

NO. A-07-1820

State of Minnesota
In Supreme Court

Jonathan Goodman,

Respondent,

vs.

Best Buy, Inc.,

Petitioner.

**BRIEF OF AMICUS CURIAE
MINNESOTA DEFENSE LAWYERS ASSOCIATION**

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STATEMENT OF INTEREST

This appeal concerns the application of statutes of limitations for state law claims following the dismissal of related federal claims. Statutes of limitations implicate public concerns; the Minnesota Defense Lawyers' Association ("MDLA") has a public interest in the matters before this Court in the current proceeding.

The MDLA, founded in 1963, is a non-profit Minnesota corporation whose members are trial lawyers in private practice.¹ The MDLA is affiliated with the Minnesota State Bar Association and the Defense Research Institute. Over the past 45 years, the MDLA has grown to include representatives from over 180 law firms across Minnesota, with 800 individual members.

The MDLA devotes a substantial portion of its efforts to the defense of civil litigation. As such, it has a public interest in protecting the rights of litigants in civil actions, promoting the high standards of professional ethics and competence, and improving the many areas of law in which its members regularly practice. Those interests translate into concerns regarding the practical impact of this Court's interpretation of 28 U.S.C. §1367(d) [hereinafter "§ 1367(d)"]. To that end, and for the reasons articulated in this brief, the MDLA urges the Court to reverse the decision of the Minnesota Court of Appeals, and to hold that when the state statute of limitations would otherwise have run on supplemental state law claims that are dismissed from federal

¹ The undersigned counsel for Amici authored the brief in whole, and no persons other than Amici made a monetary contribution to the preparation or submission of the brief. This disclosure is made pursuant to Minn. R. Civ. P. 129.03.

litigation, § 1367(d) grants plaintiffs only a 30-day grace period to re-file those claims in state court.

ARGUMENT

I. Introduction

Statutes of limitations serve important policy goals. As such, they are crafted by the legislature, which considers all the interests at stake when setting limitations periods. By contrast, the Minnesota Court of Appeals' interpretation of § 1367(d) ignores the policy interests served by uniform statutes of limitations. When the overall purposes of statutes of limitations are considered in light of § 1367(d) specifically, a single, uniform 30-day grace period is the appropriate statutory interpretation.

The Minnesota Court of Appeals, along with many courts that have considered the issue, recognized that the language of § 1367(d) is subject to multiple interpretations. *Goodman v. Best Buy, Inc.*, 755 N.W.2d 354, 357 (Minn. Ct. App. 2008). Although it recognized the statute's ambiguity, the Minnesota Court of Appeals side-stepped any policy considerations and looked exclusively at the text of the statute. *Id.* at 359 (rejecting interpretations that "are based on policy" and finding that the "appropriate focus is on the text").

The statute's ambiguity, however, necessitates consideration of the policy implications before adopting any interpretation of the statute. In construing ambiguous statutes, the judiciary seeks to effect the intent of the legislative body. *See* Minn. Stat. § 645.16 (2008) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."). While the language of a statute may be an indicator of this intent, the statute's legislative history and the purpose and policy

behind the law are equally informative.² See Minn. Stat. § 645.16 (listing indicators of legislative intent); *Wegener v. Comm'r of Revenue*, 505 N.W.2d 612, 614-15 (Minn. 1993) (“Frequently . . . even when the plain meaning did not produce absurd results but merely an unreasonable one ‘plainly at variance with the policy of the legislation as a whole’ this Court has followed that purpose, rather than the literal words.”); *Krumm v. R. A. Nadeau Co.*, 276 N.W.2d 641, 643 (Minn. 1979) (stating that in statutory construction, “literal constructions should not override the general policy and objectives of the law.”) (internal citations omitted). A review of the purposes behind statutes of limitations generally and the specific reasons for the implementation of § 1367(d) reveals the error of the Court of Appeals’ interpretation.

II. Uniform Enforcement of Statutes of Limitations Serves Litigants’ and Society’s Interests.

The policy purposes served by statutes of limitations include predictability, uniformity, and fairness in the adjudication of claims. Katherine F. Nelson, *The 1990 Federal “Fallback” Statute of Limitations: Limitations by Default*, 72 Neb. L. Rev. 454, 462 (1993). When calculating the appropriate time interval for a specific limitations period, the legislative body balances the societal benefits of having valid claims

² The statute’s language and legislative history support the grace-period interpretation of § 1367(d). Because those issues have been fully briefed by appellant Best Buy, and to avoid unnecessary duplication, analysis of these issues will not be made in this brief.

