UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BENEFIT CONCEPTS NEW YORK, INC., and DANIEL E. CARPENTER,	:	**CASE NO. 3:03CV1456 (DJS)**
Plaintiffs,	:	
	:	
- v -	:	
	:	
NEW ENGLAND LIFE INSURANCE CO. d/b/a NEW ENGLAND FINANCIAL and OMEGA REINSURANCE CORP.,	:	
	:	
Defendants.	:	

MEMORANDUM OF DECISION

Plaintiffs Benefit Concepts New York, Inc. ("BCNY") and Daniel Carpenter ("Carpenter") bring this action against defendants New England Life Insurance Co., d/b/a New England Financial ("NEF") and Omega Reinsurance Corp. ("Omega"). Defendants NEF and Omega have motioned this court to dismiss Carpenter's claims as time-barred by either the statutes of limitations for tort claims under Massachusetts law or the statutes of limitations for torts under New York law. The court, for the following reasons, **GRANTS in part and DENIES in part** the Motion to Dismiss. **[doc. #9]**

FACTS

The plaintiff, Daniel Carpenter, brings this action for damages against his former employer, New England Life Insurance Company d/b/a New England Financial. Carpenter was, from July 1983 until February 2003, a licensed insurance agent of NEF. Carpenter was not directly employed by NEF; rather, he operated a series of corporate entities that worked on behalf

of NEF selling insurance. Benefit Concepts New York was one of these corporations. Carpenter owned and operated BCNY, along with Donald Israel and Mark Taylor, during a period of time from 1985 to 1991, when the Carpenter/Israel/Taylor partnership dissolved. Carpenter was a 50% owner of BCNY, while Israel and Taylor each held 25% of the company.

BCNY was, until 1993, a New York corporation with a principal place of business in New York. NEF is a Massachusetts corporation operating out of Boston and Omega is a Arizona corporation also operating from Boston. At present, Carpenter lives in Florida but maintains a residence and place of business in Connecticut. BCNY is now a Delaware corporation operating from Connecticut.

Carpenter, Israel and Taylor each sold insurance through BCNY, but Carpenter was the most successful of the trio. Carpenter is acknowledged by both parties to be a high-producing insurance agent and one of NEF's top producers. Sometime during 1985, NEF created a corporate entity known as the National Financial Marketing Group, Inc. ("NFMG"). The purpose of NFMG was to provide additional income to high-producing agents such as Carpenter. BCNY joined NFMG, providing Carpenter, Israel and Taylor with additional compensation.

The members of NFMG created, in 1986, Omega Reinsurance Corp. for the purpose of reinsuring policies written by qualifying agents. The system of reinsurance provided high-producers such as Carpenter with yet more income, this time in the form of Omega stock. Carpenter, and other agents, expected Omega stock to increase in value over time. Carpenter, Israel and Taylor became members of Omega through a unit, established in Carpenter's name, called the "Carpenter Unit." Israel and Taylor received higher than normal commissions as a result of their participation in the Carpenter Unit. The Omega shares were issued solely in Carpenter's name, and not to all three producers through BCNY.

The business relationship between Carpenter, Israel and Taylor ended in 1991, when

Carpenter purchased Taylor's and Israel's shares of BCNY. The three former partners signed a "Buyout Agreement" which provided, in Paragraph 11, that Carpenter's Omega stock holdings were intended to benefit Taylor and Israel as well as Carpenter. Carpenter claims that NEF and Omega provided information to Taylor and Israel that led them to insert the provision in the 1991 Buyout Agreement.

NEF formally acquired Omega in 1992. Israel and Taylor sued Carpenter and NEF and Omega in 1993 for breach of contract based on Carpenter's failure to distribute the Omega stock in accordance with the terms of the 1991 Buyout Agreement. The original 1993 suit, brought in Massachusetts, was dismissed by stipulation. A second action, this time against Carpenter and BCNY, was brought in New York in 1995 and subsequently removed to federal court. The proceedings in that case occurred between 1995 and September 25, 2000 when the district court entered judgment against Carpenter. The amount of the judgment was appealed, and the The District Court entered a final judgment after remand in favor of Israel and Taylor on September 7, 2001 in the amount of $500,000.

