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Florida Supreme Court Decides Statute Of Limitations Applies To Arbitrations

In an opinion released yesterday, the Florida Supreme Court held in *Raymond James Financial Services, Inc. v. Phillips, et al.*, No. SC11-2513, that Florida's statute of limitations, which is applicable to a "civil action or proceeding," also applies to arbitrations. This decision will likely have far-reaching effects well beyond the securities industry as many cases that arose out of the economic downturn may now be untimely because of statutes of limitation. Not only will parties in arbitration be able to assert this legal defense, but yesterday's decision strongly suggests that other statute-based claims and defenses, such as claims under Florida's Deceptive and Unfair Trade Practice Act, Florida's Securities and Investor Protection Act, and Florida's civil theft statute, will continue to remain viable in arbitration. This avoids a potential policy conflict with the Federal Arbitration Act, Florida Arbitration Code, and case law favoring arbitration. Alex Sabo of Bressler, Amery & Ross, P.C. co-authored an amicus brief on behalf of the Florida Securities Dealers Association, Inc., the oldest and largest state securities association in the U.S.

The *Raymond James* case arose out of an investor dispute in which the trial court agreed with investors who argued that arbitrations are not "civil actions" or "proceedings" for purposes of section 95.011, Florida Statutes. Florida's Second District Court of Appeal affirmed the trial court's decision and noted that Florida's statute of limitations could not apply in arbitrations unless the arbitration agreement expressly stated that it did because arbitrations are not "actions" and "proceedings" as contemplated by the statute. The Florida Supreme Court quashed the Second District's decision and answered in the affirmative the following certified question: "Does Section 95.011, Florida Statutes, apply to arbitration?" Relying upon principles of statutory construction, the Court noted that Florida's statute of limitations refers to "actions," which are defined as "a civil action or proceeding." Although the terms "civil actions" and "proceedings" are not defined by the statute, their ordinary definitions include "[a]n action brought to enforce, redress, or protect a private or civil right" and "[a]ny procedural means for seeking redress from a tribunal or agency," respectively. In turn, a "tribunal" is commonly defined as "[a] court or other adjudicatory body." Because parties to an arbitration seek redress from an "adjudicatory body," the Court held that arbitrations are "proceedings," and therefore "actions" as contemplated by the statute. The Court further justified its holding by considering several other cornerstones of statutory interpretation, including restating the well-established principle that courts are to give significance and effect to every word and part of the statute if possible, and that if the legislature wanted to confine the statute of limitations to only judicial proceedings, it would have written the statute to read "judicial proceedings" as opposed to just "proceedings." Finally, the Court also noted that the purpose of the statute of limitations is to prevent expired claims from being litigated, a concern that exists as equally in arbitration as it does in courtroom litigation.

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