The U.S. Supreme Court's "Stop The Clock" Supplemental Jurisdiction Tolling Decision Alters Pennsylvania And New Jersey Time Limits For Filing Cases Transferred From Federal To State Court

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ABSTRACT

In 2018, in the case of Artis *v.* District of Columbia,[3] *the U.S. Supreme Court held that rather than merely providing a thirty-day grace period for refiling state law claims brought alongside federal claims, the federal supplemental jurisdiction statute stops the clock from running on such claims while the federal action is pending. This article examines the likely effects of that decision on Pennsylvania, where there has been a complicated and cumbersome transfer procedure, and New Jersey which had previously followed the grace-period approach.*

I. THE U.S. SUPREME COURT'S DECISION IN *ARTIS* v. *DISTRICT OF COLUMBIA*

The federal Supplemental Jurisdiction statute, 28 U.S.C. §1367, enables federal district courts to entertain claims not otherwise within their adjudicatory authority

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3. *Artis* v. *District of Columbia*, 138 S.Ct. 594 (2018).

when those claims "are so related to claims . . . within [federal-court competence] that they form part of the same case or controversy."[4] Included within this supplemental jurisdiction are state claims brought along with federal claims arising from the same episode. When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss all related state claims, as well.[5] A district court may also dismiss the related state claims if there is a good reason to decline jurisdiction.[6] *Artis* addressed the time within which state claims so dismissed may be refiled in state court.

Section 1367(d) relevantly provides:

> 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.[7]

"Tolled" means the state limitations period was suspended during the pendency of the federal suit, in *in addition*, there was a 30-day grace period.

The plaintiff petitioner, Stephanie Artis, originally filed a lawsuit in the United States District Court for the District of Columbia against her former employer, the District of Columbia, alleging employment discrimination. Her complaint asserted four separate causes of action: Title VII of the federal Civil Rights Act of 1964 and three claims under District of Columbia law.[8] For purposes of the federal supplemental jurisdiction statute, the District of Columbia is treated as a state.[9] On June 27, 2014, the District Court granted the District of Columbia's motion for summary judgment on the Title VII claim and declined to exercise supplemental jurisdiction over her remaining state-law claims.[10] Fifty-nine days later, Artis refiled her state-law claims in the D.C. Superior Court. That court dismissed the case on the basis that it was filed 29 days late, and the D.C. Court of Appeals affirmed that dismissal.[11]

In the Supreme Court, Artis argued that her filing was timely because the word "tolled" means the state limitations period was suspended during the pendency of the federal suit, and *in addition*, there was a 30-day grace period. The District of Columbia and the 23 *amici* state attorneys general, including the attorney general of Pennsylvania, argued that "tolled" means the state limitations period continues to run and may expire while the state claim is pending in federal court, but a plaintiff is accorded a grace period of 30 days after dismissal from federal court to refile in state court.

The Supreme Court split 5-4 on this issue, with Justice Ginsburg writing the Court's majority opinion. She articulated the two interpretations as follows:

> Does the word "tolled," as used in §1367(d), mean the state limitations period is suspended during the pendency of the federal suit; or does "tolled" mean that, although the state limitations period continues to run, a plaintiff is accorded a grace period of 30 days to refile in state court post dismissal of the federal case?

4. 28 U.S.C.A. §1367(a).
5. *See* 28 U.S.C.A. §1367(c)(3).
6. *See* 28 U.S.C.A. §1367(c)(1), (2), and (4).
7. 28 U.S.C.A. §1367(d), (emphasis added).
8. *Artis* v. *District of Columbia*, 51 F.Supp. 3d 135 (D.D.C. 2014).
9. 28 U.S.C.A. §1367(e).
10. *Artis, supra* note 3, at 599.
11. *Artis* v. *District of Columbia*, 135 A.3d 334 (DC. App. 2016).

