The Tolling Effect of the Federal Supplemental-Jurisdiction Statute

In Brief

On July 7, 2014, the California Supreme Court issued a unanimous opinion in City of Los Angeles v. County of Kern, holding the federal supplemental-jurisdiction statute to provide only a "grace period" of thirty days to refile a supplemental claim in state court after dismissal by a federal court. Under this holding, if a plaintiff refiles the claim in state court more than thirty days after a federal dismissal, the plaintiff could be barred by the state statute of limitations.

Background

Although federal courts are courts of limited jurisdiction, they may hear state claims under circumstances allowed by the U.S. Constitution and federal statute. One such federal statute is the federal supplemental-jurisdiction statute, which allows a federal court to hear a state claim that otherwise would not qualify for federal jurisdiction if the state claim is closely related to another claim that does qualify for federal jurisdiction.

Recognizing that this jurisdictional grant could sweep into federal court state claims that are better suited to adjudication in state court, Congress granted federal courts discretion to decline to exercise the supplemental jurisdiction authorized by the statute. Thus, if a state claim presents novel or complicated issues of state law, or if all other claims have been resolved, a federal court may decide to dismiss the state claim to allow state courts the opportunity to resolve it. If the case was filed in federal court originally and the federal court declines to exercise supplemental jurisdiction over a state claim, then the claimant must refile the state claim anew in state court.

Most claims must be filed within a certain amount of time or risk being barred. These limitations periods incentivize plaintiffs to bring claims in a timely fashion, give defendants repose, and help ensure that evidence and testimony does not

become stale.[1. *Developments in the Law: Statutes of Limitations*, 63 Harv. L. Rev. 1177 (1950).]

However, the time during which a state claim is pending in federal court under the supplemental-jurisdiction statute can be months or even years. If the claim's limitation period continues to run during that time, a federal court could be put in the difficult position of decide between keeping jurisdiction over a claim that deserves to be in state court and dismissing the claim that may be barred from refiling by the limitations period. In addition, because the plaintiff timely filed the claim in *some* court, the rationale for the limitations period barring refiling in state court is less compelling.

Accordingly, in the supplemental-jurisdiction statute, Congress provided that the limitations period of a supplemental-jurisdiction claim is "tolled while the claim is pending" in the federal court "and for a period of 30 days after it is dismissed," absent a state rule extending the period still further.

California courts have interpreted the tolling provision of the statute in two ways when the state limitations period otherwise would have expired during the pendency of the federal action. Some construed the statute to stop the running of the limitations period entirely while it is pending in federal court. Under this "suspension" view, if a claim with one year left in the limitations period is filed in federal court but is dismissed under the supplemental-jurisdiction statute two years later, the plaintiff has one year and thirty days to refile the claim in state court.

Other California courts construed the statute to give only a grace period of thirty days after dismissal for refiling. Under this "grace period" view, a dismissed claim whose limitations period otherwise would have expired during the federal action would receive only thirty days for refiling in state court. Thus, in the example above, the plaintiff would have only thirty days to refile the claim.[2. For a claim whose limitations period does *not* expire during the federal action, three possibilities arise: (1) the limitations period stops running at the time of filing and begins again thirty days after dismissal; (2) the limitations period continues to run during the federal action and has whatever time left at dismissal, but no less than thirty days; (3) the limitation period at the time of dismissal becomes thirty days regardless of how

much longer is left under the state limitations period.]

The U.S. Supreme Court has not resolved the issue.

The California Supreme Court Weighs In

In June 2006, voters in Kern County approved a ban on the use of biosolids as fertilizer. The City of Los Angeles sued in federal court, alleging that the ban violated the federal Constitution and was preempted by state law. The preemption claim, a state claim, was joined under the federal supplemental-jurisdiction statute. The district court granted summary judgment on the federal claims and entered judgment in Los Angeles's favor, but the Ninth Circuit reversed, ordered dismissal of the federal claims on standing grounds, and remanded for consideration of the state preemption claim. On remand, the district court declined to exercise supplemental jurisdiction over the remaining state preemption claim, citing the novel and complex nature of the issue.

