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February 1, 2022

Chairman William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 E. Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 156 - Civil Actions - Specialties - Statute of Limitations – **OPPOSE**

Dear Chairman Smith, Vice Chairman Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

I am a Maryland attorney, and have practiced here for more than 40 years. I represent Encore Capital Group and its wholly owned subsidiaries, including Midland Credit Management and Midland Funding (collectively "Encore"). I write on Encore's behalf, and in conjunction with the written testimony of Ms. Gibson. I respectfully ask that you allow me to supplement Ms. Gibson's letter with my legal analysis. For all of the reasons stated below, I suggest that the Committee should not approve the proposed Bill.

SB 156 would extend the statute of limitations for claims relating to or concerning a judgment, from three to 12 years. This is an extraordinary change in the law, without precedent in the history of this State.

The first statute setting limitations on actions in Maryland was originally passed in 1715. It adopted the English statute of limitations - set in 1623 - in most respects. The primary difference was that the English statute provided for five years to bring an action, while the Maryland statute set three years as the appropriate time period. *See*, Maryland Statutes of Limitation – McMahon v. Dorchester Fertilizing Co., Maryland Law Review, Volume Eight, Issue Four at pages 296–297.

This three-year statute of limitations has been codified many times. The current version has long been found in the Courts and Judicial Proceedings Article at Section 5–101. It provides a general catch-all period of limitation:

> "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."

The statute of limitations reflects a legislative judgment of what is deemed an adequate period of time within which a person of ordinary diligence should bring her action. *Walco Corporation v. Burger Chef Syst.*, 281 Md. 207 (1977). The statute of limitation strikes a balance between protecting the interest of a plaintiff that pursues her claim diligently, while allowing repose to a potential defendant. *Doe v. Archdiocese of Washington*, 114 Md. App. 169 (1997). For hundreds of years, the General Assembly has considered three years a sufficient amount of time for a diligent plaintiff to marshal her evidence, consult counsel and bring her claim. The three-year period of limitations applies to plaintiffs in many different circumstances, including many plaintiffs who may be severely injured or damaged. For example, the three-year statute of limitation applies to persons who have suffered grievous personal injuries, who have been injured by defective products, who have been defrauded, or whose contract has been breached.

As the Court of Appeals has explained on many occasions, although the statute of limitations should allow plaintiffs sufficient time to research, develop and file their clams, a competing consideration is that there must be fairness and finality for defendants. That is, there comes a time when a defendant ought to be secure in her reasonable expectation that the slate has been wiped clean of ancient obligations, and she ought not to be called on to resist a claim when evidence has been lost, memories have faded, and witnesses have disappeared. *Doughty v. Prettyman*, 219 Md. 83 (1959); *Feldman v. Granger*, 255 Md. 288 (1969).

SB 156 would set aside this settled law and allow a plaintiff who claims to have been injured in connection with a judgment 12 years to bring her suit. There is no argument here that such a plaintiff could not bring her suit in the normal three-year period of limitations. Nor could there be, since every plaintiff who claims to be injured as a result of a judgment, is undoubtedly aware of her injury at or around the entry of the judgment. No judgment can be entered against a party unless that party has been served with a complaint, and given notice of its opportunity to defend. If that party claims that there was some illegal action that was taken that resulted in the judgment being entered against him or her, the ordinary three-year statute of limitation provides that party with more than enough time to consult a lawyer and bring the claim.

The proponents of SB 156 argue that a judgment creditor has 12 years to ***enforce her judgment***, and therefore a judgment debtor should have 12 years to ***bring a claim*** that relates to the judgment. The proponents say this is fairness, or parity. But the proponents of the bill mistakenly attempt to equate things that are not the same, and ignore the fact that parity already exists between creditors and debtors.

Creditors have three years to file a claim against any party that has defaulted on a debt. Similarly, any party who claims that it has been injured by another party obtaining judgment against it, has three years to bring that claim. The key here is that the three-year period applies equally to all ***claims***: ***claims*** brought for alleged defaults, and ***claims*** brought for alleged violations of the Consumer Protection Act or the Maryland Debt Collection Practices Act.

However, once a claim has been turned into a judgment, enforcement of that judgment is governed by a different statute of limitations. Since 1715, Maryland has granted judgment creditors 12 years to enforce their judgments. Thus, a judgment has long been considered to be a "specialty" and subject to a different period of limitations. Like the ordinary statute of limitations, the statute of limitations for specialties has been codified multiple times. It is found today in Section 5-102 of the Courts and Judicial Proceedings Article. It provides that an action on one of a number of identified specialties shall be filed within 12 years after the cause of action accrues or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner. One of the identified specialties is "judgment."

A judgment differs from a claim in significant ways. A claim is a mere allegation. It must be supported by sufficient proof, and it does not grant its proponent any rights other than the right to bring his or her case. A judgment, on the other hand, constitutes a decision or a verdict by a court of proper jurisdiction that the claim is valid and it sets the amount of damages to be paid for that claim. Thus, claims and judgments are by no means interchangeable. A judgment represents a claim that has been validated by a court.

Because judgments and claims are different, they have different limitation periods associated with them. The ordinary three-year statue limitation applies to claims, and governs when a claim may be brought. The specialties limitation period for judgments has for a very long time been set at 12 years, because that is the period within which the judgment may be enforced, unless it is extended. As the Court of Appeals noted in *Cain v. Midland Funding*, this period of time has benefits for both judgment debtors and judgment creditors. Judgment creditors are given a longer period of time to enforce the judgment, which allows some "breathing room" for judgment creditors.

Most important, the judgment replaces the claim brought by the plaintiff. That party no longer needs to preserve its evidence; the judgment stands as its right to collect, and no further proof is required. Consequently, judgment creditors have no obligation to preserve evidence any longer, and frequently will not do so. The bill proposed here will alter that careful balance significantly to the detriment of judgment creditors. If a judgment debtor is given 12 years to bring its claim about deficiencies in the judgment, most judgment creditors will not have preserved their evidence or defenses to that claim. Like any other defendant, judgment creditors are entitled to repose, and there is no basis for arguing that these plaintiffs need more than the ordinary period of time within which to bring their claims.

Thus, it is wrong to equate the amount of time necessary to bring a claim, with the amount of time allowed to enforce a judgment. Claims (and defenses) require proof, and proof can become unavailable because of the passage of time. A judgment, on the other hand, requires no proof; it stands by itself as a declaration of a court that the claim was valid. It is a mistake therefore to equate the two, and the proponents of the bill are in error when they argue that the time period to bring a claim about a judgment should be the same as the time period to enforce a judgment.

As detailed in Ms. Gibson's letter, with which I agree, there are many additional reasons why the Committee should reject this bill. But, I believe the principal reason the bill should be rejected is that it is based on a faulty premise that the time period for judgment debtors to bring their claims should be equated with the time period the General Assembly has long allowed for the enforcement of judgments.

Sincerely,

James P. Ulwick