> Petitioner urges the first, or stop-the-clock, reading. Respondent urges, and the District of Columbia Court of Appeals adopted, the second, or grace-period, reading.[12]

The Court's majority adopted the "stop-the-clock" interpretation:

> 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. Because the D.C. Court of Appeals held that §1367(d) did not stop the D.C. Code's limitations clock, but merely provided a 30–day grace period for refiling in D.C. Superior Court, we reverse the D.C. Court of Appeals' judgment.[13]

Thus, following a jurisdictional dismissal of state claims from federal court, a plaintiff in this situation now has the amount of time that remained on the limitations period at the time the federal proceeding was commenced, plus 30 days, to refile in state court.

By way of example, the stop-the-clock approach means that if a state law cause of action was commenced in federal court one year before the expiration of the state law statute of limitations, the plaintiff would have one year plus 30 days (or a longer period if provided by state law) to refile state law claims in state court after a jurisdictional dismissal *regardless* of how long the action was pending in the federal court. Under the grace period interpretation urged by Pennsylvania and other *amici*, the plaintiff would have only the unexpired portion of the year provided under the state limitations period, if any, plus a 30 day grace period, to refile in state court.

Now that the stop-the-clock rule on tolling limitations periods has been established by *Artis*, Pennsylvania and New Jersey procedures for transferring cases from federal to state court following jurisdictional dismissals will necessarily change.

II. *ARTIS* ALTERS THE TIME PENNSYLVANIA LAW PROVIDES TO PARTIES TRANSFERRING FEDERAL CASES DISMISSED FOR LACK OF JURISDICTION

An *amicus* brief in *Artis* by the National Conference of State Legislatures and other associations of government entities[14] noted that 39 states already augment their limitations periods with tolling statutes that preserve claims that were timely commenced in federal court. Most of these states have straightforward tolling provisions stating that, if a cause fails other than on the merits (or for want of prosecution in some states), it may be recommenced within a given period of time, most often six or twelve months.[15] Pennsylvania is one of those 39 states, but its tolling statute is unusual. It is one of only three states that have tolling provisions applicable to federal-to-state transfers that do not provide a specified period in which dismissed claims may be refiled.

A. The Pennsylvania Transfer Statute, 42 Pa.C.S. §5103, Requires "Prompt" Filing In State Court

The Pennsylvania tolling statute takes the form of a "transfer" statute that allows a party to transfer a case erroneously brought in the wrong court to the right one.[16]

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12. *Artis, supra* note 3, at 598.
13. *Id.*
14. *Artis* v. *District of Columbia*, 2017 WL 3588731 (U.S. 2017) (Appellate Brief).
15. *Id.*, at 1A.
16. The Pennsylvania transfer statute, 42 Pa.C.S.A. §5103(a) and (b), provides:

> (a) General rule.—If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court

Its purpose is to avoid the loss of claims due to the statute of limitations expiring on a party that filed a timely action in the wrong court or erred concerning federal jurisdiction.[17] Subsection 5103(a) requires state tribunals to transfer cases mistakenly filed in the wrong state court, while subsection (b) permits plaintiffs to transfer to a state court cases dismissed by a federal court for lack of jurisdiction. The transferred case retains in state court its original federal court filing date.

Section 5103(b)(2) requires the plaintiff to file a certified transcript of the final judgment of the federal court and the "related" pleadings in a Pennsylvania court. The transfer statute originally contemplated a process in which an erroneous filing would be corrected administratively by the original court transferring the action to the correct court. That is still the practice when cases are mistakenly filed in the wrong state court. The current amended statute places the onus on plaintiffs to refile in state court claims dismissed from federal court, with certified copies of the final order and all related federal pleadings.[18] The current amendment was adopted in 1982 when the constitutionality of a prior version of the statute requiring federal courts to transfer rather than dismiss actions was questioned.[19]

> or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.
>
> (b) Federal cases.—
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> (1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).
>
> (2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth. Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

17. *Chris Falcone, Inc.* v. *Insurance Company of State of Pennsylvania*, 907 A.2d 631, 637 (Pa. Super. 2006).

18. *In re Shuman*, 277 B.R. 638, 655 n.9 (Bankr. E.D. Pa. 2001) ("Once a federal court has determined that subject matter jurisdiction is absent, then the court is not responsible for the transfer of the case to state court. State law provides for the litigant to take those steps."); *Gamelli, Inc.* v. *Peco Energy Company*, 2000 WL 875700, at *1 (E.D. Pa. June 20, 2000) ("The district court will take no further action following the dismissal, leaving the mechanics of transfer to the litigants.")