During the course of the federal trial, Stephen Gucciardi, then the Chief Operating Officer and Treasurer of Omega, gave testimony regarding the ownership of Omega stock that proved harmful to Carpenter's defense. Plaintiffs also claim that NEF and Omega provided information, testimony and support to Israel and Taylor throughout the course of the litigation in New York, during the period from 1995 to 2000.

All parties in this action agree that Carpenter's Omega stock was valued at $966,000. Carpenter alleges that, due to accounting irregularities, he was entitled to approximately $200,000 in additional payments from NEF upon redemption of his Omega shares. NEF disputes this and contends that the accounting irregularities led to an overvaluation of Carpenter's stock,

since corrected, and so no further monies are due. NEF also contends that Carpenter was informed of the accounting error and NEF's position on November 29, 1994. Carpenter argues that he did not know NEF would refuse to pay the disputed sum until final payments on the redeemed Omega stock were made in May 2000.

Carpenter's appeal of the judgment against him was dismissed and the judgment affirmed on June 13, 2003. The present action was filed on August 27, 2003.

STANDARD OF REVIEW

When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). Under Rule 12(b)(6), dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). In its review of a motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

DISCUSSION

A federal court sitting in diversity applies the law of the forum state. Erie R.R.Co. v.

Tompkins, 304 U.S. 64 (1928). This rule applies as well to the laws and rules governing the choice of law to apply when that choice is uncertain. Klaxon Co. v. Stentor Elec. Mfg. Co., Inc., 313 U.S. 487 (1941). Thus, the plaintiff's choice of a Connecticut forum means that Connecticut's choice of law will guide this court to the appropriate substantive law.

The defendants argue that the claims in this case are governed by a contractual provision that requires the application of Massachusetts law. Under Massachusetts law all of the plaintiff's claims would be time-barred. Carpenter and BCNY raise the possibility that New York law governs this case and argue that the claims are not time-barred. The defendants alternatively propose that, even under New York law, the claims are time-barred. The court will first address the contractual provision and then consider how Connecticut's choice of law rules apply in this case. Finally, the court will decide what, if any, claims are time-barred.

I. The Contractual Choice of Law Provision

Connecticut law honors contractual choice of law agreements except when certain conditions are present. Elgar v. Elgar, 238 Conn. 839, 848 (1996). Such provisions are, however, limited in scope by their terms. Connecticut's courts have held that "narrowly drawn choice of law provisions do not preclude causes of action under the laws of another state where such causes of action are not based in contract." Messler v. Barnes Group, Inc., No. CV 960560004, 24 Conn. L. Rptr. 107, 1999 WL 61034, *9 (Conn.Super. Feb. 1, 1999). A tort claim, even one that is closely related to the subject matter of the contract, may be brought even where it would be barred under the law of the state applied to similar contract claims under the contractual choice of law agreement. See, Greystone Cmty. Reinvestment Assocs. v. First Union Nat'l Bank, No. 3:00CV871, 2002 WL 229901, *2 (D.Conn. 2002). Connecticut courts have adopted the

reasoning of New York law that distinguishes between provisions that govern controversies 'arising out of or relating to' a contract, (see, Turtur v. Rothschild Registry International, Inc., 26 F.3d 304, 309-310 (2d.Cir. 1994)) and those contracts that are "governed by and construed in accordance with" the laws of a state. See, Krock v. Lipsay, 97 F.3d 640, 645 (2d.Cir. 1996). The latter type of contract is deemed too narrow to apply to tort claims related to the contract. Blakeslee Arpaia Chapman, Inc. v. Helmsman, No. 443753, 31 Conn.L.Rptr. 214, 2002 WL 172670, *2-3 (Conn.Super. Jan. 9, 2002); see also, Greystone, 2002 WL at *2 (holding that tort claims would not be barred under contract language similar to that used in this case.)

The defendant's argue that the choice of law provision in the shareholder agreement signed by Carpenter should govern this case. That provision reads, in relevant part: "This Agreement shall be governed by and construed in accordance with the domestic substantive laws of The Commonwealth of Massachusetts." There is no dispute as to the terms of the choice of law clause. The language of this clause falls squarely in the category of provisions that are too narrow to permit a reading that encompasses tort, rather than contract, claims. The choice of law clause contained in the shareholder's agreement does not require the court to apply Massachusetts law to plaintiff's tort claims.

