

NO. A07-1820

State of Minnesota
In Supreme Court

Jonathan L. Goodman,

Respondent,

vs.

Best Buy, Inc.,

Appellant.

REPLY BRIEF

Charles E. Lundberg (#6502X)
David A. Turner (#0333104)
BASSFORD REMELE, P.A.
33 South Sixth Street, suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

Shalanda D. Ballard (#284361)
BEST BUY, INC.
7601 Penn Avenue South
Richfield, Minnesota 55423

Joseph G. Schmitt (#231447)
HALLELAND LEWIS NILAN
& JOHNSON, P.A.
600 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, Minnesota 55402-4502

Attorneys for Appellant

Katherine L. MacKinnon (#170926)
LAW OFFICE OF
KATHERINE L. MACKINNON
3744 Huntington Avenue
St. Louis Park, Minnesota 55416
(952) 915-9215

Attorney for Respondent

Melissa M. Weldon (#275499)
Stephen P. Laitinen (#239446)
LARSON • KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, Minnesota 55101
(651) 312-6500

*Attorneys for Amicus Curiae
Minnesota Defense Lawyers Association*

Justin D. Cummins (#276248)
MILLER O'BRIEN CUMMINS, PLLP
One Financial Center
120 South Sixth Street, Suite 2400
Minneapolis, Minnesota 55402-1529
(612) 333-5381

*Attorneys for Amicus Curiae
National Employment Lawyers Association,
Minnesota Chapter*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
ARGUMENT	1
A. The Court of Appeals Correctly Determined That 28 U.S.C. § 1367(d) Is Ambiguous.....	1
B. The Correct Reading of § 1367(d) Is that a Statute of Limitations Shall Not <u>Expire</u> While the Plaintiff’s Claim Is in Federal Court	2
C. The Weight of State and Federal Case Law Supports the “Grace Period” Interpretation of § 1367(d).....	8
D. The “Grace Period” Interpretation of § 1367(d) Effectuates Longstanding Policies Behind Statutes of Limitations.....	10
E. The “Grace Period” Interpretation of § 1367(d) Is the Only Interpretation Supported by the Statute’s Legislative History	11
F. The Paramount Authority Doctrine Does Not Save Goodman’s Claim.....	12
CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page
CASES	
<i>Berke v. Buckley Broad. Corp.</i> , 821 A.2d 118 (N.J. Super. Ct. App. Div. 2003).....	1, 7, 8
<i>BP Am. Prod. Co. v. Burton</i> , 549 U.S. 84 (2006)	2
<i>Cave v. E. Meadow Union Free Sch. Dist.</i> , 514 F.3d 240 (2d Cir. 2008)	9
<i>Dahl v. Eckerd Family Youth Alternatives, Inc.</i> , 843 So. 2d 956 (Fla. Dist. Ct. App. 2003)	8
<i>Dees v. Hyundai Motor Mfg. Ala. LLC</i> , 605 F. Supp. 2d 1220 (M.D. Ala. 2009).....	9
<i>DeMars v. Robinson King Floors, Inc.</i> , 256 N.W.2d 501 (Minn. 1977)	7
<i>Green v. Bock Laundry Mach. Co.</i> , 490 U.S. 504 (1989).....	2
<i>Hanger v. Abbott</i> , 73 U.S. (6 Wall.) 532 (1867).....	13
<i>Harter v. Vernon</i> , 532 S.E.2d 836 (N.C. Ct. App. 2000).....	8
<i>Herrmann v. McMenemy & Severson</i> , 590 N.W.2d 641 (Minn. 1999).....	3
<i>Hibbs v. Winn</i> , 542 U.S. 88 (2004)	5
<i>Holmgren v. Isaacson</i> , 104 Minn. 84, 116 N.W. 205 (1908)	13
<i>Huang v. Ziko</i> , 511 S.E.2d 305 (N.C. Ct. App. 1999)	7, 8, 9, 10, 11
<i>Juan v. N. Mariana Islands</i> , 6 N.M.I. 322 (N. Mar. I. 2001).....	8, 12
<i>Knipple v. Lipke</i> , 211 Minn. 238, 300 N.W. 620 (1941)	13, 14
<i>Kolani v. Gluska</i> , 75 Cal. Rptr. 2d 257 (Cal. Ct. App. 1998).....	8, 10, 11
<i>Langerman v. Casserly</i> , 107 Minn. 491, 12 N.W. 1086 (1909)	13
<i>Lindahl v. Office of Pers. Mgmt.</i> , 470 U.S. 768 (1985)	2

