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STATE OF MICHIGAN
IN THE SUPREME COURT

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. 2021-189420-CZ

AMICUS CURIAE SUPPLEMENTAL BRIEF FOR THE NATIONAL ASSOCIATION OF STATE TREASURERS THROUGH ITS AFFILIATE THE NATIONAL ASSOCIATION OF UNCLAIMED PROPERTY ADMINISTRATORS

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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.

   Amicus Curiae's answer: Yes.

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.

   Amicus Curiae's answer: Yes.

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.

   Amicus Curiae's answer: No.

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The issue presented in this case concerns whether the statute of limitations under the Michigan Uniform Unclaimed Property Act ("UUPA"), MCL 567.221, *et seq.;* see also MCL 567.250(2), continues to run after the State Treasurer has commenced an "examination" or "audit" of a holder pursuant to MCL 567.251(2). The *Amicus* submitting this brief, the National Association of Unclaimed Property Administrators ("NAUPA"), has a significant interest in the nationwide administration of state unclaimed property laws, including the continued ability of its member states and unclaimed property administrators to effectively enforce the reporting requirements of their respective unclaimed property laws, which is implicated by this appeal.

NAUPA is a network of the National Association of State Treasurers, Inc. NAUPA's membership includes the unclaimed property administrators representing all states, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands and other international governmental entities (the "states"). NAUPA seeks to promote and strengthen unclaimed property administration and interstate cooperation in order to enhance the states' return of unclaimed property to rightful owners and provide a forum for the open exchange of information and ideas. NAUPA's member states continually strive to increase the amount of unclaimed property they reunite with owners, returning billions of dollars annually to owners (including over $5 billion in the last fiscal/reporting year), with billions more being returned by companies in possession of unclaimed property (known as "holders") through their compliance with mandated pre-reporting

[1] Pursuant to MCR 7.312(H)(5), NAUPA as *amicus curiae* represents that no party or party's counsel authored this brief in whole or in part. Neither counsel for either party nor any party made any monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae* made such a monetary contribution. As an *amicus* who appeared tat the application stage, this brief is submitted as an invited brief per the terms of the Court's January 26, 2024 order. See MSC IOP 7.312(H).

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owner notification requirements.[2] The issues presented in this case are important to NAUPA and its members since they affect the enforcement of unclaimed property laws both in Michigan and potentially in other states.

Unclaimed property examinations play a vital role in ensuring that holders comply with the unclaimed property laws. At the same time, however, most states have extremely small compliance staffs and auditing departments. Moreover, unclaimed property administrators generally cannot obtain access to the type of information that would enable them to readily and systematically determine apparent non-compliance of holders on an annual basis. For example, unlike the Internal Revenue Service and other taxing authorities, which receive various mandatory filings on a quarterly or annual basis that they are able to review to identify possible under-reporting of tax liabilities (*e.g.,* W-2s, 1099s, business and income tax filings, etc.), unclaimed property administrators do not have access to this information, and they do not receive similar types of regulatory data submissions that can be used to assess holders' potential unclaimed property liabilities. Further complicating these difficulties, holders of unclaimed property often are large national or multi-national companies with decentralized record keeping and numerous subsidiaries located far from the states to which the property is due.

The Uniform Law Commission (the "ULC") was well-aware of these enforcement limitations when it drafted the Uniform Unclaimed Property Act (1981) (the "1981 Act"). The 1981 Act added the 10-year limitation period upon which MCL 567.251(2) is based, which is at issue in this case. Indeed, the ULC has recognized the constraints on states' enforcement abilities on multiple occasions. For example, in its comments to the 1981 Act, the ULC acknowledged that

[2] Such reporting requirements include holders sending a notice to the last known address of the owner prior to the transfer of the custody of unclaimed property to the state, so as to allow the owner to reassert control over the asset and rebut a presumption of abandonment.

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states have found obtaining compliance with the unclaimed property laws to be extremely difficult and that the enforcement provisions of previous uniform unclaimed property laws adopted by the ULC were inadequate. See 1981 Act, Commissioner's Prefatory Note. The ULC also acknowledged that conducting audits is very expensive and burdensome for the states and that holders often rely on this reality in failing to report. See 1981 Act, § 33, Comment. Additionally, in its comments to the corresponding statute of limitations provision applicable to state enforcement efforts contained in the Uniform Unclaimed Property Act (1995) (the "1995 Act"), the ULC expressly observed that "the Unclaimed Property Act is based on a theory of truthful self-reporting." 1995 Act, § 19(b), Comment.

