

>> MAY IT PLEASE THE COURT, I'M
GEORGE GUERRA.
I'M HERE WITH MY CO-COUNSEL ON
BEHALF OF RAYMOND JAMES
FINANCIAL SERVICES ASKING THE
COURT TO REVERSE THE SECOND DCA
AND ANSWER IN THE AFFIRMATIVE THE
QUESTION PRESENTED.
>> CAN I ASK YOU A QUESTION
ABOUT THE QUESTION?
THE QUESTION PRESUMES THAT THE
ARBITRATION AGREEMENT DOES NOT
INCORPORATE THE SESSION LIMIT
STATUTE OF LIMITATIONS IN
FLORIDA.
DO YOU AGREE OR DISAGREE WITH
THAT, THAT THE CONTRACT DOES
NOT CONTROL THE ANSWER TO THIS
INITIAL QUESTION?
>> YOUR HONOR, I DO HAVE AN
ISSUE WITH THE QUESTION AND I
DO DISAGREE WITH THE
PROPOSITION THAT THE CONTRACT
DOES NOT INCORPORATE THE --
>> THIS IS FRIENDLY QUESTION.
>> YEAH.
>> THERE IS SEEMS TO ME A
SENSIBLE READING OF THE
CONTRACT.
>> CORRECT.
>> THAT INCORPORATES THE
STATUTE OF LIMITATIONS OF
FLORIDA BY SAYING ANYTIME
BARRED CLAIMS ARE INELIGIBLE
FOR ARBITRATION.
WAS THAT ARGUED BELOW?
>> IT WAS, YOUR HONOR, AND IN
FACT THE, THE FACT THAT THIS
COURT AND OTHER COURTS OF THIS
STATE HAVE HELD LANGUAGE
SIMILAR TO THE LANGUAGE IN THIS
CONTRACT DOES IN FACT
INCORPORATE THE STATUTES OF
LIMITATIONS IS ONE OF THE
PRIMARY REASONS WE BELIEVE THIS
COURT SHOULD --
>> IT WOULD BE HARD FOR ME TO
BELIEVE WITH EVERYTHING ELSE
DONE IN ARBITRATION THAT THE
INTENT ISN'T TO GIVE AN
OPEN-ENDED AGREEMENT TO FILE
THE CLAIM WHENEVER YOU SO DEEM,
NOT YOU, BUT THE AGGRIEVED
PARTY.
>> RIGHT.
I THINK THAT'S ABSOLUTELY
CORRECT.

THAT IS ONE OF THE FUNDAMENTAL ISSUES THAT'S PRESENTED BY THE SECOND DISTRICT'S RULING THERE IS REALLY NO LEGITIMATE WAY TO HARMONIZE THE NOTION THAT THE POLICY OR THAT THE INTENT OF CHAPTER 95 --

>> YOU KEEP, YOU'RE GOING BACK TO 95.

SO YOU'RE SAYING YOU STILL HAVE TO DECIDE WHETHER, IT'S A PROCEEDING, WHETHER THAT IS INTENDED BY THE STATUTE OF LIMITATIONS?

>> WELL NO, ACTUALLY, THAT'S CORRECT.

WE DON'T HAVE TO GET THERE. I THINK THAT'S MAYBE WHAT THE POINT REALLY IS ULTIMATELY. THE CONTRACT DOES INCORPORATE CHAPTER 95.

IT DOESN'T MAKE SENSE TO SUGGEST THAT IF YOU GO TO ARBITRATION ALL OF A SUDDEN YOU DON'T HAVE THE RIGHTS THAT ARE PART OF 95 BECAUSE THE CONTRACT SPECIFICALLY SAYS, THIS CONTRACT, AND ALL THE RIGHTS AND THE RIGHTS OF THE PARTIES PURSUANT TO IT SHALL BE GOVERNED BY THE INTERNAL LAWS OF STATE OF FLORIDA.

CHAPTER 95 VERY CLEARLY IS PART OF THE INTERNAL LAWS OF THE STATE OF FLORIDA.

>> I GUESS WE GET BACK TO CHAPTER 95 AND MAYBE WE DO GET TO THE QUESTION, DOES IT INCORPORATE ARBITRATION PROCEEDINGS, WITHIN THE PLAIN LANGUAGE OF THE, OF THE STATUTE OF LIMITATIONS?

>> IT DOES. AND I THINK --

>> SO MAYBE, WHAT I GUESS I'M SAYING IS, MAYBE YOU HAVE TO REACH THAT ANYWAY BECAUSE IT IS ONLY APPLICABLE IF THE STATE OF FLORIDA INTENDED FOR ARBITRATION PROCEEDINGS TO BE BE PROJECT TO THE STATUTE OF LIMITATIONS.

>> IT IS A BIT CIRCULAR BUT I THINK IF ONE STARTS WITH THE PROPOSITION THAT THIS CONTRACT, AND LOOKING AT THIS CONTRACT WHICH I THINK IS A FAIR WAY TO ANALYZE IT, DOES INCLUDE, DOES

INCORPORATE CHAPTER 95, DOES SPECIFICALLY SAY, NO CLAIMS SHALL BE ELIGIBLE FOR ARBITRATION IF IT WOULD OTHERWISE BE, I'M PARAPHRASING NOW, IF IT WOULD BE OTHERWISE BARRED BY THE STATUTE OF LIMITATIONS.

THAT IS A SUCCESSFUL INCORPORATION OF THE STATUTE OF LIMITATIONS.

>> DOESN'T THIS CASE REALLY COME DOWN TO WHETHER, AND I'M GOING TO PHRASE THIS QUESTION CAREFULLY.

AN ARBITRATION PROCEEDING IS A PROCEEDING?

>> I THINK THAT'S A VERY FAIR QUESTION AND --

>> I THOUGHT YOU WOULD.

OPPOSING COUNSEL WON'T LIKE THAT FORMULATION BUT AGAIN, WHEN I SAY ARBITRATION PROCEEDING I'M NOT ALONE IN SAYING THAT.

THAT'S IN THE STATUTES, RIGHT?

>> IT IS IN THE STATUTES, YOUR HONOR.

THIS VERY COURT HAS REFERRED TO ARBITRATION PROCEEDINGS IN A VARIETY OF INSTANCES INCLUDING EVEN IN THE MILEY DECISION WHICH HAS BEEN THE CENTER FOCUS OF THIS CASE FOR SOME TIME.

IN ITS ANALYSIS THE COURT REFERRED TO ARBITRATION PROCEEDINGS IN MEILE.

THERE IS NO QUESTION AN ARBITRATION PROCEEDING IS NO DIFFERENT IN THE SENSE IN THE TERM THE WAY PROCEEDING IS USED.

>> THE STATUTE USES THE TERM, DOES IT SAY ACTION AND OR PROCEEDINGS?

>> OR, CIVIL ACTION OR.

>> CIVIL ACTION OR PROCEEDINGS.

SO THERE MUST BE, DOESN'T AN INFERENCE ARISE IT MUST BE TALKING ABOUT SOMETHING THERE WHEN THEY SAY PROCEEDINGS OTHER THAN ACTIONS?

IF THERE IS SOME DISTINCTION IN MIND, RIGHT?