<i>Lucky Friday Silver-Lead Mines Co. v. Atlas Min. Co.</i> , 395 P.2d 477 (Idaho 1964).....	15
<i>Oklahoma v. New Mexico</i> , 501 U.S. 221 (1991).....	2
<i>St. Paul, M. & M. Ry. Co. v. Olson</i> , 87 Minn. 117, 91 N.W. 294 (1902).....	12, 13
<i>Trentadue v. Buckler Lawn Sprinkler</i> , 738 N.W.2d 664 (Mich. 2007)	10
<i>Turner v. Kight</i> , 957 A.2d 984 (Md. 2008).....	1
<i>United States v. Couch</i> , 291 F.3d 251 (3d Cir. 2002).....	2
<i>United States v. Texas</i> , 507 U.S. 529 (1993)	7
<i>Velasquez v. Frontier Med. Inc.</i> , 375 F. Supp. 2d 1253 (D.N.M. 2005)	9
<i>Weinberger v. Maplewood Review</i> , 668 N.W.2d 667 (Minn. 2003).....	1
<i>Weinrib v. Duncan</i> , 962 So. 2d 167 (Ala. 2007).....	8
<i>Williams Elec. Games, Inc. v. Garrity</i> , 479 F.3d 904 (7th Cir. 2007)	9
<i>Wood v. Elling Corp.</i> , 572 P.2d 755 (Cal. 1977)	8, 10

STATUTES

28 U.S.C. § 1367(d)	passim
28 U.S.C. § 1441	14
Minn. Stat. § 363A.29, subd. 3.....	5, 6
Minn. Stat. § 541.15	3
Tenn. Code Ann. § 28-1-115.....	5

OTHER AUTHORITIES

Thomas M. Mengler et al., <i>Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction</i> , 74 <i>Judicature</i> 213 (1991)	11
<i>The Oxford English Dictionary</i> (2d ed. 1989)	4

David D. Siegel, *Changes in Federal Jurisdiction and Practice Under the New Judicial Improvements Act*, 133 F.R.D. 61 (1991) 12

Webster's Third New International Dictionary of the English Language Unabridged (1981)..... 3

Charles Alan Wright et al., *Federal Practice and Procedure* (3d ed. 2008) 1

ARGUMENT

A. The Court of Appeals Correctly Determined that 28 U.S.C. § 1367(d) Is Ambiguous.

This appeal turns on the meaning of the word *tolled* in 28 U.S.C. § 1367(d) (2008). The Minnesota Court of Appeals begins its analysis of this issue by discussing three different interpretations of *tolled*. (A.4.)¹ Statutory language is ambiguous if it is susceptible to more than one reasonable interpretation. *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 672 (Minn. 2003). By definition, *tolled* is ambiguous in § 1367(d).

Other state appellate courts have flatly held that § 1367(d) is ambiguous. *E.g.*, *Turner v. Kight*, 957 A.2d 984, 989 (Md. 2008) (stating that § 1367(d) is “unquestionably ambiguous”), *cert. denied*, 129 S. Ct. 1985 (2009); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118, 123-24 (N.J. Super. Ct. App. Div. 2003). As Maryland’s highest court recently noted, “If the learned appellate judges around the country cannot agree on the meaning and application of [§ 1367(d)], it cannot be said to have only one reasonable interpretation.” *Turner*, 957 A.2d at 989; *see also* 13D Charles Alan Wright et al., *Federal Practice and Procedure* § 3567.4, at 459-470 (3d ed. 2008) (stating that § 1367(d) is “not a model of clarity” and that “the confusion is the result of poor drafting”).