II. Connecticut Choice of Law Rules

The question remains–what substantive law governs the claims in this action? The traditional choice of law rule in Connecticut is *lex loci delicti* which directs the court to apply the law of the state where the injury or accident occurred. O'Connor v. O'Connor, 201 Conn. 633, 637 (1986). The state Supreme Court has abandoned a categorical approach to this rule in favor of the Restatement (Second) of Choice of Law whenever *lex loci delicti* "would produce an

arbitrary, irrational result." O'Connor, 201 Conn. at 650. Recently, courts applying Connecticut choice-of-law law have used the Restatement approach even where *lex loci* would lead to the same result. Svege v. Mercedes Benz Credit Corp., 182 F.Supp.2d 226, 229 (D.Conn. 2002); see, Williams v. State Farm Mutual, 229 Conn. 359 (1994) (applied Restatement to a motor vehicle accident and held that state where accident occurred had the most significant relationship with the parties). This court will follow the trend and apply the Restatement analysis adopted by the Connecticut Supreme Court in O'Connor.

The O'Connor court adopted § 145 of the Restatement Second which provides that "the rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles states in § 6."[1] 1 Restatement (Second), Conflict of Laws § 145(1). A four-pronged analysis is used to apply the principles of § 6. Courts consider: (a) the place of the injury; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered. 1 Restatement (Second), Conflict of Laws §145(2). It is the significance of the contacts with respect to each issue, not the number of contacts, that governs the choice of law. O'Connor, 201 Conn. at 652-653.

III. Choice of Law Analysis

Plaintiff's claims are based largely on transactions that occurred between Carpenter,

[1]Section 6 considers the needs of the federal system; the relevant policies of the forum and other interested states; the comparative interests of the states; the protection of justified expectations; the policies underlying the field of law; predictability and uniformity; and the ease in determining and applying the law.

BCNY, NEF, Omega and Israel and Taylor prior to 1995 and in most cases during the formation of the Buyout Agreement in 1991. The defendants allegedly made unspecified false and misleading statements to the plaintiff during an extended period from 1991 until September 2000. These statements appear to fall into three categories: 1) statements made to Carpenter by NEF and Omega related to his ownership of Omega stock; 2) statements made by agents of the defendants during the course of a trial in federal court in New York between 1995 and 2000; 3) statements made to Carpenter at the time of the Buyout Agreement in 1991 but not discovered to be fraudulent until, at latest, September 2000. The Omega stock was paid to Carpenter as compensation for work done through BCNY in New York and divided among Carpenter, Israel and Taylor pursuant to the 1991 Agreement, which was executed in New York, and the judgment of the District Court in New York.

Carpenter further alleges that NEF and Omega breached a fiduciary duty to him when they improperly provided information about the Omega stock to Israel and Taylor and when the defendants aided Israel and Taylor in their suit against Carpenter. Plaintiffs also claim that defendants were negligent both in determining the value of Carpenter's Omega stock and in their statements to Israel and Taylor. Finally, Carpenter seeks contribution from NEF and Omega for a portion of the judgment entered against him following the Israel and Taylor lawsuit.

The court notes at the outset that any statements made during the course of trial are not properly the subject of a lawsuit pursuant to the absolute immunity for witness statements and compelled testimony "so long as such statements are material and pertinent" to the case in which they are offered. Weiner v. Weintraub, 22 N.Y.2d 330, 331 (N.Y. 1968); see also, Herzfeld & Stern v. Beck, 572 N.Y.S.2d 683, 685 (N.Y. App. Div. 1991). This rule has also been adopted by Connecticut and Massachusetts, the other states with potentially significant contacts to this

matter. See, Doe v. Blake, 809 F.Supp. 1020, 1028 (D.Conn. 1992); Petyan v. Ellis, 200 Conn. 243, 245-46 (1986); Sriberg v. Raymond, 325 N.E.2d 882, 883 (Mass. 1976); Eberle v. DiViacchi, No.Civ.A.95-0055-B, 1996 WL 218210, *2 (Mass. Super. March 29, 1996). Thus, no claims based on statements made within the context of a judicial proceeding can form a basis for this suit, regardless of the law applied. The court will only consider the alleged injury caused by statements made outside the context of a judicial proceeding, including those statements discovered during the judicial proceeding.

