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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

DINE BRANDS GLOBAL, INC,

Plaintiff–Appellee,

v

RACHAEL EUBANKS, in her capacity as THE TREASURER FOR THE STATE OF MICHIGAN,

Defendant–Appellant.
_____/

Supreme Court No. 165391
Court of Appeals No. 360293
Oakland CC No. 2021–189420–CZ

THE WALT DISNEY COMPANY ,

Plaintiff–Appellee,

v

RACHAEL EUBANKS, in her capacity as THE TREASURER FOR THE STATE OF MICHIGAN,

Defendant–Appellant.
_____/

Supreme Court No. 165392
Court of Appeals No. 360291
Oakland CC No. 2021–189464-CZ

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or her state governmental action is invalid.

SUPPLEMENTAL BRIEF ON APPEAL OF APPELLANT RACHAEL EUBANKS, STATE TREASURER

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

The Appellees, Dine Brands Global, Inc, (Dine Brands), and the Walt Disney Company, (Disney), filed their complaints in Oakland County Circuit Court challenging an examination determination issued by the Appellant, the State Treasurer. On January 24,2022, the Circuit Court issued an order enjoining the State from enforcing the administrative decisions. (Order.) The Treasurer appealed. On January 19, 2023, the Court of Appeals issued its decisions. The Treasurer filed its applications for leave to appeal with this Court, and on September 15, 2023, this Court remanded the matters to the Court of Appeals for further review. The Court of Appeals issued its decisions on remand on January 11, 2024. This Court ordered supplemental briefing and argument on the applications on January 26, 2024.

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in interpreting the Uniform Unclaimed Property Act, MCL 567.221 *et seq.*, when it concluded that an examination or audit conducted by the Treasurer was not an "action or proceeding" under MCL 567.250(2).

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Did not answer.

   Court of Appeals' answer: Did not answer.

2. If so, whether the commencement of the examination tolled the statute of limitations in MCL 567.250(2)?

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Did not answer.

   Court of Appeals' answer: Did not answer.

3. Whether, even if an examination is a "proceeding," the Treasurer must still file a lawsuit within the applicable time frame to avoid the lawsuit being time-barred?

   Appellant's answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Did not answer.

   Court of Appeals' answer: No.

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STATUTES INVOLVED

MCL 567.250

(1) The expiration, before or after the effective date of this act, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this act. This subsection does not apply to gift cards or gift certificates.

(2) Except as otherwise provided in subsection (3), an action or proceeding shall not be commenced by the administrator with respect to any duty of a holder under this act more than 10 years, or, for the holder of records of transactions between 2 or more associations as defined under section 37(a)(2), more than 5 years, after the duty arose.

(3) For eligible holders electing to participate in the streamlined audit process described in section 31b, an action or proceeding shall not be commenced by the administrator with respect to any duty of a holder under this act more than 4 years after the duty arose.

MCL 567.251

(1) The administrator may require a person who has not filed a report under this act or a person who the administrator believes has filed an inactive, incomplete, or false report, to file a verified report in a form specified by the administrator. The report shall state whether the person is holding any unclaimed property reportable or deliverable under this act, describe unclaimed property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of a person to determine whether the person has complied with this act. The administrator may conduct the examination even if the person believes he or she is not in possession of any property reportable or deliverable under this act. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

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(3) If a person is treated under section 13 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection (2), may examine the records of the person if the administrator has given the notice required by subsection (2) to both the person and the business association at least 90 days before the examination.

(4) Any examination performed by the administrator or his or her duly authorized agents must be performed in accordance with the generally accepted auditing standards to the extent applicable to unclaimed property examinations. A person who has been audited by the administrator or his or her duly authorized agents or a person whose books, records, and papers have been examined by the administrator or his or her duly authorized agents shall be provided a complete copy in printed or electronic format of the audit report, which shall identify in detail the work performed, the property types reviewed, any estimation techniques employed, calculations showing the potential amount of property due, and a statement of findings as well as all other correspondence and documentation which formed a basis for the findings. Not later than 6 months after the effective date of the amendatory act that added this subsection, the administrator shall electronically file a request for rule-making with the office of regulatory reinvention pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to initiate rules on auditing standards.

(5) When the person being examined does not have substantially complete records, the administrator or his or her duly authorized agents may determine the amount of any abandoned or unclaimed property due and owing based upon a reasonable method of estimation consistent with the standards described in subsection (4). If the person being examined has filed all the required reports and has maintained substantially complete records, then all of the following apply to the examination:

(a) The examination shall include a review of the person's books and records.

(b) The examination shall not be based on an estimate.

(c) The administrator or his or her duly authorized agents shall consider all evidence presented by the holder to remediate the findings.

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(6) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this act, the administrator may assess the cost of the examination against the holder at the rate of $50.00 a day for each examiner; however, the charges shall not exceed the value of the property actually found to be reportable and deliverable. The cost of examination made pursuant to subsection (3) shall be imposed only against the business association.

(7) If a holder fails after the effective date of this act to maintain the records required by section 32 and the records of the holder available for the periods subject to this act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay an amount as may reasonably be estimated from any available records.

