitant to apply tolling based on a plaintiff's mental condition. This hesitation also reinforces the implication that, if one should be found to exist at all, any exception allowing for equitable tolling based on a plaintiff's mental condition should be quite narrow, and require plaintiff to meet an exceedingly stringent standard of proof.

holding that, "'in spite of his mental condition, Mr. Biester was capable of pursuing his own claim.'" Id.

Here, Plaintiff cannot meet this high standard, even allowing for the possibility that a mental condition could rise to a level sufficient to constitute equitable grounds for tolling these administrative filing deadlines. Accepting, *arguendo*, Plaintiff's apparent diagnosis with Type II bipolar disorder (see Bernstein Aff. ¶ 11, Exh. D), the mere fact of that diagnosis is nonetheless insufficient here because the evidence otherwise demonstrates unerringly that, during the period between February 4, 2005 and March 21, 2006, far from being impaired or incapacitated by this condition, Plaintiff displayed remarkable tenacity in simultaneously pursuing her legal rights and affairs, including this and other legal claims, immediately after leaving Defendant X Corporation, by taking the following several steps:

At her deposition, Plaintiff testified that, after she left Defendant X Corporation, she contacted two public officials at the Occupational Health and Safety Administration (OSHA), including one "Ronald Tate," who advised her to file a charge as to her claims of sexual harassment. (See Heater dep. at 67-71, 80, Exh. C) Plaintiff acknowledged consulting another attorney, Jay West, in March 2005, about filing a discrimination action against Defendant X Corporation, long before her current counsel's approach and eventual retention in February 2006. (See id. at 35-37; 2/06-3/06 entries in Plaintiff's psychiatric records, Exh. F; Valencic Dep. 111-17, Exh. L.) Plaintiff also admitted that she consulted with Attorney West based on a reference from yet another attorney, Mark Essy, whom she previously consulted about filing a worker's compensation claim against Defendant X Corporation. (See Exh. C. at 24-30) Plaintiff then filed this workers'

compensation claim in early March 2005.[9] (See Notice of Worker's Compensation Denial, Exh. E).

Additionally, Plaintiff testified that she did not retain Attorney West because he had advised her that a discrimination claim would not be successful unless she had a witness, and none came forward. (See Exh. C at 37) At that point, Plaintiff testified that she "*let [her discrimination claim] go*" until she met her current counsel in February 2006, by which time the limitations periods for her to file her Title VII, ADEA, and PHRC claims had long since expired.[10] (See id. at 37) Clearly, Plaintiff's delay in filing her EEOC charge cannot be excused.

The evidence also shows that Plaintiff filed a claim for social security benefits in May and June 2005, and has since December 2005 pursued an appeal of the Social Security Administration's initial denial of benefits decision, even retaining yet another attorney to handle that claim on December 12, 2005. (See DAP Referral for and Application Summary for Supplemental Security Income, Exh. G; Social Security Administration Supplemental Security Income, November 22, 2005 Notice of Disapproved Claim, Exh. H Disability Report-Appeal, received by Social Security Administration on December 14, 2005, Exh. I; Berger and Green Contingent Fee Agreement dated December 12, 2005 and executed by Plaintiff, Exh. J). Thus, these

[9] It is in the context of this claim, and not as a signal of any intention to return to work, that Plaintiff sent a letter from her primary care physician stating that she "cannot work until further notice due to emotional stressors at work, pending evaluation by psychiatry." (March 10, 2005 letter from Plaintiff to Defendant X Corporation, Exh. O; Plaintiff's Response to Defendants' Motion to Dismiss, Exh. 4) Thus, these efforts show Plaintiff to be perfectly competent to recognize and manage her legal rights and affairs and to pursue legal claims, and not entitled to *any* consideration of her purported mental condition as grounds for equitable tolling the limitations periods to file an administrative charge on her Title VII, ADEA, and PHRA claims.

[10] Counting the 300 days under Title VII and the ADEA, and the 180 days under the PHRA, from Plaintiff's last day working at Impro, February 4, 2005, those limitations periods expired on December 1, 2005, and August 3, 2005, respectively.

facts, which Plaintiff cannot dispute, show that Plaintiff *tenaciously* pursued several legal claims after leaving Defendant X Corporation, making her diagnosis with a mental condition plainly insufficient to warrant any consideration of the possibility of an equitable tolling. Summary judgment is therefore warranted in Defendants' favor on Heater's Title VII, ADEA, and PHRA claims.

IV. Plaintiff cannot offer anything beyond her apparent diagnosis, as all the experts who have examined Plaintiff agree that she was not incompetent, incapacitated, or otherwise unable to manage her legal rights and affairs between March 2005 and March 2006.

Aside from this apparent diagnosis, it thus becomes apparent Plaintiff can offer nothing to oppose these undisputed facts. Certainly, she cannot rely on the notes she introduced in response to Defendants' Motion to Dismiss raising the untimeliness of her EEOC charge (see Plaintiff's Response to Defendants' Motion to Dismiss, Exhs. 3 and 4, as discussed *supra* note 9 and *infra*), as Plaintiff's treating psychiatrists and her social worker *all agreed* at their depositions that, between March 2005 and March 2006, *Plaintiff was not incompetent*, incapacitated, or unable to handle her legal rights and affairs, and they never instituted proceedings to have Plaintiff declared incompetent or involuntarily committed, to have a guardian appointed, or to have Plaintiff's driver's license revoked.[11] (See Menon Dep. at 80, Exh. K; Valencic Dep., at 138-39, Exh. L; Helmy Dep. at 78-79, 102, 144, 147, 161, 169-70, 177-80, Exh. M)

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[11] Indeed, the psychiatrist who treated Plaintiff from June 2005 through April 2007, Dr. Kanthi Menon, at her deposition disavowed the conclusion she seemingly had drawn in the January 16, 2007 letter she signed with Plaintiff's social worker, Lynn Valencic, that "[t]hrough observation and work with this client, it can be stated that the severity of her symptoms impaired her ability to recognize her legal rights and manager her legal affairs from March 2005 through March 2006." (See Plaintiff's Response to Defendants' Motion to Dismiss, Exh. 3) Instead, Dr. Menon repudiated this conclusion at her deposition, stating that Ms. Valencic had dictated this letter, and that that portion *represented Ms. Valencic's conclusion alone*. (See Menon Dep. at 80, Exh. K.)