It is in this context of under-reporting and compliance challenges that the ULC included a statute of limitations applicable to state enforcement efforts in the 1981 Act. A number of states, including Michigan, have enacted a version of this provision since it was adopted by the ULC over 40 years ago. Yet the Court of Appeals' opinion (and the underlying circuit court's opinion) are—to NAUPA's knowledge—the first ever to hold that the statute of limitations continues to run against the state even after it has identified possible non-compliance and properly initiated an examination of a holder. NAUPA has grave concerns that, if this ruling is allowed to stand, it will provide a blueprint for the unintended manipulation of unclaimed property law enforcement, encourage noncompliance by holders, result in needless litigation, and, ultimately, will deprive citizens of their assets. Although such a ruling would only have precedential effect in Michigan, holders under audit in other states can nonetheless be expected to highlight it in an effort to limit the scope of their unclaimed property liability and to cause unnecessary delay of the audit process.[3]

[3] See, e.g., Stephen P. Kranz, *et al.*, *Meaningful Statute of Limitations for Unclaimed Property Audits and Enforcement Actions? Michigan Court of Appeals Says Yes!*, National Law Review, published Mar 11, 2023, <https://natlawreview.com/article/meaningful-statute-limitations-

That danger is heightened in these circumstances, which involve the interpretation of a statute based upon a model act.

NAUPA therefore intercedes in this action as *amicus* in order to assist the Court in understanding the intended purpose and operation of the statute of limitations contained in the 1981 Act, and incorporated by the Michigan Legislature as part of the UUPA, as well as the practical impact that the Court of Appeals' opinion would have on the administration and enforcement of Michigan's unclaimed property laws, and—potentially—for the courts in this State.

unclaimed-property-audits-and-enforcement-actions> (last visited June 5, 2024) ("this is not a Michigan-specific victory and one that should be explored further for holders under audit by other states as well").

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INTRODUCTION

This case focuses on whether an examination that is timely commenced by the State Treasurer stops the statute of limitations from running against the State under MCL 567.250(2). In its initial *amicus* brief, which NAUPA incorporates here by reference, NAUPA respectfully submitted that consideration of the 1981 Act upon which MCL 567.250(2) is based—as well as the practical implications of allowing the statute of limitations to continue to run after an examination has been commenced—support the Treasurer's position that the Court of Appeals' original opinion should be overruled. NAUPA now submits this supplemental brief to respond to the questions the Court asked the parties (and *amici* who appeared at the application stage) to address in its January 26, 2024 Order.

Specifically, NAUPA respectfully submits that the Court of Appeals erred when it concluded that the phrase "action or proceeding" under MCL 567.250(2) is limited to a "*judicial* action" or a "*judicial* proceeding." Applying that limitation renders the term "proceeding" in the section entirely superfluous and conflates distinct words with distinct meanings in violation of fundamental rules of statutory interpretation. Concluding that an examination or audit is a "proceeding," in contrast, gives meaning to all the words and phrases contained in MCL 567.250(2), and it is consistent with how these terms are generally understood in this context.

Additionally, NAUPA respectfully submits that the Court of Appeals on remand correctly determined that the commencement of an examination stops the statute from running against the State without the need to consider tolling because the UUPA places the burden on the holder to initiate a court action to challenge the Treasurer's findings from an examination. Moreover, stopping the statute of limitations from running upon the commencement of an examination accomplishes the purposes that statutes of limitations are intended to serve while preventing holders from being able to unilaterally limit their unclaimed property liability through their own

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conduct in an examination or through unintended consequences that could arise under administrative processes provided for under the UUPA.

Finally, NAUPA respectfully submits that the Court of Appeals' decision on remand also correctly determined that, because, under MCL 567.251a, the Treasurer did not need to file an action in court to compel Plaintiffs to deliver unclaimed property identified during the examinations, the Treasurer had no obligation to file a lawsuit within the same time period required to commence the examinations. To find otherwise (even absent the burden shifting called for by MCL 567.251a) would lead to the untenable result that the State would be unable to compel the delivery of all unclaimed property within the scope of a timely-commenced examination without filing preemptory lawsuits, which would be contrary to the intent of the UUPA and a waste of judicial resources.

ARGUMENT

I. The Court of Appeals erred in holding that an examination does not constitute an "action or proceeding" under MCL 567.250(2), which is based on § 29(b) of the 1981 Act.

