

Does Your Arbitration Agreement Permit Pursuit of Stale Claims?

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In a decision that will have a major impact on claims brought in arbitration, the Washington Supreme Court held on July 22, 2010 that, unless parties expressly agree otherwise, state statutes of limitations do not apply to claims brought in arbitration. Washington statutes of limitations prohibit the commencement of various "actions" after a certain number of years. For example, an action based upon a written contract must be commenced within 6 years whereas most tort actions, such as employment discrimination claims, must be commenced within 3 years. In *Broom v. Morgan Stanley DW, Inc.*, a majority of the Washington Supreme Court held that arbitration proceedings are not "actions" for purposes state statutes of limitations. Thus, state statutes of limitations may not serve as a defense to otherwise stale claims in arbitration. In other words, a claim may be viable in arbitration even though it is untimely and could not be pursued in court.

Fortunately, the Supreme Court held that the parties to arbitration agreements may agree to apply statutes of limitations. If your company uses arbitration agreements and wants to preserve statutes of limitation defenses in arbitration proceedings, be sure that your arbitration agreement expressly provides that statutes of limitations are applicable to claims brought in arbitration.

In light of this and other developments in the law applicable to arbitration agreements, we strongly recommend review of all arbitration agreements.