Because § 1367(d) is ambiguous, it is entirely appropriate for this Court to consider both its legislative history and the policies behind the statute. *See, e.g.*,

¹ “A.” denotes Appellant’s appendix on file with the Court.

Oklahoma v. New Mexico, 501 U.S. 221, 235 n.5 (1991) (“we have repeatedly looked to legislative history and other extrinsic material when required to interpret a statute which is ambiguous”); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring) (“I think it entirely appropriate to consult all public materials, including the background of Rule 609(a)(1) and the legislative history of its adoption, to verify that what seems to us an unthinkable disposition . . . was indeed unthought of . . .”). “Resort to legislative history will always be a necessary tool of statutory construction, and the circumstances under which the courts should turn to legislative history and the weight to be accorded particular sources of history cannot be prescribed by inflexible canons of construction.” *Lindahl v. Office of Pers. Mgmt.*, 470 U.S. 768, 810 (1985) (White, J., Rehnquist, C.J., and O’Connor, J., dissenting).

B. The Correct Reading of § 1367(d) Is That a Statute of Limitations Shall Not Expire While the Plaintiff’s Claim Is in Federal Court.

In interpreting federal statutes, this Court is to use the “ordinary” meaning of a word and not any technical definition. *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006). Moreover, courts should not let a strained, “hypertextual” reading of a statute – or an over-reading of the statute’s terms and grammatical structure – overcome “common sense and rationale.” *United States v. Couch*, 291 F.3d 251, 255 (3d Cir. 2002). With respect, Goodman’s arguments are steeped in such hypertextualism.

1. The Ordinary Meaning of “Shall Be Tolled” Is Not “Shall Be Suspended”

Neither Goodman nor the court of appeals considered the ordinary meaning of *tolled*. Goodman’s interpretation of *tolled* relies exclusively on other words in § 1367(d)

such as *while*, *and*, and *period of limitations* but avoids the issue of whether *tolled* truly means to temporarily suspend the running of the statute of limitations. Goodman does not offer any authority that *toll* means *to suspend* in § 1367(d), other than his own hypertextual analysis of these innocuous words in the statute. For its part, the court of appeals attempted to glean meaning by relying solely on the current *Black's Law Dictionary* definition of *tolled*. However, *Black's* is a technical dictionary used by lawyers and judges and cannot be the exclusive source of the ordinary meaning of *tolled*.

To properly interpret § 1367(d), lawyers and judges must set aside their preconceptions, acquired through years in law school and the legal profession, about what *tolled* means. In the law, *to toll* can sometimes mean to suspend the start of a limitations period. For example, a statute of limitations is *tolled* while the plaintiff is underage, meaning the limitations period does not begin to run until he or she reaches the age of majority. *See, e.g.*, Minn. Stat. § 541.15 (2008). Also, a statute of limitations is *tolled* – does not begin to run – if the defendant fraudulently conceals the plaintiff's right of action. *See, e.g., Herrmann v. McMenemy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999).

But the issue here is not when the statute of limitations started; Goodman, after all, had the full benefit of the one-year statute of limitations when he commenced his action.

“To suspend” is not the ordinary definition of *tolled*; it is a technical definition used by judges and lawyers in other contexts. *Webster's* dictionary defines *toll* as “to take away,” “make null,” or “remove.” *Webster's Third New International Dictionary of the English Language Unabridged* 2405 (1981). The *Oxford English Dictionary* defines

it as to “bar, defeat, annul,” or “take away the right of.” XVIII *The Oxford English Dictionary* 204 (2d ed. 1989). Neither of these dictionaries defines *toll* as “to suspend.”