19. In *Weaver* v. *Marine Bank*, 683 F.2d 744, 747–48 (3d Cir. 1982), the Third Circuit held that the state could authorize transfer of cases even though Congress had not spoken on the issue by analogy to procedures adopted by states for certifying questions of state law. A dissent challenged the constitutionality of a state statute directing federal court action. *Id*. at 751-52. The following year the dissenting judge in *Weaver* wrote the opinion in *McLaughlin* v. *Arco Polymers, Inc*., 721 F.2d 426, 430–31 (3d Cir. 1983), reversing a district court which, upon finding no diversity, transferred the action to a Pennsylvania state court based on 42 Pa.C.S. §5103(b) and *Weaver. Id*. at 428. The court found no authority for transferring a case originally filed in federal to state court. *Id*. at 429. As to the earlier version of the transfer statute, the *McLaughlin* court noted that "[a]fter the district court entered its order of transfer in this case, the Pennsylvania legislature amended the relevant transfer statute to permit the preservation of claims filed in federal court without the necessity of any transfer order." *Id*. at 430. From the vantage of the federal courts, "[n]o federalism problem exists because the transfer is effectuated by the plaintiff's own actions under §5103(b)(2)." *Electric Lab Supply Company* v. *Cullen*, 782 F.Supp. 1016, 1021 (E.D. Pa. 1991) (citations omitted).

As section 5103 does not specify a time period for perfecting the transfer from federal court, Pennsylvania caselaw has placed an undefined "promptness" duty on plaintiffs:

> [F]or benefit of both bench and bar, we now emphasize that in order to protect the timeliness of an action under 42 Pa.C.S.A. §5103, a litigant, upon having his case dismissed in federal court for lack of jurisdiction, must promptly file a certified transcript of the final judgment of the federal court and, at the same time, a certified transcript of the pleadings from the federal action. The litigant shall not file new pleadings in state court.[20]

B. Pennsylvania Litigants Have Repeatedly Lost Claims Timely Commenced In Federal Court Due To Inadvertent Failure To Satisfy The Express And Judicially-Implied Requirements Of The Transfer Statute

Despite the warning, subsequent litigants have repeatedly run afoul of both the implicit promptness requirement and the explicit, but burdensome and widely misunderstood, procedural requirements for perfecting transfer. The implicit promptness requirement *may* extend the time to refile in state court beyond the minimum one month provided by section 1367 of the federal supplemental jurisdiction statute, although that is unclear.[21] In practice, the Pennsylvania transfer statute is something of a default trap.[22] Against his admitted inclination, a county court president judge ruled that he was constrained to strike a plaintiff's transferred claim based on appellate authority as "with each emerging case the court establishes an increasingly stringent adherence to the requirements of the [transfer] statute."[23]

Even though the original legislative design was to automatically transfer actions mistakenly filed in the wrong court administratively, Pennsylvania courts after *Williams* strictly enforced the implicit requirement that a litigant act "promptly" when transferring a case.[24] And, even though the original legislative design was to correct filing mistakes without claim defaults, Pennsylvania courts measure the "promptness" of the transfer not from mistaken attempts to refile, but rather from

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20. *Williams* v. *F.L. Smithe Machine Company*, 577 A.2d 907, 910 (Pa. Super. 1990); *see also Collins* v. *Greene County Memorial Hospital*, 615 A.2d 760, 763 (Pa. Super. 1992) (a litigant's right to transfer triggered the "promptness requirement" implicit in section 5103 "that litigants must act promptly in transferring their actions. . .").

21. The Superior Court has analogized the Section 5103 implicit promptness requirements to caselaw requiring a plaintiff to attempt service within thirty days of filing a writ of summons. *Kelly* v. *Hazleton General Hospital*, 837 A.2d 490, 494 (Pa. Super. 2003). However, it went on to state that "[w]e choose not to define 'promptness' by reference to a specific number of days. We leave that task to the Legislature." *Id*. at 496.

22. Where the nonadherent plaintiff's action would be outside the statutory limitation period had it not been extended by the filing of the federal action, defendants may spring the trap either in preliminary objections for failure to conform to law or rule of court, Pa.R.C.P. No. 1028(a)(2), or in new matter as a statute of limitations affirmative defense. *Ferrari* v. *Antonacci*, 689 A.2d 320, 322 (Pa. Super. 1997).

23. *Stull* v. *Posner*, No. 03-S-415, 2003 WL 25428941 (Pa.Com.Pl., Adams County Dec. 22, 2003) (opinion).

24. *See Collins, supra* note 20, at 763 (holding that the litigants' seven-month delay in transferring the case to state court violated the promptness requirement implicit in section 5103); *Kurz* v. *Lockhart*, 656 A.2d 160, 163 (Pa. Commonwealth 1995) (affirmed judgment against the plaintiffs who delayed for almost one year then filed a new complaint because "[t]he dismissal of the action as to [defendants] in federal court should have immediately prompted the [plaintiffs] to transfer their suit . . . to state court pursuant to section 5103 rather than file a new suit."); *Ferrari*, 689 A.2d at 323 (a delay of nearly one year was too long); *Kelly*, 837 A.2d at 495-96 (Pa. Super. 2003) (nine-month delay refiling in state court did not satisfy promptness requirement and plaintiff did not refile certified copy of federal pleadings); *Chris Falcone, Inc.*, 907 A.2d at 639 (a ten-month period to file a certified transcript was too long); *Northwestern Human Services, Inc.* v. *McKeever*, 2005 WL 2291075, at 4 (Pa. Ct. Com. Pl. Sept. 12, 2005) (five and a half months is too long).

the date that the transfer was *perfected* by refiling certified copies of *all* the federal pleadings "related" to the surviving state claims.[25]

Litigants have frequently erred by filing a new complaint in state court truncated to the surviving state law claims, which was efficient,[26] and which mirrors the practice under Pennsylvania's "savings" statute,[27] but which is a fatal error under the transfer statute.[28] Litigants have also confused the Pennsylvania "savings" statute and the transfer statute, mistakenly believing that they had one year in which to commence a new action.[29] They have wrongly believed that a private agreement while negotiating could stay the transfer statute promptness requirement.[30]

In the few reported cases where challenges to technical errors in transfers are overruled, courts have held that active appeals in the federal circuit courts of dismissals in district court may extend the time for "prompt" transfer.[31] One court found that the defendant did not prove its limitations defense based on the transfer statute noncompliance when the defendant placed in the record no evidence on when the certified copies were requested from the federal clerk's office.[32] Another case held that a plaintiff whose case was removed from state to federal court by the defendant need only file a certified copy of the federal court judgment in the state court to "revive" the state action.[33]

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25. *See Williams, supra* note 20, at 910 (excusing, in case of first impression, the fatal flaw of promptly filing a new complaint in state court with certified copies of some but not all required federal pleadings); *Commonwealth* v. *Lambert*, 765 A.2d 306, 321 (Pa. Super. 2000) (transfer to state court was not permitted because the litigant had not filed the proper documents under §5103(b)); *Perry* v. *Commonwealth*, 2007 WL 5234152 (Pa. Ct. Com. Pl. Dec. 7, 2007) (declining to decide whether a 46-day delay in transferring action was timely because, even if timely, the transfer was defective due to plaintiff's failure to file certified copies of the federal court pleadings.); *McGonigle* v. *Ansel*, 79 Pa.D.&C.4th 29, 46 (Pa. Ct. Com. Pl. Feb. 23, 2006) (granting summary judgment against a plaintiff who "mistakenly filed a new, although identical complaint in state court" two months after federal dismissal); *Stull* v. *Posner*, 2003 WL 25428941 (Pa. Ct. Com. Pl. Dec. 22, 2003) (order and opinion) (praecipe for transfer filed two weeks after federal dismissal was untimely because uncertified pleadings were attached). The authors have found no authority on determining what federal pleadings are "related" to surviving state claims. For example, if a pleading is amended in federal court, must certified copies of the earlier versions be filed in state court?

26. It is apparently beneficial that federal racketeering claims, so often dismissed in federal court, do not clutter the pleadings in state actions on surviving claims.

27. 42 Pa.C.S.A. §5535(a)(1) ("If a civil action or proceeding is timely commenced and is terminated a party, or his successor in interest, may, notwithstanding any other provision of this subchapter, commence a new action or proceeding upon the same cause of action within one year after the termination . . .").

28. *Ferrari, supra* note 22, at 322 (Section 5103 "specifically governs the situation found here"); *Williams, supra* note 20, at 910.

29. *Kurz, supra* note 24, at 162.

30. *Northwestern Human Services, Inc, supra* note 24, at 4 (private agreement "effectively eviscerates the promptness requirement. . .")

31. *See Constantino* v. *University of Pittsburgh*, 766 A.2d 1265, 1269 (Pa. Super. 2001) (delay of 105 days from dismissal was not untimely when the plaintiff was appealing the federal court dismissal); *Hemispherx Biopharma, Inc.* v. *Asensio*, 2001 WL 1807748, at 8 (Pa. Ct. Com. Pl. Feb. 14, 2001) (delay of almost three months in filing certified pleadings was not untimely when plaintiff filed praecipe to transfer within two weeks and was appealing federal dismissal). In those cases, the federal appeal merely excused delays in promptly transferring. No case has held that a federal appeal obviates the need to promptly transfer, though it is unclear why an appeal excuses delay, but does not obviate the need to promptly transfer, when an express purpose of the transfer statute is to avoid "protective actions" litigating the same claims in different courts.

32. *Metzger* v. *Pike County*, 2012 WL 8677732, at 14 (Pa. Commonwealth Dec. 13, 2012) (nonprecedential) (finding no default on promptness duty when plaintiff refiled a complaint in state court within two weeks, but did not file certified pleadings for six months, because ambiguous record did not show when plaintiff requested certified copies); *but see McGonigle, supra* note 25, at 45 ("In reviewing the official record (docket), there is no indication that plaintiff complied with the requirements set forth in section 5103(b)(2).")

33. In *Oleski* v. *Department of Public Welfare*, 822 A.2d 120, 125 (Pa. Commonwealth 2003) the court majority offered three alternative rationales to support the plaintiff: (1) the transfer statute with its technical requirements does not apply when cases are removed to federal court by defendants as they may be

C. *Artis* Eliminates Some Default Risks Under The Pennsylvania Transfer Statute And May Obviate Mandatory Compliance

Artis does not directly clear the snares from the path of plaintiffs transferring actions to state court, but now noncompliance with the procedural requirements of the transfer statute will no longer be fatal if the case is refiled in state court within the tolled limitations period. Such errors have proved fatal in the past only because the statute of limitations was deemed to have expired upon the failure to "promptly" *perfect* a transfer according to the transfer statute's requirements. That default hazard disappears if the limitations period has not run due to *Artis* tolling. At the very least, when faced with a preliminary objection or statute of limitations defense based on noncompliance with the transfer statute, a plaintiff whose limitations period was tolled under *Artis* will be able to correct the error by amendment to comply with the transfer statute requirements.

It is likely, although not certain, that *Artis* will obviate the need to comply with the requirements of the transfer statute in most cases. *Artis* established that the federal supplemental jurisdiction statute trumps state tolling statutes, such as the Pennsylvania transfer statute, if they conflict.[34] For example, if a plaintiff filed its action in federal court the day before the limitations period would have expired, the limitations period for state law claims is extended for 30 days following dismissal from federal court under section 1367(d) of the supplemental jurisdiction statute. If a new *timely* action by such plaintiff is commenced in state court within 30 days, there is no clear reason why the plaintiff must additionally comply with the peculiar provisions of the transfer statute.[35] This is clearer where a plaintiff "stops the clock" on its limitations period so that, on dismissal from federal court, it has a year in which to bring a *timely* action in state court. Such a plaintiff would appear to have no need of the provisions of the transfer statute that was enacted to preserve dismissed claims that would otherwise be untimely. *Artis* apparently obviates the need to comply with the

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"revived" in their original state venue; (2) the transfer statute applies but a plaintiff who had already pleaded in state court satisfied any applicable technical requirements by filing only a certified copy of the federal judgment; and, (3) anticipating *Artis*, in the alternative the plaintiff's second state court action was still timely because the limitations period had been tolled under 28 U.S.C. §1367(d) by the removal. The more conventional dissenter argued that the plaintiff's "failure to promptly file a certified transcript of the pleadings from the federal action in accordance with 42 Pa.C.S. §5103(b)(2), bars further action at the county court." *Id*. at 127. *Oleski's* alternative rationale that a removed case falls outside the transfer statute because the plaintiff is not "a litigant who timely commences an action or proceeding in any United States court" ignores that the provisions "apply to any matter transferred *or remanded* by any United States court . . ." *Id*. at 123 (emphasis added). *See Coulter* v. *Ramsden*, 94 A.3d 1080, 1085-86 (Pa. Super. 2014) (in case initially filed in state court, "even if the federal court had dismissed Coulter's complaint solely due to a lack of jurisdiction, we observe that Coulter failed to transfer her case from federal court properly as contemplated under 42 Pa.C.S.A. §5103(b)(2)").

34. *Artis* appears to have resolved a conflict between different panels of the Commonwealth Court as to whether the tolling provision of the federal supplemental jurisdiction statute, 28 U.S.C §1367(d), was trumped by the Pennsylvania transfer statute, 42 Pa.C.S. §5103(b)(2). A panel of the Commonwealth Court held, in an unpublished 2012 opinion, that "42 Pa.C.S. §5103 controls, not 28 U.S.C. §1367(d), concerning the proper implementation of the statute of limitations" because the court adopted the appellee/defendant's federalism argument that "42 Pa.C.S. §5103(b)(2) accomplishes the same purpose as 28 U.S.C. §1367(d) from the perspective of both the litigant and the judiciary." *Metzger*, 2012 WL 8677732, at 10, 13. An earlier published opinion by a different Commonwealth Court panel held that the plaintiff had satisfied section 5103 but, even if he had not, his second complaint in state court was timely because the tolling provision of section 1367(d) had stopped the clock on the limitations period. *Oleski*, 822 A.2d at 124.

35. In a recent post-*Artis* federal case discussing a plaintiff's options when state claims are dismissed *after seven years*, a district court referenced only the supplemental jurisdiction statute and disregarded the Pennsylvania transfer statute. *Robinson* v. *Prison Health Care Services, Inc*., 2018 WL 2426144, at 8 (E.D. Pa. May 30, 2018) ("Although this action was filed in 2012, Plaintiff may file his state law claims in state court because the statute of limitations for them has been tolled while this action is pending.")

transfer statute unless a plaintiff needs more than the supplemental jurisdiction statute provisions to preserve its claim.[36]

Whether or not they still need to comply, it is clear that plaintiffs *can* still avail themselves of the transfer procedures even if the limitations period has not run on their state court actions as "any litigant" in an action "dismissed in federal court" can transfer claims to state court "by complying with the transfer provisions." Until Pennsylvania case law has clearly assimilated *Artis*, a plaintiff aware of the transfer statute and its requirements should comply with it to avoid procedural litigation based on the superseded law discussed in this article. A plaintiff may prefer the transfer provisions for strategic reasons. An advantage of commencing a new action in state court in disregard of the transfer statute is starting afresh with a "clean" complaint limited to surviving claims. Also, the costs of procuring certified copies of "related" pleadings can be a factor. Further, experience shows the risk of technical errors in attempting to comply with the transfer requirements. On the other hand, a plaintiff may prefer transfer to establish continuity between the original federal action and the state action to preserve law of the case. For example, transfer might help a plaintiff to retain favorable federal court discovery rulings in the state court action and may help avoid rehashing the many quotidian disputes that arise in litigation.