In initially affirming the trial court's grant of summary disposition in Plaintiffs' favor, the Court of Appeals held that the phrase "action or proceeding" under MCL 567.250(2) was limited to "*judicial* actions or proceedings." *Dine Brands Global, Inc v Eubanks*, unpublished per curiam opinion of the Court of Appeals issued Jan 19, 2023 (Docket No 360293), slip op at 5 (emphasis added). On remand, as the Court of Appeals noted, it was required to assume that an examination constituted a "proceeding" within the meaning of the statute. *Dine Brands Global, Inc v Eubanks (On Remand)*, unpublished per curiam opinion of the Court of Appeals issued Nov 9, 2023 (Docket No 360293), slip op at 2. Therefore, the Court of Appeals' opinion on remand did not revisit whether an examination constitutes a "proceeding." Instead, it merely assumed this to be case.

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Nevertheless, the reasoning underlying the Court of Appeals' remand opinion demonstrates why this assumption is entirely correct.

Specifically, the Court of Appeals explained that, in interpreting a statute, "[a] reviewing court must read the statute as a whole, with effect given 'to every word, phrase and clause in a statute and *avoid an interpretation that would render any part of the statute surplusage or nugatory*.'" *Id.* (quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002)) (emphasis added). But, by interpreting the terms "action" and "proceeding" as they apply to the State under the Act to both be limited only to "*judicial* actions and proceedings," the Court of Appeals effectively treated the two terms as meaning the same thing—thus rendering the term "proceeding" entirely superfluous in violation of fundamental rules of statutory construction and ignoring the Legislature's choice of distinct terms. *Id.*; see also *United States Fidelity & Guaranty Corp v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14 (2009) ("When the Legislature uses different words, the words are generally intended to connote different meanings."). However, Michigan's legislature did not limit proceedings under MCL 567.250(2) to "*judicial* proceedings." Indeed, the Legislature plainly believed the term comfortably includes a variety of administrative matters, too. See also MCL 24.292(1) & (2) (referring to administrative "proceedings" concerning licenses or permits); MCL 24.286(2) (referencing "oral proceedings" before administrative bodies); MCL 24.275a(4) & (5) (identifying certain administrative "proceedings"); MCL 24.274(1) (same); MCL 24.203(3) (defining "contested case" as a certain type of "proceeding . . . before a single agency"). Even revenue matters. See, e.g., MCL 205.734(1) (referring to Tax Tribunal "proceeding[s]").

Thus, contrary to the Court of Appeals' initial decision, the Legislature intended the terms "action" and "proceeding" to mean different things under the UUPA. And the term "proceeding"

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encompasses an examination, which is one of the enforcement mechanisms expressly provided for under the Act. This interpretation gives meaning to both terms used in the provision and is consistent with the way the terms are generally understood in this context. Cf. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 554 (2002) (the term "*action*" is commonly understood to mean "[a] civil or criminal *judicial proceeding*") (quoting *Black's Law Dictionary* (7th ed)) (emphasis added); *BP Am Prod Co v Burton*, 549 US 84, 91 (2006) (the term "action" in a statute is "ordinarily used in connection with judicial, not administrative, proceedings"); *United States v Fruchtman*, 421 F2d 1019, 1021 (CA 6, 1970), cert denied, 400 US 849 (1970) ("'proceeding' is a term of broad scope, encompassing both the investigative and adjudicative functions of a department or agency").[4]

The conclusion that an examination constitutes a "proceeding" under MCL 567.250(2) is further supported by the Court of Appeals' analysis in its remand decision of the provisions contained in the UUPA setting forth the process to be followed after the Treasurer has initiated an examination. In this regard, as the Court of Appeals noted, once the Treasurer has commenced an examination under MCL 567.251(2), the Act "does not require . . . that [the Treasurer] bring an action to enforce a decision" made at the conclusion of the examination that the holder has failed remit unclaimed property in its possession. *Dine Brands Global, Inc v Eubanks (On Remand)*, slip op at 4–5. Instead, as the Court of Appeals explained:

> MCL 567.251a allows [the Treasurer] to issue a final decision after determining that a holder has failed to deliver unclaimed property required by the act. *The burden, and obligation, of challenging that decision issued by [the Treasurer] is then placed on the*

[4] In an effort to explain how the term "proceeding" differs from the term "action," Plaintiffs suggest that "action" means a "judicial action" and that "proceeding" means a "similar dispute resolution procedure." (Dine Brands' Supp Br., p. 11.) Accepting these definitions either renders the two terms effectively synonyms, in violation of the requirement to give each word in a statute meaning, or results in the term "proceeding" being impermissibly vague and ambiguous. *United States Fidelity & Guaranty Corp*, 484 Mich at 14.

