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Andrew Burnett

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RECENT DEVELOPMENT

PHILIP MORRIS USA, INC. V. CHRISTENSEN: A CLASS ACTION CLAIM CAN TOLL THE STATUTE OF LIMITATIONS FOR INDIVIDUAL, UNNAMED MEMBERS OF THE CLASS AS LONG AS THE DEFENDANT IS PROVIDED WITH SUFFICIENT NOTICE.

By: Andrew Burnett

In a matter of first impression, the Court of Appeals of Maryland held that a class action claim can toll the statute of limitations for individual unnamed members of the class as long as the defendant is provided with sufficient notice. *Philip Morris USA, Inc. v. Christensen*, 394 Md. 227, 905 A.2d 340 (2006). More specifically, the defendant must have notice of the “substantive claims” asserted against them, as well as the number and “generic identities” of possible plaintiffs. *Id.* at 256, 905 A.2d at 357. The second issue the Court addressed is whether granting summary judgment was appropriate for petitioner.

On August 13, 2001, Nona Christensen (“Ms. Christensen”) in her capacity as the representative of her deceased husband, Russell Christensen (“Mr. Christensen”), brought a survival and wrongful death action against Philip Morris USA, Inc. (“Philip Morris”) and other manufacturers of cigarette products. The action was also brought against Giant Food, LLC (“Giant”) and others involved in the distribution and sale of cigarette products. With the exception of Giant, the defendants in the case at bar, (“petitioners”), were in a prior class action suit filed in the Circuit Court for Baltimore City. *Christensen*, 394 Md. at 232, 905 A.2d at 343 (citing *Philip Morris USA, Inc. v. Angeletti*, 358 Md. 689, 752 A.2d 200 (2000)).

The claims against the petitioners in the class action were asserted on behalf of all Maryland residents who suffered from physical injuries or disease caused by tobacco products, and who pled nicotine addiction as their injury. Although Mr. Christensen was not a named plaintiff, he did provide an affidavit on behalf of the named plaintiffs, discussing his smoking habit and his lung cancer. The circuit court issued a Class Certification Order, but the Court of Appeals of

Maryland, on June 15, 2000, issued a writ of mandamus directing the circuit court to vacate its Class Certification Order.

As a result, Ms. Christensen filed the action at issue here on behalf of her husband. On September 4, 2003, petitioners moved for summary judgment arguing that all of Ms. Christensen's claims were barred by the statute of limitations. The circuit court granted the motion, rejecting the argument that the statute of limitations was tolled by the pendency of the *Philip Morris* class action. The Court of Special Appeals of Maryland reversed the judgment as to all petitioners except Giant, which was remanded to determine when Mr. Christensen was put on inquiry notice of his claims against Giant and whether summary judgment would be proper. Philip Morris petitioned the Court of Appeals of Maryland for a writ of certiorari, which was granted.

Upon granting certiorari, the Court considered two issues. First, in a matter of first impression, the Court sought to determine whether the statute of limitations for the filing of individual suits is tolled by the pendency of a class action. *Christensen*, 394 Md. at 231, 905 A.2d at 341.

In rejecting petitioner's argument that the Court's precedent precluded judicial recognition of a tolling exception such as those recognized by the United States Supreme Court in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 94 S.Ct. 756 (1974), the Court of Appeals of Maryland pointed to *Bertonazzi v. Hillman*, 241 Md. 361, 216 A.2d 723 (1966). *Christensen*, 394 Md. at 235-37, 905 A.2d at 345-46. In *Bertonazzi*, the Court determined the pendency of an action filed in an incorrect venue tolled the statute of limitations for claims against a decedent's estate. *Christensen*, 394 Md. at 236, 905 A.2d at 345. The Court in *Bertonazzi* stated that even though time would be extended, the purpose of the statute of limitations was still being served. *Christensen*, 394 Md. at 238, 905 A.2d at 346-47. Defendants would still be assured that claims asserted after evidence had disappeared would be unjust. *Id.*

The Court in *Bertonazzi* went on to note that two conditions must be satisfied to toll the statute of limitations. *Christensen*, 394 Md. at 238, 905 A.2d at 347. First, there must be persuasive authority or policy considerations supporting the tolling exception. *Id.* Second, the tolling exception is consistent with the purposes of statutes of limitations. *Id.* Although the Court of Appeals of Maryland has previously analyzed cases under the *Bertonazzi* two-part test, the Court in the instant case sought to clarify the circumstances under which a

tolling exception would be applicable. *Christensen*, 394 Md. 227, 905 A.2d 340.

When a Maryland rule is patterned after a federal rule, the Court of Appeals of Maryland has always found federal case law persuasive. *Id.* at 253, 905 A.2d at 355-56. In particular, Maryland Rule 2-231 is modeled after Federal Rule of Civil Procedure 23. *Christensen*, 394 Md. at 253, 905 A.2d at 356. As such, the Court found the reasoning in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756 (1974) particularly persuasive. *Christensen*, 394 Md. at 253, 905 A.2d at 356.