prosecuted with the societal benefits of not litigating stale claims. *Id.* at 463.³ Considering the specific claim at issue, the legislature weighs the interests of both parties, providing plaintiffs sufficient time to pursue claims and giving defendants some certainty as to the length of any potential liability. *Id.*⁴

Limitations periods provide certainty that benefits both parties. *See Wilson v. Garcia*, 471 U.S. 261, 275 n.34 (1985) (discussing the benefits of a uniform statute of limitations for both parties), *superseded by statute on other grounds as recognized in Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377-80 (2004). When lawsuits drag on for multiple years, witnesses or parties may move, change employment, or even pass away. Memories of the events in question will fade, making a fair determination of the case more difficult.⁵ *See, e.g., DeMars v. Robinson King Floors, Inc.*, 256 N.W.2d 501, 504 (Minn. 1977) (“Since witnesses die or disappear and memories fade, trial of actions should never be negligently and unreasonably delayed.”).

Certainty also serves societal interests. Predictable and uniform statutes of limitations have a stabilizing effect on commercial markets and property transactions.

³ *Goodman v. Best Buy* implicates the actions of two legislative bodies: the United States Congress, which passed § 1367(d), and the Minnesota legislature, which enacts statutes of limitations for state claims.

⁴ Congress performed a similar balancing act in determining the impact of § 1367(d) on any remaining state law claims.

⁵ A real example of these practical implications is found in *Berke v. Buckley Broad. Co.*, 821 A.2d 118 (N.J. Sup. Ct. App. Div. 2003) (interpreting § 1367(d)). Had the Minnesota Court of Appeals’ “suspension” interpretation been adopted in *Berke*, the plaintiffs would have been allowed to re-file their state claims nearly eleven years after the cause of action arose. *Id.* at 123. One of the defendants did, in fact, die during the pendency of this action. *Id.* at 121.

See Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1185-86 (1950); *Nelson, supra*, at 465. Statutes of limitations “grant repose to liability that otherwise would linger on indefinitely.” *Johnson v. Soo Line R.R. Co.*, 463 N.W.2d 894, 896 (Minn. 1990); *see also Noske v. Friedberg*, 670 N.W.2d 740, 746 (Minn. 2003) (quoting with approval the same language from *Johnson v. Soo Line*). Such commercial benefits, however, only come to fruition if courts apply statutes of limitations uniformly and consistently.

Understanding that a specific fact scenario might call for a different equitable result, courts have adopted and apply common law defenses such as waiver and equitable tolling to allow otherwise stale claims to go forward. *See, e.g., Jinks v. Richland County*, 538 U.S. 456, 463 (2003) (explaining that federal defendants could waive state law statutes of limitations); *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 557 (1974) (explaining that the statute of limitations is subject to equitable tolling in certain situations); *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 918-20 (Minn. 1990) (discussing the doctrines of waiver and equitable estoppel as applied to a statute of limitations defense). Absent such fact-specific inquiries, however, statutes of limitations should be strictly applied by courts, and the determination of an appropriate limitations period should properly rest with the legislature.

III. Uniform Enforcement of Statutes of Limitations Promotes Fair and Efficient Operation of the Courts.

The judiciary also benefits from uniform and evenly-enforced statutes of limitations. *See, e.g., Bd. of Regents v. Tomanio*, 446 U.S. 478, 487 (1980) (“Statutes of

limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.”); *Dalton v. Dow Chem. Co.*, 158 N.W.2d 580, 584 n.2 (Minn. 1968) (“The purposes of statutes of limitations are the repose of the defendant and the fair and effective administration of justice.”). Predictable statutes of limitations help to reduce a court’s crowded docket by deterring plaintiffs from filing time-barred claims. *Nelson, supra*, at 465. Judicial results are more reliable when claims are brought in a timely manner because litigation “which results in the finding of ultimate facts for or against the plaintiff by the judge or jury is obviously more reliable if the witness or testimony in question is relatively fresh.” *Bd. of Regents v. Tomanio*, 446 U.S. at 487. Moreover, “to the extent that the public perceives that time-bars prevent frivolous claims and promote accuracy,” those limitations periods enhance the public perception of the court’s legitimacy and fairness. *Nelson, supra*, at 465.

Specifically, interpreting § 1367(d) to provide plaintiffs with a 30-day grace period to bring any remaining state law claims after federal claims are dismissed provides uniformity among the states. Regardless of what federal court plaintiffs are in, and irrespective of what state law controls any remaining claims, both plaintiffs and defendants across the country will clearly know that only 30 days are available to re-file any remaining state law claims if the statute of limitations has otherwise expired. Under the suspension interpretation adopted by the Court of Appeals, each cause of action in each state could be re-filed in a different time period, creating more work for court administrators and judges alike. When interpreting § 1367(d), courts should use a “straightforward” application of the statute that “unquestionably promotes fair and

efficient operation of the federal courts.” *Jinks v. Richland County*, 538 U.S. at 463. Applying the 30-day grace period uses a straightforward application that can be duplicated uniformly in all fifty states, as Congress intended.

IV. The Minnesota Legislature is the Appropriate Body to Institute Dramatic Changes in State Statutes of Limitations.

With multiple, competing interests at stake, legislative bodies are in the best position to determine the appropriate limitations period for certain categories of claims. As the United States Supreme Court has recognized, “[a]lthough any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.” *Bd. of Regents v. Tomanio*, 446 U.S. at 485 (quoting *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975)); see also *DeMars v. Robinson*, 256 N.W.2d at 505 (“What may be a reasonable time [for a limitation period] depends upon the sound discretion of the legislature in the light of the nature of the subject and the purpose of the enactment.”).

In adopting § 1367(d), Congress deferred to individual states that might wish to enact a law that would provide for a longer time period in which to bring a claim:

The period of limitations for any claim asserted under subsection (a) [providing for supplemental federal jurisdiction], and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed *unless State law provides for a longer tolling period.*

28 U.S.C. § 1367(d) (emphasis added).

At least three state legislatures have adopted specific statutes that allow plaintiffs additional time to file state claims that were dismissed under the supplemental jurisdiction statute. The Texas legislature has provided that plaintiffs have sixty days to bring any remaining state law claims. Tex. Civ. Prac. & Rem. Code Ann. §16.064 (2008). The legislatures of both New York and New Mexico have granted plaintiffs six months to bring remaining state law claims. N.M. Stat. Ann. § 37-1-14 (2008); N.Y. C.P.L.R. § 205 (2008). *See also* Denis F. McLaughlin, *The Federal Supplemental Jurisdiction Statute—A Constitutional and Statutory Analysis*, 24 Ariz. St. L.J. 849, 984 n.650 (1992) (noting that all three above-named statutes apply to § 1367(d) cases).

The Minnesota legislature has not adopted such a statute. Without the provisions of § 1367(d), many plaintiffs' state law claims would simply expire under the statutes of limitations created by the Minnesota legislature. An evenhanded interpretation of § 1367(d) gives plaintiffs an additional 30 days. The Minnesota Court of Appeals would increase this period by months or years, based on a case-by-case determination. However, given the many competing policies and interests at issue, the legislature is the appropriate body to provide any extension beyond the legislatively-created state statutes of limitations or the 30 days explicitly provided for by Congress in § 1367(d). *See, e.g., Camacho v. Todd & Leiser Homes*, 706 N.W.2d 49, 55 (Minn. 2005) (recognizing the legislature's unique role in setting statutes of limitations). Because the Minnesota legislature has not enacted such a statute, this Court should follow the 30-day grace

period interpretation that is consistent with § 1367(d)'s purpose to provide a uniform limitations period among the states.

V. Relying on the Purpose of Statutes of Limitations and § 1367(d), Most Courts Have Concluded that Plaintiffs Have Only a 30-day Grace Period.

Since the enactment of § 1367(d), thirteen different courts—five federal courts, seven state courts, and one U.S. territorial court—have interpreted § 1367(d) in the absence of legislative action. In cases quite similar to that presented in this matter, courts have overwhelmingly interpreted § 1367(d) to provide only a 30-day grace period when supplemental claims with expired limitations periods are dismissed from federal court.⁶ These courts have examined the language, legislative intent, and policy implications of § 1367(d) before reaching the conclusion that plaintiffs have only a 30-day grace period if the state statute of limitations has already expired. *See, e.g., Beck v. Prupis*, 162 F.3d at 1100 (stating that dismissing claims on which the statute of limitations has run may be an abuse of discretion); *Huang v. Ziko*, 511 S.E.2d at 308 (citing the policy of “prompt prosecution of legal claims”); *Juan v. Gov’t of the Commonwealth*, 2001 WL 34883536 at 327 (citing the intention of the legislature and the policy of the statute of limitations).

⁶ *See Williams Elecs. Games, Inc. v. Garrity*, 479 F.3d 904, 907 (7th Cir. 2007); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 761 (6th Cir. 2000); *Beck v. Prupis*, 162 F.3d 1090, 1099-1100 (11th Cir. 1998), *aff’d on other grounds*, 529 U.S. 494 (2000); *Meng v. Schwartz*, 305 F. Supp. 2d 49, 61 (D.D.C. 2004); *Green v. Fund Asset Mgmt., L.P.*, 147 F. Supp. 2d 318, 333 (D.N.J. 2001); *Weinrib v. Duncan*, 962 So. 2d 167, 170 (Ala. 2007); *Berke v. Buckley Broad. Co.*, 821 A.2d at 123; *Juan v. Gov’t of the Commonwealth*, 2001 WL 34883536, 6 N.M.I. 332, 327 (N. Mar. I. 2001); *Kolani v. Gluska*, 75 Cal. Rptr. 2d 257, 261 (Cal. Ct. App. 1998) (California Second District); *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003); *Huang v. Ziko*, 511 S.E.2d 305, 308 (N.C. Ct. App. 1999).