Goodman maintains in his brief (pp. 17-19) that when Congress uses a term of art from the common law the courts should use common-law meanings of such terms and then suggests that the common-law meaning of *toll* is “to suspend.” But despite its common-law pedigree, *toll* is an ambiguous term. This Court’s task is not to craft an encyclopedic definition of *toll* but to decide what *toll* means in the narrow context of 28 U.S.C. § 1367(d). Other courts’ definitions of *toll* in other contexts do not resolve this issue. Instead, the text and legislative history of § 1367(d), along with its policy underpinnings, reveal that *toll* means to prevent the expiration of a statute of limitations during the pendency of the federal claim and thirty days thereafter.

2. This Court Should Read “Shall Be Tolled” as “Shall Not Expire”

The most reasonable reading of § 1367(d) is that the period of limitations governing the pendent claim shall not expire “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.” Under this “grace period” reading of § 1367(d), the running of a statute of limitations is neither stopped nor suspended. Three outcomes are possible:

1. If the statute of limitations would otherwise expire while the claim is in federal court, § 1367(d) blocks the expiration and the plaintiff has thirty days after dismissal in which to re-file the claim in state court. (Thus, if a plaintiff starts a lawsuit on the 364th day of a one-year limitations period, he or she has thirty days – not just one day – in which to re-file after the federal court dismissal.)

2. If the statute of limitations would otherwise expire less than thirty days after dismissal by the federal court, the plaintiff gets a full thirty days in which to re-file.
3. If the statute of limitations would otherwise expire more than thirty days after dismissal, the plaintiff would have the remainder of the limitations period in which to re-file.

Goodman's case is clearly an example of scenario #1: It is undisputed that the one-year statute of limitations (Minn. Stat. § 363A.29, subd. 3) on his Minnesota Human Rights Act (MHRA) claim began to run when Goodman's employment was terminated on February 21, 2005. Goodman commenced an action in state court on July 12, 2005, which Best Buy promptly removed to federal court. (A.47.) The one-year limitations period would otherwise have expired on February 21, 2006, while the action was pending in federal court. The federal court dismissed Goodman's MHRA claim on December 4, 2006. (A.20.) Goodman re-commenced his MHRA claim in state court on March 9, 2007, more than one year after the applicable statute of limitations had run. (A.37.)

This reading does no violence to the text of § 1367(d) and gives effect to all its provisions.² See *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). The phrase "shall be tolled while the claim is pending and for a period of 30 days" means § 1367(d) bars or takes away the expiration of the statute during the period the claim is in federal court and for

² The last clause of § 1367(d) ("unless State law provides for a longer tolling period") refers to state "saving statutes" that explicitly toll the limitations period upon dismissal by the federal court. Minnesota has no saving statute, but Tennessee's, for example, reads: "Notwithstanding any applicable statute of limitation to the contrary, any party filing an action in a federal court that is subsequently dismissed for lack of jurisdiction shall have one (1) year from the date of such dismissal to timely file such action in an appropriate state court." Tenn. Code Ann. § 28-1-115; see also Appellant's Br. at 23 & n.11 (citing other saving statutes).

thirty days after dismissal. This reading does not cut short any state's statute of limitations; in fact, it may serve to lengthen the time the plaintiff would ordinarily have to re-commence, as in scenarios #1 and #2 above.

The court of appeals below dismissed out of hand the "shall not expire" interpretation of § 1367(d) on the theory that it is "conditional," meaning the interpretation would only apply when and if a statute of limitations would otherwise expire while the claim is pending in federal court. But most legal rules are "conditional" in this sense because they are triggered by a condition or event. Under the "shall not expire" reading the statute of limitations is neither stopped nor suspended: operation of the statute of limitation is tolled if it would otherwise expire during the pendency in federal court and for thirty days thereafter.