In *American Pipe*, the United States Supreme Court held that the statute of limitations was tolled by the pendency of the putative class action and the statute of limitations does not resume until class certification is denied. *Christensen*, 394 Md. at 253, 905 A.2d at 356 (citing *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 94 S.Ct. 756 (1974)). The Court reasoned tolling was necessary in order to promote judicial efficiency and economy. *Christensen*, 394 Md. at 253-54, 905 A.2d at 356. The tolling exception protects individuals involved in class action claims and eliminates the need to file separately. *Id.* However, *American Pipe* pertained to members of a putative class who were making motions to intervene after class certification was denied. *Christensen*, 394 Md. at 248, 905 A.2d at 354. This is different than the case at bar which involves a subsequent claim by Ms. Christensen as an individual member and not as an intervener. *Id.*

As such, the Court in the case at hand also relied on *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 103 S.Ct. 2392 (1983). *Christensen*, 394 Md. at 249, 905 A.2d at 353. The Court in *Crown, Cork & Seal*, held that the statute of limitations is tolled for the individual claims of class members in the same way the tolling in *American Pipe* applied for intervenors. *Christensen*, 394 Md. at 254-55, 905 A.2d at 356-57. Refusing to extend the rule to individual members could shorten the time a class member has to file an action if certification is denied, whereby claimants are left without an action in which to intervene. *Id.*

The Court of Appeals of Maryland went beyond the requirements set forth in *American Pipe*, and held that a plaintiff must demonstrate that the defendants are notified of “not only the substantive claims being brought, but also of the number and generic identities of the potential plaintiffs.” *Christensen*, 394 Md. at 256, 905 A.2d at 357 (citing *American Pipe*, 414 U.S. at 555, 94 S.Ct. at 767). The Court emphasized that to benefit from class action tolling, the individual suit

must “concern the same evidence, memories, and witnesses as the subject matter of the original class suit.” *Christensen*, 394 Md. at 256, 905 A.2d at 357 (quoting *American Pipe*, 414 U.S. at 562, 94 S.Ct. at 770 (Blackmun, J., concurring)).

Petitioners argued that even if the Court recognizes a tolling exception in class action suits, it should, based on a lack of commonality, make an exception for causes of action arising out of a “mass-tort” incident. *Christensen*, 394 Md. at 257, 905 A.2d at 358-59. However, the Court rejected this argument by noting that a lack of commonality does not necessarily mean the defendant had a lack of notice of the substantive claims of every putative class member. *Id.* Therefore, the Court stated there is no reason to have a *per se* exception for mass-tort cases. *Id.*

The only further question to be decided was whether Philip Morris received adequate notice of Ms. Christensen’s claims. *Id.* at 266, 905 A.2d at 363. The Court of Appeals of Maryland held that the petitioners had adequate notice because the class action complaint defined the plaintiff class as “all Maryland residents who have suffered or continue to suffer from physical injuries or disease caused by smoking cigarettes or using smokeless tobacco . . .” *Christensen*, 394 Md. at 266, 905 A.2d at 364 (quoting *Philip Morris*, 358 Md. at 700, 752 A.2d at 206). Therefore, because Mr. Christensen also provided an affidavit and testified at a deposition regarding his history of smoking and lung cancer, “there was no question” that Philip Morris had adequate notice of his claims. *Christensen*, 394 Md. at 266, 905 A.2d at 364.

The second issue the Court addressed is whether the circuit court was correct when it granted summary judgment in favor of Giant. *Id.* at 268, 905 A.2d at 365. Giant was not a defendant in the class action against Philip Morris, and therefore, class action tolling was not applicable. *Id.* at 268, 905 A.2d at 356. However, there is a dispute between the parties regarding the timing of Mr. Christensen’s cause of action arising from his lung cancer. *Id.* Accordingly, the Court remanded the issue to the circuit court for reconsideration in light of *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 904 A.2d 511 (2006). *Id.* at 269, 905 A.2d at 364. The Court in *Georgia-Pacific* held, with respect to asbestos, a claimant should have knowledge of a claim when he has been diagnosed with mesothelioma and the claimant has knowledge of exposure to asbestos. *Christensen*, 394 Md. at 269, 905 A.2d at 365. As such, the trial court will have to make factual determinations consistent with these factors to determine if Ms.

Christensen has a cause of action against Giant arising from Mr. Christensen's use of tobacco products. *Id.*

Maryland courts now recognize the pendency of a class action suit will toll the statute of limitations for putative class members so long as the claims are the same and the defendant has adequate notice of the putative class member who is benefiting from the tolling exception. Therefore, if class certification is denied, individual members may bring a separate action without being barred by the statute of limitations, so long as the claim is timely filed after the denial of certification.