>> ABSOLUTELY AND A MORE EXPANSIVE EXPECTATION REALLY BASED ON THE FACT THAT IF IT'S NOT THAT, THEN, AS THE SECOND

DCA DETERMINED, IF IT'S NOT, IF IT MEANS THE SAME THING, THEN IT'S, AS, CIVIL ACTION, THEN IT, THE COURT EFFECTIVELY MADE, CREATED A REDUNDANCY OR IN FACT LIMITED THE STATUTE IN A WAY.

>> EXCEPT IT SAYS,
LET ME READ THE REST OF IT.

A CIVIL ACTION, PROCEEDING,
COMMA, CALLED ACTION IN THIS
CHAPTER.

WHAT DOES THAT MEAN?

>> IT MEANS IT HAS NOW FROM
THAT POINT FORWARD, DEFINED AN
ACTION TO INCLUDE ANY
PROCEEDING AS WELL.

>> I SEE, OKAY.

THERE IS NOT ANOTHER PLACE --
BUT AREN'T THERE PLACES IN THE
FLORIDA STATUTES WHERE
ARBITRATION IS REFERRED TO AS A
PROCEEDING?

>> THERE ARE, THERE ARE.

IN FACT ONE IS THE FLORIDA
ARBITRATION ACT AND IN FACT TO
READ THOSE IN HARMONY ONE WOULD
HAVE TO CONCLUDE THAT CLEARLY
ARBITRATION PROCEEDING, OR
PROCEEDING MEANS ARBITRATION
PROCEEDING JUST AS JUSTICE
CANADY SUGGESTED.

>> OKAY.

SO TELL ME THIS.

WHERE IS IT THAT THE SECOND
DISTRICT WENT WRONG IN SAYING
THAT THE STATUTE OF LIMITATIONS
WERE NOT APPLICABLE TO
ARBITRATION CLAIMS?

WHAT IS THE FLAW IN THEIR
REASONING THAT WE'RE, WHERE
THEY WENT WRONG?

>> I THINK THEY WENT WRONG IN A
VARIETY OF PLACES TO BE QUITE
HONEST, YOUR HONOR.

THEY FAILED TO DO WHAT WE DID,
WHEN WE FIRST BEGAN, WHICH WAS
TO CONSIDER THE LANGUAGE OF THE
CONTRACT ITSELF, AND TO
CONCLUDE THAT IT SPECIFICALLY
INCORPORATES THE CHAPTER OR
PARDON ME, SPECIFICALLY
INCORPORATES THE STATUTE OF
LIMITATIONS.

THEY, I DON'T THINK CONSIDERED
CORRECTLY THE NOTION THAT
INCORPORATING THE TERM,
JUDICIAL, BEFORE THE TERM

PROCEEDING, ACTUALLY DID LIMIT
THE STATUTE AND AS A
CONSEQUENCE IMPERMISSIBLY
CHANGED THE MEANING OF THE
STATUTE.

WE ALSO BELIEVE THAT THE SECOND
DCA DIDN'T PROPERLY CONSIDER
THE LEGISLATIVE INTENT OR
DETERMINE WHAT THE LEGISLATIVE
INTENT WAS AND HARMONIZED OR
EFFECTIVELY DETERMINE HOW IT
WAS THAT THE LEGISLATIVE INTENT
BEHIND CHAPTER 95 COULD
POSSIBLY BE DIFFERENT WHEN
PARTIES APPEARED IN ARBITRATION
VERSUS IN A STATE COURT OR A
FEDERAL COURT PROCEEDING.

>> THIS IS, IS THIS A
NATIONAL, IS THIS A NATIONAL
CONTRACT OR JUST A FLORIDA
ARBITRATION AGREEMENT?

>> WELL, IN FACT, YOUR HONOR,
THIS CONTRACT IS NOW SO OLD I'M
NOT SURE IT'S EITHER BUT
ULTIMATELY I DO BELIEVE THAT
THIS IS A CONTRACT THAT IS USED
THROUGHOUT, IN DIFFERENT PARTS
THE COUNTRY.

>> EXCEPT IT SAYS FLORIDA LAW
APPLIED?

>> CORRECT.

>> SO THEY WANTED THE WHOLE,
EVERYBODY ARBITRATING IN THE
UNITED STATES WAS GOING TO BE
SUBJECT TO THE INTERPRETATION
OF FLORIDA LAW?

>> WELL, I THINK THE ANSWER TO
THAT IS PROBABLY YES, YOUR
HONOR.

WHETHER OR NOT THAT IS TODAY AN
ENFORCEABLE PROVISION OF COURSE
THIS GOES BACK SOME TIME.

NOT ONLY HAS THE LAW EVOLVED
BUT THE COMPANY IS A FLORIDA
COMPANY AND THE COMPANY'S
PRESENCE LARGELY EXISTS IN
FLORIDA.

NOW THAT IS NOT TRUE ANYMORE
BUT IT WAS THEN.

>> I SEE.

I WAS GOING TO ASK YOU, AROUND
THE 50 STATES DO OTHER STATES
HAVE A STATUTE OF LIMITATIONS
THAT SPECIFICALLY REFERRED TO
ARBITRATION PROCEEDINGS IN
THEIR STATUTES OF LIMITATION?

>> THERE ARE SOME.

AND IN FACT THE STATUTES VARY
AND THE SECOND DCA RELIED ON
THE WASHINGTON STATUTE AND THE,
A WASHINGTON DECISION, THE
BROOM CASE.

AND EFFECTIVELY SEEMED TO RELY
ON THAT.

ONE OF THE FUNDAMENTAL PROBLEMS
WAS IN RELYING ON BROOM AND
ANY OF THE OTHER STATES IS THAT
THOSE STATES DO HAVE DIFFERENT
STATUTES.

THE ONLY ONE WE'VE IDENTIFIED
THAT HAS LANGUAGE SIMILAR TO
THE FLORIDA STATUTE IS A
PENNSYLVANIA STATUTE AND THE
CASE, THE ONE CASE THAT WE
FOUND THAT ACTUALLY TREATED
THIS ISSUE ACTUALLY FOUND AS WE
BELIEVE THIS COURT SHOULD FIND,
AND THAT IS THAT A PROCEEDING
CLEARLY ENCOMPASSES AN
ARBITRATION PROCEEDING.

>> WE HAVE HAD MANY CASES
RECENTLY THAT TALKED ABOUT THE
SUPREMACY OF THE FEDERAL
ARBITRATION ACT.

IS THERE ANY, WHAT ARE THE
IMPLICATIONS FOR THE FEDERAL,
ANYTHING, AS FAR AS HOW WE
INTERPRET THIS?

WHETHER THE STATUTE OF
LIMITATIONS APPLIES DOESN'T
APPLY THAT CONFLICTS WITH THE
FEDERAL ARBITRATION ACT?

>> YES, YOUR HONOR, THERE IS.
SPECIFICALLY IT INVOLVES THE
CONGRESSIONAL INTENT BEHIND THE
PASSAGE OF THE FEDERAL
ARBITRATION ACT.

THE CONGRESS PASSED THE
FEDERAL ARBITRATION ACT IN
ORDER TO INSURE THAT THERE WAS
NO LONGER THE HISTORICAL
HOSTILITY AGAINST ARBITRATION
THAT ONCE EXISTED.

AND THE CASE LAW THAT HAS
FOLLOWED HAS CLEARLY FOUND THAT
WHEN ANY STATUTE OR LAW
CONFLICTS WITH THAT OBJECTIVE,
THEN IT IS PREEMPTED BY THE
FEDERAL ARBITRATION ACT.