The significance of the contacts point strongly to the application of New York law in this action. The court acknowledges that there are some difficulties in determining where the parties were located when certain statements and actions were taken, but the overall weight of the four factors favors New York law. The court is obligated to draw inferences from the pleadings and facts in favor the non-moving party, and there is sufficient evidence to permit the court to conclude that Carpenter was working in and around New York during the majority of his relationship with the defendants.

There is no dispute that BCNY was operating in New York between 1991 and 1993 or that Carpenter was working from New York at least until 1993. The Buyout Agreement was written and executed in New York, it involves parties that worked together in New York and all of the actions related to that document occurred predominantly in New York. Israel and Taylor appear to be permanently based in New York and they were certainly located there at the time of the communications between them and the defendants that allegedly injured the plaintiffs. Although it is arguable that the locus of the relationship between plaintiffs and defendants shifted to Massachusetts around 1995, the vast majority of the actions underlying plaintiffs claims occurred prior to 1995, even if they may have continued until 2000 or were not discovered until

2000. Finally, the judgment that gives rise to the contribution claim was rendered by a federal court in New York applying New York law, and New York has the most interest in the issue of contribution. Israel v. Carpenter, No. 95Civ.2703, 2000 WL 1376255 (S.D.N.Y. 2000).

This court finds that a) the alleged injuries occurred mostly in New York; b) the cause of the injuries were actions taken or acknowledged mostly in New York; c) a majority of the parties were incorporated or operating from New York at the time of the activities that form the basis for the suit; and d) the relationship of the parties, during most of the relevant period, was focused on New York. The Restatement test directs the court to apply New York law in this action.

IV. Plaintiffs' Claims for Negligent and Fraudulent Misrepresentation

New York law provides a six year statute of limitations for claims of negligent and fraudulent misrepresentation. N.Y. C.P.L.R. § 213(8); see, Von Hoffmann v. Prudential Insurance Co., 202 F.Supp.2d 252, 262-263 (S.D.N.Y. 2002). The cause of action accrues, and the limitations clock begins to run, on the date of the alleged misrepresentation. Fandy Corp. v. Lung-Fong Chen, 262 A.D.2d 352 (N.Y. App. Div. 1999). Continuing acts of misrepresentation do not toll the limitations period unless they cause significant, distinct harm that gives rise to separate claims. Long Island Lighting Co. v. IMO Industries, Inc., 6 F.3d 876, 887 (2d.Cir. 1993). The six-year period of limitations may be extended by two years from the time the party discovers or should have discovered the misrepresentation through reasonable diligence. N.Y. C.P.L.R. § 203(g); see, Old Republic Insurance Co. v. Hansa World Cargo Service, Inc., 51 F.Supp.2d 457, 469 (S.D.N.Y. 1999). The two-year extension runs from the time that a party is placed on inquiry notice of the alleged harm. Teh-An Liu v. Cheng Tsu Wu, 267 A.D.2d 97 (N.Y. App. Div. December 14, 1999). The Second Circuit has held that, under diligence-

discovery accruals, the level of notice required is only "knowledge of, or knowledge that could lead to, the basic facts of the injury." Kronisch v. United States, 150 F.3d 112, 121 (2d.Cir. 1998). The test of when reasonable diligence would uncover the injury is one of objective reasonableness. Van Hoffman, 202 F.Supp.2d at 262.

The plaintiffs allege that the defendants engaged in negligent and fraudulent misrepresentations in two situations. First, defendants misrepresented the ownership and value of Carpenter's Omega stock. Second, NEF and Omega misrepresented their involvement in, and opinion of, the Israel and Taylor lawsuit against Carpenter.