3. Goodman's Proposed Reading of § 1367(d) Is Not Reasonable.

Goodman's over-reading of the "shall be tolled" language of § 1367(d) results in an extraordinary situation – the federal statute modifies all applicable state statutes of limitations in virtually all circumstances. There is literally nothing in the text of § 1367(d) that supports such a construction. Goodman's reading grossly protracts the limits state legislatures have duly placed on state claims. Goodman is essentially asking this Court to grant him a two-year statute of limitations when § 363A.29 clearly gives him only one year. It is unreasonable to interpret § 1367(d) as authorizing a 100% increase (or more) in the size of the limitations period. This is precisely why the New Jersey appellate court in *Berke* found the "grace period" interpretation more reasonable.

See Berke, 821 A.2d at 123 (“Despite its ambiguous use of the word ‘tolling,’ we do not believe that [§ 1367(d)] intends a result that would permit a gross protraction of the limitations period . . .”).

As set forth in our opening brief (pp. 21-23), Goodman’s proposed reading of § 1367(d) undercuts the longstanding common-law rule that in the event of a nonsuit or dismissal without prejudice “the result is the same as if [the lawsuit] had never been filed and the statute of limitations had never been tolled.” *DeMars v. Robinson King Floors, Inc.*, 256 N.W.2d 501, 505 (Minn. 1977).³ “Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident.” *United States v. Texas*, 507 U.S. 529, 534 (1993) (citation omitted). Applying the common-law rule, but for § 1367(d) Goodman could not re-commence his MHRA claim in state court at the time the federal court dismissed his action without prejudice because the one-year limitations period had expired more than nine months earlier.

Similarly, Goodman’s reading of § 1367(d) is contrary to the general rule recognized in a majority of states that, after a dismissal without prejudice, a party cannot tack on to the limitations period the time the claim was pending in court:

“[I]n the absence of a statute, a party cannot deduct from the period of the statute of limitations applicable to his case the time consumed by the pendency of the action in which he sought to have the matter adjudicated, but which was dismissed without prejudice as to him.”

Huang v. Ziko, 511 S.E.2d 305, 308 (N.C. Ct. App. 1999) (quoting 51 Am. Jur.

³ See also Appellant’s opening brief at p. 22, n. 10, citing cases from other states.

Limitation of Actions § 311 (1970)); see also *Wood v. Elling Corp.*, 572 P.2d 755, 758 (Cal. 1977), quoted in *Kolani v. Gluska*, 75 Cal. Rptr. 2d 257, 261-62 (Cal. Ct. App. 1998).

At best, Goodman's proposed reading of the statute is no more consistent with the statute's text than is Best Buy's reading. But Best Buy's reading – the “grace period” view – is the only reading supported by the legislative history and the only reading that effectuates the policies behind statutes of limitations. And it is the only reading supported by most state appellate courts that have addressed this issue and supported by the vast majority of federal court cases dismissing supplemental-jurisdiction claims under § 1367.

C. The Weight of State and Federal Case Law Supports the “Grace Period” Interpretation of § 1367(d).

Most of the state appellate courts that have considered this exact issue have held that § 1367(d) affords the plaintiff only a thirty-day “grace period” in which to re-file the dismissed claim. See *Weinrib v. Duncan*, 962 So. 2d 167, 168-70 (Ala. 2007); *Kolani*, 75 Cal. Rptr. 2d at 261-62; *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118, 123 (N.J. Super. Ct. App. Div. 2003); *Harter v. Vernon*, 532 S.E.2d 836, 840 (N.C. Ct. App. 2000); *Huang*, 511 S.E.2d at 308; *Juan v. N. Mariana Islands*, 6 N.M.I. 322, 327 & n.13 (N. Mar. I. 2001) (citing additional cases). Significantly, the California Court of Appeal in *Kolani* concluded that the reading of § 1367(d) advanced by Goodman is “unreasonable,” 75 Cal. Rptr. 2d at 261, and the North Carolina Court of Appeals in *Huang* pronounced it

“untenable,” 511 S.E.2d at 308.