>> BUT THERE ISN'T ANYTHING
SPECIFICALLY THAT HAS BEEN
RULED ON THAT SAYS, I MEAN, FOR
EXAMPLE, IF YOU, IF THE PARTIES
AGREED THAT IT WAS OPEN-ENDED,

THAT THE ARBITRATION COULD BE FILED AT ANY TIME, THAT'S NOT CONTRARY TO FLORIDA, TO FEDERAL LAW, IS IT?

>> NO, IT WOULDN'T BE BUT WHAT IS CONTRARY IS THE NOTION THAT THE RIGHTS OF THE PARTIES IN ARBITRATION ARE DIFFERENT THAN THE RIGHTS OF THE PARTIES ARE IN A STATE OR FEDERAL COURT AND THAT, THAT FACT MAKES IT, AND BECAUSE THIS IS OF COURSE A CONTRACT THAT INVOLVES INTERSTATE COMMERCE, THAT MAKES IT VIOLATIVE OF THE SUPREMACY CLAUSE AND ALSO PREEMPTS THE FLORIDA STATUTE.

>> WELL --

>> IN A NORMAL, I DON'T KNOW IF YOU CAN EVEN ANSWER THIS BUT GENERALLY IN THESE AGREEMENTS THAT OFFER ARBITRATION AND THEY SPECIFY ONE STATE LAW OVER ANOTHER, IS THERE NORMALLY, OR GENERALLY A PROVISION, A SEPARATE PROVISION ABOUT STATUTE OF LIMITATIONS?

>> ORDINARILY NOT, BUT OF COURSE, YOUR HONOR, I DON'T PRETEND TO KNOW WHAT ALL OF THE CONTRACTS SAY AND OF COURSE THIS CONTRACT INVOLVES A FINANCIAL SERVICES INSTITUTION BUT OF COURSE THE SECOND DCA'S RULING ADDRESSES ALL ARBITRATIONS IN THE STATE OF FLORIDA.

>> BUT IN THIS AGREEMENT THERE IS A SEPARATE PARAGRAPH THAT ACTUALLY TALKS ABOUT STATUTE OF LIMITATIONS AND SO WHAT IS THE PURPOSE OF THAT, I MEAN WE HAVE THE SECTION THAT SAYS, FLORIDA LAW IS APPLICABLE.

AND THEN YOU HAVE THAT SECTION D WHICH SPECIFICALLY TALKS ABOUT STATUTE OF LIMITATIONS.

>> RIGHT.

>> AND SO WHY WAS THAT SECTION OF IT NECESSARY IF WE ALREADY ARE TALKING ABOUT FLORIDA LAW IS APPLICABLE?

>> WELL I THINK IT RELATES TO THE PRESUMPTION THAT THE PARTIES ENTERED INTO THE CONTRACT WITH, WHICH IS NOT ONLY THE SUBSTANTIVE LAW OF THE

STATE OF FLORIDA APPLIES BUT THAT SPECIFICALLY THE STATUTES OF LIMITATION ARE NOT INTENDED TO BE PREEMPTED, WAIVED OR OTHERWISE CHANGED BY ANY LANGUAGE OF THE CONTRACT. AND I GUESS THE OTHER IMPORTANT POINT IS, THAT PROVISION HAS NO MEANING IF IN FACT THE STATUTES OF LIMITATIONS DON'T APPLY BECAUSE CLEARLY THERE WOULD BE NO REASON TO INCLUDE THAT PROVISION.

>> DOESN'T IT ALSO INCLUDE THE DETERMINATION THAT A COURT, RATHER THAN AN ARBITRATION PANEL WILL BE MAKING THIS VERY DECISION?

>> THIS CONTRACT ACTUALLY GAVE THE OPTION TO THE PARTIES AND IF EITHER PARTY CHOSE TO EXERCISE, AND I SHOULD SAY IN THIS CASE THE RESPONDENTS, THE CLAIMANT IN THE ARBITRATION EXERCISED THAT PROVISION BUT IT DOESN'T CHANGE THE FACT THAT IT IS A DECISION THAT OUGHT TO BE MADE, IN OTHER WORDS THAT THE STATUTE OF LIMITATIONS APPLY. JUST WHO GETS TO MAKE THAT DECISION.

>> WOULD YOU RESPOND TO THE ARGUMENT, I'M NOT SURE I UNDERSTAND IT COMPLETELY, THAT RAYMOND JAMES IN THE BRIEF OF THE RESPONDENT, OPTED FOR A DISPUTE RESOLUTION PROCESS WITH ITS OWN LIMITATION PERIOD. THE ARBITRATION CLAUSE REQUIRED PARTIES TO SUBMIT TO THE RULES OF A FINRA ARBITRATION SPONSORING ORGANIZATION, THAT HAS RULES WHICH CONTAIN A SIX-YEAR PERIOD OF PROSCRIPTION OF THEIR OWN.

WHAT IS YOUR ARGUMENT, OR YOUR RESPONSE TO THAT?

>> THE FINANCIAL INSTITUTION REGULATORY AUTHORITY, FORMERLY THE NASD, HAS ITS OWN RULES FOR CONDUCT OF ARBITRATION BEING, LIKE THE AAA HAS OTHER RULES AND OTHER ARBITRATION ORGANIZATIONS.

FINRA'S RULE INCLUDES A SIX-YEAR ELIGIBILITY PROVISION. AND THE ARGUMENT HAS BEEN MADE

THAT ELIGIBILITY PROVISION IS A
STATUTE OF LIMITATION, MAYBE
AGREED UPON OR SELF-IMPOSED
STATUTE OF LIMITATION.

IT'S NOT.

IT MERELY STATES THAT A CLAIM,
A CLAIM IS NO LONGER ELIGIBLE
TO BE ARBITRATED UNDER THEIR
RULES AFTER SIX YEARS.

IT DOES NOT AFFECT THE STATUTE
OF LIMITATIONS.

IN FACT THE RULES ALSO REQUIRE
THAT IF, IF A PARTY OBJECTS TO
ARBITRATION OF THE CLAIM, THEY
CAN NOT OBJECT TO THAT CLAIM
THEN BEING BROUGHT IN COURT
LATER.

I SEE THAT I'M OUT OF TIME SO I
WILL CEDE THE PODIUM.

THANK YOU.

>> MAY IT PLEASE THE COURT.

I'M ROBERT PEARL.

I REPRESENT THE RESPONDENTS IN
THIS CASE AND I FIND IT
FASCINATING THAT WE'RE HERE
TODAY DISCUSSING STATUTE OF
LIMITATIONS IN A ARBITRATION
CASE WHEN TRADITIONALLY THIS
COURT HAS RULED THAT IS THE
PROVINCE OF THE ARBITRATORS.
AND SO WE ARE NOW IN A POSITION
WHERE THE COURT IS ASKED TO
DECLARE WHAT THE FLORIDA LAW IS
WHERE NORMALLY ARBITRATORS --

>> DOES THE AGREEMENT SAY THAT?

>> EXCUSE ME?

>> DOESN'T THE PARTIES AGREEMENT
SAY YOU TAKE THIS ISSUE TO A
COURT, THAT YOU CAN, EITHER
PARTY CAN TAKE THIS ISSUE TO
COURT?

>> YES. AND THAT'S WHY WE'RE HERE
BECAUSE ORDINARILY ARBITRATORS
WOULD MAKE THAT RULING AS THE
COURT POINTED OUT.