(8) For an eligible holder that has elected to follow the streamlined process described in section 31b, examinations shall not include checks voided within 180 days from the date of issuance of the check.

(9) As used in this section, "substantially complete records" means at least 90% of the records necessary for unclaimed property examination purposes as defined under the principles of internal controls. The determination of substantially complete records shall not be made solely as a percentage of the total overall individual records to be examined, but also on a materiality level of value of the records. The lack of greater than 10% of records in 1 particular property class to be examined does not result in the extrapolation of error in those areas in which a person has filed all the required reports and has maintained at least 90% of the overall records for that particular property class. Substantially complete records are not meant to be an absolute measurement of all available records.

MCL 567.251a

If the administrator determines that a holder has failed to report or deliver to the administrator unclaimed property as required by this act, the administrator shall mail to the holder by certified or registered mail a notice of examination determination, which shall include the property deliverable. The notice of examination determination shall constitute a decision of the administrator. Within 90 days after the decision of the administrator is mailed, a holder that is aggrieved of the decision may bring an action in the circuit court, or within the same period, the holder may elect to contest the decision by filing a

request for reconsideration with the administrator prior to bringing an action in circuit court.

MCL 567.252

(1) A holder required to file a report under section 18, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for 10 years, or, for the holder of records of transactions between 2 or more associations as defined under section 37(a)(2), for 5 years, after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by rule of the administrator.

(2) A business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides those instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for 3 years after the date the property is reportable.

MCL 567.253

The administrator may bring an action in a court of competent jurisdiction to enforce this act.

MCL 567.261

This act shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it

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INTRODUCTION

"'Escheatment' is the power of a State, as a sovereign, to take custody of property deemed abandoned." *Delaware v Pennsylvania*, 598 US 115, 119 (2023). Over the last century, the escheatment of intangible personal property has led to the development of case law and uniform laws to avoid conflicts amongst the States when dealing with abandoned property in the possession of multi-state or even multi-national corporations or entities.

During this time, the volume of abandoned property increased, and Michigan, like many States, transitioned its escheatment process to one centered on statutory abandonment and administrative enforcement rather than requiring litigation to recover the property in every instance. The statutory system is designed to create clear rules and promote efficiency, including multi-state examinations and enforcement. But identifying and securing statutorily abandoned property can be complicated and time-consuming if a holder of that property does not self-report, requiring multiple states to work collaboratively to examine the records.

An examination is a "proceeding" as used throughout the Michigan's Uniform Unclaimed Property Act (UUPA), MCL 567.221 *et seq*. The Court of Appeals' initial decision in this case is the first in the nation to hold that examinations are not "actions or proceedings" within the meaning of the UUPA. The initial decision overlooked the plain text, context, and the clear purpose of the UUPA and places Michigan out of step with the rest of the nation in enforcing the UUPA.

Additionally, the final administrative decision, the statutory "examination determination," is the result of the examination. It is the holder, not the Treasurer,

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who carries the burden of challenging that decision. The Treasurer is not required to file a lawsuit under the UUPA because the Legislature gave the Treasurer the administrative authority to demand the surrender of statutorily abandoned property. Moreover, tolling has no effect of the Treasurer's ability to file a lawsuit to compel compliance with the administrative decision (or even to compel compliance with its audit once its commenced). Holders have a duty to comply with such a decision and any written demand for the surrender of abandoned property. The Court of Appeals' initial decision is clearly erroneous, inconsistent with the rest of the UUPA, and this Court should grant leave and reverse.

If the Court of Appeals initial decision is allowed to stand, Michigan will become an outlier amongst the States in its escheatment process. While other States proceed collaboratively in enforcement examinations, Michigan, because of the Court of Appeals' published decision, now must instead conduct its own examination through a lawsuit to prevent its enforcement rights from lapsing. Annually, Michigan has approximately 400 examinations underway. This lawsuit requirement prevents Michigan from meaningfully participating in multi-state examinations, a process permitted by the uniform acts. This puts Michigan at a disadvantage: it isolates it from other States in joint enforcement efforts, and it requires a preemptive lawsuit that would otherwise be unnecessary. These examination lawsuits will unnecessarily clog the court's docket when the Legislature already gave the Treasurer the power to administratively examine the records.

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This result is not only bad public policy for Michigan, but it is also bad public policy for holders. The same multi-state audits and examinations will continue to take place. But now the same records will also be subject to a separate, preemptive lawsuit in Michigan. The Court of Appeals' initial decision misinterpreted the law and effectively results in an increase in cost, expense, and litigation to Michigan and holders of abandoned property. The time and manner for completing the disclosure and discovery process within the lawsuit will likely be different than the timeframe established in the multi-state examination. The plain text and purpose of the UUPA support a different outcome. The examination is an action or proceeding within the meaning of the phrase as used within the UUPA. This Court should reverse the Court of Appeals' decision and adopt the analysis it provided on remand.

