TESTIMONY OF DON MAURICE
OUTSIDE COUNSEL TO RMAI
IN OPPOSITION TO
SB 156

Civil Actions – Specialties – Statute of Limitations

February 3, 2022

My name is Don Maurice, and I am Outside Counsel to Receivables Management Association International. RMAI is a national nonprofit trade association representing over 590 businesses that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms. RMAI respectfully opposes SB 156 because it brings uncertainty to the law, makes multiple limitations periods subject to the same cause of action, and is harmful to consumers and businesses alike.

Statutes of limitations serve two purposes. First, "to ensure fairness to defendants by encouraging promptness in bringing claims, thus avoiding problems that may stem from delay, such as loss of evidence, fading of memory, and disappearance of witnesses."[1] Second, statutes of limitations are designed "to provide adequate time for diligent plaintiffs to file suit . . . and to serve societal purposes, including judicial economy."[2]

The statute of limitations that is the subject of the bill, Md. Courts and Judicial Proceedings Code Ann. § 5-102, was first enacted in 1957. In the ensuing 54 years, decisional law from Maryland Courts as well as federal and other state courts have interpreted the statute. None have identified the statute's failure to promote the two purposes outlined above.

The stated purpose behind the bill is to abrogate a recent decision by Maryland's highest court interpreting § 5-102(a)(3) that sets the limit on how long a judgment can be enforced for reasons that are not made clear. That decision, however, did nothing to change how § 5-102(a)(3) has been interpreted. As the Court of Appeals noted, its "interpretation is consistent with our application of the statute in [Maryland] case law," stretching as far back as 1883 interpreting prior iterations of the same statutory provision.[3]

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[1] *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 333, 635 A.2d 394 (1994).
[2] *Kumar v. Dhanda*, 426 Md. 185, 209, 43 A.3d 1029 (2012).
[3] *Cain v. Midland Funding, LLC*, 475 Md. 4, 43-44, 256 A.3d 765, 788 (2021), citing *Goodwin & Boone v. Choice Hotels Int'l, Inc.*, 346 Md. 153, 695 A.2d 168 (1997); *McMahan v. Dorchester Fertilizer Co.*, 184 Md. 155, 40 A.2d 313 (1944); *Johnson v. Foran*, 59 Md. 460, 461-63 (1883).

But SB 156 is not about enforcing judgments – instead, it is designed to undermine the two purposes of statutes of limitations: fairness to defendants and protecting diligent plaintiffs and societal interests.

For example, imagine a pedestrian who is seriously injured by a motor vehicle. The injured pedestrian suffers devasting trauma requiring continuing care for the rest of her life. She obtains a substantial judgment against the driver. The judgment is satisfied by executing on the driver's bank account allowing the injured pedestrian to secure her needed continuing care. Eleven years later, a relative of the driver appears, claiming the funds taken under the judgment were his and he sues the pedestrian for restitution. Today, that claim is subject to a three-year limitations period at most and would be dismissed. If SB 156 were enacted, it would allow the claim to continue in litigation. I don't imagine there will be many records or witnesses available 11 years later to allow the victim to easily defend against the claim. Bank records would be long gone and so would witnesses. The cost of defending an action with little documentary evidence or witness testimony would weigh heavily on our hypothetical victim and would likely influence her to settle.

And while this is an extreme example, it serves to underscore the path SB 156 is laying out. To be sure, SB 156 will shoehorn old, stale claims subject to shorter limitations periods into the longer limitations period applicable to enforcing judgment, merely because a judgment was involved. That is the absurd result which the Court of Appeals called out in *Cain* –

> It would be illogical to apply a strained interpretation to the specialties statute and hold that a 12-year limitations period applies to claims under the [Maryland Consumer Protection Act] for unlicensed collection activities that result in the entry of a judgment, but only apply a three-year limitations period to claims for similar conduct that by happenstance, does not result in the entry of a judgment.[4]

SB 156 would destroy the finality of judgments. It would subject judgment holders – not just financial institutions, but victims or fraud, abuse, and mental and bodily injury – to the threat of distant litigation, merely because they sought to collect a judgment that was lawfully obtained. It is absurd and poses significant harm to everyone, except the plaintiffs' attorneys and bad actors who would handsomely benefit.

Thank you for your time. I would be happy to answer any questions.

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For further information, contact David Reid, RMAI General Counsel, at dreid@rmaintl.org or (916) 482-2462 or Don Maurice, RMAI's outside counsel, at dmaurice@mauricewutscher.com or 908-237-4570.

[4] *Cain v. Midland Funding, LLC,* 475 Md. 4, 48, 256 A.3d 765, 790 (2021).

ABOUT DON MAURICE

Don Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a fellow of the American College of Consumer Financial Services Lawyers, a fellow of the American Bar Foundation and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association. He is admitted to the Bars of Massachusetts, New York, New Jersey, and the District of Columbia. He is editor of the Consumer Financial Services Blog (cfsblog.com).