>> SO WHY IS THAT ODD?

IT'S A PROVISION IN YOUR OWN
CONTRACT.

YOU'RE NOT SAYING WE DON'T HAVE
PROPER JURISDICTION TO
CONSIDER?

>> CLEARLY, CLEARLY THIS IS
EXTRAORDINARY BECAUSE THIS IS
THE ONLY WAY THIS ISSUE COULD
COME BEFORE THE COURT IS MY
POINT.

TYPICALLY --

>> REFRESHING I WOULD SAY.
REFRESHING WE SHOULD BE ABLE TO
DECLARE WHAT THE LAW OF FLORIDA
IS ON FLORIDA LAW CLAIMS.
>> THAT IS ONE OF THE REASONS
WHY THIS IS SUCH AN OPPORTUNITY
FOR THE COURT TO DECLARE THE
STATE OF THE LAW FOR THE
BENEFIT OF ALL THE LITIGANTS OR
ARBITRATION PARTICIPANTS
THROUGHOUT THE STATE.
OTHERWISE WE'RE LEFT WITH SOME
LOWER COURT INTERPRETATIONS OR
NO INTERPRETATIONS WHICH
ARBITRATORS THEN HAVE TO
DETERMINE WHETHER THEY ARE
BOUND BY OR NOT BOUND BY.
>> SO IT'S A GOOD THING.
>> IT IS A GOOD THING.
>> YOU JUST WANT US TO AFFIRM
THE SECOND DISTRICT?
>> YOU WOULD LIKE IT IF WE
AGREE WITH YOU.
>> CLEARLY BUT I'M ALSO ASKING
THE COURT TO DO WHAT THE COURT
HAS ANNOUNCED IS ITS POLICY TO
ENFORCE THE AGREEMENT ACCORDING
TO ITS TERMS.
WHAT WE'RE ASKING THE COURT TO
DO IS, DECLARE AS THE PARTIES
HAVE AGREED IN THIS CONTRACT,
THAT THE COURT WILL DETERMINE
THE APPLICABILITY OF THE
STATUTE OF LIMITATIONS AND
THAT'S WHY WE'RE HERE.
>> I THINK THAT, I DON'T KNOW
THAT ANYONE DISAGREES WITH YOU.
>> AND I'M MAKING THAT
OBSERVATION BECAUSE I THINK
IT'S HELPFUL TO UNDERSTAND THAT
THIS IS A MATTER OF CONTRACT.
THE APPELLANT HAS ARGUED
TO AFFIRM THE DISTRICT COURT
DECISION WOULD BE ANTI-ARBITRATION.
WOULD BE REFLECT A HOSTILITY
TOWARDS ARBITRATION WHICH WOULD
BE AGAINST FEDERAL POLICY.
THAT IS NOT THE CASE.
>> LET'S GET OVER WHETHER,
LET'S JUST LOOK AT THE LANGUAGE
OF THE, FIRST OF ALL, THE
CONTRACT BUT YOU MAY DISAGREE
ON WHETHER THE CONTRACT PLAINLY
INCORPORATES FLORIDA STATUTE OF
LIMITATIONS BUT I'M HAVING A
HARD TIME UNDERSTANDING HOW
CIVIL ACTION OR PROCEEDINGS

DOES NOT INCLUDE A, FROM A REASONABLE READING OF THE TERM, AN ARBITRATION PROCEEDING.

I'M HAVING A HARD TIME TO BELIEVE THAT ANYONE THAT KNOWS THE HISTORY OF ARBITRATION WOULD THINK THAT SOMEBODY ENTERING AN ARBITRATION AGREEMENT GAVE A, A PLAINTIFF FREE REIGN TO FILE THE ARBITRATION ANYTIME THEY WANTED AS OPPOSED TO WITHIN THE STATUTE OF LIMITATIONS.

>> AND THAT IS WHY THE CONTRACT TERMS ARE SO ESSENTIAL AND THAT'S WHY THE DISTRICT COURT FRAMED THE QUESTION THE WAY IT DID.

WHICH IS, CAN IT BE IMPLIED? CAN IT BE INFERRED BY THE TERMS OF THE CONTRACT?

HERE TH DCA ESTABLISHED THE CERTIFIED QUESTION AS, DOES THE PARTIES HAVE TO EXPRESSLY INCORPORATE.

THE DCA ALSO SAID THIS CONTRACT DOES NOT DO THAT.

THAT IN FACT IF THERE IS ANY CONFUSION AS TO THE MEANING IT IS CONSTRUED AGAINST THE DRAFTER RATHER THAN --

>> YOU AGREE IT IS A ISSUE OF LAW FOR DE NOVO CONSIDERATION BY THIS COURT?

>> ABSOLUTELY I AGREE.

>> WE CAN DISAGREE WITH THE INTERPRETATION OF THEIR CONTRACT AND THE INTERPRETATION OF THE STATUTE.

SO LET'S FOCUS IN ON THE STATUTE.

TELL ME WHY ACTION OR PROCEEDING DOES NOT EXPRESSLY, PLAINLY INCLUDE AN ARBITRATION PROCEEDING.

>> AND THAT IS THE HEART OF THE QUESTION BECAUSE IF THIS COURT DETERMINES THAT THE LANGUAGE PROCEEDING IN 95.011 DOES NOT INCLUDE ARBITRATIONS WE'RE DONE IN THIS CASE AS FAR AS WE BELIEVE. AND IT DOES NOT INCLUDE PROCEEDINGS.

WE'VE GONE AT LENGTH TO EXPLAIN THE LEGISLATIVE HISTORY HERE.

THE FACT THAT THERE IS NO RECORD AT ALL OF THE TERM

ARBITRATION BEING CONSIDERED BY
THE LEGISLATURE WHEN THE
STATUTE WAS REVIEWED AND --

>> YOU'VE GOT A TERM,
PROCEEDING AND MY, I'M LOOKING
HERE AT MERRIAM WEBSTER'S
DICTIONARY OF LAW
AND THAT'S WHAT I HAPPEN TO
HAVE ON MY iPad.
PROCEEDING, A PARTICULAR STEPS
OR SERIES OF STEPS IN
ENFORCEMENT, ADJUDICATION OF
RIGHTS, REMEDIES, LAWS OR
REGULATIONS.

AN ARBITRATION, WOULD SEEM TO
COME CLEARLY WITHIN THE SCOPE
OF THAT.

THAT'S WHAT AN ARBITRATION IS.
IT'S A SERIES OF STEPS OR A
STEP IN THE ENFORCEMENT OR
ADJUDICATION OF ADMINISTRATION
OF RIGHTS, REMEDIES AND
REGULATIONS DEPENDING WHAT THE
SUBJECT OF THE ARBITRATION IS.
WHY ISN'T THAT PLAIN MEANING
AND THE MEANING OF IT HERE IN
THIS PARTICULAR DICTIONARY WILL
NOT BE THAT DIFFERENT THAN IN,
I THINK PROBABLY IN WEBSTER'S
INTERNATIONAL DICTIONARY OR ANY
SERIES OF DICTIONARIES.

TELL ME WHY, GIVE THAT PLAIN
MEANING THAT ACCEPTED USAGE OF
THAT TERM, THE SECOND DISTRICT
COULD POSSIBLY BE RIGHT IN THE
WAY THEY HAVE INTERPRETED THIS?

