

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

MATTHEW O'REILLY, Civil Docket  
Plaintiff, Case No. C-02-CV-24-000546  
vs.  
WASTE MANAGEMENT, INC., et al  
Defendant.

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

COMPLEX MOTIONS

Annapolis, Maryland

Monday, February 3, 2025

BEFORE: THE HONORABLE PAMELA K. ALBAN, Judge

APPEARANCES:

For the Plaintiff:

Matthew O'Reilly, appearing *Pro Se*

For the Defendant:

Geoffrey M. Gamble, Esq., Waste Management, Inc., et al  
James Aist, Esq., Capstone On Campus Management, LLC  
Briana N. Maine, Esq., Capstone On Campus Management, LLC  
Scott H. Phillips, Esq., Beatty Management Group, LLC

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1                                   P R O C E E D I N G S

2                                   (2:06 p.m.)

3                   THE COURT: Good afternoon, everyone. I hope my  
4 staggering helped you just a little bit. But I saw most of  
5 you sort of here, anyway, at 1:30. So, I'm sorry. I wasn't  
6 bad, my time estimate. I'm only five minutes over; so there  
7 you go.

8                   We'll call Matthew O'Reilly vs. Waste Management  
9 et al. It's C-02-CV-24-546. The plaintiff will be over  
10 here and I guess we can have all of you maybe slide one of  
11 the chairs over. I know we have three, at least three  
12 groups of attorneys and motions to address. So I'm going to  
13 try to focus up and move things. Maybe we'll get somebody  
14 in the prime seat, and we'll go that way. I'll have  
15 everybody identify themselves, please. All right. Will  
16 everybody identify themselves, please, for the record.

17                  MR. O'REILLY: Matthew O'Reilly, plaintiff, Your  
18 Honor.

19                  THE COURT: All right. Thank you.

20                  MR. GAMBLE: Good afternoon, Your Honor. Jeff  
21 Gamble, Saul Ewing, on behalf of defendants Waste  
22 Management, Inc., Waste Management of Maryland, Inc., Adam  
23 Tsottles, and Roy Palmer.

24                  THE COURT: Okay.

25                  MR. AIST: Good afternoon, Your Honor. James Aist

1 from Anderson Coe and King, here on behalf of Capstone  
2 Management.

3 MS. MAINE: Good afternoon, Your Honor. Briana  
4 Maine, also here on behalf of of Capstone Management.

5 THE COURT: Okay.

6 MR. PHILLIPS: Good afternoon, Your Honor. Scott  
7 Phillips on behalf of Beatty Management Group.

8 THE COURT: All right. All right. So please be  
9 seated, everyone. All right. This was obviously kind of  
10 a -- this is a -- we all -- we got a lot to do today. And  
11 Judge Trunnell thought it was great for us all to do it at  
12 once; so good for him.

13 I went through is and I think logically, in my  
14 brain, I don't know if anybody else's brain is going to work  
15 this way or not, but it's the way mine was working. I  
16 thought it might make sense if I heard from Capstone first  
17 as to their motion to dismiss with regards to them. I feel  
18 like all of the defendants are slightly differently  
19 positioned. And so as I was going through it, I thought  
20 dealing with Capstone for first might kind of take one step  
21 and then we'll take another step. We'll then go to BMG, and  
22 then we can then go to WMI.

23 MR. O'REILLY: My only I'm not opposing to that,  
24 Your Honor, but both, as far as I recall, both Capstone and  
25 BMG adopted portions of the Waste Management dismiss --

1 motion, I don't know if that has a very

2 THE COURT: They did. My intrigue to deal with  
3 them candidly is their lack of inclusion in that suit and  
4 the impact that that has on the rest of the argument. And  
5 maybe I may be simplifying the issues too much, and I'm sure  
6 counsel can correct me if I'm wrong, but I think that  
7 deals -- that kind of puts them in one universe. And if we  
8 get out of that universe, then maybe I'll ask them to step  
9 aside and then we'll do Waste Management. But my, in my  
10 mind, they're in one set of universe because of that fact,  
11 and so I want to hear about that. Okay? All right.

12 So I'm putting you on the spot. I don't know.  
13 You've all looked a little surprised there asking you for  
14 first.

15 MR. PHILLIPS: That's okay, Your Honor.

16 THE COURT: See, my brain did not work like  
17 everybody else's in this, but hopefully it makes sense in  
18 the ultimate conclusion. So if I can have one second. All  
19 right. And for the record, for all of you, I did review --

20 I did review all of the pleadings in this. I will note that  
21 late -- I mean, it wasn't docketed Friday, because I was  
22 certainly in this case, there was a supplemental response.  
23 Again, you've already responded once. I'm not sure that any  
24 supplemental response is necessary to be considered by the  
25 Court, but I have done my best to review it, and we can go

1 from there.

2 MR. O'REILLY: If I may, Your Honor, that  
3 supplemental response was actually ordered by Judge Malone  
4 on the 12th of December. So he actually requested that  
5 we -- encouraged was the word he used -- us to file  
6 supplemental responses for the purposes of this hearing.

7 THE COURT: For the third?

8 MR. O'REILLY: Yes. Yes.

9 MR. GAMBLE: That's not exactly accurate. There's  
10 a transcript of that proceeding in the record. He said  
11 there was a question by counsel for Beatty, Mr. Phillips  
12 said, if there are supplemental briefs to be filed on this  
13 issue, is that permissible? And he said, that's up to, you  
14 know, basically said, that's up to you all.

15 THE COURT: Okay. So it was more of a, if you  
16 want to.

17 MR. GAMBLE: Yes.

18 THE COURT: Okay. All right. Thank you. All  
19 right, then, counsel, I am happy to hear from you.

20 MR. AIST: Thank you, Your Honor. Despite all the  
21 paper that's been filed in this case, Capstone's motion to  
22 dismiss is really very simple.

23 THE COURT: That's why I'm kind of starting with  
24 you.

25 MR. AIST: Yes. And, Your Honor, you identified

1 the right issue. Capstone never became a party to the  
2 plaintiff's prior claim filed in the United States District  
3 Court. What happened was that after the District Court  
4 denied the plaintiff's amended complaint, the plaintiff  
5 filed a motion for leave to amend and included a proposed  
6 second amended complaint, which for the first time sought to  
7 include Capstone as a party. That motion was filed on July  
8 21st, 2020.

9 On February 8th, 2021, the District Court denied  
10 that motion to amend, which meant that Capstone never became  
11 a party to the case. And I could stop right now and just  
12 say, period, end of story, and plaintiff did not sue  
13 Capstone until 2024, and any possible claim he might have as  
14 to Capstone is barred by limitations.

15 THE COURT: Right.

16 MR. AIST: I could stop there. I'll continue a  
17 little further just in case the Court has a

18 THE COURT: But that, candidly, is where I think I  
19 mean, how do, I guess, and then that's -- I mean, you agree  
20 that you were not part of any suit prior to that and that  
21 there would be any argument about tolling of statute of  
22 limitations, whether I'm into that -- whether that argument  
23 prevails or not is not applicable to you.

24 MR. AIST: It's not

25 THE COURT: Would you agree?

1           MR. AIST: -- because the only way the tolling  
2 rule can apply is if we were ever a party in the first place

3           THE COURT: Right.

4           MR. AIST: -- and Capstone was not.

5           THE COURT: Correct. And that's kind of where --  
6 that's what I'm talking about. You're in this universe  
7 versus in another universe where we're getting to whether  
8 things were res judicata or any of those other things. So  
9 before we get to that, I'm going to have the plaintiff, Mr.  
10 O'Reilly, answer the statute of limitations argument with  
11 regards to Capstone.

12           MR. AIST: Thank you, Your Honor.

13           THE COURT: Okay. So explain to me, Mr. O'Reilly,  
14 how you get around the fact that they were not part of that  
15 suit.

16           MR. O'REILLY: Okay. There are a couple of things  
17 where I disagree with Mr. Aist's statement. The first is  
18 that to in order to satisfy the requirements that he says  
19 were required to bring him into the suit, there would have  
20 had to have been a second parallel action filed against  
21 Capstone specifically, either in the federal court or in the  
22 Maryland state court, which is something that the Supreme  
23 Court, especially when it comes to issues of a single claim  
24 or a single set of transactions, have very specifically said  
25 does not suit judicial economy.

1 THE COURT: Right.

2 MR. O'REILLY: There was also the appeal process  
3 that, you know, took a long period of time, thanks to Covid,  
4 during which any, at any point during the process had an  
5 appeal been returned down to the District Court with  
6 instructions to grant the amendment would have brought  
7 Capstone back into the case, would have brought Capstone  
8 into the case unequivocally and would have reset it back to  
9 the date of the filing of that amended complaint or the  
10 proposed amended complaint.

11 So there was a, there was, it was still within the  
12 jurisdiction of the federal courts up until February of last  
13 year to be able to bring that case back into and bring  
14 Capstone into the case to that date, which no one argues was  
15 within the statute of limitations for most of the, most of  
16 the causes of action that were originally filed in the  
17 amended complaint.

18 THE COURT: So your argument is it goes to the  
19 date that you tried to file the amended complaint -- tried  
20 to file the amended complaint, the second amended complaint,  
21 let's be clear, in the District Court, because you appealed  
22 his denial of that, and that's what

23 MR. O'REILLY: Because it was still within the  
24 jurisdiction of the federal court. And so at any point it  
25 could have been brought back to that. Now, I have something

1 to add to that as well.

2 THE COURT: Okay.

3 MR. O'REILLY: The one exception to what Mr. Aist  
4 says, you know, he says the only way, but that's not the  
5 only way. The other exception is actual notice. And there  
6 is evidence on the record that both Capstone and BMT were  
7 notified ahead of time prior to the filing of that amended  
8 complaint that they would be brought in as defendants in  
9 that case. They were aware of the case. They were aware of  
10 the number. They were aware of, you know, of all of the  
11 indica of the case itself. And so they had actual notice  
12 that they would be sued. They had actual notice when they  
13 were sued.

14 And so -- and there's an additional wrinkle.  
15 Because I was pro se, I cannot file a summons in a federal  
16 court. I have to wait for the court to approve the summons  
17 before the summons can be sent. So the ordinary  
18 notification that would be official from the court that an  
19 attorney can send, a pro se person cannot. So I had no  
20 other way to give them notice other than what I did, which  
21 was notify them ahead of time before the filing of it. So  
22 they have had notice for the entire time since I think,  
23 April of 2020, that they would be a defendant in this case  
24 and that this is, you know, very similar, the same, you  
25 know, very similar set of facts to what was in there.

1           And so I think that in service to the United  
2 States Supreme Court's preference that we preserve judicial  
3 economy wherever we can, you know, as long as it serves the  
4 suit of fairness and justice, and the fact that there was  
5 actual notice that they would have had to be able to prepare  
6 a defense, to be able to, you know, to gird themselves for  
7 the thing. Just because it never converted into a summons  
8 and actual participation in the case, I don't think that  
9 that should preclude the tolling of the statute of  
10 limitations.

11           THE COURT: I guess my question for you is,  
12 doesn't some of these choices that you've made, I mean, I  
13 don't know that judicial economy trumps statute of  
14 limitations bans, but wouldn't they constitute strategy  
15 choices on your part as opposed to strict prohibitions, I  
16 guess.

17           MR. O'REILLY: I can understand where the Court is  
18 coming from on that -- on that front. I disagree insofar as  
19 there is I, as a pro se person, you know, as a pro se  
20 litigant, that the additional costs of filing new cases, the  
21 additional -- and, you know, again, I'm not a doctor of the  
22 law, there's a lot of this that I don't know. And so to say  
23 that it was a strategic decision would probably be a little  
24 presumptuous on my part.

25           THE COURT: But here's what I am going to say, and

1 I'm not sure that everybody on this side agrees, but I'm  
2 going to say you've done better than most, you know, than  
3 some attorneys I have seen who have appeared before me in  
4 this case, in this room. So I will say you have done very  
5 well by yourself. But again, a part of that decision was  
6 that you did choose to proceed pro se, that you did choose  
7 to make some of these decisions.

8 MR. O'REILLY: But again, you know, choice is a  
9 strong word.

10 THE COURT: I hear you.

11 MR. O'REILLY: Right.

12 THE COURT: All right. So

13 MR. O'REILLY: You know, and partly because of the  
14 damage that has been done with this, you know, you know

15 THE COURT: I hear you. I hear you.

16 MR. O'REILLY: -- that I am destitute. So my  
17 decisions are limited by practicality, not necessarily by,  
18 you know, the strategy that I would take if I had not.

19 THE COURT: Okay. I guess, do you want to respond  
20 to the argument that basically there's two prongs. One that  
21 because the suit was already kind of out of the gate, he  
22 didn't feel that he could do another suit to include you  
23 once that was denied or that it was still up on appeal?

24 MR. AIST: Well, he had other choices he could  
25 make, Your Honor, to be sure. First of all, he could have

1 filed a claim against Capstone in state court, and that  
2 would have preserved any claim he had, you know, up to that  
3 point. But plaintiff is absolutely wrong in asserting that  
4 because he had, in his, you know, taking the facts as he's  
5 pled them, that he communicated to Capstone that it was  
6 going to be sued, that that somehow brings them into the  
7 case and tolls limitations as to -- as to him. That's just  
8 absolutely wrong.

9           There is some case law that. That says that if  
10 you sue a party and there's like, misnomer, like you  
11 misnamed the party, but the actual party that you intended  
12 to sue knows about it, that sometimes that can relate back  
13 and you can correct the pleadings, but that's not the case  
14 here. **He never got a complaint filed and accepted by the**  
15 **court so that summonses could be issued to Capstone.**

16 Capstone never became a party in the federal case, ever, at  
17 any time. And plaintiff failed to file any type of action  
18 within limitations in the circuit court in Maryland. And  
19 for those reasons, he is out of court. He is out of time,  
20 and the statute of limitations bars his claims.

21           THE COURT: Okay.

22           MR. O'REILLY: May I, Your Honor?

23           THE COURT: Absolutely.

24           MR. O'REILLY: I'm sorry.

25           THE COURT: I'm going to give you, even though

1 you're the moving party, I'm going to give him one more word  
2 on this.

3 MR. O'REILLY: I appreciate that, Your Honor. The  
4 one thing that I want to bring up which goes a little bit  
5 beyond what Mr. Aist is saying is that there are elements  
6 within the third amended complaint in this action that are  
7 within the statute of limitations, regardless of what  
8 happened in the federal claim. And because we are here on a  
9 motion to dismiss, we have to take, you know, all reasonable  
10 inferences and presume that the allegations in the complaint  
11 are true. That means that there are still portions of the  
12 complaint which apply to Capstone On Campus Management that  
13 are still active, even if those portions that are only  
14 relating to the federal are considered to be out of time.

15 THE COURT: And which ones would those be?

16 MR. O'REILLY: The noise complaints, health code  
17 violations. I'm sorry, Your Honor, I don't know that I have  
18 the complaint.

19 THE COURT: I have it handy. And those you are  
20 arguing are still ongoing

21 MR. O'REILLY: Yes.

22 THE COURT: Though you are

23 MR. O'REILLY: Yes, ma'am. Well, they were  
24 certainly within -- I think that the -- they include  
25 everything up to the date of the third amended complaint,

1 which is -- I do have it here.

2 THE COURT: Which was filed October 15th.

3 MR. O'REILLY: October 15th, yes. And so the  
4 allegations are that those -- that the violations continue  
5 up until October 15th of this year. Which, again, on a  
6 motion to dismiss footing, we are required to assume as  
7 true, and that keeps Capstone in the case.

8 THE COURT: All right. Since we brought something  
9 new up, go ahead.

10 MR. AIST: Thank you, Your Honor. First of all,  
11 the plaintiff in his opposition to Capstone's motion to  
12 dismiss the third amended complaint acknowledges that the  
13 statute of limitations expired in October of 2020. If you  
14 look at his opposition to our motion on page 5. This is  
15 the, at the top of the -- at the top of that page, he says  
16 "Capstone had actual notice within the original untold  
17 statute of limitations and knew or should have known that it  
18 was a proper party to the federal action." We've already  
19 discussed that argument.

20 But here's what he says, "In April 2020, more than  
21 six months before the expiry of the statute of limitations,  
22 Mr. O'Reilly notified COCM, including counsel Tammy Cohen,  
23 that COCM would be joined as a defendant in the suit." So  
24 right there, he's acknowledging that the statute of  
25 limitations for any claims as to Capstone expired in October

Hearsay, hearsay, hearsay! Where are these alleged 'other places', in what 'papers'??

1 of 2020.

2 Furthermore, Your Honor, in other places in his  
3 papers, the plaintiff has acknowledged that he has not lived  
4 at the address where he complained about these noise  
5 complaints since 2019. And so, on that basis alone, he has

6 no standing to continue to assert claims for noise  
7 violations because he doesn't even live in the property  
8 where, you know, he claims that this -- he was bothered by  
9 this.

10 THE COURT: Right.

11 MR. AIST: So for those reasons, limitations has  
12 long since passed on this claim, and we ask that Capstone be  
13 dismissed, Your Honor.

14 THE COURT: All right. Why I'm stopping you here  
15 in this universe of the statute of limitations universe is  
16 that I agree. I think what happens is that basically, I  
17 don't believe that their claims have been brought in time  
18 they were not a party to in the federal suit. So I'm not  
19 even getting into whether the tolling applies or any of  
20 that, but they weren't even in there. And so I think that  
21 their statute of limitations dates back to the date of the  
22 incident, and we are well beyond that.

23 I am not convinced that the -- there were actions,  
24 there were steps that Mr. O'Reilly could have taken to bring  
25 them in. If once that was denied, he could have filed in

1 state court, he could have filed a separate action. There  
 2 were choices that were made. And I understand that you were  
 3 attempting to abide by a recommendation that the Supreme  
 4 Court said, "No, no, we want to hear all of this together."  
 5 But there are mechanisms. And again, I'm sorry, because  
 6 you were proceeding Per Se and I think you've done obviously  
 7 lots of litigation. You're keeping a lot of attorneys very

8 busy here. But I think that it was incumbent upon you to  
 9 have taken some positive action. Whether it was file in  
 10 state court, ask for it to be transferred to be  
 11 consolidated, file a case in federal court and ask for that  
 12 to be consolidated. I mean, there were other options  
 13 besides sitting on your right, sitting on the claim and not  
including them.

Sitting on my rights? Are  
 you fucking kidding me??

15 MR. O'REILLY: Your Honor -- yes, ma'am. I'm  
 16 sorry.

Does "notice" actually mean anything  
 anymore? Does the SCOTUS ruling apply  
 to notice or not??

17 THE COURT: If I can finish, then the other

18 argument that you are advancing, the Court is not convinced  
 19 that the actual notice argument applies here. Again, I  
 20 think there is some question as to all of that. But again,  
 21 under the law, whether you called and told them that you  
 22 were going to file I don't believe is sufficient to preserve  
 23 a statute of limitations claim against them.

24 And finally, about the ongoing nature of the noise  
 25 violations, Court does agree that if you aren't living

This is based ENTIRELY on hearsay!! Capstone says something about 2019, the Court simply accepts it as true (ON A MOTION TO DISMISS) and dismisses the defendant.

BULLSHIT.

17

1 there, you don't have standing any longer, I believe, to

2 argue that. So when you moved out in 2019, that ends, you

3 could have had it up to 2019; but even if I gave you up

4 through that, through December 2019, you were still outside

5 of any statute of limitations, again for that.

6 So one last word.

7 MR. O'REILLY: I'm sorry, Your Honor.

8 THE COURT: I just made my ruling.

9 MR. O'REILLY: I know. I'm sorry, Your Honor, but

10 I don't believe that the Baltimore Health Code has any

11 requirement for residency to the private -- the private

12 cause of action that is established within the Baltimore

13 Health Code makes no mention whatsoever of residency, or

14 simply if you are present in Baltimore and you are bothered

15 by the violation of the Baltimore Health Code when it comes

16 to noise, you have a private right of action.

17 THE COURT: Again, the date -- the facts scenario

18 that is listed in the complaint I don't think is quite that

19 open ended. I think it's very specific to a certain

20 scenario that dates back a number of years that would be

21 outside the statute of limitations.

22 In light of all of that, I am granting the motion

23 to dismiss as to Capstone, the complaints against Capstone.

24 So any claims against Capstone are dismissed. So now we're

25 going to talk about BMG. And again, BMG is also very

Check the 3rd Amended  
Complaint for allegations that  
this noise continued until 2024

1 similarly situated. But I certainly am happy to hear both  
2 sides on BMG. Thank you.

3 MR. PHILLIPS: Thank you, Your Honor. I would  
4 adopt in toto Mr. Aist's remarks. BMG is situated in  
5 precisely the same posture as Capstone in this case. BMG  
6 was also the subject of a proposed second amended complaint  
7 in the federal court case. The court denied Mr. O'Reilly's  
8 motion for leave to file that complaint. As a result, BMG  
9 never became a party to the second amended complaint or a  
10 party to the federal case at all.

11 In fact, Mr. O'Reilly, in his opposition to our  
12 previous motions to dismiss in this case, acknowledged as  
13 such, and I'm speaking now with regard to his opposition to  
14 dismiss the amended complaint. On page 70 it says that the  
15 second amended complaint "Never became the operative  
16 complaint." Later on that same page. "No summons was ever  
17 issued for BMG." That's kind of all you need to know right  
18 there, Your Honor, which is that BMG never became party to  
19 the second amended complaint.

20 The same issue -- the same remarks Mr. Aist made  
21 with regard to the notice, I notified BMG of my intent to  
22 bring them into this lawsuit. We would adopt those. But  
23 there's even more with regard to BMG. In his papers,  
24 although not brought up today, Mr. O'Reilly cites emails  
25 that he uses to substantiate the alleged notice issue.

1 These are Exhibit 1 to his opposition.

2 In these emails, these are emails that he sent to  
3 a lawyer in Baltimore named Tammy Cohen, and he alleges that  
4 that was sufficient to put my client BMG on notice of the  
5 existence of the federal lawsuit. But in these emails, if  
6 you look at them in two instances, he asks Ms. Cohen, and  
7 right now I'm referring to his July 4, 2020, email, he says,  
8 "If Waste Management is not hired by your client," and  
9 here's the important part, "then please clarify, which  
10 entities is/are your clients." He doesn't even know as of  
11 July 4 who Ms. Cohen represents. Yet now he wants the Court  
12 to believe that I let BMG know about the federal case  
13 because I emailed Tammy Cohen. That was July 4.

14 He reiterates that same position in his August 4,  
15 2020, email to Ms. Cohen. Which entity or entities are your  
16 clients with regard to 9 East 33rd street, the project at  
17 issue in this case? So it just, it rings hollow that this  
18 apparent trans -- this -- these communications he was having  
19 with Tammy Cohen somehow was sufficient to put BMG on notice  
20 of the federal lawsuit. It wasn't. But even if they --  
21 even if she were BMG's lawyer, as the Court has pointed out,  
22 that's not sufficient for purposes of tolling statute  
23 limitations.

24 THE COURT: Okay. All right. Do you want to be  
25 heard?

1 MR. O'REILLY: We're in a bit of unexplored  
2 territory for me here, Your Honor. So I -- I hope

3 THE COURT: That's okay.

4 MR. O'REILLY: -- you'll bear with me. Given what  
5 has already been transpired I'm not going to rehash anything  
6 that goes in.

7 THE COURT: You're going to here's what you're  
8 going to do. You're going to incorporate your arguments  
9 against Capstone in your arguments against BMG?

10 MR. O'REILLY: I am indeed.

11 THE COURT: There you go. Okay.

12 MR. O'REILLY: But, Your Honor, to start with, and  
13 I will point the Court to, you know, paragraph 69. Mr.

14 O'Reilly filed the present action on March 4th, 2024,  
15 rendering all health code violations between March 5, 2021,  
16 and the date of this amendment within the statute of  
17 limitations for all defendants. And similar wording is  
18 throughout for the different things. New evidence has come  
19 to light during discovery that was only disclosed after the  
20 close of the pleadings or the close of the ability to amend  
21 the complaint. I don't know what it's called. But the

22 scheduling order cut off for the ability to amend the  
23 complaint.

24 The defendants produced some discovery four months  
25 late, which shows, and I don't think I included in the

1 filing already, but I have it here, which shows that BMG  
2 actually actively participated in the prosecution, indeed,  
3 offering assistance by offering video cameras and things,  
4 you know, video camera footage and things like that to Waste  
5 Management to assist in the false prosecution that was --  
6 that was done. And so there is actual evidence that points  
7 to the conspiracy that is listed.

8 And I meant to bring this up as a preliminary  
9 issue. One of the other things that was disclosed, this  
10 was -- discovery was due by the 26th of August 2024, and  
11 these emails didn't come to light until 11th of December  
12 2024. So it was literally almost four months past the due  
13 date, according to the Maryland rules.

14 A new cause of action for defamation, a new person  
15 saying Mr. O'Reilly tried to steal the truck was disclosed  
16 about a new individual by the name of Paul Marker who I'd  
17 never heard of before, had never been -- had been  
18 deliberately concealed for the past seven years, and is now.

19 So I would like the Court's permission to join Paul Marker  
20 and to amend the complaints to join Paul Marker into it, to  
21 add him as it. But I can also clarify that BMG is, you  
22 know, is a definitive part of the conspiracy to -- or  
23 malicious prosecution, for all the rest of it. And that  
24 that could not have been, you know, that was only discovered  
25 in December of this past year.

1 THE COURT: All right. You want to respond to the  
2 newly discovered evidence aspect of it?

3 MR. PHILLIPS: Thank you, Your Honor, just  
4 briefly. The issue of Paul Marker is not raised in his  
5 opposition to

6 THE COURT: This I'm going to deal. Paul Marker  
7 is going to have to be something that he needs to file  
8 separately with the Court. That's not something that I'm  
9 willing to address here. Today is just motions to dismiss.

10 Go ahead.

11 MR. PHILLIPS: Paul Marker is not an employee or  
12 agent of BMG.

13 THE COURT: Okay.

14 MR. PHILLIPS: I never heard of him before until  
15 we saw a notice a week or so ago. So that's not an issue  
16 for us. Again, I think Your Honor points out I think he  
17 needed to request to add Paul Marker as a direct defendant  
18 distinct from the issue which is before the Court.

19 And with regard to the, as Your Honor knows,  
20 having read the complaint, there are many substantive counts  
21 in the complaint. In many instances, Mr. O'Reilly, couples  
22 with those substantive complaints an aiding and abetting and  
23 a conspiracy count. As we pointed out in our papers, to the  
24 extent that the substantive counts fall by virtue of statute  
25 limitations, the aiding and abetting, and conspiracy claims

1 fall by the wayside. They cannot under Maryland law be  
2 standalone counts. So that's where I'll end.

3 THE COURT: So, but do you agree with me that and  
4 I don't know, maybe you don't, my understanding is with  
5 defamation that is very specific in that that is a once you  
6 were put on notice, right? Or is all -- all of that, in  
7 other words, I thought that was specific to defamation, that  
8 the cause of action would accrue when you should have  
9 figured it out. I'm using very lay terms as opposed to the  
10 technical terms. Do you, am I -- you're looking at me like  
11 I'm cross eyed, but

12 MR. PHILLIPS: Well, I'm not -- I'm not sure  
13 whether Paul Marker is the basis for the new alleged  
14 defamation claim. But there's certainly nothing in the  
15 third-amended complaint.

16 THE COURT: But, so he's referencing and I guess  
17 this is why I didn't finish articulating, I guess, my  
18 thoughts. So if I am understanding your argument, Mr.  
19 O'Reilly, and you can correct me if I'm wrong, is that he  
20 thinks that I should not dismiss BMG from the malicious  
21 prosecution counts, at least because he learned through  
22 discovery that maybe you played a more active role than what  
23 he originally thought with the initial prosecution of him.  
24 Am I saying it correctly?

25 MR. O'REILLY: Yes, ma'am, that's correct.

1 THE COURT: So it was only through discovery that  
2 he learned this. I guess my question for you is I know that  
3 there is a when you should have known or should have learned  
4 or aspect of when the statute of limitations told starts  
5 running. So for example, you know what I'm -- you're  
6 nodding now -- so you're on the same page.

7 MR. PHILLIPS: I think so.

8 THE COURT: You know what I'm saying.

9 MR. PHILLIPS: I think so.

10 THE COURT: Would that apply to malicious  
11 prosecution?

12 MR. PHILLIPS: No. Somewhere I read long ago, you  
13 know, the whole discovery

14 THE COURT: And it's fraud, right. It's

15 MR. PHILLIPS: -- the whole discovery rule with  
16 regard to limitations is

17 THE COURT: That's what I'm talking about.

18 MR. PHILLIPS: Yeah. If you -- if you see smoke  
19 you -- that starts your three-year clock to investigate  
20 whether there's fire. Under Mr. O'Reilly's own writings, as  
21 Mr. Aist pointed out on page 5, and it's -- it's the same  
22 language that Mr. Aist cited to you in Mr. O'Reilly's  
23 opposition to Capstone's motion

24 THE COURT: Okay.

25 MR. PHILLIPS: -- appears with regard to BMG's

1 motion.

2 THE COURT: Okay. Let me get that out.

3 MR. PHILLIPS: It's on page 5 of the opposition to  
4 BMG's motion, the second full paragraph beginning BMG had  
5 actual notice.

6 THE COURT: Right.

7 MR. PHILLIPS: It's the second sentence of that  
8 paragraph that's important. In April 2020, more than six  
9 months before the expiry of the statute of limitations,  
10 right there that tells you two things. That tells you that  
11 Mr. O'Reilly is of the opinion that limitations ran six  
12 months after April 2020. In other words, October of 2020.

13 Why is that important? It tells you that he knows  
14 that his cause of actions, including malicious prosecution,  
15 all accrued in October of 2017. If you look at the timeline  
16 in the third-party complaint or in the third-amended  
17 complaint, October 17, 2017, is when Mr. O'Reilly alleged he  
18 was defamed by Mr. Tsottles. So we got October 2017 is the  
19 defamation. There's your smoke. You've got three years to  
20 find fire.

21 Fast forward to October 2020. No fire is found.  
22 Case is over with regard to limitations.

23 THE COURT: All right.

24 MR. O'REILLY: Ma'am, I would like to clarify  
25 something

1 THE COURT: Sure.

2 MR. O'REILLY: -- if I may. I didn't mean to  
3 limit the, you know, the causes of action to the malicious  
4 prosecution, aiding and abetting, or conspiracy. I believe  
5 now based on this new evidence that came in in December that  
6 BMG was actively involved in the malicious prosecution,  
7 perhaps the defamation, the intentional infliction of  
8 emotional distress and a host of other related torts that  
9 are part of this.

10 And the -- I'm going to go a little technical  
11 because I can. So Maryland follows the discovery rule,  
12 which is that you are not -- that the statute of limitation  
13 is tolled until the injury is discovered. And this  
14 certainly does, you know, is an injury. Now what Mr. sorry?

15 MR. PHILLIPS: Phillips.

16 MR. O'REILLY: Phillips, thank you. What Mr.  
17 Phillips is referencing is the inquiry notice rule which the  
18 United States Supreme Court and the Maryland Supreme Court  
19 have both addressed. Merck v. Reynolds, the United States  
20 Supreme Court clarified that things, something called  
21 inquiry notice or what they called storm warnings

22 THE COURT: Right. But you can't put your head in  
23 the sand is the idea. If you -- okay, so obviously you knew  
24 things were going not so well for you when they filed suit  
25 and you knew BMG was around and all of that back then.

1 MR. O'REILLY: Right.

2 THE COURT: And I guess that's what he's saying  
3 is, look, we were already involved and he knew that and he  
4 had the obligation at that point to try to do something more  
5 than he did.

6 MR. O'REILLY: I don't disagree, Your Honor. But  
7 the other part of the -- the other part of the United  
8 States, the prongs that are required for inquiry notice is a  
9 factual determination of when the plaintiff could have  
10 gotten hold of that information, whether or not they did a  
11 reasonable inquiry. And so the court is actually is to --  
12 to address inquiry notice, the court actually has to make a  
13 factual determination of when that information would have  
14 been available to me, and cannot stop -- it cannot the  
15 tolling of the statute of limitations until that time.

16 Now, you know, BMG has been aware since April of  
17 2020 that they were involved in this. Whether or not it was  
18 formally a part of the court. They have actively prevented  
19 me -- and even this email did not come from BMG, this came  
20 from Waste Management. And there are still things that are  
21 due in discovery that are not part of this. I have asked  
22 for the emails going back and forth between BMG and Waste  
23 Management. They have never been produced. There's been  
24 less than 150 pages of unique documentation produced in this  
25 case at all over the last six months. So there is a host of

1 information here that is not available.

2 And I think that there are more things to be found

3 about BMG's involvement with this. I could not have known  
4 because there was no way that I could have forced BMG to  
5 come to the table and give me anything, because even now in  
6 suit, they still refuse to produce anything.

7 MR. PHILLIPS: We produced documents, Your Honor.

8 There's no motion to compel with regard to BMG. My  
9 colleague, Ms. Maine, was kind enough to point out to me  
10 that Mr. Marker has a wastemanagement.com email address. So  
11 he's a Waste Management folk. He's not a BMG employee.

12 MR. O'REILLY: That's correct. Yeah. No, this is  
13 separate from the

14 THE COURT: Yeah, and I was -- and I'm sorry, I --  
15 when he started to address it, I stopped it. Obviously,  
16 whether you join Mr. Marker or not is a separate question.  
17 It's not something that is before this Court today.

18 Here's where I understand your argument to some  
19 extent. And I do agree, and I thank you for giving me,  
20 again, there's a lot to sift through and to keep all of the  
21 terms right. You are right. This is a discovery rule, does  
22 apply to the statute of limitations. But as I indicated,  
23 this is not a I can kind of put blinders on and not look or  
24 not ask the questions that need to be asked. There is --  
25 it's not an unlimited, unbridled right to wait until you

THERE ARE NO PLEADINGS BUT THE PLAINTIFF'S!!

Literally NOTHING has been pled but the complaint!!

29

1 find that information. So you are, I have to, the Court has  
2 to look at the circumstances that everybody has pled.

3 And looking at all of the documents, I don't know  
4 that I need to go beyond that to have an evidentiary hearing  
5 about all of that because of the way that things have been  
6 pled. And if I'm looking at the pleadings, my thought is

7 that it's kind of interesting. You're saying, well, I  
8 didn't know. But yet you knew something in at least 2020,  
9 at least in April of 2020. There is, by your own admission,  
10 conversations about adding them as parties to that suit.

11 At that point, even if I give you to then, you are  
12 on the clock. Even if I told the clock, and again, I don't  
13 know that I should even go that far, but even if I give it  
14 to you and say, okay, you had no idea BMG was involved,  
15 though I disagree. I think you did from the get go. Hang  
16 on. I think you did from the get go based on some of the  
17 allegations. But even if I gave you to that, it still has  
18 tolled. It still tolled before this suit was filed.

19 This suit was filed four years after that. And  
20 again, I'm not even sure you got me that far, if you know  
21 what I mean. I think you knew darn well that they were  
22 involved and there was action involving them to some extent  
23 back much closer to the original prosecution and the  
24 original incident back in 2017 and 2018. The preciseness of  
25 when that clock starts, I don't know that I need to get into

1 because, again, how far out we are. Again, they were not  
2 joined to the original suit. So you are not entitled to any  
3 of the tolling that might have happened because you would  
4 have had them in that original suit. And so I think the  
5 statute of limitations has run with regards to BMG as far --  
6 either way that I look at it.

7 MR. O'REILLY: I have two questions, and they're  
8 genuine questions, Your Honor. I'm not trying to

9 THE COURT: No, I appreciate it. I hope I'm being  
10 articulate enough. I'm trying to be articulate enough to  
11 get this through.

12 MR. O'REILLY: Yeah. So the question that I have  
13 is, yes, I was aware that BMG had some sort of involvement  
14 in the suit. I was aware that it had some sort. But the  
15 original filings in the federal court, BMG was not added to  
16 the intentional inflection of emotional distress or the  
17 malicious prosecution or anything like that, because there  
18 was no evidence that they were involved in that portion of  
19 it at all.

20 THE COURT: You have the idea. You are on notice  
21 at that point to start your inquiry. You have to start  
22 looking into it because again, I don't think you get to turn  
23 a blinded eye to information that you have.

24 MR. O'REILLY: I agree, insofar as, but, and the  
25 Merck decisions specifically invokes scienter, and says that

1 it is the scienter, it is actually the wrongdoing, the  
2 discovery of the wrongdoing that is the critical component  
3 that stops -- that starts -- that stops the tolling of the  
4 statute of limitations.

5 THE COURT: Right.

6 MR. O'REILLY: Without that, without knowing,  
7 without the evidence that there is actual scienter on new  
8 causes of action that they weren't originally part of, even  
9 in the federal suit, even in the, you know, even in the  
10 proposed second amended complaint, we have new evidence that  
11 indicates that they had actual scienter.

12 So this is something that I could not have pleaded  
13 back then. It was not until December that I was aware  
14 enough of this particular input into these specific causes  
15 of action. And without beating a dead horse here, we are at  
16 motion to dismiss stage, and all reasonable inferences  
17 should be taken in my favor. And if there is even, and, you  
18 know, compounding that with the lack of discovery, I mean,  
19 you know, Mr. Phillips is correct, there's just a tiny  
20 little bit of discovery. But the, you know, things that I  
21 have specifically asked for that I am due as part of the  
22 Maryland rules have not been proposed. And I think that it  
23 would be premature for the Court to take an inference, and  
24 forgive me for my boldness here, but it would be premature  
25 for the Court to take an inference in their favor to dismiss

1 the case rather than at least deferring this until the  
2 discovery is complete so that we can know if there's any  
3 additional information.

4 Because that leads me into my other question is,  
5 Your Honor, I've been pursuing this case for eight years  
6 now, almost seven and a half years. I have been doing my  
7 due diligence the whole time. I have been stonewalled at  
8 every single turn. I don't know how the Court would have  
9 expected -- it's not a matter that I had blinkers on, Your  
10 Honor. It was a matter that no matter where I looked, there  
11 were walls being put up to prevent me from finding the  
12 information that was finally turned over in discovery. And  
13 what I would like is the rest of discovery at the very  
14 least.

15 Now, at that point, if BMG says, look, this is  
16 everything that you have, this is everything that you are  
17 due, and there's still nothing here, then by all means,  
18 godspeed and good luck. But I think that it would be unjust  
19 to dismiss them at this point when they have not produced  
20 everything that has been requested of them, that they are  
21 unequivocally, you know, by the Maryland rules, by the  
22 discovery rules, due to me. I think that it would be very  
23 unjust to dismiss them from the case entirely.

24 Because if something, you know, if Waste  
25 Management turns over something else, and it does, we do

1 find scienter, or we do find a new course of action that  
2 hasn't been led at all based on the discovery, because I've  
3 been looking for it, can I bring BMG back into the case at  
4 that point? I think we're facing a much larger hurdle. So  
5 I think that the -- maybe it's better to err on the side of  
6 caution at this point and at least keep BMG in the case  
7 until we get to the finalization of the discovery that I  
8 owed, and it's six months overdue.

9 MR. AIST: Just two quick points, you, Honor. Mr.  
10 O'Reilly has everything that BMG has to produce. About two  
11 weeks ago, Mr. O'Reilly served on all the defendants a  
12 second set of requests for admissions that really went to  
13 the discovery process. Confirm that you have fulfilled in  
14 good faith all of your discovery obligations. There's about  
15 30 of those worded somewhat differently, but that's the  
16 thrust of it. That obviously prompted me to get on the  
17 phone with my client. You guys have any more documents that  
18 we haven't produced? Here's what we've produced. Here's  
19 the document request. Make sure you don't have anything  
20 beyond what we produced that's responsive to that request.  
21 I was told you've got everything, Scott. So that's it.  
22 There's no sense in hitting the pause button here.

23 The final point I would make, Your Honor, is we  
24 have moved to dismiss the only operative complaint that's  
25 before the Court, the third-amended complaint. That's what

1 this argument and your ruling needs to be confined to, not  
2 what may or may not happen, based on conjecture about what  
3 discovery may or may not show in the future. Thank you.

4 THE COURT: You make compelling arguments, Mr.  
5 O'Reilly. You certainly are very articulate, and you have  
6 done, like you said, you have done your due diligence, and  
7 you are very versed in all of this. The issue that I have,  
8 I keep coming back to, they were not part of the original  
9 suit, and therefore, it is -- and certainly they were around  
10 and in the air, if you will. They were being talked about.  
11 They were being referenced. They were integral at various  
12 points.

13 So it wasn't, for example, as if I don't know who  
14 this Marker, this Mr. Marker is. Like, all of a sudden,  
15 they came out of the blue. They were there. They were  
16 around. You had talked about adding them in 2020, all of  
17 that aspect of it. I just don't think that the information  
18 that you are providing is sufficient for me to say that that  
19 statute of limitations didn't start and has run, and that we  
20 are beyond that for them at this point. Again, and Mr.  
21 Phillips makes a very good point that at this point, I am  
22 dismissing the viable complaint that is in existence here  
23 against BMG.

24 God forbid that something come out you can -- that  
25 is very damning on them, that is this red herring that

1 you're looking for that will loop them back in, and then I  
2 think I have, as a judge, signed orders allowing re, you  
3 know, amended complaints in light of discovery violations.

4 So that is something that is not foreclosed to you in the  
5 future, should there be something along those lines. Not  
6 that I'm encouraging you to do anything along those lines,  
7 but just in case something does come to light that is -- so  
8 there isn't quite an injustice.

9 In other words, what you are, the scenario that  
10 you're posing to keep it open just in case because this  
11 might, I don't think outweighs the legal finding that is  
12 being put before me to rule on today. And so for those  
13 reasons, I am going to grant the motion to dismiss as to  
14 BMG. Okay.

15 MR. O'REILLY: Yes, ma'am.

16 THE COURT: Based on statute of limitations  
17 violations. That brings me now we're going to -- this one  
18 is going to get a little more involved. We didn't have to  
19 get into anything else so far, but now we are here on a  
20 little more complicated. Mr. Gamble with regards to Waste  
21 Management, and it's not just Waste Management. There are  
22 two -- there are other things. So that's, I think, it makes  
23 sense to deal with this slightly differently as opposed to,  
24 I think, again, not grouping them as a whole. But if we  
25 talk about maybe Waste Management of Maryland and Waste and

1 Ms. Oates, again, there's like, different things that are --  
2 they are -- all of the people you're representing are not  
3 seated or situated the same in my mind.

4 MR. O'REILLY: Yes. Sorry, Your Honor. Ms. Oates  
5 is not represented by Mr. Gamble.

6 THE COURT: Oh, I apologize. Okay. I'm sorry. I  
7 didn't realize.

8 MR. GAMBLE: No problem. And I appreciate -- I  
9 appreciate that, Your Honor, I do think that this is --  
10 these are types of motions

11 THE COURT: I had them listed -- sorry. I had  
12 them listed someplace altogether, and they were not  
13 represented the same. Okay.

14 MR. GAMBLE: Yeah, that's correct. And I think  
15 that your approach coming in here and sort of parsing out  
16 the individual arguments here is a really sound approach,  
17 and I would be happy to continue down that path here as  
18 pertains to the Waste Management defendant's motion and the  
19 various arguments. I think that we can

20 THE COURT: I appreciate it. Because this, I will  
21 tell you, we call the monster. The (indiscernible) was in  
22 here was -- it was very -- and it's because of, you know,  
23 again, this is well done, I guess, let me say that.

24 MR. GAMBLE: My pleadings have been called worse,  
25 Your Honor, so I'm okay with that. If it's okay, since I

1 think we're all collectively the thinking about statute of  
2 limitations, I would like to start there, even though that  
3 wasn't how I had viewed this argument going. Because I  
4 think that my colleagues here for Capstone and Beatty really  
5 laid out the framework of the statute of limitations.

6 THE COURT: Yes.

7 MR. GAMBLE: And the timing around it all. One  
8 thing that's, and I think Your Honor made the very salient  
9 points about how courts view statute of limitations. Right.  
10 You don't have to have every single element. You don't  
11 have to have every fact. You don't have to have every piece  
12 of evidence. You have to be on notice of whether you should  
13 investigate further. And when that happens, when you have  
14 enough to investigate, that's it. And you don't get to  
15 restart the statute of limitations every time you pick up a  
16 piece of paper in discovery or otherwise, through your own  
17 efforts, discover something else that goes into the cause of  
18 action. You have a cause of action when you know enough.

19 And the documents and the facts that I think are  
20 really undisputed, as alleged in the third amended  
21 complaint, are that the plaintiff understood all of the  
22 causes of action against Waste Management, was on notice of  
23 all of those causes of action by 2018, by October 2018 at  
24 the absolute latest. I would venture to say earlier October  
25 17, 2017, when Mr. O'Reilly received the summons saying that

1 he was being charged with certain crimes.

2 MR. O'REILLY: Objection, Your Honor. I'm sorry.

3 That is a mischaracterization of the timing of the  
4 notification. That is not part of the record. I'm sorry.

5 THE COURT: It's okay.

6 MR. O'REILLY: Thank you.

7 MR. GAMBLE: Thank you, Your Honor. The Court's  
8 permitted to take

9 THE COURT: Judicial notice.

10 MR. GAMBLE: -- judicial notice.

11 THE COURT: Again, I can take judicial notice of  
12 the, the filings in the -- just like I'm mixing it up right  
13 now, but I basically, I can take judicial notice of the  
14 filings that were taking place in the federal court, and I  
15 understand.

16 MR. O'REILLY: Understood, Your Honor. But there  
17 is not even dictating the opinions that says what the date  
18 was when the

19 THE COURT: When you were served -- summonsed.

20 MR. O'REILLY: -- when the service

21 THE COURT: Okay. That's fine.

22 MR. GAMBLE: I believe the summons

23 THE COURT: I think it was.

24 MR. GAMBLE: -- the summons service date will show  
25 up on the docket in the criminal case. And but we don't

1 have to look any further than Judge Russell's opinion  
2 dismissing the federal law, the defamation sounding claims  
3 in the federal lawsuit when he found that the statute of  
4 limitations for those defamation claims, which carry a one-  
5 year statute of limitations, accrued no later than October  
6 17th, 2017, when Mr. O'Reilly received the summons based on  
7 the complaint that was before him, had public notice of  
8 those documents.

9 But even if we move that timeline further, Mr.  
10 O'Reilly, plaintiff, filed a lawsuit in federal court on  
11 November 28th, 2017. That is the latest date by which any  
12 anyone could reasonably argue that he was on notice that he  
13 had claims. Of the 34 counts that are pled in the third-  
14 amended complaint that's before Your Honor, 26 of those are  
15 identical to those that are in this lawsuit. He had notice  
16 of all of those claims. We don't have to look, we don't  
17 have to do a fact intensive inquiry. We just need to look  
18 at the pleading that was filed in the federal court on  
19 November 28, 2017 to know that he was on notice.

20 The other eight claims all relate, they're titled  
21 slightly different, they all relate to the same incident  
22 that formed the subject matter of the federal suit in 2017,  
23 and those causes of action accrued by that date. And they  
24 have either a one-year statute of limitations for defamation  
25 or three-year statute of limitations for all the rest.

1 There's nothing that -- there's no indication that a longer  
2 statute of limitation of the period applies to any of the 34  
3 causes of action, and plaintiff has not argued or suggested  
4 otherwise.

5           So I think that it's important to first establish  
6 that when the causes of action accrued. Your Honor,  
7 pointed out there are tolling arguments that are being  
8 raised by the plaintiff here that may situate the Waste  
9 Management defendants differently than Beatty and Capstone  
10 because they were involved in a federal lawsuit and the  
11 others were not.

12           THE COURT: So that's what I wanted to see. Do we  
13 take out Waste Management Maryland and Roy Palmer because  
14 technically they were not parties or were they parties?

15           MR. GAMBLE: Waste Management

16           THE COURT: I didn't think that

17           MR. GAMBLE: -- of Maryland and Roy Palmer were  
18 not parties to the federal lawsuit. They are situated the  
19 same as Beatty and Capstone

20           THE COURT: Right.

21           MR. GAMBLE: -- insofar as there was a second-  
22 amended complaint that was anticipated to be filed but was  
23 not filed. So they were never parties to the federal  
24 lawsuit. And I would adopt the arguments as pertains to  
25 those two and those two defendants, excuse me, for purposes

1 of the statute of limitations argument, I don't think  
2 tolling applies to those two defendants for the same  
3 reasons.

4 THE COURT: That's what I wanted to say. So in  
5 other words, and then I think candidly, Waste Management,  
6 Inc., and how do you say

7 MR. GAMBLE: Tsottles.

8 THE COURT: -- Tsottles

9 MR. GAMBLE: Yes.

10 THE COURT: -- are again differently situated as  
11 well, or potentially I should say. So, I guess with regards  
12 to Waste Management Maryland and Roy Palmer, they again were  
13 not part of that original lawsuit. So any argument of  
14 tolling I don't think applies to them. And I guess what I  
15 want to know from you is how do I allow it to go forward on  
16 those two.

17 MR. O'REILLY: I think the operative words in the  
18 precedent from both Maryland and the US Supreme Court is  
19 knew or should have known that they were proper parties to  
20 the suit.

21 THE COURT: Right.

22 MR. O'REILLY: And I don't think that there is any  
23 question that Waste Management of Maryland knew that it was  
24 proper party to the suit. In fact, they said so in some of  
25 the communications, saying that Mr. O'Reilly should have

1 known that this was not Waste Management Incorporated, that  
2 it was Waste Management of Maryland Incorporated that was  
3 involved in this. So Waste Management of Maryland actually  
4 sort of, or Waste Management Incorporated actually threw  
5 Waste Management of Maryland, on the sword, and said, "No,  
6 you should have sued this party." Now, I did try to sue  
7 that party. My amendment was denied.

8 THE COURT: Right.

9 MR. O'REILLY: But on that, if I may, sorry.

10 THE COURT: Yeah. Again, that's the -- this is  
11 the thing that gets you, though, I think, a little bit.  
12 Even if I find, okay, you did know when you instituted the  
13 original suit, but then you tried. Weren't you on notice at  
14 that point and we're still

15 MR. O'REILLY: On notice if it was exactly, Your  
16 Honor. That -- because I have no -- there has never been  
17 any evidence produced ever that Roy Palmer or Adam Tsottles  
18 actually work for Waste Management of Maryland. We have no  
19 evidence whatsoever that has ever been produced to show that  
20 connection. Now, I asked for the -- I asked for HR records,  
21 and I asked for a -- I asked for an organizational chart in  
22 my discovery, Your Honor, and this is what I was provided.

23 THE COURT: I guess what I was curious about,  
24 though, was your argument is you're alleging that you didn't  
25 know about Palmer until discovery was done in September.

1 And the counter to that is, no, you tried to add him back in  
2 2020.

3 MR. O'REILLY: No, no, ma'am, I'm sorry. Marker  
4 is the one that I didn't know about. Palmer was the driver  
5 who actually hit me, and he was a part of the original  
6 attempted amendment to the suit. But he was also an active  
7 participant in the federal lawsuit. He actually filed an  
8 affidavit in, I think it was, I don't want to get the date  
9 wrong, but Mr. Palmer actually filed an affidavit in support  
10 of Waste Management Incorporated's position in the suit.  
11 There is no question that he knew or should have known that  
12 he was involved and that he was a proper party to the suit.

13 And so again, you know, we're back to -- and I  
14 think that the situation is slightly different here than it  
15 might be with BMG or Capstone, simply because it is -- it's  
16 still a mess. There is no information that has ever been  
17 produced that shows what the relationships are between these  
18 people, between these companies. What the relationships are  
19 between the companies. None of that has ever been entered  
20 into evidence. There is nothing on the record that tells  
21 us.

22 So basically, Your Honor, would have to be taking  
23 Waste Management's word for it, which, again, at this stage  
24 is an impermissible inference, as far as I'm aware, to say  
25 that, well, Waste Management should have been the party;

1 Waste Management, or, you know, Roy Palmer should have been,  
2 you know, the -- and again, we are six months past the due  
3 date for discovery, and this discovery should have been  
4 turned over. It would have cleared up a lot of these  
5 things, and we might not have to talk about them here today  
6 if that discovery had been disclosed.

7           And I filed a motion for sanctions, you know, for  
8 the failure to produce, to participate in discovery. And I  
9 think that it is appropriate for the Court to say, let's  
10 figure this out a little bit further before we just say, oh,  
11 you know, this might have been the way it happened, so let's  
12 get rid of it now. And I don't mean to minimize Your  
13 Honor's decision, but

14           THE COURT: No, no, no, no. And please, no, it's  
15 not -- obviously, I have to really dive in, and I'm trying  
16 to be thoughtful and deliberate in my actions, and it's not  
17 something that I do lightly because I do understand that you  
18 have been trying to navigate various court systems with this  
19 claim, and I'm not unsympathetic to that. I do recognize  
20 that that's happening.

21           However, there are rules, and those rules have to  
22 apply in order for there to be some sort of justice and  
23 system and all of that in place. Are they always fair? I  
24 don't know. I don't know that everybody would think that.

25           MR. O'REILLY: Hopefully, they're always just.

Exceptions such as letting defendants get away without turning over discovery they're SIX MONTHS LATE producing? Those kinds of exceptions??

T: But you do your best. I mean, you do

3 MR. O'REILLY: Right.

4 THE COURT: -- your best. Unfortunately, But

5 sometimes those rules have to apply for everyone involved.

6 And if, you know, there are exceptions, if you make too many

7 exceptions, all of a sudden the rule is gutted, and then the

8 system collapses. And is the system always just? Maybe

9 not. It's not perfect. I think anybody who has any

10 dealings with our system would readily acknowledge that it

11 is flawed. But it's pretty darn good. I mean, it's the

12 best that we have. And I think it's not -- I just want you

13 to be mindful of that, that this isn't a decision that is

14 lightly done, but it's certainly one that needs to be done

15 by the rules and by the law, and that's kind of where we

16 are.

17 MR. O'REILLY: Right. And I, without disagreeing

18 with anything Your Honor is saying, Merck vs. Reynolds, from

19 the United States Supreme Court, is studying the cases. It

20 is binding precedent. It is a request requirement for the

21 Court to do the multi-pronged analysis for inquiry, notice

22 of inquiry, notices invoked, and that is different from the

23 discovery rule in Maryland.

24 Also the, you know, the tolling of the statute of

25 limitations, it's, what is it, 2-101(c).

1 THE COURT: It's 2-101(b).

2 MR. O'REILLY: Yeah, 2-101(b) is also bolstered by  
3 the Supreme Court's decision again, that is binding  
4 precedent in Buckler last year that says that unequivocally  
5 state law claims are tolled during the pendency of a federal  
6 action.

7 THE COURT: Sort of. I'm going to ask you to hold  
8 that thought. I hate this, but I have I'm luckily in charge  
9 of our Family Law Division and one of the magistrates has a  
10 quick question for me. So I need to step down to address  
11 this question. I hate to stop this because we are flowing  
12 in a dialogue and I don't want anybody to lose their spot.  
13 So hang on. I will be right back as soon as I possibly can.