STATEMENT OF FACTS AND PROCEEDINGS

Factual Background for Dine Brands

On June 18, 2013, the State Treasurer commenced an examination of Dine Brands. (Dine Appx p 59.) There is no dispute that at the time the examination commenced, all reportable years at issue in this case were within the statute of limitations. The examination was a multi-state audit, and it included 17 other States. (Dine Appx p 60.) The examination resulted in findings that Dine Brands failed to report numerous properties due and owing to Michigan residents. On July 6, 2021, the State Treasurer issued her final examination determination finding $258,169.09 of reportable property. (Dine Appx p 33.) The determination included

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$161,065.36 worth of payroll checks issued prior to March 31, 2010. (Dine Appx p 108.) It also included $70,604.20 of checks payable to vendors issued on or prior to March 31, 2013, as well as $11,447.25 of checks payable to governmental agencies issued prior to March 31, 2008. (Dine Appx p 108.) The multi-state audit is ongoing as of today's date.

During the examination, Dine Brands raised the statute of limitations as a defense to the ongoing examination. (Dine Appx p 108.) As indicated throughout the record, Dine Brands asserted that since the State Treasurer had not commenced a lawsuit, the statute of limitations continued to run during the examination. (Dine Appx p 110–111.) The State Treasurer rejected the argument. (Dine Appx p 108.) Thereafter, Dine Brands filed a complaint.

Dine Brands Court Proceedings

After Dine Brands appealed the decision by filing its complaint in circuit court, the State Treasurer removed the case to the Court of Claims. (Dine Appx p 3.) After briefing the issue, the Court of Claims held that jurisdiction was proper in the circuit court and remanded the case.

Once remanded, Dine Brands filed a motion for summary disposition. (Dine Appx p 60–117.) The State Treasurer filed a response, and on January 24, 2022, prior to oral argument, the circuit court issued its opinion granting Dine Brands' motion and enjoined the State Treasurer from compelling Dine Brands to report and remit the properties disputed by Dine Brands. (Dine Appx p 4–62.) The Treasurer appealed.

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After briefing and oral argument, the Court of Appeals affirmed the trial court. The Court of Appeals held that an examination is not an "action or proceeding" and, therefore, the statute of limitations is continuing to run against the Treasurer to file a lawsuit to compel Dine Brands to turn over the abandoned property. The Treasurer then filed its application for leave to appeal with this Court.

On September 15, 2023, this Court remanded the case to the Court of Appeals to address two questions while presuming that an examination constituted a proceeding for purposes of MCL 567.250(2): (1) whether the commencement of the examination tolled the statute of limitations, and (2) whether the Treasurer must still bring a lawsuit within the applicable timeframe to avoid it being time-barred. (Remand Order.) The Court of Appeals considered the questions and determined that the question of tolling is irrelevant because if the examination is timely, then its resulting final administrative decision is also timely. *Dine Brands Global, Inc v Eubanks (On Remand)*, unpublished per curium decision of the Court of Appeals, p 4 (Docket No 360293, issued January 11, 2024). Additionally, the Court of Appeals found that the Treasurer did not need to commence a lawsuit because the procedure placed the burden on the holder to challenge the administrative decision. *Id.*, pp 4–5. This Court then ordered additional briefing on the questions presented.

Factual Background for Disney

On February 26, 2013, the State Treasurer commenced an examination of Disney. (Disney Appx p 30.) There is no dispute that at the time the examination

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commenced, all reportable years at issue in this case were within the statute of limitations. The examination was a multi-state audit, and it included 15 other States. (Disney Appx p 30.) The examination resulted in findings that Disney failed to report numerous properties due and owing to Michigan residents. On May 14, 2021, the State Treasurer issued her final position regarding Disney's statute of limitations argument, rejecting it, and acknowledging the examination has found $532,945 of property potentially owed to Michigan residents. (Disney Appx pp 35–36.) The multi-state audit is ongoing as of today's date.

During the examination, Disney raised the statute of limitations as a defense to the ongoing examination. (Disney Appx p 101.) As indicated throughout the record, Disney asserted that since the State Treasurer had not commenced a lawsuit, the statute of limitations continued to run during the examination. (Disney Appx pp 18–19.) The State Treasurer rejected the argument. (Disney Appx p 16.) Thereafter, Disney filed a complaint.

Disney Court Proceedings

After Disney appealed the decision by filing its complaint in circuit court, the State Treasurer removed the case to the Court of Claims. (Disney Appx pp 2–3.) After briefing the issue, the Court of Claims held that jurisdiction was proper in the circuit court and remanded the case.

Once remanded, Disney filed a motion for summary disposition. (Disney App'x p 6.) The State Treasurer filed a response, and on January 24, 2022, prior to oral argument, the circuit court issued its opinion granting Disney's motion and

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enjoined the State Treasurer from compelling Disney to report and remit the properties disputed by Disney. (Disney App'x p 97–113.) The Treasurer appealed.

After briefing and oral argument, the Court of Appeals affirmed the trial court. The Court of Appeals held that an examination is not an "action or proceeding" and, therefore, the statute of limitations is continuing to run against the Treasurer to file a lawsuit to compel Disney to turn over the abandoned property. The Treasurer then filed its application for leave to appeal with this Court.

As noted, on September 15, 2023, this Court remanded the case to the Court of Appeals to address the same two questions as above, again presuming that an examination constituted a proceeding for purposes of MCL 567.250(2). The Court of Appeals considered the questions and determined that the question of tolling is irrelevant because the if the examination is timely, then its resulting final administrative decision is also timely. *The Walt Disney Co v Eubanks (On Remand)*, unpublished per curium decision of the Court of Appeals, p 4 (Docket No 360291, issued January 11, 2024). Additionally, the Court of Appeals found that the Treasurer did not need to commence a lawsuit because the procedure placed the burden on the holder to challenge the administrative decision. *Id.*, pp 4–5. This Court ordered additional briefing on the questions presented.

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STANDARD OF REVIEW

This case presents purely legal questions of statutory interpretation. "Statutory interpretation is a question of law" reviewed de novo. *Fradco, Inc v Dep't of Treasury,* 495 Mich 104, 112 (2014). "When interpreting a statute, courts must 'ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.'" *Id.*, quoting *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312 (2002). "This requires courts to consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." *Fradco, Inc,* 495 Mich at 112. (internal citation and quotation marks omitted). "Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156–157 (2011) (additional citation omitted). This Court "may consult dictionary definitions to give words their common and ordinary meaning." *Id.* "In the absence of ambiguity, 'the statute speaks for itself and there is no need for judicial construction; the proper role of the court is to apply the terms of the statute to the circumstances in a particular case.'" *Detroit Edison Co, v Celadon Trucking Co*, 248 Mich App 118, 121 (2001), quoting *Massey v Mandell*, 462 Mich 375, 380 (2000).

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ARGUMENT

I. The UUPA's intake of abandoned property is designed to operate without judicial involvement. The phrase "action or proceeding" as used in the UUPA's statute of limitations includes administrative enforcement actions and proceedings.

The central terms at issue here are "action or proceeding," MCL 567.250(2), and they are unambiguous and encompass the Treasurer's examination, which is an administrative action or proceeding. The phrase "action or proceeding" is not inherently a legal term of art, and judicial actions or proceedings are a subset or type of the broader group. See 11 USC 362(a)(1) (the automatic stay applies to "the commencement or continuation, including the issuance or employment of process, of a *judicial, administrative, or other action or proceeding* against the debtor . . . ."(emphasis added.) Just like in the bankruptcy code, "actions or proceedings" include audits and investigations. See 11 USC 362(b)(9)(A) and (b)(25)(A) (exempting audits and investigations from the automatic stay). By analogy, while a Wrangler is a type of Jeep, not all Jeeps are Wranglers. Something can be an action or proceeding without being judicial, hence the terms administrative action, quasi-judicial proceedings. The Court of Appeals erred in interpreting the phrase "action or proceeding" as used in the UUPA's statute of limitations, to exclude administrative actions or proceedings and, instead, holding that an "action or proceeding" refers exclusively to a judicial action or proceeding, requiring the Treasurer to file a lawsuit.

The UUPA consistently uses the phrase "action or proceeding" to encompass a broad array of actions or proceedings, including administrative actions to enforce

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the Act. Moreover, the Court of Appeals' interpretation is inconsistent with the purpose of the UUPA and renders portions of the statute nugatory. This Court should reverse the Court of Appeals January 19, 2023, published decision.

A. The UUPA's design and framework concern administrative enforcement of statutory abandonment.

The UUPA has been in effect since 1996. MCL 567.221, *et seq*. The Treasurer is the successor to the Board of Escheats, and the UUPA defines the procedures the Treasurer must use related to the custody and disposition of escheated property as well as the statutory framework governing Michigan's common law right of *bona vacantia*.[1] Const 1963, art 10, § 4; see also MCL 567.259. Since its adoption, the Michigan Legislature has amended the law and created administrative and judicial review of the Treasurer's examination determinations.

1. The UUPA is designed to provide for statutory abandonment without the need for judicial proceedings.

Given the context and purpose of the UUPA, as well as the general background of custodial escheatment and statutory abandonment, it is self-evident that the UUPA does not envision the Treasurer repeatedly filing lawsuits to compel holders to remit abandoned property to the State. In a nutshell, the UUPA is

[1] The case law developed over the last century "ha[s used] 'escheat' as encompassing the appropriation of both real and personal property . . . ." *Delaware v New York*, 507 US at 497 n 9 (1993). The term "escheat" is now used to encompass *bona vacantia*. *Id.* "At common law, abandoned personal property was not the subject of escheat, but was subject only to the right of appropriation by the sovereign as bona vacantia." *Anderson Nat Bank v Luckett*, 321 US 233, 240 (1944).

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designed for property to be deemed abandoned and escheated based on defined dormancy periods, without the need for a judicial proceeding as to each such property. The statute sets presumptive abandonment timelines, then requires holders to make outreach attempts to either confirm or refute the presumption.

In short, rather than requiring countless court proceedings the UUPA provides for statutory abandonment. MCL 567.223; see also *Texaco Inc, v Short*, 454 US 516 (1982) (holding statutory abandonment constitutional). Given the increased volume of intangible personal property being abandoned, the State moved away from the cumbersome process of the Code of Escheats and adopted a streamlined approach to escheatment. Because of the abandonment, the property rights devolve to the State, and the abandonment creates the State's right to demand the property from a holder. "Funds held by a debtor become subject to escheat because the debtor has no interest in the funds." *Delaware v New York*, 507 US at 502. And in fulfillment of the consumer protection aims of custodial escheatment, the absent owner can then either recover the value of the escheated property from the State through the UUPA claim process or otherwise dispute the abandonment through litigation. Consistent with U.S. Supreme Court precedent, the UUPA continues Michigan's escheatment objectives while also streamlining Michigan's intake process of abandoned property. MCL 567.238 through MCL 567.247. Many other States have adopted similar provisions.

In discussing statutory abandonment, "it is essential to recognize the difference between the self-executing feature of the statute and a subsequent

judicial determination that a particular lapse did in fact occur." *Texaco, Inc*, 454 US at 533. The difference directly implicates the Due Process Clause and what types of notice are required. *Id*. at 533–534. Accordingly, unlike statutory abandonment, a process that does not foreclose a subsequent lawsuit to determine whether statutory abandonment did occur, escheatment through judicial proceedings directly implicates due process and its notice requirements for judicial proceedings because of the finality.

In this regard, and in light of Michigan's historical practice, the UUPA's purpose and operation are clear. It is designed to be self-executing and administrative with judicial intervention being used as a last resort to enforce the UUPA. In contrast, the UUPA's predecessor, the Code of Escheats, provided a comprehensive procedure for judicial determinations with holders and individuals *in every instance*. (See Code of Escheats Sections 28 through 30 attached as exhibit A). Those procedures were jettisoned with the adoption of the UUPA. Now, property is presumptively, or alternatively stated, statutorily deemed abandoned if certain statutory conditions are met. In turn, the Treasurer has the full power to administratively enforce compliance with and execute the State's sovereign power of escheat. This process avoids the necessity of a judicial proceeding but retains judicial review for disputed matters.

Construing the UUPA to require the Treasurer to commence a lawsuit to determine whether the statutory conditions for abandonment occurred is not only inconsistent with statutory abandonment, but it also appears to directly implicate

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additional Due Process rights for the various individuals who presumptively abandoned their property. See *Texaco, Inc*, 454 US at 533–534 (distinguishing between the notice required before a statute may operate and affect substantial rights and the notice required before a judicial determination). The UUPA does not contemplate a lawsuit against the holders with notice to all the individuals as part of the routine operation and administration of the Act. Indeed, the UUPA requires holders to provide notice to individuals of their abandoned property and gives holders the obligation to challenge the administrative decision that the holder must turn over subject property to the State. MCL 567.238(5) and MCL 567.251a. Given the constitutional rights involved coupled with the administrative statutory procedure, the lack of statutory guidance in the UUPA to require the Treasurer to commence lawsuits against holders and individuals is a strong indication that the Legislature intended the UUPA to provide for statutory abandonment and administrative enforcement rather than accomplishing the objective exclusively through countless judicial proceedings.

In this context, the statutory text unequivocally outlines the general enforcement process of the UUPA: (1) the Treasurer can administratively examine a holder's records, (2) the Treasurer can issue an examination determination, and (3) the holder can challenge that final administrative decision either through an administrative hearing or directly in a circuit court. MCL 567.251; MCL 567.251a. The statute of limitations addresses how many years back the Treasurer may audit, and that time period mirrors a holder's record retention requirements.

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MCL 567.250(2). The "proceeding" referenced in the statute of limitations section concerns the UUPA's enforcement mechanisms, i.e., the Treasurer's examination. MCL 567.250(2); MCL 567.252(1). A lawsuit brought by the Treasurer would be to enforce the examination or an un-appealed, final administrative decision, which is not the case here.

2. The UUPA provides an administrative enforcement process that holders can challenge in court.

The State is not all-knowing and has limited information concerning whether an entity possesses abandoned property belonging to another. Accordingly, the UUPA creates an administrative regulatory structure that mandates voluntary reporting by holders. MCL 567.238. But not all holders comply. Thus, the UUPA also provides the Treasurer two administrative enforcement remedies: (1) the ability to require a holder to file a verified report, and (2) the ability to administratively examine a holder's records. MCL 567.251. The holder can contest the examination results through an administrative hearing or, alternatively, the holder can bypass that process and appeal the final administrative decision directly to a circuit court. MCL 567.251a. After the Treasurer issues a written demand for what it has deemed legally abandoned property, it is a misdemeanor for a person to willfully refuse to pay or deliver property to the administrator as required by the UUPA. MCL 567.255(4).

The UUPA also permits the Treasurer to work collaboratively with other States and conduct multi-State examinations, litigation, or both. MCL 567.254; see

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also, e.g., *Delaware v Pennsylvania*, 598 US 115 (2023). When an administrative enforcement effort fails, the UUPA provides the Treasurer with the broad, overarching authority to seek judicial enforcement, utilizing courts throughout the nation to enforce the Act. MCL 567.253.

The UUPA is the comprehensive state law governing the identification, turn over, and disposal of abandoned property and its escheatment. It creates an administrative process for holders to report and remit abandoned property, for the Treasurer to examine holders for abandoned property, and for holders to challenge the Treasurer's decision regarding abandoned property. The only lawsuit that the UUPA envisions the Treasurer filing after the examination is one to enforce an unchallenged final administrative decision. MCL 567.251a. As the Court of Appeals recognized on remand, the UUPA's design provides that a holder, not the Treasurer, may file a lawsuit to challenge the final administrative decision resulting from an examination. *Dine Brands Global, Inc v Eubanks (On Remand)*, p 4. To hold otherwise returns the law to the prior statute, requiring lawsuits in every instance.