>> BECAUSE THE TERM PROCEEDING
AS DEFINED, AS YOU'VE JUST
IDENTIFIED, IS ONLY ONE
DEFINITION.

IN FACT THE FLORIDA LEGISLATURE
HAS DEFINED THE TERM PROCEEDING
DIFFERENTLY.

>> BUT THEY REFERRED TO
ARBITRATION PROCEEDINGS.

>> NO. THEY USE THE TERM
PROCEEDING IN CHAPTER 92 AS
MEANING IN THE CIVIL OR
CRIMINAL ACTION BEFORE A COURT.

>> BUT IN THE ARBITRATION ACT
ARE THERE NOT REFERENCES TO
ARBITRATION PROCEEDINGS?

>> YES, I'M GLAD YOU RAISED THAT
POINT.

>> I AM TOO.

>> WHEN THEY TALK ABOUT THAT --

>> IF THEY'RE REFERRING, IF THE

LEGISLATURE ITSELF IN THE
ARBITRATION ACT IS REFERRING TO
ARBITRATION PROCEEDINGS HOW CAN
YOU POSSIBLY TAKE THE POSITION
THAT AN ARBITRATION, WHAT IS IT
IF IT IS NOT A PROCEEDING?

>> A ARBITRATION IS CONTRACTUAL
EFFORT TO RESOLVE A DISPUTE.

IT COULD BE SIMPLE A MR. GUERRA
AND I AGREE WITH MISS HELLER TO
RESOLVE A DISPUTE.

WE COULD HAVE A AGREEMENT ON
A PIECE OF PAPER AND WE
APPOINT HER THE ARBITRATOR.

DOES THAT ITSELF CONSTITUTE A
LEGAL PROCEEDING OR PROCEEDING
UNDER THE STATUTE?

>> -- ARBITRATIONS, WHAT
HAPPENED IN ARBITRATION, OR
ARBITRATION PROCEEDINGS BECAUSE
THEY REFERRED TO IT AS
ARBITRATION PROCEEDINGS.

AM I WRONG?

>> YEAH, BECAUSE IN THE
ARBITRATION CODE THE TERM,
CIVIL ACTION OR PROCEEDING IS
USED AND IT'S USED TO DESCRIBE
THE PROCEEDING TO EITHER
ENFORCE OR TO VACATE AN
ARBITRATION RULING IN COURT.
THAT'S WHERE IT'S FOUND.

AND IT IS NOT INTENDED TO --

>> NEVER ACTUALLY REFER TO
ARBITRATION PROCEEDINGS?

>> THEY USE THE TERM
ARBITRATION PROCEEDING AS THE
IN COURT PROCEEDING.

AND NOT A SEPARATE, PRIVATE
RESOLUTION, DISPUTE RESOLUTION.

I THINK THE CONTEXT HERE IS
ALSO IMPORTANT IN THAT THIS
AGREEMENT IS AN INDUSTRY
AGREEMENT.

MR. GUERRA AND I PRACTICE IN
THE WORLD OF FINRA ARBITRATION
AND THE DIFFERENCE BETWEEN
ARBITRATION AND COURT IS
PRONOUNCED.

WE DON'T HAVE NORMAL APPELLATE
RIGHTS.

GREAT DEFERENCE IS GIVEN TO
ARBITRATORS.

WE DON'T HAVE JURY SELECTION.
WE DON'T HAVE NORMAL DISCOVERY.
THE RULES OF EVIDENCE ARE
RELAXED.

THERE ISN'T NORMAL MOTION

PRACTICE.

>> THE POINT OF ALL OF THAT IS, THAT EVERYTHING THAT A VICTIM OF SECURITIES FRAUD, IF THEY AGREED TO ARBITRATE HAVE, ARE LESSER RIGHTS THAN SOMEBODY WOULD HAVE IN A COURT OF LAW?

>> CORRECT. THAT IS CORRECT.

>> YOU'RE SAYING THE ONLY RIGHT THAT ACTUALLY YOU HAVE GREATER RIGHTS THAN IF YOU WERE IN A COURT OF LAW YOU CAN BRING THE ACTION ANYTIME YOU WANT?

>> NO.

AND THAT IS BECAUSE MR. GUERRA RESPONDED TO YOUR QUESTION, YOUR HONOR, REGARDING THE SIX-YEAR ELIGIBILITY RULE. WHEN THIS CONTRACT IS DRAFTED BY RAYMOND JAMES THERE IS IN THE BACKGROUND A SIX-YEAR ELIGIBILITY RULE.

AND ELIGIBILITY FOR ARBITRATION MEANS THAT IF IT IS NOT BROUGHT TIMELY, THEN IT CAN BE DISMISSED IN ARBITRATION BUT ACCORDING TO THE NASD ARBITRATION CODE AT THE TIME, THERE IS THEN A CONCOMITANT RIGHT FOR YOU TO LAUNCH A LAWSUIT.

AND THE PARTIES AGREE BY THIS CODE OF ARBITRATION, THAT THE LAWSUIT CAN BE BROUGHT WITHOUT PREJUDICE BECAUSE YOU BROUGHT AN ARBITRATION, BUT THEN THAT'S GOVERNED BY THE STATUTE OF LIMITATIONS.

SO THERE'S A FALLBACK AND THE DRAFTER OF THIS AGREEMENT KNOWS THAT.

SO THAT WHEN THIS, A UNIQUE AGREEMENT IS PREPARED, IT'S DONE IN THE CONTEXT OF FINRA ARBITRATION JUST AS THOUGH THE PARTIES CAN INCORPORATE A LONGER, OR A SHORTER STATUTE OF LIMITATIONS BY AGREEMENT.

THERE IS NOTHING IN THE LEGISLATIVE HISTORY HERE THAT EVINCES AN INTENT BY THE LEGISLATURE TO INCLUDE ARBITRATION AS A TERM INTENDED TO BE COVERED BY THE WORD, PROCEEDING.

AND IT IS JUST AS LIKELY --

>> IF YOU'RE CORRECT, THEN IT

SEEMS TO ME, WHAT, WHY WOULD YOU NEED TO HAVE BOTH WORDS ACTION AND PROCEEDING?

BECAUSE IF YOU'VE TALKING ABOUT SOMETHING BROUGHT IN LAW, TO ME ACTION WOULD COVER IT.

SO WHY DO YOU HAVE THE TWO TERMS?

SEEMS TO BE WRITING THAT PROCEEDING OUT.

>> BECAUSE ACTION IS A TERM THAT MEANS A LAWSUIT BY A PLAINTIFF AGAINST A DEFENDANT. A PROCEEDING TRADITIONALLY IS SOMETHING THAT CAN BE ADMINISTRATIVE.

>> PROCEEDING, RIGHT?

>> EXCUSE ME?

>> THERE ARE TWO PARTIES IN THE PROCEEDING ALSO, CORRECT?

>> YES.

AND THERE'S ILLUSTRATION THAT CHAPTER 95 PROVIDES SUCH AS PROCEEDINGS BROUGHT BY MUNICIPALITIES OR GOVERNMENT AGENCIES AND SO FORTH.

SO THE QUESTION IS BY INCLUDING THE WORD, PROCEEDING AND WE'VE GIVEN THE LEGISLATIVE BACKGROUND HERE, IS THERE ANY INDICATION THAT THE LEGISLATURE INTENDED THAT TO INCLUDE ALL ARBITRATIONS OF ANY KIND ANYWHERE IN THE STATE OF FLORIDA?