As to the first claim, Carpenter admits that he had actual knowledge that NEF and Omega undervalued his stock by 1994. Plaintiff argues that he held back on exercising his rights because of representations made by the defendants that the error would be fixed, and that he was not aware that NEF would not recognize his claim until 2000. The six-year limitations period unquestionably began to run on the misrepresentations regarding the value of the Omega stock in 1994, at the time of the alleged misrepresentation. Plaintiff argues, and the court accepts for purposes of this discussion, that the defendants assured him that the error in valuation would be corrected and that he was unaware this representation was false until May 2000. Even under this theory of the facts, plaintiff cannot show that the statute of limitations for his cause of action extends beyond May 2002. The injury occurred as early as 1994, and Carpenter was under inquiry notice, by his own admission, no later than May 2000. Any claims for fraudulent or negligent misrepresentation based on the statements of the defendants related to the value of the Omega stock are dismissed as time-barred under New York law.

The second possible claim of fraudulent or negligent misrepresentation poses a different dilemma for the court. A statute of limitations defense raised in a motion under Federal Rule of

Civil Procedure 12(b)(6) should not be granted unless the plaintiff can prove no set of facts that would entitle him to relief. Old Republic, 51 F.Supp.2d at 468. Here, plaintiffs allege unspecified acts of misrepresentation related to the interactions between Carpenter, BCNY, Israel and Taylor from 1991 through 2000. The plaintiff has not pled with sufficient particularity for the court to determine at this time either when the actual injury allegedly occurred or when Carpenter and BCNY were on inquiry notice that they had been harmed. Therefore, it is possible that Carpenter can prove facts that would show that acts of misrepresentation occurred between August 27, 1997 and September 25, 2000 that caused the plaintiffs injury separate and distinct from those injuries caused by actions prior to August 27, 1997. Carpenter might also be able to show that he was not able to discover any harms through reasonable diligence until 2001. Either showing would place the plaintiffs' claims within the limitations period.[2] The court must deny the motion to dismiss as to any claims arising from the alleged misrepresentations of NEF and Omega regarding the lawsuit and claims of Israel and Taylor, without prejudice to renewing the statute of limitations defense when the record is more fully developed.

V. Plaintiffs' Claim for Breach of Fiduciary Duty

The parties accept that this is a claim for damages governed by a three-year statute of limitations under New York law. Cooper v. Parsky, 140 F.3d 433, 440-441 (2d.Cir. 1998). The issue before this court is when the limitations period begins to run. Defendants argue that

[2]The court must reiterate that any statements made during the course of trial are not properly the basis for a damages claim pursuant to the witness immunity discussed *supra*. Further, the court notes that if plaintiffs' claims for fraudulent and negligent misrepresentation are based only on the actions taken by NEF and Omega at the time of the 1991 Buyout Agreement, then those claims would be barred by the statute of limitations. Again, the injury was suffered more than six years prior to filing of the present action, and Carpenter would be on inquiry notice, at the latest, in 2000, nearly three years prior to the commencement of this suit.

because plaintiff's breach of fiduciary duty claim is based on the duty owed to plaintiff as a shareholder, the clock started ticking no later than May 2000 when NEF completed the purchase of Carpenter's Omega shares. Plaintiffs admit that the fiduciary relationship arising from Carpenter's shareholder status ended more than three years before the filing of this suit, but they rely on an exception to the statute of limitations to save their claims.

The Second Circuit has held that the limitations period for claims arising out of a fiduciary relationship does not run until the relationship is repudiated or otherwise ended. Golden Pacific Bancorp v. FDIC, 273 F.3d 509, 518-519 (2d.Cir. 2001). The reason for this exception is to ensure that the beneficiary can continue to rely on the fiduciary throughout the course of the relationship without fear that a lawsuit will undermine the expectation of trust and confidence. Plaintiffs argue that the employer-employee relationship between NEF and Carpenter, which continued until February 2003, is a fiduciary relationship that serves to toll the statute of limitations on the breach of fiduciary duty claim.