B. The UUPA's consistent, expansive use of the phrase "action or proceeding" includes examinations.

The phrase "action or proceeding" as used in the statute of limitations must be read in the greater statutory context in which it is used, and when so read, must be given its ordinary and common meaning. That usage includes unclaimed property examinations. MCL 567.250. Throughout the UUPA, the phrase "action

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or proceeding" is used in its ordinary and common form. Moreover, interpreting the phrase as a term of art being limited to judicial actions or proceedings hinders the operation and purpose of the various subsections where it appears. A consistent interpretation of the phrase and terms in their ordinary meaning allows the UUPA to operate as intended. And the examinations at issue here fall within the definition of a "proceeding" and the various demands for records satisfy the definition for "actions."

The words "action" and "proceeding" have meanings and usages beyond lawsuits and their progression. The word "action" is defined as "the doing of something; state of being in motion or of working." Webster's New World Dictionary, Third College Edition, p 13 (3rd College Ed, 1994). Similarly, the definition of the word "proceeding" extends beyond the courtroom: it is also "an advancing or going on with what one has been doing." *Id*. at p 1072.

1. Applying common definitions to the phrase "action or proceeding" is consistent with the text and purpose of MCL 567.248 and MCL 567.249.

Throughout the entirety of the UUPA, the phrase "action or proceeding" is never used in relation to any court or specific forum. It is never used to reference the judiciary. This makes sense because the use of the phrase in its broader, colloquial sense gives meaning to the sentences and subsections that it is contained within. Indeed, within its first two uses, the phrase "action or proceeding" appears within the same sentence as the word "action." MCL 567.248(1) and MCL 567.249.

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Construing the phrase to mean a lawsuit in this context also leads to absurd results. For example, section 28(1) provides " [a]n action or proceeding shall not be maintained against a holder for or on account of any action taken by the holder in destroying or otherwise disposing of the property pursuant to the authorization of the administrator." MCL 567.48(1). In contrast to the Court of Appeals' decision, applying colloquial definitions provides meaning to the sentence. "An [act of doing something] or [an advancing or going on with what one has been doing] shall not be maintained against a holder for or on account of any [act of doing something] taken by the holder in destroying or otherwise disposing of the property pursuant to the authorization of the administrator." *Id*.

In providing generalized immunity from adverse actions, the UUPA recognizes a wide variance in property types and property owners. Former owners of abandoned property are "persons," and a "person" is broadly defined to include municipalities, the state, and its political subdivisions. MCL 567.222(o). In short, potential exposure for destroying abandoned property could include offsets, arbitration, administrative actions and/or proceedings, and well as judicial proceedings. By defining the phrase "action or proceeding" narrowly to only include judicial actions or proceedings, the Court of Appeals erred, and its interpretation exposes the Treasurer and the State, as well as holders like Disney and Dine Brands, to liability that the UUPA expressly shielded.

The UUPA establishes who and when property is abandoned and provides closure for the entities holding said property. Since there is a wide variance of

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property types that will be statutorily deemed abandoned and ownerless, the UUPA acknowledges that the former owner as well as what avenues of recovery they may otherwise have at their disposal will vary and be unknown until a given situation arises. Given the uncertainty, an ordinary reading of the phrase "action or proceeding," applying its plain meaning, in this context is also consistent with effectuating the purpose of the immunity provision.

2. Applying common and ordinary definitions is consistent with effectuating the general prohibition of private escheatment.

Additionally, the broader definition of the phrase is consistent with the State's exercise of its sovereign authority over abandoned property and the UUPA's bar of private escheatment. MCL 567.250(1) states:

> The expiration, before or after the effective date of this act, of any period of time specified by *contract*, statute, or court order, during which a claim for money or property can be made or during which an ***action or proceeding*** may be *commenced* or *enforced* to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this act. This subsection does not apply to gift cards or gift certificates. [Emphasis added.]

The prohibition specifies that any time period in a *contract*, statute, or court order**,** during which an "***action or proceeding***" may be *commenced or enforced* to obtain payment does not prevent the money from being deemed abandoned and subject to the UUPA. MCL 567.250(1) (Emphasis added). In plain language, the subsection means an entity cannot circumvent the UUPA and the State's exercise of its rights over abandoned property by relying on a time limitation imposed on a property

owner to take some act or make some claim. For example, it prevents a business from relying on a time period to commence arbitration proceedings as a basis for private escheatment. Importantly, holders and potential owners of abandoned property include municipalities and governmental units. See MCL 567.222(i)&(o). The subsection broadly bars a holder's (i.e., debtor) assumption of title to abandoned property based upon a statute of limitations.

In the context of the UUPA, this general provision covers a wide swath of properties and claim procedures where the properties are being held by corporations and municipalities, funeral homes, public utilities and banks to name just a few. There is a wide variance in enforcement procedures that can be employed depending on the property type and parties involved. Nevertheless, the subsection is meant to generally address all properties subject to the UUPA. The Court of Appeals' narrow interpretation of the phrase "action or proceeding" hinders and limits the purpose of the subsection.