AND THERE IS NOTHING TO SUGGEST THAT.

>> WHY WOULD IT BE EXCLUDED?

I MEAN JUST SEEMS TO ME THAT THERE'S NO DELINEATION OF EVERYTHING THAT'S INCLUDED IN THAT WORD AND THE MERE FACT THAT A ARBITRATIONS MAY NOT HAVE BEEN MENTIONED DOES NOT MEAN THAT ARBITRATION IS NOT INCLUDED.

>> BECAUSE THIS COURT'S ROLE WITH RESPECT TO STATUTORY CONSTRUCTION IS NOT TO ADD LANGUAGE THAT THE LEGISLATURE FORGOT TO INCLUDE.

>> IT JUST SEEMS I GUESS THE WASHINGTON CASE THAW RELY ON, THE STATUTE OF LIMITATIONS IN THAT CASE, SPECIFIED ACTIONS ONLY.

>> CORRECT.

>> SO ACTIONS OR PROCEEDINGS IN NORMAL STATUTORY CONSTRUCTION INDICATES A BROADER APPLICATION AND ARE YOU, SO WHAT IS YOUR ARGUMENT AS TO WHAT PROCEEDINGS MEAN?

IT ONLY APPLIES TO WHAT?

>> IT APPLIES TO JUDICIAL PROCEEDINGS.

>> WELL ISN'T THAT AN ACTION THOUGH?

>> IN SECTION 682.07 IN THE FLORIDA ARBITRATION CODE, IT SAYS, A PARTY HAS THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT ANY ARBITRATION PROCEEDING OR HEARING UNDER THIS LAW. A WAIVER THEREOF PRIOR TO THE PROCEEDING OR HEARING IS INEFFECTIVE.

>> THAT IS CLEAR, YOUR HONOR, THE LEGISLATURE KNOWS HOW TO USE THE TERM ARBITRATION PROCEEDING WHEN IT INTENDS TO INCLUDE THAT WITHIN ITS DEFINITION.

HERE IT DIDN'T USE ARBITRATION PROCEEDING.

>> SO YOU'RE SAYING IT HAD TO INCLUDE THE WORD ARBITRATION IN THE STATUTE OF LIMITATIONS?

>> BECAUSE IT DIDN'T, WERE THIS COURT TO DO THAT IT WOULD BE, IT WOULD BE IN EFFECT ADDING STATUTORY LANGUAGE.

>> WHAT ABOUT ADMINISTRATIVE HEARING?

SOMEBODY TRIES TO INITIATE A ADMINISTRATIVE HEARING OUTSIDE THE STATUTE OF LIMITATIONS THEY HAVE GOT TO INCLUDE THAT TOO?

>> THAT IS THE PROBLEM WITH USING THE TERM PROCEEDING TO MEAN JUST ABOUT ANYTHING.

>> IT IS NOT JUST ABOUT ANYTHING.

IT IS SOMETHING ABOUT A LEGAL PROCEEDING.

IN THE WORDS USED BY THE LEGISLATURE, BY CASE LAW, I THINK ARBITRATION, WHETHER IN FEDERAL OR FLORIDA LAW, IT'S COMMON TO REFER TO ARBITRATION PROCEEDINGS AS JUST THAT. THAT'S WHAT THEY ARE.

>> IF THAT WAS THE LEGISLATIVE INTENT, THEN WE WOULD KNOW

THAT.
IN FACT --
>> IN THAT STATUTE THAT THE
CHIEF JUSTICE JUST READ TO YOU,
THE LEGISLATURE IS SAYING
WHAT HAPPENS IN A ARBITRATION
IS A PROCEEDING.
BY PUTTING THOSE WORDS
TOGETHER.
THEY DON'T HAVE TO PUT IT IN
THE STATUTE OF LIMITATIONS
ALSO.
I JUST, I'M --
>> I RESPECTFULLY DISAGREE.
>> IT MYSTIFIES ME.
>> I RESPECTFULLY DISAGREE.
IN THIS COURT'S DECISION IN THE
MIELE CASE LOOKED AT THE
LEGISLATIVE PURPOSE BEHIND THE
STATUTE.
>> THERE IS NOTHING AMBIGUOUS
ABOUT THE TERM PROCEEDING.
WHY IS THAT AN AMBIGUOUS TERM
IN THIS CONTEXT?
>> BECAUSE ARBITRATIONS ARE NOT
PROCEEDINGS.
THEY ARE, THE --
>> THE WHOLE WORLD SAYS THEY
ARE BUT YOU SAY THEY AREN'T.
>> THEY'RE NOT ACCORDING TO THE
NORMAL PARLANCE AND THERE ARE
DIFFERENT DEFINITIONS SUCH AS
THE ONE I JUST READ WHICH
DOESN'T DESCRIBE IT AS
ARBITRATION AT ALL.
>> OKAY.
YOU SAID SOMETHING EARLIER THAT
ANYONE COULD CONTRACT TO HAVE A
SHORTER STATUTE OF LIMITATIONS?
>> YES.
>> ARE YOU AWARE OF 95.03 THAT
SAYS YOU CAN NOT SET A LESSER
TIME THAN PROVIDED BY THE
STATUTE OF LIMITATION, THAT
IT'S VOID?
>> THAT'S CORRECT WITH RESPECT
TO ANY ACTION.
THE LANGUAGE ACTION APPEARS
RIGHT IN THAT STATUTE.
>> THEN GOING, SO YOU, YOU
THINK THAT IT COULD BE, THEY
COULD SET A SHORTER TIME IN THE
ARBITRATION PROCEEDING AND IT
NOT BE AN INVALID PROCEEDING?
>> THE PARTIES CAN AGREE BY
CONTRACT.
JUST A QUESTION WHETHER THE

COURT WANTS TO ENFORCE CONTRACT BY THEIR TERMS.

>> YOU KEEP ON MENTIONING THAT THE LEGISLATIVE HISTORY. PRIOR TO 1974 THERE WAS NO 95.011.

95.03 WAS LIMITED TO APPLY TO ONLY TO SUITS. YOU WOULD AGREE SUITS IS A MORE NARROW TERM, CORRECT? SUITS?

>> I'M NOT SURE THAT THERE IS A DISTINCTION BETWEEN SUITS AND ACTIONS IN MY EXPERIENCE, YOUR HONOR.

ONE, AN ACTION IS SOMETHING THAT IS COMMENCED BY A PLAINTIFF.

A PROCEEDING IS TYPICALLY COMMENCED BY A PETITIONER.

>> WHICH IS --

>> AND A SUIT IS ALSO COMMENCED BY A PLAINTIFF.

>> SO, AGAIN YOUR IDEA IS THAT THIS STATUTE ONLY APPLIES TO SOMETHING BROAD IN COURT?

>> CIVIL ACTION OR PROCEEDING, WE BELIEVE MEANS A CIVIL ACTION OR A CIVIL PROCEEDING.

AND THEREFORE, IT WOULD APPLY TO SOMETHING IN COURT.

>> IF SOMEBODY WANTS TO NARROW IT, THEN THEY MUST DO IT, BY CONTRACT?

>> TWO WAYS, YOUR HONOR.

ONCE AGAIN, THIS IS THE IRONY THAT BRINGS US HERE.