14 (At 3:06 p.m., recess in proceedings.)

15 (At 3:12 p.m., proceeding resumed.)

16 THE COURT: All right, Mr. Gamble.

17 MR. GAMBLE: I think Mr. Aist and Mr. Phillips  
18 will hope to address you briefly

19 THE COURT: Okay.

20 MR. GAMBLE: -- before I get it back.

21 MR. AIST: We just wanted to ask, Your Honor,  
22 since the Court has ruled on the motion as to Capstone and  
23 Beatty, are we excused?

24 THE COURT: Yes, you're excused.

25 MR. AIST: Okay.

1 MR. PHILLIPS: Thank you, Your Honor.

2 MS. MAINE: Thank you, Your Honor.

3 THE COURT: All right, thank you. You can spread  
4 out more.

5 MR. GAMBLE: Yeah, that's great.

6 MS. MAINE: Enjoy your space.

7 MR. GAMBLE: So, Your Honor, I just wanted to  
8 respond briefly to a couple, maybe one or two of the points  
9 the plaintiff raised before the recess, for purposes of  
10 understanding whether tolling applies to Mr. Palmer or Waste  
11 Management of Maryland, you don't have to delve into the  
12 allegations, you don't have to weigh facts, you don't have  
13 to do any of that. You have to look at what was filed in  
14 the federal court and determine whether or not those two  
15 individuals, excuse me, those two defendants were parties to  
16 that lawsuit, and it's beyond question that they were not.

17 In order to invoke tolling under 28 U.S.C 1367 or  
18 Maryland Rule 2-101(b), the predicate condition if you were  
19 a party to that federal lawsuit. That does not exist here.  
20 That ends the inquiry. Whether you should have known,  
21 didn't know, might have known, that's irrelevant. Were they  
22 a party to that lawsuit? If not, you can't take advantage  
23 of the tolling and everything that we've heard this  
24 afternoon and all of the third-amended complaint in the  
25 opposition brief, and based on again the federal docket

1 where there was a lawsuit filed in November of 2017  
2 demonstrates, without question, this plaintiff was on notice  
3 of all the claims that are asserted in this lawsuit in 2017,  
4 and that was over seven years ago. And so as pertains to  
5 defendant Roy Palmer and defendant Waste Management of  
6 Maryland, I would ask that you dismiss those two individuals  
7 on the basis of a lack, excuse me, on the basis of the  
8 statute of limitations renders the claims against them time  
9 barred.

10 MR. O'REILLY: May I respond, Your Honor?

11 THE COURT: Give me one moment.

12 MR. O'REILLY: Yes, ma'am.

13 THE COURT: All right. I'm happy to hear from  
14 you.

15 MR. O'REILLY: Yes, ma'am. I can't explain to you  
16 exactly where off the top of my head, but I believe there  
17 was in the most recent filing from the Waste Management that  
18 upon federal dismissal, the Maryland court respects federal  
19 rules for, I think, which means that this case is subject to  
20 the relation back doctrine and the United States Supreme  
21 Court in Krupski vs Costa Croisiere, under Federal Rules of  
22 Civil Procedure 15(c)(1)(C), depends on what the party to be  
23 added knew or should have known and not on the amending  
24 parties knowledge or timeliness in seeking to amend the  
25 pleading. That firmly puts this into Mr. Palmer and Mr. --

1 and the Waste Management of Maryland who were involved in  
2 the suit, even if they weren't active parties at the time,  
3 knew or should have known that they were proper parties to  
4 the suit. And I believe that under the Supreme Court's  
5 ruling that does -- that sort of undoes now what Mr. Gamble  
6 is talking about here.

7 THE COURT: I don't. I think you're mixing -- I  
8 think you're mixing things. Go ahead. I'm sorry. It's  
9 your motion. Did you want to have the last word, Mr.  
10 Gamble?

11 MR. GAMBLE: Judge, that federal rule applies in  
12 federal court. We're not there.

13 THE COURT: Court, not here, right, um-hum.

14 MR. GAMBLE: So the relation back doctrine's not  
15 relevant. And there's nothing that I'm aware of in the  
16 tolling statutes, statute and rule that are being sought to  
17 apply here that would suggest anything about the knowledge  
18 of the party that wasn't sued

19 THE COURT: Right.

20 MR. GAMBLE: -- as rendering them subject to the  
21 lawsuit. They're either a named party

22 THE COURT: Right.

23 MR. GAMBLE: -- and therefore they're subject to  
24 the federal jurisdiction and tolling may apply to them,  
25 we'll talk about that in a moment, or they weren't. And

1 similar to how Capstone and BMG are situated, that's where  
2 Roy Palmer and Waste Management of Maryland are as it  
3 pertains to the federal case.

4 THE COURT: Right.

5 MR. GAMBLE: And so I think that ends the inquiry.

6 THE COURT: I do. Unfortunately, I'm disagreeing  
7 with you, Mr. O'Reilly. Again, I do think you are citing  
8 some federal rules, but they don't apply in Maryland. The  
9 Maryland rule just talks about the, and I agree, with the  
10 tolling statute. The tolling statute, again, doesn't apply  
11 here. I don't get to it because they weren't parties. If  
12 they were parties to the action, then we're going to talk  
13 about the tolling statute. But because again, they were not  
14 parties, and even if I look at the discovery rule to stay  
15 any type of the discovery rule with regards to the statute  
16 of limitations, I don't think it's that you get to obviate  
17 the deadline of the statute of limitations in light of that.

18 MR. O'REILLY: But Maryland follows the discovery  
19 rule.

20 THE COURT: I do.

21 MR. O'REILLY: Right, yeah.

22 THE COURT: And I'm applying the discovery rule  
23 here.

24 MR. O'REILLY: But we're applying it to an entity  
25 rather than a cause of action.

1 THE COURT: Right.

2 MR. O'REILLY: And I'm not certain that that's  
3 proper, Your Honor. I don't mean to try to usurp here, but  
4 the, you know, when a -- if I can bring a new cause of  
5 action, and perhaps that's what Your Honor is saying, is  
6 that I need to file a new lawsuit that alleges, based on the  
7 newly established evidence that, you know, Roy Palmer did  
8 this thing, and now we are restarting the entire process  
9 based on this newly discovered evidence, then maybe that's  
10 what I need to do.

11 But that is the, you know, one way or another,  
12 there was no way that I could have been aware of Roy  
13 Palmer's defamation or Paul Marker's defamation until this  
14 process, you know, there was no way I was going to get my  
15 hands on a document that was entirely and only within Waste  
16 Management's possession. No matter, you know, it's not a  
17 matter of blinders. It is a matter of there was no way for  
18 me to obtain this until we got into discovery in this suit.  
19 So the discovery rule has to apply when there is absolutely  
20 no way, no matter how diligent I was, other than breaking  
21 into Waste Management's office and going fishing, there's no  
22 way I could have known.

23 MR. GAMBLE: Other than suing -- other than  
24 attempting to sue Roy Palmer in the federal action as a  
25 defendant, there's inquiry notice there. And as the case is

1 made clear, you don't have to know every single fact in  
2 order for the statute of limitations to begin running.

3 MR. O'REILLY: The inquiry notice in Merck vs.  
4 Reynolds is very clear, Your Honor. It requires a factual  
5 inquiry to find out. And the wording is whether or not the  
6 plaintiff did a reasonable investigation. You must find out  
7 when the information was available.

8 THE COURT: What is the cite to this Merck v.  
9 Reynolds?

10 MR. O'REILLY: Merck, M E R C K.

11 THE COURT: Okay.

12 MR. O'REILLY: I believe it's a 2006 case. There  
13 is an equivalent case in the Maryland Court of Appeals, now  
14 the Supreme Court, which I think is Georgia Pacific vs.  
15 Benjamin or something along those lines, I can't remember,  
16 but I will find it.

17 THE COURT: Do you have the sites of each of those  
18 that you're asking, or were they in?

19 MR. O'REILLY: They were. They have been in

20 THE COURT: In your motions.

21 MR. O'REILLY: -- in every filing since the --  
22 since the federal court. Merck & Co. v. Reynolds,

23 THE COURT: Okay.

24 MR. O'REILLY: 559 U.S. 6

25 THE COURT: Five five -- hang on 6.

1 MR. O'REILLY: Sorry.

2 THE COURT: 559 U.S.

3 MR. O'REILLY: U.S. 633.

4 THE COURT: Six three three.

5 MR. O'REILLY: 2010.

6 THE COURT: 2010, it was in 2010?

7 MR. O'REILLY: Yes.

8 THE COURT: And then you said there was a Maryland  
9 case as well.

10 MR. O'REILLY: Yes, and I am looking for that now.  
11 Looking for the citation.

12 MR. O'REILLY: If it will help, Your Honor, I can  
13 file a supplemental.

14 THE COURT: Actually, what I'm going to ask.

15 (At 3:21 p.m., Court addresses other parties  
16 present in the courtroom. O'Reilly v. Waste Management,  
17 Inc., et al was set aside.)

18 (At 3:30 p.m., proceeding resumed.)

19 THE COURT: Come on, back up. We will recall  
20 O'Reilly vs. Waste Management, Inc., et al. It's C-02-CV-  
21 24-546. Identify yourselves again for the record.

22 MR. O'REILLY: Matthew O'Reilly, plaintiff.

23 THE COURT: Thank you.

24 MR. GAMBLE: Your Honor, Jeff Gamble, Saul Ewing,  
25 on behalf of the Waste Management defendants, other than

Asking the defendant whether  
Supreme Court precedent applies??

1 (indiscernible.)

2 THE COURT: All right. So, basically, as we're

3 trying to look at this, I don't know that in inquiry that I  
4 need to have a factual hearing. I mean, do you agree that  
5 is there a requirement for a factual hearing with regards to  
6 this determination as to whether the statute of limitation  
7 applies, or the discovery rule or

8 MR. GAMBLE: Those matters are routinely resolved

9 THE COURT: Right.

10 MR. GAMBLE: -- on a motion to dismiss? And there  
11 are certainly some cases where the facts in the complaint or  
12 things or items available in the public record are meager.  
13 I've seen that term before. That's not this case. It's  
14 very clear and I think the clearest evidence, right, did  
15 this plaintiff know that he had causes of action against Roy  
16 Palmer and Waste Management of Maryland? Plaintiff filed,  
17 attempted to file a second-amended complaint in federal  
18 court years and years ago. And that's the best evidence.  
19 And you don't have to look anywhere else.

20 THE COURT: Right. And I do agree with that. And  
21 that's where I am going to fall. Again, I still think that  
22 these all are still, these two, and that's Waste Management  
23 of Maryland and Mr. Palmer, are in the same boat as Capstone  
24 and -- and sorry, BMG. And for those reasons, I am going to  
25 grant a motion to dismiss against those two for violations

1 of statute of limitations. Okay.

2 MR. O'REILLY: Your Honor, to be clear, are  
3 these -- is it -- this is a dismissal without prejudice,  
4 yes? **ALL OF THESE DISMISSALS ARE WITHOUT PREJUDICE**

5 THE COURT: **I am not intending to assign prejudice**  
6 **at this point.** I'm not giving you leave, however

7 MR. O'REILLY: Understood.

8 THE COURT: -- to file

9 MR. O'REILLY: Yes, ma'am.

10 THE COURT: -- again. I mean

11 MR. O'REILLY: I just wanted to be clear because I

12 THE COURT: I hadn't thought about whether I was  
13 going to say with prejudice or without, candidly. I'm  
14 sorry, I hadn't thought -- there were enough complicated  
15 issues to address. Let me think about it. I'll hear you  
16 all as to whether these all -- dismissal should be with or  
17 without prejudice. And I will think about that. Okay?

18 Next

19 MR. O'REILLY: Your Honor, you had asked for the  
20 citation on

21 THE COURT: Oh, sure. Yes.

22 MR. O'REILLY: This case is a little bit less on  
23 point, but it is, it precedes the Merck decision, but it is  
24 Georgia Pacific v. Benjamin.

25 THE COURT: Okay.

THIS IS NOT WHAT MERCK SAYS

1 MR. O'REILLY: And this is the Court of Appeals of  
2 Maryland 394 Md.59, 2006.

3 THE COURT: Okay. All right. Again, my  
4 understanding is that I can review the pleadings and all of  
5 that and make my decision on the statute of limitations  
6 based on that. And again, I believe that in light of the

7 fact that there wasn't an attempt to add these various  
8 parties at some point way back in 2020, certainly indicates  
9 that there was some notice that the plaintiff was under to  
10 file something with regards to those parties.

11 And again, I understand how this feels to you.  
12 Big picture. I get it. But as I indicated, sometimes the  
13 system has rules that need to be followed in order for the  
14 things to go forward, and it's hard to make exceptions to  
15 some of the basic rules.

16 MR. O'REILLY: May I ask, Your Honor. I'm so  
17 sorry, I didn't mean to interrupt.

18 THE COURT: Go ahead.

19 MR. O'REILLY: May I ask and that Your Honor  
20 review the Merck v Reynolds decision at least prior to  
21 issuing the final opinion on this.

22 THE COURT: I am actually having my law clerk read  
23 through it as we speak. Okay?

24 MR. O'REILLY: Okay. Thank you, ma'am.

25 THE COURT: So just so you know. Okay. All

1 right. With that then that brings us to I'd like to do  
2 Tsottles next, I think, because that's easier, I think, than  
3 Waste Management, Inc. Because now we're in Tsottles and,  
4 well, I mean, they're both the same in that they were up  
5 in -- and let me see if I can capture some of the argument.

6           It is my understanding is the reasons that we,  
7 these were able to be sued in federal court was because of a  
8 diversity of jurisdiction. And it wasn't necessarily a  
9 division between this is a federal question and this is a  
10 state question, and that the state was going to proceed  
11 along with along those lines. But I think the Court can  
12 take judicial notice of the pleading sheets and all of that,  
13 and, candidly, what was done up there. And it was about  
14 diversity as opposed to any certain, any combination, if you  
15 will, a federal cause of action and state cause of action.  
16 Am I getting your argument, basically?

17           And then because it was that the federal court  
18 exercised the jurisdiction it had because it made decisions  
19 in the case and it didn't dismiss. Again, is was easier  
20 with Tsottles. We have to get into a further discussion  
21 with WMI or Waste Management, Inc. With Tsottles, the court  
22 exercised their jurisdiction when the judge, when Judge  
23 Russell was making all of those rulings with regards to the  
24 motions to dismiss. At no point did he not decide something  
25 because it was in the state purview or choose not to

1 exercise supplemental jurisdiction. Is that a fair  
2 statement?

3 MR. GAMBLE: It is. And as you -- I'm sure as  
4 Your Honor

5 THE COURT: So encapsulating your argument.

6 MR. GAMBLE: Yeah. And I'm sure as Your Honor has  
7 seen, when a court is faced with a different set of  
8 circumstances, i.e., whether as a federal constitutional  
9 question or some other claim that bears on a question of  
10 federal law, the court is very particular in saying, I'm  
11 resolving this issue first. And then in the very end of the  
12 opinion, it will say, and I'm going to decline the state law  
13 claims that can go to someone else. Not the case here.  
14 Because all 33 counts were cast in, were state law claims.  
15 That's how they were cast.

16 And I know that there's arguments that we should  
17 just disregard the civil information report. That's just  
18 sort of a housekeeping matter. No, that's what you, that's  
19 what you, you check a box there to make sure that the court  
20 is aware. How you -- how it, you believe that it has  
21 subject

22 THE COURT: Well, I don't think. And I'm sorry  
23 I'm interrupting you, and I don't mean to be rude. But I  
24 don't think I have to just rely on that sheet. I think it's  
25 very clear in the discussion by Judge Russell that he was

1 applying Maryland's state law to all of this crime, all of  
2 the allegations. In other words, he wasn't applying federal  
3 law to all of them. He was discussing them under state.

4 MR. GAMBLE: Correct.

5 THE COURT: Right. I mean

6 MR. GAMBLE: He acknowledged that it was before  
7 him on diversity jurisdiction.

8 THE COURT: Right.

9 MR. GAMBLE: And he -- there was no federal  
10 question to be asked. He was resolving 33 counts under  
11 Maryland law because they were state law claims. That's  
12 what was before the judge, and that's how they were decided.  
13 So there was no opportunity for the judge to decline to  
14 exercise supplemental jurisdiction because that wasn't the,  
15 those weren't the facts before him.

16 THE COURT: Right.

17 MR. GAMBLE: And that puts 1367(b) outside the  
18 purview of this Court for purpose of tolling. And also 2-  
19 101(b)(2), you know, that's -- neither of those are relevant  
20 for that very reason Your Honor.

21 THE COURT: All right. Let me hear where you are  
22 on this.

23 MR. O'REILLY: To start with, Your Honor,  
24 declining jurisdiction, it is not presumed that a federal  
25 court assumes jurisdiction over state law claims. In fact,

1 the -- there is ample precedent that says that the federal  
2 court must actually state that it is adopting, you know,  
3 that it is incorporating the -- that it's taking  
4 jurisdiction over the state law claims in order for it to be  
5 considered to have taken jurisdiction.

6 Now, candidly, Your Honor's point about the  
7 addressing the Maryland law components of it may play a part  
8 in that. But I think that the federal court is required to  
9 apply Maryland law for a lot of the substantive, a lot of  
10 the procedural features of it, regardless of whether or not  
11 the claims themselves are federal claims or state claims.

12 The second part of that is that the under Waste  
13 Management's theory here, there is no way to amend a federal  
14 complaint to include a federal cause of action if it is not  
15 indicated on the civil cover sheet. That means that the  
16 civil cover sheet takes precedence over an amendment of the  
17 pleadings that includes a federal action. There is no  
18 question in the amended complaint, the, you know, the actual  
19 one that was accepted, the operative complaint before the  
20 federal court, that there were, you know, civil rights  
21 violations that were alleged under 1983. And so the  
22 amendment to the pleading has got to take precedence over  
23 what the civil cover sheet says.

24 THE COURT: So even if the -- I take that,  
25 clearly, Judge Russell still considered -- he didn't waive

1 jurisdiction on the state claims because -- because he made  
2 rulings on the merits with regards to defamation. He  
3 applied Maryland's rule on statute of limitations in regards  
4 to, I think there were three different complaints or three  
5 different claims that he did do it. It was the defamation,  
6 it was spoliation, and the negligent infliction of emotional  
7 distrust. He reached the merits of each of those applying  
8 Maryland law. So how do I

9 MR. O'REILLY: So first, I disagree with Your  
10 Honor's characterization on the merits. And that's a  
11 separate

12 THE COURT: Well, on the merits of the statute of  
13 limitations claim.

14 MR. O'REILLY: Fair enough. Fair enough. Yes, on  
15 the merits of the statute of limitations in that  
16 particular -- yes.

17 THE COURT: Because I would say he didn't reach  
18 the merits on a number of claims that you didn't respond to  
19 that he considered you submitted to.

20 MR. O'REILLY: Correct. Yes. And so, yeah, with  
21 that distinction, I agree fully, Your Honor, that he did.  
22 Now, the federal court is bound by the Erie Doctrine to  
23 apply Maryland state law to causes of action that are  
24 Maryland common law causes. So if there was anything that I  
25 pled in the federal court that that was not a federal cause

1 of action, then the court either had to adopt it or

2 THE COURT: Or choose not to exercise  
3 jurisdiction.

4 MR. O'REILLY: -- choose not to exercise  
5 jurisdiction. Right. And so when the court dismisses and  
6 chooses not to exercise jurisdiction, that triggers the  
7 tolling

8 THE COURT: Correct.

9 MR. O'REILLY: Into two oh one.

10 THE COURT: But that's not what happened.

11 MR. O'REILLY: How so? I'm sorry, I, don't  
12 follow, Your Honor. I don't mean to

13 THE COURT: It's okay. But that's not what  
14 happened here in the way that I'm reading it. Basically, at  
15 no point -- so he could have chosen to apply Maryland law or  
16 say, I'm not, I'm not exercising jurisdiction over this. He  
17 at no point said, I'm not exercising jurisdiction because  
18 this is a state claim. What he did do, and this I was, I  
19 will tell you, it took me a little while to get here with  
20 the ones that were considered undisputed. I mean, because  
21 again, this is very multilayered. But if you're considering  
22 them undisputed, then there was technically no finding on  
23 the merits of those. But he didn't decline to exercise  
24 jurisdiction, if that makes sense.

25 MR. O'REILLY: I understand what Your Honor is

1 saying, and I think that there's a slight distinction, razor  
2 thin, between accepting jurisdiction to begin with beyond  
3 what is required by Erie. And, you know, so he is required  
4 to apply Maryland law. That does not mean that he is  
5 accepting jurisdiction over the -- over the -- and I'm  
6 having trouble coming up with an analogy here. But I can  
7 conceive of a time where the court applies Maryland law to  
8 do a certain thing with a cause of action and still declines  
9 to assume jurisdiction over that thing. And I think that  
10 that's what we have here is that Judge Russell did his best  
11 to apply Maryland law, as was required, but still not have  
12 it rise to the level where he was actually assuming  
13 jurisdiction over that cause of action; so that when he  
14 dismissed the cause of action, he was actually dismissing it  
15 without taking jurisdiction of it.

16 THE COURT: Okay. What do you say about that?

17 MR. GAMBLE: There's no such thing. You either  
18 exercise jurisdiction over the claims or you don't. And in  
19 all the cases that I've read where a federal question has  
20 been pled, which is not the case here, the judge has to then  
21 make a subsequent decision. Do I exercise, you know,  
22 supplemental jurisdiction. You don't have supplemental  
23 jurisdiction if you don't have a federal cause of action.  
24 But even if you did hear the judge

25 THE COURT: What about the adding of the civil

1 rights violation? Did he add that in the amendment?

2 MR. GAMBLE: Well, referring to a statutory  
3 provision -- because I've looked into this a lot when you're  
4 thinking about moving a state, excuse me, a state law  
5 complaint to federal court, you have to be -- it has to be  
6 within the cause of action. Not necessarily in that, you  
7 know, in that part of the pleading, but it has to bear on  
8 the cause of action. And referencing a federal statute  
9 somewhere in the complaint doesn't get you there.

10 And Judge Russell did not make any decisions  
11 relevant to 1983 in his decisions. They were all state law  
12 claims because he was being presented with claims based on  
13 diversity of jurisdiction. And he resolved each one of  
14 those. I agree with Your Honor wholeheartedly. He resolved  
15 each one of those 33 counts, and that is exercise, by  
16 definition, as it pertains to Tsottles, he is exercising  
17 jurisdiction over the person and over the cause of action in  
18 his court, and he rendered a decision based on 33 counts.

19 When you decline supplemental jurisdiction, you  
20 make no findings as to the state law claims. That's for  
21 another judge. You're not going to make an advisory  
22 opinion. You're not going to step foot into that at all.  
23 Okay. Here, that's all he did. He resolved the 33 claims  
24 on a motion to dismiss.

25 THE COURT: Okay.

1 MR. O'REILLY: May I, Your Honor?

2 THE COURT: Yes.

3 MR. O'REILLY: To me that argument smacks of a  
4 technical form of a pleading required, which is in complete  
5 contravention to not only the Federal Rule 8, which says  
6 explicitly that there is no technical form of a pleading  
7 required, but also, you know, and I realize, and I  
8 appreciate Your Honor, you know, gracing me with the  
9 compliments about how I'm doing here, but I was not always  
10 this way. I put 11,000 hours into this case since I started  
11 back in 2018. And I was, you know, and looking at my  
12 pleadings back then, I mean, it's an absolute mess. So I've  
13 gotten better at it over time. And expecting me to adhere  
14 to and know what the technical pleading requirements are to  
15 say, you can't just say 1983. You have to say it in this  
16 section with this thing and coupled with this in order for  
17 it to be valid seems a non-starter.

18 THE COURT: I am going to conclude that because of  
19 the, the opinions that the court is taking judicial notice  
20 of issued by Judge Russell in the federal case, it appears  
21 that he exercised jurisdiction over all of the claims with  
22 regards to Tsottles. And as a result, there was no  
23 supplemental jurisdiction waiver that would then kick in the  
24 tolling of the statute of limitations. And so  
25 unfortunately, there's no tolling that happened, and,

1 therefore, the case has to be dismissed, again, with regards  
2 to Mr. Tsottles.

3           And if there had been anything, and I agree that  
4 he, I'll tell you, I thought about it long and hard with  
5 regards to the motion to dismiss because, again, I know it's  
6 not quite the merits that you think, but there were merit  
7 decisions made on the statute of limitations to a very  
8 select counts. But as I read through it for the 15th time  
9 or whatever I did, it is apparent to the Court that he did  
10 exercise that jurisdiction by granting the motion to  
11 dismiss. It wasn't because he didn't have jurisdiction. It  
12 was because of your lack of contesting those claims or the  
13 manner in which they were contested. And so, therefore, I  
14 think he made a ruling on the merits with regards to, to  
15 that.

16           So that brings us to WMI. Now, why I think WMI is  
17 slightly differently situated is because he dismissed it  
18 because of lack of personal jurisdiction. Now, the thing  
19 that I find interesting is I think in his second opinion in  
20 which he does your motion to reconsider, he reconsiders the  
21 dismissal for personal jurisdiction. And though he says I'm  
22 not going to conclude, I certainly think he said that he  
23 exercised -- that you brought enough information to him that  
24 he felt like that there was personal jurisdiction, but it  
25 still fell because of X, Y and Z.

1           So my thought is the way that I'm reading it, I  
2 don't think I can discount that he exercised jurisdiction  
3 over WMI. In other words, it seemed to me in his supplement  
4 opinion or second opinion that he issued in, I think it was  
5 2021, and I'm sorry if I have the date wrong, that he wrote  
6 with regards to the personal jurisdiction -- wish he had  
7 been clearer than he was. But I think what he did was he  
8 indicated that the court will assume without concluding that  
9 O'Reilly has unearthed and introduced sufficient warrant or  
10 evidence to warrant reversing the court's determination that  
11 it lacked jurisdiction over WMI. And that's pretty  
12 confusing to say assume without including.

13           But it seems to me that at that point, what he's  
14 saying is you convinced him that he did have personal  
15 jurisdiction over WMI, and he then further analyzed it with  
16 the rest of the case. Because he then said the court will,  
17 regardless of the reason set forth, will decline to  
18 reconsider its dismissal because of the same deficiencies.  
19 In other words, he exercised that the analysis as to WMI  
20 that he had done with Tsottles.

21           And I don't know, because I know your argument was  
22 slightly different, I guess, again, it's not one of the  
23 reasons that articulate the tolling, even if he didn't  
24 exercise personal jurisdiction. Right. I mean, and if he  
25 did exercise jurisdiction, then the tolling doesn't happen

1 either.

2 I guess I'm going to let you argue, Mr. Gamble, to  
3 preserve your record.

4 MR. GAMBLE: Yeah. As I was preparing for the  
5 argument this weekend and earlier today, I was struck by the  
6 statement that Judge Russell made, which I think is pretty  
7 clear that he says, in the alternative, you know, even if I  
8 didn't find personal jurisdiction, the claims are dismissed  
9 as a result of failure to state a claim and all of the other  
10 ones that you outlined there. And by filing the motion for  
11 reconsideration, which was asking the judge to reconsider,  
12 among other things, personal jurisdiction. And plaintiff  
13 put it -- attempted to put into the record additional facts  
14 that he said suggested that there was personal jurisdiction.

15 Plaintiff opened the door to Judge Russell to make  
16 that alternative ruling. And that's exactly what we have  
17 here. And I think that if I was attempting to argue that,  
18 you know, make a case that Judge Russell, you know, didn't  
19 take jurisdiction over WMI, that would come right back on  
20 and say, no, wait a second, he, he did exercise jurisdiction  
21 over WMI. He made a ruling that the findings as they  
22 pertain to Tsottles applied with equal force to the Waste  
23 Management, Inc. And not the cleanest way to write that up  
24 for certain, but that was the clear import of that is to say  
25 there's this alternative reason that I need to reach. And

1 the reason that he

2 THE COURT: So let's say he didn't do -- so for  
3 the alternative reason, it would still -- I would still be  
4 at the same place I am with Tsottles. But what if the other  
5 alternative, where do I go with that?

6 MR. GAMBLE: Yeah, it's a great question. So the  
7 statute 2-101(b) says lack of jurisdiction doesn't specify  
8 whether that pertains to subject matter jurisdiction or  
9 personal jurisdiction. So I think there's at least an  
10 argument that this contemplates that there being a lack of  
11 subject matter jurisdiction; so you're in the wrong court.  
12 You need to go sue that party some somewhere else. But I  
13 acknowledge the fact that it's written broadly enough to  
14 potentially encompass personal jurisdiction.

15 So what do you have to do if that is personal  
16 jurisdiction is read into that statute? Well, you have to  
17 look at when the plaintiff needed to refile his claims in  
18 state court in order to take advantage of the 2-101(b)  
19 tolling principle.

20 THE COURT: So he had one year. Right? I think I  
21 had the math done at one point. It was one -- hang on

22 MR. GAMBLE: So the third -- so the rule, Your  
23 Honor, reads

24 THE COURT: One year and one month, right, before  
25 he -- before he filed his federal. And then afterwards,

1 this is where -- this is where it falls is because  
2 afterwards he lost in the Fourth Circuit in 2023. Am I  
3 right?

4 MR. GAMBLE: October of '23, yes, Your Honor.

5 THE COURT: Yes, October of '23.

6 MR. GAMBLE: Oh, I'm sorry, September. I  
7 apologize. September of '23.

8 THE COURT: Okay. I wrote this down by months and  
9 I had it, there it is, okay. So then it was -- that's when  
10 his motion to reconsider was denied. Is that right?

11 MR. GAMBLE: Yeah, the

12 THE COURT: Okay.

13 MR. GAMBLE: The Fourth Circuit denied the  
14 petition for rehearing on bond September 5th, and then the  
15 Fourth Circuit mandate came down a week and a day later on  
16 September 13th, 2023, which is the critical date for 2-101  
17 purposes.

18 THE COURT: So then it was one year and one month  
19 prior to -- so from the action from the day that this  
20 happened to when he filed. And then it is from September to  
21 when he filed this suit, which is how many months? Because  
22 you filed in April. When did you file?

23 MR. O'REILLY: March of 20

24 THE COURT: March

25 MR. O'REILLY: Yeah, March 4th

1 THE COURT: '24.

2 MR. O'REILLY: -- I think of 2024.

3 MR. GAMBLE: So it's

4 THE COURT: So he then he is

5 MR. GAMBLE: -- six months.

6 THE COURT: -- then within the statute of  
7 limitations for everything except for the defamation  
8 actions.

9 MR. GAMBLE: I don't follow the one, the one year,  
10 Your Honor, that you're adding to the

11 THE COURT: I'm sorry. So if the filing of the  
12 federal action tolls the statement -- the statute of  
13 limitations. I start from the day of the action to that  
14 federal, that still runs. So I calculate that against that  
15 clock was running. So he already had lost a year and a  
16 month of that clock, and so then it tolls. And I stop it  
17 because petitioning the Supreme Court I think is not. It's  
18 been determined as election. Is that correct?

19 MR. O'REILLY: No, Your Honor, it is a -- I'm  
20 sorry.

21 MR. GAMBLE: Yeah, so it is an election. I mean,  
22 the way that 2-101 reads is it's upon entry of judgment.

23 THE COURT: Okay.

24 MR. GAMBLE: And entry of judgment refers to the  
25 judgment being entered by the district court. So I think

1 that there's a threshold question about what the effect of  
2 an appeal would have on those 30 days. What cases  
3 interpreting 1367(d) have said in the federal context is if  
4 you have a timely appeal and there's appellate jurisdiction  
5 exercise, the rationale and the policy of giving you those  
6 extra 30 days should apply because you're still in the  
7 appeal.

8 THE COURT: Right.

9 MR. GAMBLE: Supreme Court when you're taking a  
10 shot at getting a cert petition, completely different. The  
11 Supreme Court

12 THE COURT: And that was by case law, right?

13 MR. GAMBLE: Yes.

14 THE COURT: Yeah, okay.

15 MR. GAMBLE: And Supreme Court -- and even in  
16 circumstances where your cert petition is timely, you might  
17 have a little bit of an argument there. But the Supreme  
18 Court never took jurisdiction because the cert petition was  
19 filed late. The cert petition was filed 60 days

20 THE COURT: Untimely.

21 MR. GAMBLE: Yeah, 60 days after the 30 days run.

22 But Your Honor

23 THE COURT: So I

24 MR. GAMBLE: What he has -- what the plaintiff has  
25 to do here, he must file it within 30 days. It's not that

1 he gets it's not that you stack that you can file it

2 THE COURT: See, this is how I read it. I was  
3 certainly

4 MR. GAMBLE: -- two years, eleven months, you  
5 know, two years and eleven months later because you have,  
6 you know, that well, I don't want to get into that too  
7 far.

8 THE COURT: And you think he

9 MR. GAMBLE: The statute cannot be clearer. It's  
10 you must file within 30 days after entry of the judgment for  
11 this tolling to even apply. And then the court, then Your  
12 Honor would have the opportunity to do the heavy lift of the  
13 math to figure out if he has any days left on his statute of  
14 limitations based on how many days had transpired before he  
15 filed the suit. And then you would get into the how many  
16 days within that 30-day period ran off the statute of  
17 limitations clock.

18 But what's clear, and what the courts say, and  
19 I'll pull a case here to help us out, you must -- 30 days is  
20 the magic time period. It's as sacrosanct as the 30-day to  
21 file a notice of appeal. You have to hit that deadline or  
22 you don't get to take advantage of that tolling. It's --  
23 sorry full stop there. It is a mandatory.

24 And plaintiff, and I agree with Your Honor on this  
25 point, is very sophisticated when it comes to dissecting

1 these rules. And in his pleadings and I think it's in the  
2 complaint itself says, hey, I filed it within 30 days of  
3 when the Supreme Court of the United States rejected my cert  
4 petition as untimely. He knew about the 30 days. He had to  
5 do it within 30 days. But unfortunately, and this is, the  
6 equities aren't, you know, I understand his frustration  
7 here. But the 30 days runs from when the mandate from the  
8 Fourth Circuit appeal comes down, full stop.

9 That is when the 30 days run. And there's no  
10 exceptions for that. That's a hard and fast rule. It's  
11 entitled to give the pleader enough time to put together the  
12 state court complaint and get it on file, and that wasn't  
13 met here. It was five months shy of that or short of that  
14 time period. And that's dispositive of the rule in 2-  
15 101(b), the timing component of 2 101(b).

16 MR. O'REILLY: Your Honor, may I?

17 THE COURT: Yes, hang on one second.

18 MR. O'REILLY: Sure.

19 THE COURT: Because I felt like I looked at this  
20 and I'm trying to find it. Okay.

21 MR. GAMBLE: It's considered -- the case -- the

22 THE COURT: I just saw it. I read some place  
23 about

24 MR. GAMBLE: -- Supreme Court of Maryland talks  
25 about a grace period when defining the 30-day period within

1 which to file. And it's the Turner vs. Kight, I think is  
2 the case, 406 Md.167 from 2008 that talks and it gives the  
3 best construction of the rule, I think, and talks about it  
4 in terms of 1367(b) and it actually defers to 1367(d) when  
5 there's ambiguity. And under that rule, there's plenty of  
6 case law that says

7 THE COURT: See, and that's where I think I'm  
8 wrong. That's where I think -- because I was looking at it  
9 that way as well. But I'm going to be candid. I was  
10 looking at Capstone's motion and it was discussing the Artis  
11 artist case. And in the Artis case, she filed state court  
12 claims in the appropriate state court. And basically it

13 discusses that the Supreme Court held the tolled means the  
14 limitations clock stops the day the claim is filed in  
15 federal court, and 30 days post dismissal restarts from the  
16 point at which it was stopped.

17 MR. GAMBLE: That's right.

18 THE COURT: So 30 days post dismissal, it restarts  
19 at the point it was stopped.

20 MR. GAMBLE: Correct.

21 THE COURT: So it was stopped in this case one  
22 year and one month into the tolled -- the statute of  
23 limitations.

24 MR. GAMBLE: That's correct.

25 THE COURT: So then that's where we pick up in May

1 of '23, because I was doing it from May, because that was  
2 the judgment. I mean, there was a motion to reconsider. So  
3 I guess if you want to consider that motion for reconsider,  
4 that takes us to September, I think you said, of '23. So  
5 then we're at one year and two months by October, one year  
6 and three months or even it starts in October because you  
7 get that 30-day grace period to get the decision and get it  
8 going. And so that's the way that I'm reading. Is it  
9 opposite of the way that you are saying that it

10 MR. GAMBLE: We agree that that's how the statute  
11 of limitations are calculated once you are in this Court.

12 But you don't get entry into this Court unless you file your  
13 complaint within 30 days of the mandate from the Fourth  
14 Circuit Court of Appeals. It's a

15 THE COURT: Okay.

INCORRECT!!!!

16 MR. GAMBLE: -- it's just like filing a notice of  
17 appeal. You can have great

18 MR. O'REILLY: Your Honor

19 MR. GAMBLE: Excuse me, you can have great

20 THE COURT: Wait, I'm going to -- I'm one hundred  
21 percent going to hear from you. I just want to

22 MR. O'REILLY: Okay.

23 MR. GAMBLE: Judge, you can have

24 THE COURT: I promise. You're probably

25 MR. GAMBLE: -- you can have wonderful arguments

1 in the Appellate Court of Maryland. They could be, you  
2 know, absolute winners.

3 THE COURT: Thirty days.

4 MR. GAMBLE: Okay?

5 THE COURT: Okay.

6 MR. GAMBLE: But you can't get to that court and  
7 have that court hear your argument unless you file a notice  
8 of appeal within 30 days of the entry of the judgment. It's

9 the same language that tracks over in, you know, in a lot of  
10 these rules that we're governed by here, and that's a hard  
11 and fast rule. And I've been there a bunch of times where  
12 I'm in court on a constitutional question in federal court  
13 that the court declines to exercise supplemental  
14 jurisdiction and it's a race to get my pleading into

15 THE COURT: Right.

16 MR. GAMBLE: -- into the state court. It's the  
17 same, the same rule governs here. You only start  
18 calculating limitations once you are in the court after  
19 the -- within that 30 day period.

IT IS FUCKING NOT. BOTH SCOTUS  
AND THE MD SUPREME COURT SAYS  
IT'S NOTNOTNOT A 'GRACE PERIOD'!!!

20 THE COURT: Okay.

21 MR. GAMBLE: It's a grace period.

22 THE COURT: I'm happy to hear from you.

23 MR. O'REILLY: Thank you, ma'am. (Indiscernible.)

24 THE COURT: I know you're jumping out of your  
25 seat.

1 MR. O'REILLY: So just from the off, I've lost  
2 track, but I think it was either five or six times that  
3 counsel has asked the Court to make inferences in their  
4 favor as the moving party. The fact that we are having this  
5 discussion at such a depth means that there is some  
6 ambiguity here, that there is some actual discussion about  
7 what applies and where and that is not appropriate at a  
8 motion to dismiss stage. The all reasonable inferences are  
9 supposed to be resolved in my favor. This is not a place  
10 for proof. This is a place for showing.

11 This is a place do the four corners of the  
12 complaint, the complaint itself, plead a plausible, you  
13 know, plead enough of a cause of action to survive to go on  
14 to the next step. And here we are talking about the  
15 vagaries of appellate court law. That should be reserved  
16 for summary judgment motions or motions for judgment on the  
17 pleadings or something along those lines.

18 THE COURT: Well, it's why we're having this in  
19 depth is because, candidly, you put your toe in a wading  
20 pool that is rather complicated

21 MR. O'REILLY: Understood.

22 THE COURT: -- and it is the intermix of two  
23 different statutes, both federal and state. And as I'm

24 looking at it, I am seeing the case law in the notes to Rule  
25 2-101 that does indicate that you have 30 days from the date

MD CASE LAW  
SAYS OTHERWISE

1 of the dismissal to file in this Court. And I'm sorry, I'm  
2 seeing the cases. That's why I'm asking -- I'm getting  
3 educated here today along with you.

4 MR. O'REILLY: I would like to educate as well, if  
5 I may.

6 THE COURT: Um-hum, sure.

7 MR. O'REILLY: So Artis is definitely a good case.  
8 And is Artis a Supreme Court case or the Maryland case?

9 THE COURT: It's, I believe, Supreme Court.

10 MR. O'REILLY: I think -- I think you're correct,  
11 yeah.

12 THE COURT: Because it's dealing with the tolling  
13 that was taking place under 1367(d).

14 MR. O'REILLY: Correct.

15 THE COURT: But what

16 MR. O'REILLY: May I?

17 THE COURT: Go ahead.

18 MR. O'REILLY: So that's part of it. There is a  
19 Maryland case, I want to say it's from 2017, but I could be  
20 incorrect. I can't remember -- call off the top of my head.  
21 But it's a case that defines what the, you know, where the,  
22 you know, where the cutoff is. That it was the case where  
23 the Maryland Court of Appeals said, yes, that it tolls until  
24 the, you know, until the mandate is issued from the  
25 appellate court.

1           The court specifically reserved and said we do not  
2 take a position on what happens if this goes to the Supreme  
3 Court. There was some dicta in there about whether or not,  
4 you know, because it is -- what's the word I'm --  
5 permissive, you know, and not an appeal of rights. But the  
6 court specifically decided not to decide that thing, which  
7 works in my favor here because the court has not said  
8 whether or not a certiorari request is actually part of  
9 this.

10           I disagree with counsel's assertion that I was not  
11 on the -- that I was not part of the federal docket just  
12 because I missed the deadline for filing. Because again,  
13 that same court of appeals decision says that it is, as long  
14 as it is in -- within the jurisdiction of the federal  
15 system, it is, you know, and as long as the federal courts  
16 have jurisdiction over it and can, you know, work backwards  
17 from there, if something gets overturned, that is  
18 (indiscernible) it

19           Now, I agree with Your Honor a lot more heavily in  
20 that it is, and the Buckler decision from the U.S. Supreme  
21 Court I think controls here. It dovetails nicely with  
22 what's in the committee notes for 2-101. But it does -- it  
23 definitively -- the Supreme Court last year said, no, the  
24 statute of limitations is tolled during the entire pendency  
25 of the federal court action, regardless of what happens in

1 the state court. So until that mandate is issued or until  
2 the, you know, the docket, you know, denying certiorari is  
3 issued. That is the tolling is done until then.

4 And that's when I think Your Honor's entirely  
5 correct and again working in my favor here because I am the  
6 non-moving party and all reasonable, you know, inferences,  
7 that is when the statute of limitations restarted. So I

8 agree wholeheartedly with Your Honor's assessment that the  
9 statute of limitations was tolled starting the day, you  
10 know, November 27th, 2018, the day that it was filed in  
11 federal court. And whether or not it was reviewed -- and I  
12 think that this is actually, I think this is actually spoken  
13 to directly in the Buckler decision, regardless of whether  
14 or not that state court action was filed, according to 2-101  
15 here, the statute of limitations is tolled, full stop, just  
16 tolled during the entire pendency of the federal court  
17 action.

18 THE COURT: So I think here they -- I have read  
19 the Kight case and I actually have it in front of me, and I  
20 did read it last week as I was prepping for this. And it's  
21 very clear this is -- that it doesn't allow for the appeal  
22 to the supreme court to be included in that. So that though  
23 you were very timely after that. You were 30 days after  
24 that. That was discretionary. I think it was once the  
25 final judgment entered by the court of appeals

1 MR. O'REILLY: But we're mixing things

2 THE COURT: -- is what's important.

3 MR. O'REILLY: Sorry, Your Honor.

4 THE COURT: Okay. I'm listening.

5 MR. O'REILLY: We're mixing things a little bit  
6 here because 2-101 only applies if the federal court didn't  
7 apply supplemental jurisdiction.

8 THE COURT: That's right. And so that's what I'm  
9 saying.

10 MR. O'REILLY: And so if not

11 THE COURT: It's not supplemental.

12 MR. O'REILLY: Correct.

13 MR. O'REILLY: It's lack of jurisdiction.

14 THE COURT: And that's just why we're even having  
15 this discussion because here's -- and I'll -- again, I ruled  
16 with Tsottles that basically I do believe that they  
17 exercised jurisdiction. And because they exercised  
18 jurisdiction, there's no -- the statute -- there's no  
19 tolling of the statute of limitations here, and, therefore,  
20 I have to dismiss because of the lack of statute of  
21 limitations here.

22 So what we're arguing now is this alternative  
23 theory

24 MR. O'REILLY: Right.

25 THE COURT: -- that he dealt with with WMI, with

1 the Waste Management. And he said basically in his motion  
2 to reconsider, hey, you convinced me. Maybe there's more  
3 facts out there. And if I had exercised personal  
4 jurisdiction, if I had, that you'd still lose because of all  
5 the reasons that you lost this Tsottles. So if I read that  
6 decision as okay, the court exercised his jurisdiction over  
7 Waste Management, you lose statute of limitations based on  
8 Tsottles, my findings so far on Tsottles.

9           What I'm trying to sort through is giving an  
10 alternative ruling here because I think that opinion is  
11 ambiguous as to what his conclusion was. So if I -- so if  
12 he found personal jurisdiction, I'm deny -- I'm granting the  
13 dismissal. But I think I need to address both. If he -- if  
14 Judge Russell declined to exercise personal jurisdiction,  
15 this brings this under 2-101, which is the potential for the  
16 tolling. Because he -- finish my sentence and actually  
17 articulate a word. Because for lack of jurisdiction.  
18 Because I agree. I appreciate Mr. Gamble. It's not limited  
19 to supplemental jurisdiction. He pointed out it's just lack  
20 of jurisdiction. And if he found that he lacked personal  
21 jurisdiction over WM -- Waste Management -- I have WMI in  
22 all of my notes, so I apologize -- Waste Management, then  
23 does 201 (sic), how does that tolling apply?

24           And as I'm reading Kight, I believe that what the  
25 Maryland, the Court of Appeals at the time, now the Supreme

1 Court of Maryland said is that 201 is not contrary to  
2 1367(d). That basically as long as you filed 30 days from  
3 that order dismissing it for lack of jurisdiction, then you  
4 could argue even, if you were five years down the road, you  
5 could argue it was tolled. Here I did the math, but I  
6 didn't need to get there because unfortunately, again, and  
7 again it was a tactical choice that you made to apply to the  
8 Supreme Court in the case. And this case very clearly says  
9 asking for cert out of the Supreme Court does not toll that  
10 30 day requirement.

11 MR. O'REILLY: It doesn't though. It says that we  
12 do not address it. Right? That it does -- it says  
13 specifically, and this is the case that I'm thinking of --  
14 but I think that this case is overruled by Buckler, Your  
15 Honor. I think that this is no longer good law, at least in  
16 this particular instance because of the Supreme Court's  
17 ruling in Buckler.

18 To go back just a minute. I agree with what Your  
19 Honor is saying about, you know, perhaps Judge Russell did  
20 reconsider as part of the reconsideration. But Waste  
21 Management Incorporated was already not part of the suit on  
22 the 12(b)(1) by the time the reconsideration happened.  
23 Judge Russell did not bring back Waste Management  
24 Incorporated into the suit. Waste Management was still out  
25 of the suit at that time. And anything that Judge Russell

1 said in reconsideration is dicta. It is not endemic to the  
2 actual dismissal of 12(b)(1) under the, you know, that Waste  
3 Management had already been subject to.

4 So and also in the notes here where a federal  
5 district court lacked subject matter jurisdiction over a  
6 client's legal malpractice. You know, so that is the law  
7 there is subject matter jurisdiction not personal  
8 jurisdiction. And that's from the notes here in 2-101(b).  
9 So I think that we have a further, we're further from that.  
10 But again, Your Honor, we're at a motion to dismiss. And I  
11 don't, you know, I realize I'm speaking very passionately.  
12 I don't mean to tell Your Honor what to do, but, you know,  
13 this is

14 THE COURT: No, you're passionate. I appreciate  
15 it.

16 MR. O'REILLY: Yeah, this, you know, for them,  
17 this is money. This is my life, this is my career, my  
18 health, my family. I've been homeless and out of work for  
19 years because of what they did. And I think that I deserve  
20 my day in court one way or the other. And if this is all  
21 that we have to get there, let's get there. But again, if  
22 we have two ways to read something, we have to read it in  
23 the way that it's in my favor.

24 THE COURT: I understand. I read it in the favor  
25 of the non-moving party. Mr. Gamble, was there any response

1 that you wanted to make?

2 MR. GAMBLE: Just that the, I mean, they did not  
3 take up the issue, I agree, in Kight, you know. But what  
4 they did say is that they made a conclusion. They made a  
5 holding. And their holding is that under 1367(d), that 30-  
6 day period starts to run after issuance of an order of the  
7 U.S. Court of Appeals or a mandate affirming the dismissal.  
8 That's what the holding of the Kight case was. And it  
9 refers to the California case earlier citing it, as far as I  
10 can tell, somewhat approvingly that, and I think this is  
11 where Your Honor picked up, the decision to seek further  
12 review from the U.S. Supreme Court is discretionary. It's  
13 not a matter of right, as is seeking further review from the  
14 Fourth Circuit Court of Appeals.

15 And I was thinking about this argument over the  
16 weekend. I thought the same thing. You could file a cert  
17 petition 10 years down the road and say, well, you know,  
18 it's still, you know, it's still potentially proceeding.  
19 And as I, one thing that I said when I started is it could  
20 conceivably be a different set of circumstances if there  
21 were a timely cert petition to the U.S. Supreme Court and  
22 the Supreme Court says, yes, we're going to take it up.  
23 Maybe you can make a better case that that is part of the  
24 appeal. And that's, you know, that's a continuation of the  
25 Fourth Circuit Court of Appeals. I don't think that's what

1 the California case said and I don't think that's where the  
2 Right court was headed.

3 But here, there's not been a cert petition that's  
4 been timely filed that's been missed as well. The timing is  
5 everything. And I understand that we defer when we're  
6 inferring portions of a complaint. But when we interpret  
7 the law, we have to interpret it in black and white, and  
8 rules matter and timing matters. That's where we are today.

9 MR. O'REILLY: Even if Mr. Gamble is correct, the  
10 Buckler court still says that the federal filing, the  
11 federal action stops the clock.

12 THE COURT: And you are absolutely right with  
13 that. But that clock calculation -- so, for example, in  
14 this scenario, let's say that you had filed 30 days within,  
15 like you did after the Supreme Court -- I think, what was  
16 it, less than 10?

17 MR. O'REILLY: Yes.

18 THE COURT: I think you had it ready. I mean, you  
19 were in and there. Let's say by October 10th or whatever,  
20 within that 30 days you had filed this action, then the  
21 statute of limitations was tolled. Only a year and a month  
22 would have been tolled, even though you were six years away  
23 from the incident. Do you understand? Or seven years.

24 MR. O'REILLY: I understand what you're saying,  
25 but I -- yeah.

1 THE COURT: So, this is where -- that's where the  
2 tolling is, is it stops the clock.

3 MR. O'REILLY: And that's where I disagree with  
4 Your Honor. The Supreme Court was very clear that it does  
5 not stop the clock for the purposes of 1367. It stops the  
6 clock on the statute of limitations without regard to what  
7 comes after it. So anytime within that, and this was one of  
8 the central holdings, I think of it was Buckler, and there  
9 was one other case that came out around the same time, that  
10 they were very, very clear that says the statute of  
11 limitations restarts upon the issuance of the mandate from  
12 the federal court.

13 And so once that is, then you are free to file in  
14 any court from that period forward until the end of that  
15 statute of limitations which has been tolled for the entire  
16 pendency of the federal claim.

17 THE COURT: Well, and I may be very wrong, but

18 MR. O'REILLY: Please be wrong with  
19 (indiscernible), Your Honor.

20 THE COURT: And I do agree with counsel. What  
21 I -- I don't think I have read one fact that wasn't in your  
22 favor. What I'm doing is interpreting the law, and that's  
23 where I am. And I am -- look, it is not something that I do  
24 with relish at all because, look, it's not easy and I know,  
25 I read, and there's been injury, and you have suffered, and

1 it is not an easy decision to do this.

2 But unfortunately, I think what my role is is not  
3 to ignore rules that apply to certain aspects of this case.

4 And so it is with regret for you, because I understand how  
5 invested you are in all of this, I am going to make the  
6 finding that -- I am going to do it because, so we are just  
7 dealing with WMI or Waste Management, Inc., at this point,

8 in reading the 2021 opinion of Judge Russell, the Court is  
9 unclear as to what decision he ultimately made with regards  
10 to Waste Management, Inc.

11 If he decided that he -- you convinced him that he  
12 had personal jurisdiction over Waste Management, Inc., I  
13 would have to dismiss this because the statute of  
14 limitations is violated because he exercised jurisdiction.  
15 There's no tolling of the statute of limitations, and,  
16 therefore, it is -- this filing is well beyond the  
17 expiration.

18 If I find that he still -- he assumed, without  
19 concluding, that he still kept Waste Management Inc. out of  
20 the case because he had concluded that he lacked personal  
21 jurisdiction over Waste Management, Inc., I think the  
22 timing, the way that I am reading Maryland Rule 2-101 and  
23 the statute, the federal statute, 1367(d), the way that I'm  
24 reading both of those under the Kight case, I believe that  
25 you needed to institute this filing 30 days after the Court

1 of Appeals did not or affirmed the dismissal, and that would  
2 have been in the fall of 2023. This filing didn't take  
3 place until the spring of 2024.

4 And therefore, because you didn't get in Maryland  
5 court, in a circuit court, within 30 days of that final  
6 dismissal, I don't even get to the tolling that is warranted  
7 by 1367(d). And so for that reason, I'm going to dismiss  
8 against WMI as well, or Waste Management, Inc.

9 I've tried to keep the record as clean as I can  
10 for everybody. I'm not reaching any of the other issues  
11 that were raised, any of the res judicata, any of those. I  
12 am just making my decisions in all of these cases for  
13 statute of limitations grounds. Okay. All right. So  
14 that's where we are. All right. I wish you guys good luck.

15 MR. O'REILLY: Thank you, Your Honor.

16 MR. GAMBLE: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. GAMBLE: Thank you for your patience and  
19 wading through all

20 THE COURT: No, thank you. Of course. And thank  
21 you all for your presentations and everything along those  
22 lines. And your patience when I had to deal with other  
23 matters today. All right.

24 (At 4:20 p.m., hearing concluded.)

25

**CERTIFICATE OF TRANSCRIPTIONIST**

I hereby certify that the proceedings in the matter of Matthew O'Reilly vs. Waste Management, Inc., et al, Case No. C-02-CV-24-000546, heard in the Circuit Court for Anne Arundel County, Maryland, on Monday, February 3, 2025, before the Honorable Pamela K. Alban, Judge, were recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, the preceding pages 2 through 90 constitute a complete and accurate transcript of the proceedings.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In Witness Whereof, I have affixed my signature this 12th day of February, 2025.

*Carol Vasques*

Carol Vasques, Transcriptionist