Federal courts’ opinions on § 1367 provide additional critical insight into the meaning and purpose of the statute. Granted, since § 1367(d) concerns the application of the statute of limitations after dismissal by a federal court, the precise issue before this Court would never arise in federal court. But when federal courts have dismissed supplemental state-law claims under § 1367, they have uniformly done so with the express understanding that the plaintiff will have thirty additional days in which to restart the pendent claim in state court – unless the statute of limitations expires more than thirty days after dismissal, in which case the plaintiff gets the full benefit of the limitations period. *See, e.g., Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 250 (2d Cir. 2008); *Williams Elec. Games, Inc. v. Garrity*, 479 F.3d 904, 907 (7th Cir. 2007); *Dees v. Hyundai Motor Mfg. Ala. LLC*, 605 F. Supp. 2d 1220, 1230 n.4 (M.D. Ala. 2009) (“Pursuant to 28 U.S.C. § 1367(d), the applicable statute of limitations under state law will be tolled 30 days so as to allow [plaintiff] time to re-file his state law claims in state court.”); *Velasquez v. Frontier Med. Inc.*, 375 F. Supp. 2d 1253, 1288 (D.N.M. 2005) (“By dismissing state law claims without prejudice, [plaintiff] will not be prejudiced, because under 28 U.S.C. § 1367(d), she has 30 days in which to re-file her claims in state court.”).

If Goodman’s reading of the statute were true, the last lines of these federal judges’ opinions would read something like this:

The supplemental claim being subject to a one-year limitations period, plaintiff having commenced this action 60 days after the claim accrued, and the action having been

pending in this court for 161 days, IT IS HEREBY ORDERED that the claim is dismissed without prejudice and plaintiff has an 496 days (305+161+30) in which to re-file her action in state court.

The federal courts' dismissal orders are instead clear and to the point – the plaintiff has thirty additional days in which to restart the claim in state court.

D. The “Grace Period” Interpretation of § 1367(d) Effectuates Longstanding Policies Behind Statutes of Limitations.

Public policy favors the prompt prosecution of legal claims. *Wood v. Elling Corp.*, 572 P.2d 755, 758 (Cal. 1977); *Huang*, 532 S.E.2d at 308. “The primary purposes behind statutes of limitations are: 1) to encourage plaintiffs to pursue claims diligently, and 2) to protect defendants from having to defend against stale or fraudulent claims.” *Trentadue v. Buckler Lawn Sprinkler*, 738 N.W.2d 664, 683 (Mich. 2007) (quotation omitted).⁴

Other state appellate courts have concluded that the “grace period” interpretation – which allows up to thirty days after dismissal in which to re-commence the claim – furthers these policies. The California Court of Appeal in *Kolani* concluded that the “grace period” reading

affords a plaintiff a reasonable time within which to get the case refilled. At the same time, it upholds the policy of the statute of limitations, by *limiting* the time to refile, and thus assuring that claims will be *promptly* pursued in any subsequent action.

75 Cal. Rptr. at 261 (emphasis in original). In contrast, the North Carolina Court of

⁴ See also Brief of Amicus Curiae Minnesota Defense Lawyers Association at 4-8, discussing the interests and policies underlying statutes of limitations.

Appeals in *Huang* concluded that the reading of § 1367(d) that Goodman advances “is contrary to the policy in favor of prompt prosecution of legal claims.” 511 S.E.2d at 308.

E. The “Grace Period” Interpretation of § 1367(d) Is the Only Interpretation Supported by the Statute’s Legislative History.

As set forth in great detail in our opening brief (pp. 6-13), the thirty-day “grace period” interpretation of § 1367(d) is clearly and directly supported by the statute’s legislative history. The genesis of § 1367(d) was the 1969 legislative recommendation of the American Law Institute entitled *Study of the Division of Jurisdiction Between State and Federal Courts* (hereinafter “the ALI Study”).