RAYMOND JAMES HAD THE ABILITY TO SPECIFICALLY INCORPORATE THE STATUTE.

>> AND I WILL SAY THAT I ACTUALLY THOUGHT THEY DID THAT. SO THAT'S NOT HELPFUL TO YOU BUT I THOUGHT THAT'S WHAT THEY DID IN THEIR CONTRACT.

>> I THINK THE DCA SAYS THAT THEY DIDN'T BY EXPRESS LANGUAGE.

>> AND I THINK THEY EXPRESSLY DID.

>> THEY INCORPORATE THE LAW OF THE STATE OF FLORIDA AND YOU ASKED A PERTINENT QUESTION IS THIS CONTRACT SUPPOSED TO APPLY NATIONALLY AND IT ISN'T A NATIONAL APPLICATION CONTRACT? THERE IS NO REASON TO CONCLUDE, WE BELIEVE, THAT BY REFERENCING

THE LAW, THE OF STATE OF
FLORIDA THAT YOU'RE REFERENCING
LAWS THAT DON'T APPLY TO
ARBITRATION.

AND THAT IT'S CIRCULAR AS
MR. GUERRA POINTED OUT OF THE
WE DON'T BELIEVE THERE IS AN
EXPRESS INCORPORATION.

ONE ONLY NEEDS TO GO ONTO THE
INTERNET TODAY TO SEE THAT
THERE'S ALREADY SUGGESTED
LANGUAGE TO REMEDY THIS PROBLEM
THAT'S BEEN PROMULGATED BY
PROMINENT LAW FIRMS IN THE
STATE OF FLORIDA.

IF YOU WANT TO MAKE SURE YOUR
ARBITRATION CONTRACT INCLUDES
THE RIGHT TO RAISE THE STATUTE
OF LIMITATIONS AS A BAR, PUT IT
IN YOUR CONTRACT.

>> DIDN'T THEY DO THAT HERE?

>> THEY DID NOT DO THAT HERE.

>> WHAT DOES, THEN WHAT DOES
SUBSECTION D MEAN?

I MEAN SUBSECTION D SAYS,
NOTHING IN THIS AGREEMENT SHALL
BE DEEMED TO LIMIT OR WAIVE THE
APPLICATION OF ANY RELEVANT
STATE OR FEDERAL STATUTE OF
LIMITATIONS.

GOES ON TO TALK ABOUT MAKING
THAT DETERMINATION IN A COURT.
SO WHAT IS THE POINT?

I MEAN IF --

>> THE POINT IS, IF THERE IS A,
AN APPLICABLE STATUTE OF
LIMITATIONS, THEY WANT TO BE
ABLE TO RAISE THAT IN AN
ARBITRATION HEARING BUT IT HAS
TO BE APPLICABLE.

THERE ARE TWO STATES, I THINK
JUSTICE PARIENTE MENTIONED
THIS, TO MR. GUERRA, THERE ARE
TWO STATES THAT SPECIFICALLY
HAVE ADOPTED ARBITRATION CODES
THAT STATE THE STATUTE OF
LIMITATIONS APPLY IN
ARBITRATION.

THAT IS NEW YORK AND GEORGIA.
BOTH OF THOSE STATUTES WERE ON
THE BOOKS THAT WHEN THE FLORIDA
LEGISLATURE ENACTED 95.011 AND
CHOSE NOT TO DO THAT.

AND THEREFORE WE BELIEVE THAT
FOR THE COURT --

>> YOU HAVE TO DRAW A INFERENCE
ABOUT THE INTENT OF THE FLORIDA

LEGISLATURE BASED ON THEIR FAILURE TO DO SOMETHING THAT SOME OTHER STATE DID I WOULD SUGGEST THAT IS PRETTY FANCIFUL BECAUSE I DON'T THINK PEOPLE IN THE LEGISLATURE ARE NECESSARILY CONSULTING WHAT THE LAW OF OTHER STATES WOULD BE WHEN THEY'RE ENACTING THE LAWS OF FLORIDA.

THEY MIGHT INCIDENTALLY DO THAT BUT THEY'RE CERTAINLY, THAT IS NOT SOMETHING WE WOULD CHARGE THEM WITH KNOWLEDGE OF.

>> THAT IS WHY WE SUPPLIED THE COURT WITH THE RESEARCH WE HAD DONE WITH RESPECT TO THE LEGISLATIVE HISTORY.

BOTH US AND PIABO IN ITS AMICUS BRIEF REFERENCED THE FACT THEY LISTENED TO THE AUDIOTAPES OF THE JUDICIAL, LEGISLATIVE DELIBERATIONS AND INDICATED THERE WAS NO MENTION OF THE TERM ARBITRATION.

AND FOR THIS COURT TO DETERMINE THAT ARBITRATION MEANS PROCEEDINGS, ESSENTIALLY OPENS A PANDORA'S BOX TO REVERSE THAT.

PROCEEDINGS MEANS ARBITRATION THAT MEANS ALL TYPES OF PROCEEDINGS ARE NOT SUBJECT TO, TO ALL OF THE PROVISIONS OF THE FLORIDA STATUTES.

>> YOU KNOW, AND WHY NOT?

IT SEEMS TO ME THAT THE COURT, THAT THE LEGISLATURE COULD HAVE EASILY SAID, COURT PROCEEDINGS, JUST AS THEY SAID, YOU KNOW, AN ACTION WE KNOW AS A COURT PROCEEDING.

IF THEY WERE LIMITING IT TO JUST COURT PROCEEDINGS THAT COULD HAVE EASILY BEEN DONE. SO WHY, I MEAN, I'M JUST NOT SURE I UNDERSTAND THIS.

>> THE PANDORA'S BOX, MEANS, FOR EXAMPLE, THE FLORIDA EVIDENCE CODE NOW APPLIES TO ARBITRATION.

THAT, ALL OF THE SUBSTANTIVE LAWS OF THE STATE OF FLORIDA, EVEN IN THE ABSENCE OF EXPRESS LANGUAGE, NOW ARE INCORPORATED INTO THE ARBITRATION PROCEEDINGS.

AND THAT IS NOT THE NATURE OF
ARBITRATION.

ARBITRATION IS INTENDED TO BE
EXPEDITIOUS UNLIKE THIS CASE OF
COURSE WHERE WE'RE NOW SEVEN
YEARS POST FILING AND WE'RE
STILL TALKING ABOUT IT.

BUT I DON'T THINK THAT IS THE
LEGISLATIVE INTENT.

I DON'T THINK THE RULE, THE
ROLE OF THIS COURT IS JUDICIAL
LEGISLATION.

I THINK IT'S INTERPRETATION OF
WHAT THE LEGISLATURE HAD IN
MIND BACK IN 1974.

AND I DON'T THINK THAT THERE IS
ANY INDICATION THEY INTENDED
ARBITRATION TO BE INCLUDED
UNDER CHAPTER 95, UNDER THE
TERM, CIVIL ACTIONS OR
PROCEEDINGS.

>> IF WE, FOR SOME REASON, SOME
OTHER KIND OF PROCEEDING IS
DEVELOPED AT THIS POINT WHERE
WE COULD RESOLVE DISPUTES
BETWEEN IN SOME OTHER TYPE OF
PROCEEDING OTHER THAN
ARBITRATION IT WOULD NOT BE
COVERED UNDER THE STATUTE OF
LIMITATIONS?