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> *holder* under MCL 567.251a(1). In other words, the administrative decision issued by [the Treasurer] represents a final administrative decision with which the holder must comply, *and any challenge to that decision must be initiated by the holder*. [Id., slip op at 4 (emphasis added).]

If an examination were held not to be a "proceeding," then, in direct contravention of the UUPA's specific provisions requiring the holder to initiate an action contesting the Treasurer's examination findings, the Treasurer would be required to file an action in court in order to preserve its ability to enforce a holder's reporting obligations for all of the years that were in scope at the start of an examination. This would create an irreconcilable conflict between two provisions that the Legislature could not have intended. See, e.g., *O'Connell v Dir Of Elections*, 316 Mich App 91 (2016) ("a general rule of statutory construction is that the Legislature is presumed to know of and legislate in harmony with existing laws"). This conflict is resolved, however, by concluding that an examination does constitute a "proceeding" under MCL 567.250(2), and the statute of limitations established by that section serves to set a limit on the time period that may be subject to an examination.[5] Such a conclusion is both logical and necessary to give meaning to all of the provisions of the UUPA as a whole. See, e.g., *Livingstone v Dep't of Treasury*, 434 Mich 771, 785 (1990) (holding that in construing statute of limitations provision "the 'whole chapter' in which a statute of limitation was contained, [is] 'to be read as one act, with its several parts and clauses mutually acting on each other as their sense requires'").

[5] It should be noted that, if an examination is found not to be a "proceeding," then there is nothing in the UUPA that limits how many years may be subject to an examination by the Treasurer. An interpretation of the Act that would result in such a significant omission should be rejected, providing further reason to conclude that an examination constitutes a "proceeding" under MCL 567.250(2).

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Additionally, as set forth in further detail in NAUPA's initial *amicus* brief, the conclusion that an examination constitutes a proceeding within the meaning of MCL 567.250(2) is also supported by the following:

- A review of the UUPA, which demonstrates that the Legislature intended the terms "action" and "proceeding" to have different meanings and, when it intended to limit enforcement activity to a judicial action, it knew how to do so. (See Amicus Br., pp. 6–8.)[6]

- The wording and structure of the 1981 Act, upon which the UUPA is based, strongly supports, if not compels, interpreting the phrase "action or proceeding" to include an examination. (See Amicus Br., pp. 4–5.)

- Courts have expressly recognized that an examination or audit constitutes an administrative proceeding, both in the context of the unclaimed property laws and other statutes. See, e.g., *Total Asset Recovery Services, LLC v MetLife, Inc*, unpublished opinion of the Second Judicial Circuit, issued Aug 20, 2013 (Docket No 2010-CA-3719); 2013 Fla Cir LEXIS 18463, at *2 (unclaimed property audit constituted an "administrative proceeding"); *United States v Beckham*, 917 F3d 1059, 1065 (CA 8, 2019) (holding that an audit constituted "a pending proceeding" under the Internal Revenue Code). (See Amicus Br., pp. 9–10.)

- Examinations are the primary enforcement mechanism that states rely on to bring holders into compliance with state unclaimed property laws, while actions in court are relatively rare. Nevertheless, although it has been more than 40 years since the 1981 Act was adopted, NAUPA is not aware of any other case that has been brought challenging whether an examination constitutes an "action or proceeding" under § 29(b) of the 1981 Act (upon which MCL 567.250(2) is based).[7] A finding that an examination does not constitute a

[6] Plaintiffs incorrectly suggest that other references contained in the UUPA to the phrase "action or proceeding" are limited to activities undertaken by property owners and, therefore, it would be illogical "to substitute the term 'examination' for 'action' or 'proceeding'" because owners "cannot bring 'examinations.'" (Dine Brands Supp. Br., p. 8.) To the contrary, as the Court of Appeals noted, these sections also refer to activities that might be taken by the State, which could include examinations or other procedures or actions.