On January 26, 2011, seventy-eight days after dismissal, Los Angeles refiled the entire suit in California state court. The trial court rejected Kern's argument that the suit was time-barred under section 1367(d) and granted Los Angeles a preliminary injunction. The Court of Appeal affirmed,[3. 154 Cal. Rptr. 3d 122 (Cal. Ct. App. 2013)] and Kern appealed to the California Supreme Court. The California Supreme Court adopted the "grace period" interpretation and held that, accordingly, Los Angeles's claims were time barred.

The court began by acknowledging that the most natural reading of the provision that the limitations period "shall be tolled while the claim is pending" is that the period's running is suspended during the federal-court pendency and begins to run again thirty days after the federal dismissal. Effectively, the court admitted, the bare text supports the "suspension" view.

However, the court did not stop with the bare text. Taking a legislative-realism view, the court reasoned that its own natural reading of the text might not be what Congress intended. Further, the court recognized that *what* the statute tolls—the "period of limitations"—is ambiguous: the statute could suspend either the running or the expiration of the limitations period.

Given these uncertainties, the court turned to other indications of statutory meaning, including legislative history. In the legislative history, the court found evidence that the tolling provision was borrowed from an American Law Institute proposal that seemed to contemplate a grace period. Further, the court opined, the purpose of the federal tolling provision is to preserve *claims* rather than their full limitations periods. These indications from the legislative history supported the "grace period" view rather than the "suspension" view of the federal tolling provision.

The court also considered federalism implications. The supplemental-jurisdiction statute does preempt state limitations law. But the "grace period" interpretation preempts state law less than the suspension interpretation.

For these reasons, the California Supreme Court adopted the "grace period" approach and held Los Angeles's claims untimely because their limitations periods expired during the pendency of the federal action and Los Angeles did not refile them within thirty days of the federal dismissal.

Commentary and Reflections

Kern is an important statement on the law of supplemental jurisdiction, both in its reasoning and in its result. The opinion's reasoning evinces an atextualist bent; it is primarily intentionalist—an attempt to divine the intent of Congress. As the court indicated, there is precedent supporting this approach, even from the U.S. Supreme Court. However, the U.S. Supreme Court's interpretative approach has trended more toward textualist and originalist methodologies in later years.[4. *See* Dawn Johnsen, Windsor*,* Shelby County*, and the Demise of Originalism: A Personal Account*, 89 Ind. L.J. 3, 6-7 (2014) (recounting current justices' self-descriptions of originalism). By contrast, one of the justices on the California Supreme Court has written that the California Supreme Court "has no self-avowed textualists or originalists comparable to Justice Scalia or Justice Thomas." Goodwin Liu, *How the California Supreme Court Actually Works: A Reply to Professor Bussel*, 61 UCLA L. Rev. 1246, 1261 (2014).]

Further, the originalist position has been one of original *meaning*, not original *intent*.[5. *See* Jack M. Balkin, *The New Originalism and the Uses of History*, 82

Fordham L. Rev. 641 (2013).] It is, however, unclear whether a state court interpreting a federal statute is required to apply the same interpretative methodology that the U.S. Supreme Court applies.[6. *See* Abbe Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 Yale L.J. 1898 (2011).]

But recognizing that *Kern*'s interpretive methodology and reasoning is subject to criticism does not mean it reached the wrong result. The "grace period" approach is sensible for two additional reasons that the California Supreme Court did not consider. The first is that a claimant's original filing in federal court suggests refiling within thirty days of a federal dismissal should be easy. Generally speaking, pleading standards do not differ significantly between federal and state courts, and the claimant or her lawyer has done sufficient due diligence to be able to file and litigate the claim already. If refiling is likely to be more complicated for unusual reasons, then the claimant can choose to file in state court originally (thereby avoiding the federal tolling provision altogether if the case is removed to federal court) or make appropriate preparations for refiling while the case is pending in federal court.

The second reason is that a grace period is particularly simple and easy to calculate and calendar. Tolling calculations can be messy and confusing. By contrast, a rule that refiling must take place within thirty days of the federal dismissal is clear and easy to apply.

Kern creates a split among state supreme courts as to the proper interpretation of the federal tolling provision. *Kern* governs all California state courts confronting the same issue in the future, but it does not control any other state's courts or any federal courts. And, the U.S. Supreme Court can abrogate *Kern* by reaching a different interpretation of the statute. Indeed, *Kern*'s creation of a split, the importance of the issue, and the real interpretive difficulties the statute presents, all make it likely that the U.S. Supreme Court will grant certiorari in an appropriate case to resolve the issue definitively.

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