Prior to the Minnesota Court of Appeals' ruling in this matter, only one court had held for the suspension interpretation.⁷ In *Bonifield v. County of Nevada*, a California state appellate court concluded that the "plain meaning" of "toll" within § 1367(d) means to "suspend the period, such that the days remaining begin to be counted after the tolling ceases." 94 Cal. App. 4th 298, 303 (Cal. Ct. App. 2001) (California Third District). Even under that very generous interpretation, the California appellate court ultimately upheld the lower court's dismissal of plaintiff's state law claims, which were brought almost five months after the federal court dismissal.⁸

Despite the *Bonifield* ruling, California state law remains split. See *Okoro v. City of Oakland*, 48 Cal. Rptr. 3d 260, 264 n.5 (Cal. Ct. App. 2006) (California First District) (recognizing, but not resolving, the continued split between appellate districts). Another state appellate court in a different California district interpreted § 1367(d) to provide plaintiffs only a 30-day grace period after federal claims are dismissed. In *Kolani v. Gluska*, an employer filed state law claims for breach of contract and interference with prospective advantage in state court 78 days after those claims were dismissed without prejudice from federal court. 75 Cal. Rptr. 2d 257, 259 (Cal. Ct. App. 1998) (California Second District). This California court reasoned that the two-year statute of limitations had run while the matter was in federal court, and that § 1367(d) gave the plaintiff only

⁷ *Oleski v. Dep't of Pub. Welfare*, 822 A.2d 120 (Pa. 2003), is often cited as holding for the suspension interpretation as well. However, the *Oleski* court, while considering both suspension and grace period options, does not resolve the question because plaintiff in the case had actually re-filed within thirty days. See *id.* at 126.

⁸ One other state court has now adopted the Minnesota Court of Appeals' interpretation, relying on and citing to the present case. *Turner v. Kight*, 957 A.2d 984, 992 (Md. 2008).

30 additional days to file these claims in state court. *Id.* at 261. The court concluded that it would be “unreasonable” to suspend the statute of limitations for the entire period of the federal suit, thereby allowing the plaintiff more than a year to re-file after dismissal of the federal case. *Id.* This interpretation, the court concluded, would do “significant harm to the statutes of limitations policy” and was unnecessary because “30 days is ample time for a diligent plaintiff to re-file his claims and keep them alive.” *Id.*

In Minnesota, the Court of Appeals recognized the ambiguity of § 1367(d), but rejected the majority interpretation, failing to analyze the policy implications of its decision. Yet, most courts have adopted the grace period interpretation of § 1367(d) in recognition of both the language and the purpose of the statute in light of the serious implications of any other interpretation. Because the language of § 1367(d) is ambiguous, policy considerations must be taken into account, as other courts have done, in concluding that the grace period interpretation is the best result in light of the statute’s language and the important policy implications at stake.

CONCLUSION

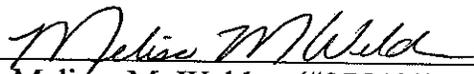
Section 1367(d) protects plaintiffs by allowing them to file otherwise expired state claims that are dismissed from federal court. Section 1367(d) should likewise protect defendants by limiting that re-filing period to a uniform 30 days. Interpreting § 1367(d) to provide for a 30-day grace period benefits the public, litigants, and the courts by furthering the policies behind all statutes of limitation. Such an interpretation appropriately honors all the language of the statute, while bearing in mind the serious

policy implications at stake. In light of those policy issues, any other result should only be achieved through legislative action where all policy implications can be carefully considered. Because the Minnesota legislature has not provided for a greater statute of limitations, the 30-day provision of § 1367(d) should be honored.

Respectfully submitted,

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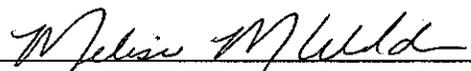
CERTIFICATE

Pursuant to Rule 132.01, subd. 3(a)(1), the undersigned set the type of the foregoing memorandum of law in Times New Roman, a proportional 13-point font, on 8 ½ by 11 inch paper with written matter not exceeding 6 ½ by 9 ½ inches. The resulting amicus brief contains 3,204 words, as determined by employing the word counter of the word-processing software, Microsoft Word XP, used to prepare it.

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