[7] Plaintiffs suggest that this fact is irrelevant and that it merely indicates that "the question is one of first impression." (Dine Brands Supp. Br., p. 14.) Plaintiffs miss the point: the absence of any court challenge to whether the term "action or proceeding" includes an examination in the 40-plus years since the 1981 Act was adopted—despite the prevalent use of examinations as an enforcement mechanism and the obvious benefit that would inure to holders if the limitations period were found to continue to run during examinations—strongly suggests that it has been widely understood that examinations are a form of proceeding that stops the statute of limitations from running against the State. Contrary to Plaintiffs' assertions, this understanding is further confirmed by the ULC's 2016 Revised Uniform Unclaimed Property Act, the comments to which indicate that the statute of limitations contained in the 1981 Act applies to examinations. See RUUPA Prefatory Note, p. 8 ("The 1995 Act . . . takes the position that no statute of limitations *on*

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> proceeding would require states to preemptively file actions in court to preserve their ability to enforce liability determinations made during the examination process, which would be a significant burden on both the State and holders and an inefficient use of judicial resources. (*See* Amicus Br., pp. 9–10.)

Thus, the Court of Appeals erred on this point.

II. The commencement of an examination stops the statute of limitations from running against the State without the need for tolling, and the applicable time period for filing any lawsuit arising out of an examination is not the same as the time period for commencing an examination.

Because the Court of Appeals' initial decision held that an examination was not a proceeding, it did not address this Court's question of whether the commencement of an examination tolls the statute of limitations. As described further below, however, the Court of Appeals on remand correctly determined that the commencement of an examination by itself stops the statute of limitations from running against the State, making it unnecessary to consider the issue of tolling.

As initial matter, it is important to note that "[i]t has been universally held that statutes of limitation sought to be applied to bar rights of the government must receive a strict construction in favor of the government." *Livingstone*, 434 Mich 771, 785–86. In this case, reading the relevant provisions of the UUPA together clearly establishes that, by commencing an examination of the Plaintiffs, the Treasurer had taken the necessary steps to secure the ability to compel the delivery of all unclaimed property in the Plaintiffs' possession as to which the statute of limitations had not expired as of the time the examination began.[8] In this regard, as the Court of Appeals explained,

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examinations begins to run until a report is filed. The revised Act reverts to the 1981 Act and provides a 10-year time bar on how far back of the end of the holding period an examiner can go, as well as specifies a 10-year record retention rule.") (emphasis added).

[8] As described above, by considering an examination to be a "proceeding," MCL 567.250(2) establishes the period of years that may be subject to review. This would include all unclaimed property that became reportable in the previous 10 years (or 5 years for property related to certain types of transactions) before the examination began.

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by using the disjunctive "or" in MCL 567.250(2), the Legislature intended to give the Treasurer the choice of pursuing *either* an "action *or* proceeding" to compel holders to comply with the UUPA. *Dine Brands Global, Inc v Eubanks (On Remand)*, slip op at 3 (citing *Pike v Northern Mich Univ*, 327 Mich App 683 (2019)). Therefore, assuming that an examination is a "proceeding," the Court of Appeals correctly concluded that the Treasurer "took one of two permissible actions during the appropriate timeframes, making [the Treasurer's] actions timely under MCL 567.250(2)." *Id*., slip op at 4. That is enough.

The Court of Appeals further explained that, under MCL 567.251a, the Treasurer was entitled to conclude the examination and issue a final determination without the need to take any further action to compel the delivery of any unclaimed property identified during the examination. Instead, as noted above, the burden is on the holder to initiate any action challenging the Treasurer's examination determinations.[9] As a result, the Court of Appeals concluded that there was no need to consider the issue of tolling and "[t]o allow plaintiffs to assert the statute of limitations as a defense against administrative decisions that began as timely examinations should not be permitted under the statute." *Id.* NAUPA agrees with this interpretation of the UUPA.

The conclusion that the commencement of an examination stops the statute of limitations from running against the State is also supported by the following arguments set forth in further detail in NAUPA's initial *amicus* brief:

- Procedural mechanisms available under the UUPA provide holders upon the completion of an examination with the unilateral ability to engage in administrative appeals that, without extensions, approach two years to complete. See MCL 567.251a. As a result, if the

[9] Plaintiffs contend that MCL 567.251a "merely provides an optional administrative process" for holders to challenge examination determinations and does not relieve the State of the need to "enforce an examination determination if the holder declines to appeal." (Dine Brands Supp. Br., p. 24.) This is demonstrably incorrect, as MCL 567.251a(5) places an affirmative obligation on holders to "deliver to the administrator the property that is not contested" by the holder either through a court action or a request for administrative reconsideration.