Moreover, Ms. Valencic agreed at her deposition that Plaintiff was not incompetent between March 2005 and March 2006, thus clarifying her position as well. (See Exh. L at 138-40.)

Significantly, in this conclusion, these practitioners are also in agreement with Defendants' psychiatric expert, who has also concluded that Plaintiff was not incompetent, incapacitated, or unable to manage her legal rights and affairs between March 2005 and March 2006. (See Bernstein Aff. ¶ 11, Exh. D.)

Likewise, a psychologist retained by the Social Security Administration, considering Plaintiff's claim for social security benefits in September 2005, concluded that Plaintiff "hasn't had any hospitalizations because of her mental impairments[,]" only that she "has unstable moods worsened by job and family stress and medical conditions. *However, she is stable on meds and no[t] [sic] significantly limited*." (See September 12, 2005 Report of Edmond Zuckerman, Ph.D., at 16, Exh. N) (emphasis added) This psychologist continued,

> The claimant's basic memory processes are intact. She is capable of working within a work schedule and at a consistent pace. She can make simple decisions. She is able to carry out very short and simple instructions. Moreover, she would be able to maintain regular attendance and be punctual. She could be expected to complete a normal workweek without exacerbation of psychological symptoms. Her ability to function socially is impaired secondary to some emotional liability. She is capable of asking simple questions and accepting instruction. She is able to get along with others in the workplace without distracting them. *She is self-sufficient.* Furthermore, she can sustain an ordinary routine without special supervision. She retains the ability to perform repetitive work activities without constant supervision. There are no restrictions in her abilities in regards to understanding and memory and adaptation. …

It is also questionable whether Ms. Valencic, only a licensed social worker at the time of her treatment of Plaintiff between March 2005 and March 2006, is even qualified to render this type of opinion, as she admitted at her deposition that she has never before rendered this type of opinion and does not typically make diagnoses, or prescribe medicine, instead leaving those activities to the treating psychiatrist. (See Exh. L at 11-12, 14, 16, 32-34, 143-44) Even assuming, *arguendo*, that Ms. Valencic was qualified to render such an opinion, however, the key point is that even she did not reach the conclusion that Plaintiff was incompetent or should have been involuntarily committed, had a guardian appointed for her, her driver's license revoked, or otherwise been determined incompetent, incapacitated, or unable to recognize and manage her legal rights and affairs – but, rather, opined precisely to the contrary – *that Plaintiff was not incompetent*. (See id. at 132-33, 138-40.)

> *The claimant is able to meet the basic mental demands of competitive work on a sustained basis despite the limitations resulting from her impairments.*

(See id.) (emphasis added) Indeed, in its subsequent decision to deny Plaintiff benefits, the Social Security Administration likewise concluded:

> You said that you are unable to work because of the following conditions: bipolar, depression and reflex sympathetic dystrophy (which is not relevant here). *At times you may be depressed. However, this is not so severe that it would prevent you from working in a stable environment. You can understand, remember and follow instructions. You think clearly and relate appropriately to others*….

(See Exh. H at 1.)

This evidence thus confirms the undisputed facts as to Plaintiff's outward conduct, detailed *supra* at III, which shows her manifest ability to consult public officials, several attorneys, and to take multiple steps to explore, pursue, and protect her legal rights and affairs. Moreover, the uniformity of opinion among the specialists and care providers who have examined and treated Plaintiff, and studied the records of such treatment clearly demonstrates that, even accepting, *arguendo*, her diagnosis with a mental illness, she clearly cannot meet the stringent standard that should be required for such illness to be further accepted as equitable grounds for tolling these deadlines in Title VII, the ADEA, and the PHRA.[12] Indeed, if the bare scenario here were sufficient to justify equitable tolling, a large segment of the adult population would be summarily excused from meeting the time periods Congress and the Pennsylvania General Assembly

[12] Indeed, given 1) Plaintiff's manifest ability to consult public officials, 2 attorneys, and to retain a third, to pursue and handle various claims; 2) the uniformity of opinion among the specialists and care providers who have examined and treated Plaintiff that she was not incompetent to manage her own affairs; and 3) that Plaintiff did not raise her mental illness until after she left Impro, this case is in no way comparable to Harris v. Potter, 2004 WL 1613578 (E.D. Pa. 2004), which this Court cited in its prior decision denying Defendants' Motion to Dismiss. Harris involved *none* of these facts and, by contrast, much stronger evidence of mental illness, a plaintiff whose mental illness prevented her from consulting with her Union or attorneys (she ultimately appeared pro sé), and additional claims of discrimination on the basis of that mental condition.

imposed in enacting Title VII, the ADEA, and the PHRA (see Bernstein Aff. ¶ 8, Exh. D), in derogation of those statutes. For this additional reason, summary judgment is warranted in Defendant X Corporation's favor on Plaintiff's Title VII, ADEA, and PHRA claims. *See* Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

CONCLUSION

For the foregoing reasons, this Court should **ALLOW** Defendants' Motion for Partial Summary Judgment and dismiss her Title VII, ADEA, and PHRA claims, *with prejudice*.