Law professors Thomas Mengler, Stephen Burbank, and Thomas Rowe – who assisted Congress in drafting § 1367 in 1990 – wrote shortly after the enactment of the statute that the drafters modeled and mirrored § 1367(d) on a tolling provision proposed in the ALI Study. See Thomas M. Mengler et al., *Congress Accepts Supreme Court’s Invitation to Codify Supplemental Jurisdiction*, 74 *Judicature* 213, 216 n.28 (1991). The ALI Study (quoted in Appellant’s opening brief at p. 12) limits the “tolling” period to thirty days after dismissal by the federal court. See *id.* Therefore, the only interpretation supported by the legislative history is the “grace period” interpretation.

In his brief (pp. 15-17), Goodman stresses that the purpose of § 1367(d) was to alleviate a concern and hesitancy by federal courts to dismiss pendent claims for which the statute of limitations had run while the claims were in federal court. This is absolutely correct. Section 1367(d) “answers this dilemma by assuring that the claim shall have at least a 30-day period for the state action after the claim is dismissed by the

federal court.” David D. Siegel, *Changes in Federal Jurisdiction and Practice Under the New Judicial Improvements Act*, 133 F.R.D. 61, 68 (1991), quoted in *Juan v. N. Mariana Islands*, 6 N.M.I. 322, 327 (N. Mar. I. 2001).⁵ The thirty-day grace period was Congress’s measured response to this concern and guaranteed a party at least that amount of time to re-file its claim in state court. *Juan*, 6 N.M.I. at 327. Congress could not have addressed this concern by passing a statute that would have deducted from the limitations period the time the case was in federal court because this would result in a radical restructuring, if not an outright gutting, of statutes of limitations in all the fifty states.

F. The Paramount Authority Doctrine Does Not Save Goodman’s Claim.

The paramount authority doctrine originated in the context of adverse possession of real property, not limitations on civil suits for damages such as Goodman’s. See *St. Paul, M. & M. Ry. Co. v. Olson*, 87 Minn. 117, 91 N.W. 294 (1902). In *Olson*, this Court clearly stated that the purpose behind the doctrine was to not penalize a litigant whose ability to sue was blocked by a coequal branch of government:

It is also well settled that the courts have no right to invade the functions confided by law to other departments of the government, and interfere with the discharge of their duties in matters exclusively [e]ntrusted to their determination, so long as such matters are pending and undetermined.

Id. at 120, 116 N.W. at 296. The paramount authority doctrine applies, if at all, when “a person is prevented from exercising his legal remedy by some paramount authority.” *Id.* at 117, 116 N.W. at 294 (emphasis added).

⁵ *Juan* is a published case but is also available at 2001 WL 34883536.

Goodman's claim that his case "is practically on all fours with *Olson*" is bizarre. Goodman was in no way prevented from taking action on his MHRA claim after the removal to federal court. *See Holmgren v. Isaacson*, 104 Minn. 84, 86-87, 116 N.W. 205, 206 (1908) (holding *Olson* inapplicable where the plaintiff was at no time prevented by any paramount authority from exercising her legal remedy). In fact, the opposite was true: Goodman was actively litigating his MHRA claim during the time the federal court case was pending. Further, there being no diversity of citizenship, Goodman at any time could have dismissed his meritless FMLA claim and asked the federal court to dismiss the MHRA claim without prejudice.

The cases discussing the paramount authority that Goodman cites make clear that the doctrine applies only when extenuating and, in some cases, extraordinary circumstances prevent someone from bringing a lawsuit. *See, e.g., Hanger v. Abbott*, 73 U.S. (6 Wall.) 532 (1867) (U.S. Civil War); *Olson*, 87 Minn. 117, 91 N.W. 294 (special proceedings before federal General Land Office); *Langerman v. Casserly*, 107 Minn. 491, 12 N.W. 1086 (1909) (prior court restraining order).

