SUPREME COURT STOPS CLOCK ON STATUTE OF LIMITATIONS FOR SOME STATE LAW CLAIMS

Just last week, the United States Supreme Court interpreted an important provision of the statute governing the supplemental jurisdiction of federal courts over state law claims in a fashion that suspended the ticking of the statute of limitations for such state law claims while the claims persist in federal court. *See Artis v. District of Columbia*, No. 16-460, ___ S. Ct. ____, 2018 U.S. LEXIS 762 (U.S. Jan. 22, 2018).

The statute governing the supplemental jurisdiction of federal courts provides in relevant part, "The period of limitations for any [state] claim [joined with a claim within federal-court competence] shall be tolled while the claim is pending [in federal court] 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) (explanatory alterations appearing in *Artis*, 2018 U.S. LEXIS 762, at *6). For the first time, the Supreme Court interpreted this provision as necessitating the complete stoppage of any erosion of the relevant state statute of limitations for any state law claim over which supplemental jurisdiction was exercised. *See id.* at *7 ("We hold that § 1367(d)'s instruction to "toll" a state limitations period means to hold it in abeyance, i.e., to stop the clock.").

The plaintiff in *Artis* was an employee of the government of the District of Columbia who, upon being fired from the District, brought a federal civil rights lawsuit in the D.C. federal district court along with one state law tort claim and two state law statutory claims. *Id.* at *10. She filed her lawsuit with almost two years remaining on the three-year statute of limitations applicable to the majority of her state law claims, but the case was in the federal court system for two-and-a-half years. *Id.* at *11. When the plaintiff's federal claims were dismissed on summary judgment, the District Court declined to exercise supplemental jurisdiction over the state law claims. *Id.* However, rather than avail herself of the 30 days permitted by 28 U.S.C. § 1367(d), the plaintiff refiled her state claims 59 days after the dismissal of the federal claims, which both the trial-level and the appellate-level state courts in D.C. concluded was improper on her part because section 1367 prescribed a "grace period" of which she did not take advantage, rather than a "stop the clock" measure. *See id.* at *11-13. [Footnote 12 of the opinion indicates the District of Columbia has no state-law equivalent to the 30-day period.]

The Supreme Court reversed and held the "stop the clock" interpretation to be the correct one, for several reasons: (1) the ordinary meaning of section 1367(d) is that of a tolling provision which suspends the statute of limitations; (2) it affords a plaintiff who initiates a federal lawsuit just before the expiration of the state statute of limitations "breathing space" to refile the state claims in state court; and (3) such an interpretation "does not present a serious constitutional problem" because it serves the general twin aims of statutes of limitation, namely preventing surprises to a defendant and barring a plaintiff who has slept on his rights, the second of which is especially served because (in the Court's view) the mere filing of the original lawsuit in federal court is proof that the plaintiff was not sleeping on her rights.

Although the District of Columbia did not have a "refiling period" longer than (or even separate from) section 1367(d), the question arises as to how such a situation will be handled in states that, like Colorado, do. Prior to the *Artis* opinion (and currently), Colorado state law had and has a longer "grace period" than section 1367(d), namely 90 days, within which a plaintiff could refile state claims in state court where the underlying federal claims were dismissed. *See* C.R.S. § 13-80-111. However, the logic and reasoning of *Artis* now suggest, if not outright direct, the following: (a) in a situation where the district court has original jurisdiction of the federal claim under 28 U.S.C. § 1331, defendants must be vigilant about calculation of the time remaining on the statute of limitations for each of the various state law claims a plaintiff may advance in federal court; (b) the time remaining on the relevant limitations period is now, at a minimum, tacked onto the date of dismissal of the federal claim or claims and may even be further extended if a plaintiff decides to appeal the dismissal to the Tenth Circuit or other relevant federal appellate court; and (c) the 90-day Colorado period, being longer than the 30-day period in 28 U.S.C. § 1367(d), is further tacked onto the end of the time remaining on the relevant limitations period, an approach anticipated by the Court in its opinion. *See Artis*, 2018 U.S. LEXIS 762, at *23 ("It may be that, in most cases, the state-law tolling period will not be longer than §1367(d)'s. But in some cases it undoubtedly will."). Prudent risk management personnel, both in-house and with risk pools or third-party administrators, would be well-served to keep careful track of all such deadlines, which by virtue of the reasoning in *Artis* are now each endowed with relevance.

As for the future of the *Artis* opinion and its likely progeny, one situation not even referenced by either the majority or the dissent is: what happens to the state law claims if a plaintiff decides to appeal the dismissal of the federal claim to the relevant federal circuit court of appeals? Although the *Artis* decision is so new that no state or federal court has had occasion to take up the question, the logic of *Artis* suggests the state statute of limitations would continue to be tolled throughout the pendency of the federal appellate proceedings, including even perhaps the time to file either a motion for reconsideration or a notice of appeal. *E.g., id.* at *9, *11 (noting the relevant point is when "the federal court relinquish[es] jurisdiction" without specificity as to which federal court is applicable). In the end, the practical effect of *Artis* is to pave a highway for civil rights plaintiffs with both federal claims and state claims over the former procedural hurdles to herding their state law claims into state court.

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