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commencement of an examination does not stop the statute of limitations from running against the State, these procedures could result in significant amounts of property being beyond the judicial enforcement powers of the State at the conclusion of an examination, leaving the State with little recourse other than to file suit; an act contrary to the purpose of MCL 567.251a and judicial economy. (See Amicus, pp. 12–13.)

- Recognizing that an examination stops the statute of limitations from running against the State accomplishes the purposes it is intended to achieve by preventing unfair surprise by giving defendants notice of potential suit and the nature of potential claims against them, as well as to ensure the preservation of evidence. (See Amicus Br., pp. 14–15.)[10]

- Recognizing that an examination stops the statute of limitations from running against the State also serves to encourage cooperative examinations and prevents holders from being able to unilaterally dictate the scope of the State's enforcement powers through their own conduct during the examination process. (See Amicus Br., pp. 15–16.)

Finally, the Court of Appeals concluded that, because the Treasurer is not required to file a lawsuit to compel a holder to report unclaimed property identified during an examination, there is no requirement for the Treasurer to "file a lawsuit within the time period set forth in MCL 565.250(2)." *Id*. at 5. Once again, NAUPA agrees with the Court of Appeals' reasoning. Nevertheless, as noted in NAUPA's initial brief, if a holder fails to deliver any uncontested property identified in a "notice of examination determination" issued in accordance with MCL 567.251a, the Treasurer might find it necessary to bring an action in court under MCL 567.253. However, the statute of limitations for any such action would run, not from when the property was originally due to be reported, but rather from when the property was required to be delivered under MCL 567.251a(l) (*i.e*., 90 days after the mailing of the "notice of examination determination"—the report of, and demand for, remittance of audit findings—if uncontested by the holder).[11]

[10] As this Court has held, "[limitation] statutes are not enacted for the sake of defeating legal claims, but only to require notice of such claims within a reasonable time and thus guard against the unfair handicaps of defending against unfounded and belated suits." *Livingstone*, 434 Mich at 795 (citation and internal quotations omitted and alteration in original).

[11] Similarly, the statute of limitations for an action in court brought by a state under § 32 of the 1981 Act to compel a holder to comply with a demand to report unclaimed property identified through an examination would be measured from the date that the holder was obligated to comply

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In sum, the Court should find that the statute of limitations ceases to run against the State as of the time an examination is commenced under MCL 567.250(2). Additionally, the Court should find that the statute of limitations applicable to any lawsuit brought by the Treasurer to compel delivery of unclaimed property properly demanded at the conclusion of an examination runs from the date that the holder was obligated to comply with Treasurer's notice of demand issued in accordance with MCL 567.251a. Any other conclusion would completely undermine the examination process, allow the statute of limitations to be used by holders to benefit from their own delay and game the ability of the Treasurer to enforce the unclaimed property laws, and encourage unnecessary litigation. Such a result should be rejected as being flatly inconsistent with the purposes of the statute of limitations applicable to the State contained in the UUPA. See, e.g., *Livingstone*, 434 Mich at 785 ("statutes of limitations should be construed in a manner that best effectuates the policies the Legislature intended to promote").

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with the demand rather than the date when the property originally should have been reported. Otherwise, a state would have no ability to enforce determinations made through the examination process regarding property that was properly in scope at the time the examination commenced. Such an interpretation that would lead to this illogical and unreasonable result should be rejected as being contrary to the purposes of the unclaimed property laws. See, e.g., *National Ctr for Mfg Sciences v City of Ann Arbor*, 221 Mich App 541, 547 (1997) ("In construing a statute, absurd or unreasonable results are to be avoided."); *Bieber v Keeler Brass Co*, 209 Mich App 597, 603 (1995) ("Constructions of statutes which lead to absurd results are to be avoided."). For this reason, plaintiffs' assertion that MCL 567.251a should not be considered by the Court because it was not enacted until 2015 and the examinations began in 2013 is unavailing. Even assuming *arguendo* that it would be improper to apply MCL 567.251a to property for which the statute of limitations had run prior to 2015 under plaintiffs' interpretation of MCL 560.250(2) prior to 2015, this would only cut off two years of liability. Moreover, for the reasons described above, the Court should reject the argument that the State is unable to recover all unclaimed property identified in a timely commenced examination.

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CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, NAUPA respectfully submits that the Court should grant the State Treasurer's application for leave to appeal and reverse the ruling issued by the Court of Appeals.

Respectfully submitted,

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