Moreover, the Court of Appeals' interpretation renders the word "enforced" nugatory; there is a significant difference between the words "commenced" and "enforced." A time period to enforce a complaint or active case prior to judgment carries no meaning within the context of the sentence where the phrase appears. Instead, the clear import from the text and purpose of the subsection is that the phrase "action or proceeding" is being used in the broad sense of referring to any "act" or "step that is part of a larger action" that may be taken or enforced within the time specified in the contract, statute, or court order.

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3. Applying common and ordinary meanings to the phrase is also consistent with the purpose and intent of the statute of limitations within the UUPA.

Returning to the statute of limitations period at issue here, MCL 567.250(2) states the limitation in terms of the operative phrase, "action or proceeding":

> Except as otherwise provided in subsection (3), an ***action or proceeding*** shall not be commenced by the administrator with respect to any duty of a holder under this act more than 10 years, or, for the holder of records of transactions between 2 or more associations as defined under section 37(a)(2), more than 5 years, after the duty arose. [Emphasis added.]

In plain terms, the phrase "action or proceeding" includes the Treasurer's authority and administrative enforcement roles, i.e., the greater statutory context in which the phrase is used. Again, there are only two administrative enforcement tools available to the Treasurer to compel compliance from a holder: (1) demanding a verified report and (2) an examination. MCL 567.251. These tools can be enforced through a judicial action if necessary. MCL 567.253. Also, the time periods used in the statute of limitations mirror the record retention requirements. MCL 567.252. The ordinary reading of the statute is that it sets the time periods under review in the examination itself. The examination – an investigation – involves a series of demands for records and includes findings that are then subject to an administrative hearing, and it is one of the "proceedings" contemplated by the statute.

Additionally, the phrase "action or proceeding" is explicitly used in reference to holders electing to participate in a streamlined audit. MCL 567.250(3). "For eligible holders electing to participate in the streamlined audit process described in

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section 31b, an ***action or proceeding*** shall not be commenced by the administrator with respect to any duty of a holder under this act more than 4 years after the duty arose." *Id.* (emphasis added). By definition, a streamlined audit involves a holder and the Treasurer working collaboratively with one another and jointly developing a timeframe for its completion. MCL 567.251b. And as the Court of Appeals recognized on remand, it is a holder, not the Treasurer, that has the statutory right to appeal and challenge the examination determination. *Dine Brands Global, Inc v Eubanks (On Remand)*, p 4. Like the meaning of the words themselves, the only coherent reading of the phrase "action or proceeding" in the context of this subsection is a reference to the audit itself and a reduction of the audits scope from 10 years to 4 years. In contrast, it would be illogical to read the statute to require the Treasurer to file a lawsuit to compel the surrender of abandoned property while the holder is cooperating with a statutorily authorized audit concerning the exact property, especially when the UUPA provides the holder with the right to an administrative hearing and appeal concerning those audit's findings.

4. The UUPA's plain language is clear and makes sense because the Court of Appeals' misreading of "action or proceeding" requires Treasury to file actions prematurely to stop the running of the limitations period.

If the Court of Appeals' decision stands, Michigan will be required to file preemptive lawsuits for each examination for abandoned property. The Court of Appeals excluded the entirety of the administrative examination process, a statutory process resulting in a decision that is subject to an administrative hearing

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and judicial review, from the UUPA's statute of limitations for enforcement. MCL 567.250(2). If the administrative examination and its decision have no effect or utility, then, as a practical matter, continued use of it is only a detriment.

Accordingly, to comply with the Court of Appeals' decision, as well as the Legislature's mandate of authority to enforce the State's sovereign right to abandoned property, the Treasurer will need to file preemptive lawsuits to examine holders' records. The Treasurer's resulting decisions will also need to be made within those lawsuits because, otherwise, they would be outside the relevant statute of limitations. The Court of Appeals' decision effectively supplants the entire administrative process outlined in the UUPA, with mandatory, cumbersome litigation.

The Court of Appeals' interpretation of "action or proceeding" as used in the statute defeats any utility of the administrative process. Given the plain text, context, and the purpose of the Act, the Court of Appeals erred in interpreting the phrase "action or proceeding" as used in the UUPA's statute of limitations. This Court should reverse.

5. The Court of Appeals' opinion will also inhibit the ability of Michigan to partner with other States in multi-state examinations (investigations).

The UUPA explicitly permits Michigan to work collaboratively with other States in examinations of holders for abandoned property. MCL 567.254(3). The Treasurer "may contract with any other person to conduct the examination on behalf of the [Treasurer]." MCL 567.251(2). With uniform dormancy periods, a

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multi-state examination allows a single administrative enforcement effort to proceed rather than 50 individual, simultaneous state examinations covering the same records and property types. The process simplifies and benefits all parties involved while also reducing disputes and litigation between States over abandoned property.

