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Securities Litigation & Enforcement News

Current Legal Developments in the Broker-Dealer Arena

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Florida Supreme Court Settles the Debate: Statutes of Limitation Apply in Florida Arbitrations

On May 16, 2013, the Florida Supreme Court answered the certified question "DOES SECTION 95.011, FLORIDA STATUTES [a key statute of limitations], APPLY TO ARBITRATION?" with a resounding "**YES**." *Raymond James Financial Services, Inc. v. Phillips* Supreme Court of Florida, Case No. SC11-2513. A copy of the Opinion is attached to this email and can also be found here.

Over the last several years, there has been a growing trend on the part of securities arbitration claimants to argue that statutes of limitation do not apply in arbitration. Arguing that arbitrations are not "actions," securities claimants have asserted that arbitrators could not enforce statutory time bars that prohibit the filing of "actions" after a certain time period had passed. The argument caught some traction, resulting in state court decisions against the application of statutes of limitation in arbitration in Connecticut, Arizona and Washington (although some states, such as Washington, subsequently introduced legislation to make clear that the statutes are intended to bar stale claims brought in arbitration). [1]

The issue arose again most recently in Florida after Raymond James asserted statute of limitations defenses in response to fairly typical stock suitability claims brought in arbitration by individual investors. Due to a unique contractual provision in the parties' customer agreement (which does not appear to have a material effect on the Supreme Court decision at issue), the parties filed a related court action to litigate the statute of limitations issues.[2] Both at the trial and initial appellate levels, the courts held that the claims could not be barred by the Florida statute of limitations because the statute did not apply to the underlying arbitration proceeding, which was not an "action or proceeding" under Section 95.011 of the Florida Statutes. See *Raymond James v. Phillips*, 36 Fla. L. Weekly at D2481. In so holding, the Second District Court of Appeal certified a question of great public importance for the Florida Supreme Court on the applicability of the statute of limitations to arbitration. The Supreme Court accepted jurisdiction on January 27, 2012 and heard oral argument on October 2, 2012.

Not surprisingly, the appeal attracted substantial attention in the securities arbitration community, resulting in amicus curiae briefs being filed by the Public Investors Arbitration Bar Association (PIABA), the Florida Securities Dealers Association, Inc. (FSDA), and the Securities Industry and Financial Markets Association (SIFMA), as well as by numerous non-securities organizations.

In its decision, the Florida Supreme Court employed principles of statutory construction and common sense to rule that the terms "civil action or proceeding" as used in Section 95.011 were meant to encompass arbitration, which is clearly "a legal process of resolving a dispute by seeking redress from an adjudicatory body." *Raymond James v. Phillips* Opinion at 9. After noting that the purpose behind

statutes of limitation is to "protect defendants from unfair surprise and stale claims," the Court concluded that "[t]hese same concerns are present in an arbitration proceeding." *Id.* at 13.

Notwithstanding the unique contractual provision that allowed the parties to take their timeliness dispute to court, the Supreme Court's Opinion left little doubt as to its clear application to future securities arbitrations:

Based on the language of the statute and the application of principles of statutory construction, we hold that ***Florida's statute of limitations applies to arbitration*** because an arbitration proceeding is within the statutory term "civil action or proceeding" found in section 95.011. Thus, ***we answer the rephrased certified question in the affirmative and agree with Raymond James that the investors' arbitration claims in this case are barred by the statute of limitations.***

Raymond James v. Phillips Opinion at 2 (emphasis added).[3]

Greenberg Traurig served as counsel to SIFMA and prepared its amicus curiae briefing on the case and also has substantial experience litigating such issues on behalf of its broker-dealer clients.

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[1] See, e.g., *Broom v. Morgan Stanley DW Inc.*, 2010 WL 2853917 (Wash. 2010); *Morgan v. Carillon Investments*, 109 P.3d 82 (Az. 2005); *Skidmore, Owings & Merrill v. Connecticut General Life Ins. Co.*, 197 A.2d 83 (Conn. 1963).

[2] The parties' agreement expressly provided that "[t]he determination of whether any such claim was timely filed shall be by a court having jurisdiction, upon application by either party." *Raymond James v. Phillips* Opinion at 4.

[3] Interestingly, the District Court certified the broader question of:

> DOES SECTION 95.011, FLORIDA STATUTES, APPLY TO ARBITRATION WHEN THE PARTIES HAVE NOT EXPRESSLY INCLUDED A PROVISION IN THEIR ARBITRATION AGREEMENT STATING THAT IT IS APPLICABLE?

The Supreme Court eliminated the need for future arguments over the text of arbitration agreements by rephrasing the certified question to provide a general rule of application of statutes of limitation even in the absence of contractual incorporation.

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