In *Knipple v. Lipke*, this Court refused to hold that litigation delays tolled the statute of limitations under the paramount authority doctrine. 211 Minn. 238, 244, 300 N.W. 620, 623-24 (1941). There, the plaintiff needed the court to issue a stock-assessment order as a precondition to bringing a lawsuit to enforce stockholders' liability. *Id.* at 239, 300 N.W. at 621. This Court held that, while the appearance in the case of objecting stockholders caused numerous delays in the litigation, the trial court was nonetheless "open and legally capable of functioning" during the period of delay and if

the court unreasonably delayed in issuing the stock assessment, it was an error and not a basis for tolling the statute of limitations. *Id.* at 244, 300 N.W. at 623-24. The clear implication of *Knipple* is that tolling under the paramount authority doctrine is available only in cases in which the courts are not “open and legally capable for functioning.” *See id.*

Goodman had complete and unfettered access to the Minnesota courts in prosecuting his claim. This case does not involve a civil war or even an anti-lawsuit injunction. Goodman’s case proceeded in federal court the same way it would have in state court – with the same law governing his rights. There was nothing improper in Best Buy’s removal of the claim to federal court. The federal court had jurisdiction over the action as it was initially pleaded – Goodman himself could have filed his action in federal court had he so desired – and Best Buy was fully entitled to remove the action under 28 U.S.C. § 1441. Nor was there any unexpected or unreasonable delay in the federal court proceedings. Goodman was not disadvantaged in any way by the removal – especially since § 1367(d) worked to give him thirty days in which to re-file his MHRA claim.

Moreover, an absurd implication of Goodman’s paramount-authority argument is that it asserts that – with respect to a state-law claim for which there is no diversity of citizenship – a U.S. district court has “paramount authority” over the state courts of Minnesota. At best, the federal and state courts had concurrent jurisdiction over Goodman’s MHRA claim. It was precisely because the federal court had only supplemental jurisdiction over the MHRA claim that it dismissed the claim without prejudice.

Although this Court granted review on the limited question of whether the paramount authority doctrine tolls the statute of limitations, Goodman relies on foreign decisions involving tolling in cases of removal to federal court. (See Respondent's Br. at 43-45.) Not only are such cases beyond the scope of this appeal and not properly before this Court, they are not on point. The key case Goodman relies on – *Lucky Friday Silver-Lead Mines Co. v. Atlas Mining Co.*, 395 P.2d 477 (Idaho 1964) – involves the tolling of the defendant's time to answer the complaint, not the statute of limitations.

Finally, it is important to remember that Goodman did get the benefit of tolling in this case; however, he failed to re-commence his claim within 30 days after dismissal. The paramount authority doctrine does not save Goodman's claim.

CONCLUSION

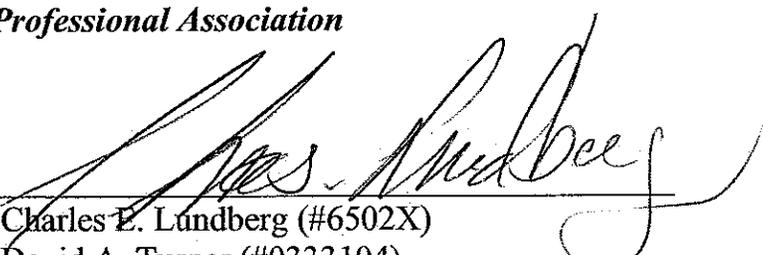
Because Goodman did not re-commence his MHRA claim in state court within the thirty days allowed by 28 U.S.C. § 1367(d), Best Buy respectfully requests that this Court reverse the judgment of the court of appeals and reinstate the judgment of the district court.

Respectfully submitted,

BASSFORD REMELE
A Professional Association

Dated: June 22, 2009

By


Charles E. Lundberg (#6502X)

David A. Turner (#0333104)

33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

Shalanda D. Ballard (#284361)

BEST BUY, INC.

7601 Penn Avenue South

Richfield, Minnesota 55423

Joseph G. Schmitt (#231447)

HALLELAND LEWIS NILAN & JOHNSON, P.A.

600 U.S. Bank Plaza South

220 South Sixth Street

Minneapolis, Minnesota 55402-4502

Attorneys for Appellant