Yet, the Court of Appeals' decision removes Michigan from this process and effectively bars Michigan from participating in multi-state examinations. That is because the Court of Appeals' decision requires Michigan to conduct the examination and make its demand for information about potentially abandoned property through the lawsuit. Within the lawsuit, Michigan will, nevertheless, need to review the holder's records to make its determination whether the holder has abandoned property of Michigan residents. Those same records will likely be subject to the contemporaneous multi-state examination.

In short, the Court of Appeals' decision creates a more cumbersome and costly process for both Michigan and holders. For the holder, it will have two different, contemporaneous, investigations occurring: the multi-state examination and Michigan's lawsuit. For Michigan, it will be reviewing records through a judicial proceeding rather than the administrative proceeding, the multi-state examination, provided for by the Legislature.

Moreover, once in litigation, Michigan will eventually reach a decision regarding the abandoned property. But that decision may involve properties that the multi-state examination determined were subject to a different State's custody

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pursuant to the escheatment priority rules. See *Delaware*, 598 US at 120–123 (discussing priority rules). Where Michigan's participation in the multi-state examination availed it to the opportunity to resolve conflicts with other States over abandoned property while reviewing the same information in the same audit, the Court of Appeals' decision forces a separate court proceeding for Michigan, potentially reviewing different records than the multi-state audit, and the resulting State conflicts over the abandoned property will potentially need to be resolved through costly and otherwise unnecessary litigation. This creates a process that is the antithesis to collaboration, uniformity, and the review process contemplated in the UUPA.

II. The Treasurer can conclude an examination without the need for tolling.

On remand, the Court of Appeals correctly answered this Court's question concerning tolling. *Dine Brands Global, Inc v Eubanks (On Remand)*, pp 3–4. Since the examination is a proceeding, the question of tolling is irrelevant. The examination determination is the conclusion of the examination. MCL 567.251a(1). In other words, tolling is not necessary to consider the examination determination timely. The Court of Appeals neatly articulated why tolling is not pertinent:

> Stated otherwise, once the examinations began in a timely fashion—and assuming that examinations were "proceedings," as directed by the Supreme Court's remand order—the question about compliance with the statute of limitations is complete. Defendant complied with the statute of limitations when it started the examinations within the applicable time period. MCL 567.251a allowed defendant to issue final decisions at the end of those timely examinations, which defendant did. Plaintiffs were allowed to, and did, file timely actions to challenge

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> those timely examinations. Any questions about tolling are not pertinent.
>
> Moreover, it should be noted that defendant did not need to take any additional action, aside from issuing its final decision under MCL 567.251a. And there is no statutory time limit for issuing an initial decision under MCL 567.251a. [*Dine Brands Global, Inc v Eubanks (On Remand)*, unpublished per curium decision of the Court of Appeals, p 4 (Docket No 360293, issued January 11, 2024).]

The Treasurer concurs with the Court of Appeals' analysis above. The Treasurer's act of issuing the examination determination is the conclusion and part of the larger series of acts constituting the examination, which is an administrative proceeding. See MCL 567.251 & MCL 567.251a. Once the Treasurer timely commenced the examination, the resulting examination determination would also be timely, regardless of tolling.

III. The Treasurer's time to file suit to enforce a final administrative decision runs from the date such a decision is issued.

Laws require holders to comply with examination determinations and impose civil and criminal liability. The time for either the People of the State of Michigan in a criminal capacity or the Treasurer in a civil capacity to prosecute or to file suit to enforce an examination determination runs from the date the final examination determination is issued. MCL 567.250(2), MCL 567.251a(1), and MCL 567.255(4). The determination may include the written demand for the properties. See MCL 567.255(4). An examination is a proceeding that results in a final administrative decision. *Id*. See also *Dine Brands Global, Inc v Eubanks (On Remand)*, p 4. And it is a crime to willfully refuse to pay or deliver abandoned

property as required by the UUPA after the Treasurer issues a written demand. MCL 567.255(4).

Measuring the UUPA's statute of limitations begins with identifying when the claim accrued. Compare MCL 567.250(2) & MCL 600.5827. The claim accrues under the UUPA when the holder's duty to turn abandoned property over to Treasury arose. MCL 567.250(2). In the context of the third question presented, the holder's duty to comply with the Treasurer's written, final examination determination begins to accrue the date the examination determination is issued, which creates the holder's duty to comply with it. MCL 567.251a, MCL 567.250(2), & MCL 567.255(4). Importantly, there is no reason for the Treasurer to file such a lawsuit if either (1) the holder complies or (2) the holder contests the decision in a court proceeding as provided by statute.

In short, while the same subsection containing the UUPA's statute of limitations is involved in the analysis, a different accrual date is implicated. While related, the duty to comply with the final administrative decision is a different obligation from the holder's duty to report and remit abandoned property in its possession. Additionally, the Treasurer would only need to file such a lawsuit in the event the holder refused to comply with the decision and, also, failed to appeal the decision. See *Dine Brands Global (On Remand)*, p 4. But the time to file that lawsuit would begin to run from the date the examination decision is issued.

Accordingly, this Court should grant the application and reverse the Court of Appeals.

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CONCLUSION AND RELIEF REQUESTED

The State Treasurer asks that this Honorable Court grant the application for leave to appeal and reverse the Court of Appeals.

Respectfully submitted,

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