>> WE FREQUENTLY ENGAGE IN
MEDIATION AS AN ALTERNATIVE
DISPUTE RESOLUTION MECHANISM.
DOES THAT MEAN THAT STATUTE OF
LIMITATIONS APPLIES TO
MEDIATION?

YOU CAN'T MEDIATE THE CASE IF
IT IS PAST A CERTAIN PERIOD OF
TIME?

I DON'T THINK THAT WOULD HAVE
BEEN WITHIN THE LEGISLATIVE
INTENTION EITHER AND THERE ARE
MANY DIFFERENT FORMS OF ADRs AS
THE COURT IS WELL AWARE.

>> YOU'RE NOW OUT OF TIME.

>> THANK YOU FOR YOUR
ATTENTION.

>> JUSTICE QUINCE, JUST TO PICK
UP ON THAT POINT I THINK THAT
IT IS A FACT THAT THOSE, THOSE
RULES THAT MR. PEARL REFERENCED
WOULD NEVER APPLY.

I MEAN THE, THIS NOTION OF THIS
PANDORA'S BOX, THAT SOMEHOW
EITHER IN MEDIATION, WELL, LET
ME FIRST ADDRESS THE ISSUE OF
MEDIATION.

IN THE CASE OF A MEDIATION,
CHAPTER 95 CLAIMS WOULD NOT BE
BROUGHT.

ONE DOESN'T BRING CLAIMS IN
MEDIATION, PERIOD THE NOTION
THAT RULES OF EVIDENCE OR OTHER
RULES OF PROCEDURE OF THE STATE
WOULD INHERENTLY NOW BE APPLIED
IS ALSO A FALSE PREMISE.

PARTIES ARE FREE TO INCORPORATE
WHATEVER RULES THEY WANT IN
THEIR ARBITRATION PROCEEDING.

IN THIS CASE THEY AGREED TO
ARBITRATE PURSUANT TO THE RULES
OF THE FINANCIAL, FINANCIAL
INSTITUTIONS REGULATORY
AUTHORITY.

THEY COULD HAVE AGREED TO AAA
RULES.

THEY COULD HAVE ALSO SAID, WE
AGREE TO ARBITRATE AND TO DO SO
PURSUANT TO THE RULE, FLORIDA
RULES OF CIVIL PROCEDURE.

THAT IS A DIFFERENT SCENARIO
ENTIRELY AND NOT ONE THAT WOULD
BE PRECIPITATED BY REVERSAL OF
THE SECOND DCA.

I BELIEVE, AND I, I THINK THAT
IT IS CLEAR THAT THIS CONTRACT
EXPRESSLY INCLUDES THE, BY ITS
LANGUAGE, THE STATUTES OF LIMIT
TASTES.

IT IS ALSO CLEAR THAT THE
LANGUAGE OF THE STATUTE IS NOT
AMBIGUOUS.

THE LEGISLATURE IN FACT IS,
HAS THE CHALLENGE OF CREATING
LEGISLATION THAT MAY INCLUDE
MATTERS THAT MAY ARISE, THINGS
THAT WILL COME IN THE FUTURE.
OTHER TYPES OF PROCEEDINGS IF
YOU WILL THAT THEY COULD NOT
HAVE ENVISIONED WHEN THEY
PASSED THE STATUTE.

IT REQUIRES, IT DEMANDS A MORE
EXPANSIVE VIEW THAN JUST
JUDICIAL OR JUST COURT
PROCEEDINGS WHICH IS THE
LIMITATION PLACED ON THE
STATUTE BY THE SECOND DCA.

WE BELIEVE THAT WAS INCORRECT.
WITH RESPECT TO CHAPTER, OR
SECTION 95.03, THAT IS A
CRITICAL PART OF THE ANALYSIS
THAT WE DID AND ONE OF THE
FUNDAMENTAL PROBLEMS WITH THE
CONCLUSION DRAWN BY THE SECOND

DCA.

95.03 EXPRESSLY PROSCRIBES THE
SHORTENING OF STATUTES OF
LIMITATIONS.

IF THE SECOND DCA WAS CORRECT
IN THE ANALYSIS, NOW IT'S OKAY
TO DO THAT.

MR. PEARL REFERENCED THE NOTION
THAT IT MAY BE LIMITED BY THE,
THIS COURT OR ANOTHER COURT'S
REFUSAL TO ENFORCE THAT KIND OF
A CONTRACT BUT THE FACT OF THE
MATTER IS ONCE, IF THAT WERE TO
BE THE LAW, THAT WOULD NEVER
COME BEFORE A COURT BECAUSE
ARBITRATORS WOULD BE MAKING
THAT DECISION AND THAT CAN NOT
BE UNDER ANY REASONABLE
INTERPRETATION, AN INTENTION
THAT THE LEGISLATURE HAD AT
THE TIME THAT IT PASSED THAT
STATUTE.

>> ALTHOUGH IT DOES SAY ACTIONS
IN THAT 95.03 AS OPPOSED TO
ACTIONS AND PROCEEDINGS.

SO MIGHT BE THAT A ARBITRATORS
COULD AGREE IN A ARBITRATION
AGREEMENT AGREE TO HAVE LESSER
STATUTE OF LIMITATIONS
PROCEEDING OR DO YOU DISAGREE
WITH THAT?

>> I THINK POTENTIALLY PARTIES
COULD FOR A VARIETY OF REASONS
AGREE TO DO THAT.

I HAVEN'T
GONE CONSIDERING THE EXERCISE
WHAT POINT PARTIES VIOLATE
95.03 AND ENTER INTO A
CONTRACT.

>> IT DOES SAY ACTIONS THOUGH,
DOESN'T IT?

>> IT DOES, BUT BECAUSE THE
STATUTE I THINK DEPHONES
ACTIONS AS ANY, CIVIL ACTION OR
PROCEEDING, I THINK IT WOULD --
>> YOU THINK IT RELATES BACK TO
THAT?

>> CORRECT, CORRECT.

I BELIEVE THAT IT DOES.
WITH RESPECT TO THE ELIGIBILITY
ISSUE, I WOULD SIMPLY POINT OUT
THAT THE ISSUE OF ELIGIBILITY
OR THE ELIGIBILITY PROVISION TO
THE EXTENT THAT IT COULD EVEN
REMOTELY BE CONSIDERED TO FILL
THE SPACE OF THE STATUTE OF
LIMITATIONS, THAT ONLY APPLIES

IN FINRA ARBITRATIONS WHICH
PROBABLY FAIR TO SAY THAT THEY
COMPRISE A SIGNIFICANT NUMBER
OF ARBITRATIONS IN OUR STATE
BUT THAT IS NOT ALL OF THE
ARBITRATIONS.

UNDER THE SECOND DCA'S RULING,
AS I BELIEVE YOU SAID, JUSTICE
PARIENTE, A PARTY IN
ARBITRATION COULD PRESUMABLY
BRING A CLAIM FOREVER.

THERE WOULD BE NO CUTOFF AND
THE SIX-YEAR ELIGIBILITY RULE
WOULD HAVE NO IMPACT
WHATSOEVER.

SO ACCORDINGLY WE WOULD
RESPECTFULLY REQUEST THIS COURT
REVERSE THE SECOND DCA'S
DECISION.

THANK YOU.

>> THANK YOU FOR YOUR
ARGUMENTS.

COURT IS ADJOURNED.

>> PLEASE RISE.

COURT IS IN RECESS.