III. *ARTIS* EFFECTIVELY OVERRULES NEW JERSEY'S "GRACE PERIOD" CASE LAW

The *Artis* decision may have a more profound impact in New Jersey than in Pennsylvania. New Jersey is one of the eleven states that do not have a tolling statute, and the Appellate Division had expressly endorsed the "grace period" approach that *Artis* rejected.[37] Also, New Jersey has a longer statute of limitations for contract actions than Pennsylvania, six years rather than four, and this will be effectively extended—potentially to astonishing lengths—by *Artis* tolling.[38]

In *Berke* v. *Buckley*, the plaintiffs were investors in a security allegedly advertised by a talk show host. They brought a federal cause of action under the Securities Exchange Act of 1934 and common-law tort causes cognizable under New Jersey law. After a series of procedural mishaps culminating in the Third Circuit's dismissal of their appeal, the plaintiffs refiled their remaining claims in state court approximately ten weeks later. While they were ultimately saved by the doctrine of substantial compliance, the Appellate Division rejected their initial contention that the statute of limitations was tolled during the entire pendency of the federal litigation under section 1367(d):

> We agree with the grace-period reasoning. The evident purpose of the statute is only to preserve a plaintiff's right of access to the state court for a minimum thirty-day period in order for it to assert those state causes over which the federal

36. For example, a plaintiff which filed in federal court on the last day of the limitations period, and which did not refile in state court within 30 days pursuant to 28 U.S.C.A. §1367(d), may arguably preserve its claim by transferring "promptly" in compliance with the transfer statute.

37. *Berke* v. *Buckley Broadcasting Corporation*, 821 A.2d 118, 123–24 (N.J. Super. App. Div. 2003) (refiled state court action was preserved by doctrine of substantial compliance but was not timely under section 1367(d)); *Binder* v. *Price Waterhouse & Co., L.L.P.*, 923 A.2d 293, 297 (N.J. Super. App. Div. 2007) (plaintiff who filed professional negligence and breach of contract actions in state court eight months after dismissal by federal court did not fall within section 1367(d) grace period); *Thakar* v. *JFK Medical Center*, 2007 WL 1498816, at 2 (N.J. Super. App. Div. May 24, 2007) (refiling six months after federal dismissal was not within grace period); *G.S. ex rel. T.S.* v. *Rumson Board of Education*, 2010 WL 1753270, at 5 (N.J. Super. App. Div. May 3, 2010) (refiling 44 days after federal court dismissal was not within grace period).

38. N.J.S.A. §2A:14-1; 42 Pa.C.S.A. §5525.

> court has declined to exercise jurisdiction and as to which the statute of limitations has run before that declination. Despite its ambiguous use of the word "tolling," we do not believe that the federal statute intends a result that would permit a gross protraction of the limitations period in clear contravention of the underlying policy of statutory limitations on the time for bringing suit. Rather, we are satisfied that the "tolling" provision of the statute refers to the period between the running of the statute while the action is pending in the federal court and thirty days following the final judgment of the federal court declining to exercise supplemental jurisdiction. Hence the import of the statute is simply to toll the running of the state statute of limitations from its customary expiration date until the expiration of a thirty-day period following conclusion of the federal action, that is, to provide a thirty-day grace period.[39]

How much of a "gross protraction" would the plaintiffs have received post-*Artis*? They had commenced their federal action only five months after the accrual of their state tort claims, so they would have received the 30-day grace period plus *five years and seven months*. That was enough to earn them poster-child status in Justice Gorsuch's dissent in *Artis*.[40]

IV. CONCLUSION

By stopping the clock on the running of the statute of limitations, *Artis* will reduce inadvertent losses of claims initially commenced in federal court, which was the General Assembly's policy goal in enacting and amending the Pennsylvania transfer statute, but at the cost of preserving causes of action that Pennsylvania law has considered to be stale. The *Artis* decision will probably make the process of refiling in Pennsylvania state court more orderly as common procedural mistakes and technical errors will less often deprive litigants of their claims. Similarly, while New Jersey courts may find the new legal landscape overly hospitable to plaintiffs, they will be relieved from wading through an equitable tolling or substantial compliance analysis to avoid the hard edges of the former grace period approach.

39. *Berke, supra note* 37, at 123-4.
40. *See Artis, supra* note 3, at 617 (Gorsuch, J., dissenting).