Two issues present themselves here–first, whether the employer-employee relationship is a fiduciary relationship and second, whether this relationship is sufficient to toll the limitations period. Assuming, *arguendo*, that there was a fiduciary relationship in existence between Carpenter and NEF until February, 2003, the court holds that this relationship is not enough to toll the limitations period. The court does value the employer-employee relationship, but there is no basis for concluding that an employee may preserve a mature cause of action indefinitely solely due to his status as an employee. Generally, employee causes of action against the employer are subject to a statute of limitations regardless of the status of the employee. Claims of harassment, breach of contract and violations of worker safety laws are all subject to statutes of limitation that run even during the course of an employee's continued employment. Here,

Carpenter's action is based on a discrete relationship, entangled with but not dependent on his status as an employee. Further, the discrete shareholder relationship unequivocally ended in May 2000, with no obvious impact on Carpenter's employment. The employer-employee relationship is insufficient to toll the statute of limitations on a breach of fiduciary duty claim based on Carpenter's status as a stockholder, even where the stock in question was distributed as a form of compensation to Carpenter.

The facts show that Carpenter's stockholder status, and any fiduciary duty that defendants owed him, ended in May 2000 when NEF completed the purchase of Carpenter's Omega shares. There is no evidence presented that the defendants mislead or otherwise prevented the plaintiffs from discovering their cause of action–indeed, the court has already found that the plaintiff was on notice, prior to August 27, 2000, regarding the actions of the defendants that give rise to this suit. Absent any showing that the three-year statute of limitations was tolled subsequent to May 2000, the plaintiffs had to bring their claim before May 2003, and they did not.

V. NEGLIGENCE AND CONTRIBUTION

New York law provides a three-year statute of limitations on claims of negligence resulting in property damage. N.Y. C.P.L.R. § 214(4). The cause of action accrues at the time of injury, otherwise defined as the time the cause of action is "complete" and a plaintiff may plead all the elements of his claim.[3] Coleman & Co. Securities, Inc. v. Giaquinto Family Trust, 236

[3]The plaintiffs argue that the statute of limitations runs from the time the negligence is discovered. The special rule that permits negligence actions to be brought within three years of the discovery of the injury is limited to situations involving "exposure" to environmental pollutants or other similar causal agents. N.Y. C.P.L.R. § 214c; Gussack Realty Co. v. Xerox Corp., 224 F.3d 85 (2d.Cir. 2000)(holding that negligence claims arising out of the pollution of certain properties were not time-barred).

F.Supp.2d 288, 299 (S.D.N.Y. 2002); Brooklyn Union Gas Co. v. Hunter Turbo Corp., 660 N.Y.S.2d 877, 878 (2d Dep't 1997). The statute of limitations for negligence is subject to equitable tolling, in situations where the defendants either prevented the plaintiff from discovering the harm or acted to dissuade the plaintiff from acting on his known rights until the limitations period has expired. Coleman, 236 F.Supp.2d at 299. The extent of tolling available under the equitable tolling doctrine is uncertain–some courts will permit only the two-year extension of time established in N.Y.C.P.L.R. § 203(g). Id.

Plaintiffs in the present action have not alleged acts of negligence with much specificity. Further, the defendants have not offered an argument that the negligence claims are time-barred under New York law. The court will assume, based on the pleadings, that the plaintiffs may possibly be able to show either that acts of negligence occurred within the three-year statute of limitations or that the doctrine of equitable tolling should be applied to save the negligence claims.[4] Therefore, the motion to dismiss is denied as to the third count of the amended complaint without prejudice to defendants renewing the statute of limitations defense later in these proceedings.

Similarly, the defendants do not argue that the claim of contribution is time-barred under New York law. The court recognizes that the parties were uncertain as to the applicable law in this case, and therefore the court will not render a final decision on any potential defenses or claims not fully briefed at this time. The court denies the motion to dismiss that claim, again without prejudice to renewing the statute of limitations defense in the future

[4]The court reserves a decision on the proper scope of the limitations period for negligence claims under equitable tolling.

CONCLUSION

The defendants Motion to Dismiss **[doc. #9]** is **GRANTED in part and DENIED in part**. Plaintiff's claims for fraudulent misrepresentation and negligent misrepresentation arising out of the dispute regarding the ownership and valuation of the Omega stock are dismissed as time-barred. Plaintiffs' claims for breach of fiduciary duty are also dismissed as time-barred.

IT IS SO ORDERED at Hartford, Connecticut, this 30th day of July, 2004.

/s/DJS
DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE