SUPREME COURT OF THE STATE OF FLORIDA

No. SC11-2513

RAYMOND JAMES FINANCIAL SERVICES, INC.,

Petitioner,

v.

BARBARA J. PHILLIPS, et al.,

Respondents.

On Discretionary Review from the Second District Court of Appeal of Florida
(Dist. Ct. App. Case No. 2D10-2144)

THE PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION'S *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS

Scott C. Ilgenfritz, Esq.
JOHNSON, POPE, BOKOR,
RUPPEL & BURNS, LLP
403 East Madison Street, Suite 400
Tampa, Florida 33602
Telephone: (813) 225-2500

Lisa A. Catalano, Esq.
St. John's University School of Law
Securities Arbitration Clinic
8000 Utopia Parkway, 2nd Floor
Queens, New York 11439
Telephone: (718) 990-6626

David A. Weintraub, Esq.
DAVID A. WEINTRAUB, P.A.
7805 S.W. 6th Court
Plantation, Florida 33324
Telephone: (954) 693-7577

Jeffrey R. Sonn, Esq.
SONN AND EREZ, PLC
Broward Financial Centre
500 E. Broward Blvd., Suite 1700
Fort Lauderdale, Florida 33394-3005
Telephone: (954) 763-4700

Attorneys for the Public Investors Arbitration Bar Association

Table Of Contents

I. Identity and Interest of *Amicus* 1

II. Summary of Argument 2

III. Argument 3

A. The Second District Court of Appeal Correctly Applied Well-Recognized Rules of Statutory Construction 3

B. The Holding of the Second District Court of Appeal is Consistent with this Court's Holding in *Miele v. Prudential-Bache Securities, Inc.*, and Two Additional Rules of Statutory Construction 5

C. The Second District Court of Appeal Correctly Concluded that the Reference in §95.011, Fla. Stat. to "Civil Action or Proceeding" Does Not Include Arbitrations 8

(1) Dictionary definitions of "civil action" and "proceeding" and Florida appellate authority citing with approval definitions of those terms 8

(2) The legislative history of Chapter 74-382, Lawf of Florida 10

(3) Legislative use of the terms "proceeding", "civil action or proceeding", and "civil action or arbitration" 12

D. The Legal Authority Relied on by Petitioner Does Not Hold that Chapter 95 Statutes of Limitation are Applicable to Claims Filed in Arbitration 16

E. Neither the Inapplicability of §§95.011 and 95.11 of the Florida Statutes to Arbitration, Nor the Second District Court of Appeal's Construction of Those Statutes is Preempted by the FAA or is in Violation of the Supremacy Clause 18

IV. Conclusion 20

Certificate of Service 21

Certificate of Compliance 23

TABLE OF AUTHORITIES

Cases

AT&T Mobility, LLC v. Concepcion, 131 S. Ct. (2011) 19

Armstrong v. City of Edgewater, 157 So.2d 422 (Fla. 1963) 6

BellSouth Telecommunications, Inc. v. Meeks,..... 4
863 So.2d 287 (Fla. 2003)

Bivens v. State, 486 So.2d 442 (Fla. 4th DCA 1991) 7, 16

Borden v. East-European Insurance Co., 921 So.2d 587..... 4
(Fla. 2006)

Brinker v. Ludlow, 379 So.2d 999 (Fla. 3d DCA 1980),..... 8, 9
decision approved, 403 So.2d 969 (Fla. 1981)

Capeletti Bros., Inc. v. Dept. of Transportation,..... 7
449 So.2d 855 (Fla. 1st DCA 1987)

Castellon v. RC Aluminum Industries, Inc., 40 So.3d 39 9
(Fla. 1st DCA 2010)

Florida Dept. of Highway Safety and Motor Vehicles 4
v. Hernandez, 74 So.3d 1070 (Fla. 2011)

Gessa v. Manor Care of Florida, Inc., 2011 WL 5864823 16
(Fla. 2011)

Holley v. Auld, 450 So.2d 217 (Fla. 1984) 4

In re: Estate of Jeffcott, 186 So.2d 80 (Fla. 2d DCA 1966)..... 6

Johnson v. Schneegold, 419 So.2d 684 (Fla. 2d DCA 1982) 7

Marschel v. Dean Witter Reynolds, Inc., 609 So.2d 718..... 16
(Fla. 2d DCA 1992), *rev. den.*, 617 So.2d 318
(Fla. 1993)

Miele v. Prudential-Bache Securities, Inc., 656 So.2d 470 (Fla. 1995) 5, 6, 9

Morales v. Moore, 356 So.2d 829 (Fla. 4th DCA 1978) 7

Nehme v. Smithkline Beecham Clinic Laboratories, Inc., 863 So.2d 201 (Fla. 2003) 4

O'Keefe Architects, Inc. v. CED Construction Partners, Ltd., 944 So.2d 181 (Fla. 2006) 16, 17

Raymond James Financial Services, Inc. v. Phillips, 2011 WL 5555691 (Fla. 2d DCA 2011) 5

Rebich v. Burdine's and Liberty Mutual Insurance Co., 417 So.2d 284 (Fla. 1st DCA 1982), *rev. den.*, 424 So.2d 762 (Fla. 1982) 6, 7

Reform Party of Florida v. Black, 885 So.2d 303 (Fla. 2004) 4

Reynolds v. State, 842 So.2d 46 (Fla. 2002) 4

Rodriguez v. Shearson/American Express, Inc., 490 U.S. 477 (1989) 1

Seagrave v. State, 802 So.2d 281 (Fla. 2001) 4

Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987) 1, 18

Shotts v. OP Winter Haven, Inc., 2011 WL 5864830 (Fla. 2011) 16

Southland Corporation v. Keating, 465 U.S. 1 (1984) 19

Special Disability Trust Fund, Dept. of Labor and Employemtn Security v. Motor and Compressor Co., 446 So.2d 224 (Fla. 1st DCA 1984) 6

State v. Hagan, 387 So.2d 943 (Fla. 1980) 5

Stinson-Head, Inc. v. City of Sanibel, 661 So.2d 119 (Fla. 2d DCA 1995), *rev. dism.*, 671 So.2d 788 (Fla. 1996) 16, 17

Volt Information Sciences, Inc. v. Board of Trustees of Leland Standard Junior University, 489 U.S. 468 (1989) 19

Wilko v. Swan, 346 U.S. 427 (1953) 1

Statutes

Fla. Stat. § 57.081(1) 8

Fla. Stat. § 90.103 ..... 13, 14

Fla. Stat. § 90.301(4) 13

Fla. Stat. § 92.153 ..... 12, 13

Fla. Stat. § 95.011 ..... 2, 3, 8, 10 14, 15, 16, 17, 18, 19

Fla. Stat. § 95.11 ..... 3, 17, 18, 19

Fla. Stat. § 440.105 9

Fla. Stat. § 440.134 9

Fla. Stat. § 473.316 ..... 14, 15

Fla. Stat. § 558.002 15

Fla. Stat. § 624.307(8) 13

Fla. Stat. § 624.422(1) 13

Fla. Stat. § 626.937(3) 13

Fla. Stat. § 627.311(9)(a) 13

Fla. Stat. § 634.151(1) 13

Fla. Stat. § 715.12 15

Fla. Stat. § 768.44(2)(a) 7

Fla. Stat. § 768.73(2) 5, 9

Other Authorities

Black's Law Dictionary (7th ed.) 8, 9

Chapter 74-382, Laws of Florida (1974), State of Florida 5, 8, 10, 11
Archives, Series 19, Carton 205

"CS/HB 895-Section Summary", State of Florida Archives, ... 10, 11
Series 19, Carton 205

FINRA Code of Arbitration Procedure, Section 12206..... 17, 18

FINRA Code of Arbitration Procedure, Section 12604..... 14

FINRA Conduct Rule 2268(d)..... 16

http://www.finra.org/ArbitrationMediation/Neutral/Eduation/ 18
NeutralCorner/index.htm.

https://piaba.org/about-piaba 1

Journal of the House of Representatives (1974), State..... 11
Archivies of Florida, Series 18, Carton 308

Journal of the Senate (1974), State Archives of Florida, ... 11
Series 18, Carton 308

NASD Code of Arbitration Procedure, Section 10304..... 17

NASD Notice to Members 05-09 16

The Neutral Corner, Volume 3, 2010..... 18

Tape Recordings Located in Series 414, Carton 162; 12
Series 38, Carton 148; Series 1238, Carton 7;
Series 1238, Cartons 7 & 8, State Archives of Florida

Trawick's Florida Practice and Procedure (1979), § 1-1 8

I. Identity and Interest of *Amicus*

The Public Investors Arbitration Bar Association, Inc. ("PIABA"), is a national, non-profit, voluntary, public bar association established in 1990, with a membership of approximately 450 attorneys located in 44 states, Japan and Puerto Rico. Attorneys who are members of PIABA devote a significant portion of their practices to representing public investors in securities arbitrations. PIABA members have represented tens of thousands of investors in securities arbitrations around the country. PIABA's mission is as follows:

> to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process . . .; making securities and commodities arbitration as just and fair as systematically possible; and creating a level playing field for the public investor in securities and commodities arbitration. [1]

For more than thirty years, contracts requiring arbitration of federal statutory securities claims were void.[2] Then, in 1987, the United States Supreme Court reversed its longstanding precedent and held that contracts providing for arbitration of federal securities claims were enforceable.[3] Since that time, virtually every broker-dealer in America, like Raymond James Financial Services, Inc.

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[1] *https://piaba.org/about-piaba*

[2] *Wilko v. Swan*, 346 U.S. 427 (1953).

[3] *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987); *see also Rodriguez v. Shearson/American Express, Inc*., 490 U.S. 477 (1989).

("Raymond James" or "Petitioner"), has required customers to sign customer agreements containing a mandatory arbitration clause whenever opening a brokerage account. Except in rare circumstances, all customers' claims must be submitted to the arbitration forum established by the securities industry, which is now operated by the Financial Industry Regulatory Authority ("FINRA").

PIABA requests leave to provide the Court with additional perspectives from the viewpoint of attorneys and their clients who are forced to file their claims in the security industry's arbitration system, who have no personal stake in the immediate controversy, but who will be greatly affected by the impact of the Court's ruling on the securities arbitration system nationwide.

II. Summary of Argument

The case pending before this Court is, fundamentally, one that involves statutory construction. The Second District Court of Appeal (hereinafter referred to by its name or as the "Appellate Court") correctly applied the rules of statutory construction recognized by this Court and the Florida District Courts of Appeal. Applying those well-recognized rules of statutory construction, the Appellate Court properly concluded that the reference in § 95.011, Fla. Stat., to a "civil action or proceeding" means an action filed in court, and does not include claims filed in arbitration. Therefore, the Appellate Court's ruling that the statutes of

limitation set forth in § 95.11, Fla. Stat., do not apply to claims filed in arbitration, unless the parties' arbitration agreement so provides, should be affirmed.

The appellate decisions relied upon by Petitioner do not hold that Chapter 95 statutes of limitation apply to claims filed in arbitration. The Codes of Arbitration Procedure of the National Association of Securities Dealers Dispute Resolution, Inc. ("NASD-DR"), and FINRA include a "Six-Year Eligibility Rule" to preclude stale claims. Neither Code of Arbitration Procedure provides for the application of statutes of limitation.

Petitioner, in its initial brief, and the amici supporting Petitioners' position, have contended that the Appellate Court's construction of § 95.011, Fla. Stat., and its ruling that the statutes of limitations set forth in § 95.11, Fla. Stat., do not apply to claims filed in arbitration are preempted by the Federal Arbitration Act ("FAA") and violate the Supremacy Clause of the United States Constitution. To the contrary, neither the Appellate Court's construction of §§ 95.011 and 95.11, nor the inapplicability of those sections to claims filed in arbitration is preempted by the FAA or violates the United States Constitution.

III. Argument

A. The Second District Court of Appeal Correctly Applied Well-Recognized Rules of Statutory Construction.

This Court has repeatedly recognized that the fundamental principle of statutory interpretation is that legislative intent is the "polestar" which guides the

Court's interpretation. *See Borden v. East-European Insurance Co.*, 921 So.2d 587, 595 (Fla. 2006); *Reynolds v. State*, 842 So.2d 46, 49 (Fla. 2002). This Court has held that courts should look "primarily" to the actual language used in the statute to discern legislative intent. *Borden*, 921 So.2d at 595. If the statutory language is clear and unambiguous, there is no need to resort to the rules of statutory construction and the statute must be given its plain meaning. *Id*. *See also Holley v. Auld*, 450 So.2d 217, 219 (Fla. 1984).

However, when statutory language is ambiguous, this Court and the appellate courts of Florida, have utilized numerous rules of construction to attempt to discern legislative intent. *Id*. One of those rules of construction recognizes the appropriateness of referring to dictionary definitions when a court is construing undefined statutory terms. *See Reform Party of Florida v. Black*, 885 So.2d 303, 312 (Fla. 2004); *Nehme v. Smithkline Beecham Clinical Laboratories, Inc.*, 863 So.2d 201, 204-205 (Fla. 2003); *Seagrave v. State*, 802 So.2d 281, 286 (Fla. 2001). This Court has also recognized that in construing ambiguous language in a statute, a court may "explore legislative history to determine legislative intent". *Florida Dept. of Highway Safety and Motor Vehicles v. Hernandez*, 74 So.3d 1070, 1074-1075 (Fla. 2011). *See also BellSouth Telecommunications, Inc. v. Meeks*, 863 So.2d 287, 289 (Fla. 2003). In the absence of a statutory definition, courts may resort to case law or to related statutory provisions which define the term in

question to assist the Court in construing a statute. *See State v. Hagan*, 387 So.2d 943, 945 (Fla. 1980).

After the Appellate Court determined that there were no definitions of the terms "civil action" or "proceeding" in Chapter 95, it analyzed dictionary definitions, the legislative history of Chapter 74-382, Laws of Florida (1974), and case law. The result of this analysis was the Appellate Court's appropriate determination that it was not the legislative intent of the Florida Legislature to include arbitrations within the meaning of the terms "civil action" or "proceeding." *See Raymond James Financial Services, Inc. v. Phillips*, 2011 WL 5555691*3-6 (Fla. 2d DCA 2011).

B. The Holding of the Second District Court of Appeal is Consistent with this Court's Holding in *Miele v. Prudential-Bache Securities, Inc.*, and Two Additional Rules of Statutory Construction.

In *Miele v. Prudential-Bache Securities, Inc.*, 656 So.2d 470 (Fla. 1995), this Court addressed whether the term "civil action" in the 1991 version of § 768.73(2) included arbitration proceedings. The Court held that the term "civil action" did not include arbitration proceedings. *Id.* at 472-73. The Court concluded that, "[i]f the legislature determines that arbitration proceedings should be subjected to the same punitive damage limitations as court actions, then it can so indicate." *Id*. at 473.

The Appellate Court's construction of the term "civil action" is in harmony with this Court's construction of the term in *Miele*. In addition, the Appellate Court's construction of the terms "civil action" and "proceeding" is consistent with two other principles of statutory construction recognized by this Court and Florida district courts of appeal.

First, this Court and Florida district courts have held that when doubt exists as to the legislative intent with respect to the statute in question or where speculation is necessary as to the legislative intent, then doubts should be resolved against the power of courts to supply missing words in a statute. *See Armstrong v. City of Edgewater,* 157 So.2d 422, 425 (Fla. 1963); *Special Disability Trust Fund, Dept. of Labor and Employment Security v. Motor and Compressor Co.*, 446 So.2d 224, 226-27 (Fla. 1st DCA 1984); *Rebich v. Burdine's and Liberty Mutual Insurance Co.*, 417 So.2d 284, 285 (Fla. 1st DCA 1982), *rev. den.*, 424 So.2d 762 (Fla. 1982); *In re: Estate of Jeffcott,* 186 So.2d 80, 84 (Fla. 2d DCA 1966). In *Rebich,* the First District Court of Appeal expressed this principle of statutory construction as follows:

> Usually, the courts in construing a statute may not insert words or phrases in that statute or supply an omission **that to all appearances was not in the minds of the legislators when the law was enacted.** *Armstrong v. Edgewater*, 157 So.2d 422 (Fla. 1963). When there is doubt as to the legislative intent, the doubt should be resolved against the power of the court to supply missing

> words. *In re: Estate of Jeffcott*, 186 So.2d 80 (Fla. 2d DCA 1966) (emphasis supplied).

Rebich, 417 So.2d at 285.

The second principle of statutory construction is that in the event of an omission in a statute as a result of legislative oversight, Florida courts are not at liberty to rewrite legislation even if such rewriting seems to fit the overall legislative policy. *See Bivens v. State*, 586 So.2d 442, 444 (Fla. 4th DCA 1991) ("Although the omission of an additional penalty may have been a legislative oversight, the court is not at liberty to promulgate laws the legislature forgot to address."); *Capeletti Bros., Inc. v. Dept. of Transportation*, 499 So.2d 855, 857 (Fla. 1st DCA 1987) ("The omission may be a legislative oversight; nevertheless, courts should not rewrite legislation to cure an omission by the legislature just because it seems to fit overall legislative policy."); *Johnson v. Schneegold*, 419 So.2d 684, 685 (Fla. 2d DCA 1982) (holding that despite an apparent legislative oversight in the 1972 revision of Florida's Wrongful Death Act, which appeared to render it unfair, the court was powerless to rewrite the statute); *Morales v. Moore*, 356 So.2d 829, 830 (Fla. 4th DCA 1978) (holding that the court was powerless to correct an omission from § 768.44(2)(a), Fla. Stat., by inserting a term into the statute that appeared logical).

Raymond James is asking this Court to rewrite § 95.011 to supply a missing term, "arbitration," when the legislative intent is unclear, at best. If there is an omission in the statute, it is the province of the legislature to correct it.

C. The Second District Court of Appeal Correctly Concluded that the Reference in § 95.011, Fla. Stat., to "Civil Action or Proceeding" Does Not Include Arbitrations.

The construction of the terms "civil action" and "proceeding" by the Appellate Court is supported by the following: (1) dictionary definitions of those terms and Florida appellate authority citing with approval definitions of those terms; (2) the legislative history of Chapter 74-382, Laws of Florida; and (3) a statutory definition of the term "proceeding" and statutory provisions that use the phrases "civil action or proceeding" and "civil action or arbitration."

(1) Dictionary definitions of "civil action" and "proceeding" and Florida appellate authority citing with approval definitions of those terms.

The Black's Law Dictionary definition of a "civil action," cited by the Appellate Court, clearly defines the term as meaning an action in court. In *Brinker v. Ludlow*, 379 So.2d 999 (Fla. 3d DCA 1980), *decision approved*, 403 So.2d 969 (Fla. 1981), in the context of construing § 57.081(1) of the Florida Statutes, the court cited with approval the following definition of the term "action" in § 1-1 of Trawick's Florida Practice and Procedure (1979):

> (T)he term 'action' is used synonymously with 'civil action.' It means a judicial proceeding for the

> determination of a controversy. A cause of action is the right to institute a judicial proceeding. The action is the method by which the cause of action is enforced. (footnotes omitted)

379 So.2d at 1001. These definitions of the term "civil action" are consistent with this Court's construction of that term in the 1991 version of § 768.73(2), Fla. Stat., in *Miele*.

Although the Black's Law Dictionary definition of the term "proceeding" cited by the Appellate Court may appear to be broader than the Black's Law Dictionary definition of the term "civil action", the Appellate Court's construction of the term "proceeding" to exclude claims filed in arbitration is consistent with the two principles of statutory construction described in Section B above. The Court's construction is also consistent with the definition of "proceeding" cited with approval by the First District Court of Appeal in *Castellon v. RC Aluminum Industries, Inc.*, 40 So.3d 39 (Fla. 1st DCA 2010).

In *Castellon*, the court addressed whether attorney's fees incurred by a worker's compensation claimant were for legal services rendered in connection with "proceedings" within the meaning of § 440.134 or § 440.105, Fla. Stat. The court adopted the following definition of proceeding from Black's Law Dictionary (7th ed.): "**[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.**" (emphasis supplied). *Id*. at 40. The definition of proceeding adopted by the First

District Court of Appeal is consistent with and supports the construction of the term "proceeding" by the Appellate Court in this case. Thus, dictionary definitions of the terms "civil action" and "proceeding" and Florida appellate authority citing with approval definitions of those terms support the Appellate Court's construction of those terms.

(2) The legislative history of Chapter 74-382, Laws of Florida.

In 1974, the Florida Legislature amended Chapter 95 of the Florida Statutes. Those amendments were set forth in Chapter 74-382, Laws of Florida (1974), and included the adoption of § 95.011 of the Florida Statutes. A review of the documents available from the State Archives of Florida with respect to the legislative history of Chapter 74-382, Laws of Florida (1974), supports the construction of "civil action" and "proceeding" by the Appellate Court.

There is no reference to the term "arbitration" in these documents. To the contrary, it appears from the legislative history that the Florida Legislature did not consider the applicability of statutes of limitation in Chapter 95 of the Florida Statutes to claims filed in arbitration. In fact, the documents comprising the legislative history of Chapter 74-382 evidence a legislative intent that the phrase "civil actions or proceedings" in § 95.011 means actions in court.

First, the "Section Summary" of Committee Substitute House Bill 895 contains the following summary of Section 1 of the Bill, which created § 95.011:

> Section 1 Applicability – This section declares that a **civil action** shall be barred unless begun within the time prescribed in this Chapter (or a different time if prescribed elsewhere in the Florida Statutes), and specifically includes within this language an action brought by the state, a public officer for a political subdivision of the state. (emphasis supplied)

See "CS/HB 895-Section Summary", State of Florida Archives, Series 19, Carton 205 (hereinafter the "Section Summary"). There are several references in the Section Summary to the following terms: "law suit", "suit", and "actions." However, no mention is made of the term "arbitration."

Second, all references to the Committee Substitute for House Bill 895 in the *Journal of the House of Representatives* and the *Journal of the Senate* state the title of the Bill as follows: "A bill to be entitled An act relating to limitations of **actions.**" (emphasis supplied). *See Journal of the House of Representatives*, pp. 330-331, 1204, and 1312-13 and the *Journal of the Senate*, pp. 715 and 929 (1974), State Archives of Florida, Series 18, Carton 308.

Third, after Chapter 74-382 was approved by both houses of the Florida Legislature and the Governor, it was printed in the 1974 edition of the Laws of Florida under the following title: "AN ACT relating to limitations of **actions**." (emphasis supplied). *See* Chapter 74-382, Laws of Florida (1974), State of Florida Archives, Series 19, Carton 205.

Finally, a review of the tape recordings of the debate in the Florida House Judiciary Committee and floor debates in the Florida House of Representatives and Senate reveal no mention of the term "arbitration" and no expression of any legislative intent for the term "civil action or proceeding" to include arbitration.[4]

In 1974, the Florida Legislature expressed no legislative intent for the statutes of limitation in Chapter 95 to apply to claims filed in arbitration. To the contrary, there is an expression of legislative intent that terms "civil action" or "proceeding" referred only to actions filed in court.

(3) Legislative use of the terms "proceeding", "civil action or proceeding", and "civil action or arbitration".

A review of the Florida Statutes for definitions of or references to the terms "proceeding", "civil action or proceeding" and "civil action or arbitration" demonstrates that the Appellate Court's construction of the phrase "civil action or proceeding" was correct.

PIABA could only locate one definition of "proceeding" in the Florida Statutes, which is set forth in § 92.153, Fla. Statutes. Chapter 92 sets forth various provisions related to witnesses, records, and documents. Section 92.153, which addresses the production of documents by witnesses and the reimbursement of their costs, sets forth the following definition of "proceeding":

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[4] *See* tape recordings located in Series 414, Carton 162; Series 38, Carton 148; Series 1238, Carton 7; Series 1238, Cartons 7 & 8, State Archives of Florida.

> (c) "Proceeding" means any civil or criminal action before a court; any investigation, inquiry, or proceeding before a grand jury, a state attorney, or a state, county, municipal, or other governmental department, division, bureau, commission or other body, or any officer thereof; any action before an officer or person authorized to issue a summons; or any administrative action authorized by law.

This sole definition of the term "proceeding" in the Florida Statutes does not encompass arbitrations.

Various provisions of the Florida Insurance Code provide for the appointment of specified persons as agents for the receipt of service of process issued in any "civil action or proceeding." The statutes addressing appointment of persons as agents for receipt of service of legal process in any "civil action or proceeding" include the following: §§ 624.307(8), 624.422(1), 626.937(3), 627.311(9)(a) and 634.151(1). All of these statutes refer to the receipt of service of legal process issued in any "civil action or proceeding." Because of the repeated reference to the receipt of legal process or service of legal process, in each instance the Florida Legislature was referring only to actions in court with the use of the phrase "civil action or proceeding".

In the Florida Evidence Code, the Florida Legislature also used the phrase "civil action or proceeding" in § 90.301(4), which provides that presumptions identified in §§ 90.301-90.304 are only applicable in "civil actions or proceedings". Section 90.103 of the Florida Evidence Code provides that the Code

applies to criminal proceedings related to crimes committed after the effective date of the Code and to "civil actions in all other proceedings" pending or brought after October 1, 1981. The statutory language in § 90.103 is clearly broader than the phrase "civil action or proceeding" in § 95.011. Nevertheless, it is clear that these references to "civil actions or proceedings" in the Florida Evidence Code do not refer to or include arbitrations.[5]

The above examples of the use of the phrase "civil action or proceeding" by the Florida Legislature make it clear that the phrase refers only to actions or proceedings in court and not to arbitration.

Three other Florida Statutes use the phrase "civil action or arbitration". Each such use demonstrates that when the Florida Legislature intends for a statute to apply to arbitration, it knows how to explicitly express that intent.

Section 473.316 addresses the privileged nature of communications between an accountant and his or her client. In subsection (6), the proceedings, records, and work papers of a review committee as defined in the statute are privileged and are not subject to discovery or introduction into evidence in a **civil action or arbitration**, administrative proceeding, or state accountancy board proceeding. This subsection of the statute also provides that no member of a review committee may testify in a **civil action or arbitration**, administrative proceeding, or state

[5] In fact, § 12604 of the FINRA Code of Arbitration Procedure states, "[t]he panel is not required to follow state or federal rules of evidence."

accountancy board proceeding pertaining to matters that take place before a review committee. (emphasis supplied)

Chapter 558 of the Florida Statutes sets forth provisions concerning alternative methods to resolve construction disputes. Section 558.002 is the definitional section of the statute. Subsection (1) defines the term "actions" as follows:

> (1) "Action" means any **civil action or arbitration proceeding** for damages or indemnity asserting a claim for damage to or loss of real or personal property caused by an alleged construction defect, but does not include any administrative action or any **civil action or arbitration proceeding** asserting a claim for alleged personal injuries arising out of an alleged construction defect. (emphasis supplied).

Finally, § 715.12 of the Florida Statutes is Florida's construction contract prompt payment law. Subsection (6) addresses the right to the receipt of interest and states in pertinent part: "This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any **civil action or arbitration** case." (emphasis supplied)

The above-referenced statutes demonstrate that when the Florida Legislature intends for a statute to apply to arbitrations, it clearly knows how to make that happen: by specifically stating that a statute applies to arbitrations.

Given the complete absence of any expression of legislative intent for the phrase "civil action or proceeding" in § 95.011 to refer to arbitrations, under the

statutory construction doctrines discussed in Section B above, the Court should not supply a missing reference to "arbitration" in § 95.011. It appears that the Florida Legislature did not consider arbitrations when it was amending Chapter 95 of the Florida Statutes in 1974. As is stated in *Bivens v. State*, "[T]he court is not at liberty to promulgate laws that the legislature forgot to address." *Bivens*, 586 So.2d at 444.

D. The Legal Authority Relied on by Petitioner Does Not Hold that Chapter 95 Statutes of Limitation are Applicable to Claims Filed in Arbitration.

In its initial brief, Petitioner has argued that the holding by the Appellate Court is contrary to binding precedent.[6] *See* Petitioner's Initial Brief, pp. 45-59. The principal authorities relied upon by Petitioner are *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So.2d 181 (Fla. 2006); *Stinson-Head, Inc. v. City of Sanibel*, 661 So.2d 119 (Fla. 2d DCA 1995), *rev. dism.*, 671 So.2d 788 (Fla.

[6] Petitioner has also argued in its brief that the affirmance of the Appellate Court's ruling would lead to the absurd result that statutory "actions", including claims under Chapter 517 of the Florida Statutes, would no longer be arbitrable unless parties' arbitration agreements expressly included claims under the statute. *See* Petitioner's Initial Brief at pp. 37-38. This argument is without merit. This Court has recently held that arbitration agreements in nursing home contracts which limit statutory remedies under Chapter 400 violate Florida public policy and render the arbitration agreements unenforceable. *See Shotts v. OP Winter Haven, Inc.*, 2011 WL 5864830 (Fla. 2011); *Gessa v. Manor Care of Florida, Inc.*, 2011 WL 5864823 (Fla. 2011). An arbitration agreement that sought to limit remedies under Chapter 517 would likewise violate Florida public policy. In the context of securities arbitrations, FINRA Conduct Rule 2268(d) prohibits the use of provisions in predispute arbitration agreements that limit a customer's rights or remedies or that limit the ability of an arbitrator to make an award. *See also* NASD Notice to Members 05-09.

1996); and *Marschel v. Dean Witter Reynolds, Inc.*, 609 So.2d 718 (Fla. 2d DCA 1992), *rev. den.*, 617 So.2d 318 (Fla. 1993).

In each of these cases, the courts addressed whether timeliness defenses to arbitration claims were to be decided by a court or the arbitration panel. In each case, the court concluded that timeliness defenses, including a statute of limitations defense, are to be decided by the arbitrators, rather than the court. *See O'Keefe*, 944 So.2d at 188; *Stinson-Head*, 661 So.2d at 120; *Marschel*, 609 So.2d at 721.

There is no indication in the opinions in *O'Keefe*, *Stinson-Head*, or *Marschel* that any party made any argument that §§ 95.011 and 95.11 are inapplicable to claims filed in arbitration. The first Florida appellate court to squarely address the applicability of Chapter 95 statutes of limitation to claims filed in arbitration is the Second District Court of Appeal in the instant proceeding.

Just as the authority relied upon by Petitioner does not hold that statutes of limitation apply to claims filed in arbitration, the applicable rules of the NASD-DR and FINRA do not so provide. The NASD-DR six-year eligibility rule in Section 10304 of the NASD Code of Arbitration Procedure, which applies to Respondents' claims, clearly states that, "[t]his Rule shall not extend **applicable** statutes of limitations …." (emphasis supplied). Likewise, the eligibility rule in Section 12206 of the FINRA Code of Arbitration Procedure states: "[t]he Rule does not

extend **applicable** statutes of limitations."[7] (emphasis supplied). Section 12206 permits motions to dismiss only upon eligibility grounds, not statutes of limitation.

In June, 2010, FINRA provided guidance to arbitrators concerning the applicability of legal concepts, including statutes of limitation, in FINRA arbitration. FINRA stated:

> A statute of limitations is a time limit after which a claim may not be brought…. Whether or not statutes of limitation are applicable to the arbitration or the claim … depends on the nature of the allegations and the law of the relevant jurisdiction.

Quoted in *The Neutral Corner,* Volume 3, 2010.[8]

E. Neither the Inapplicability of §§ 95.011 and 95.11 of the Florida Statutes to Arbitration, Nor the Second District Court of Appeal's Construction of Those Statutes is Preempted by the FAA or is in Violation of the Supremacy Clause.

The United States Supreme Court has stated the intent of the FAA as follows: "The Act was intended to 'revers[e] centuries of judicial hostility to arbitration agreements,' (citation omitted), by 'plac[ing] arbitration agreements upon the same footing as other contracts.'" (citations omitted) *See, e.g. Shearson/American Express, Inc. v. McMahon,* 482 U.S. 220, 225 (1987). The Supreme Court has recognized that the principal purpose of the FAA is to insure

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[7] The NASD-DR Code is applicable to arbitrations filed before April 16, 2007. The FINRA Code applies to all arbitrations filed after that date.

[8] *See* http://www.finra.org/ArbitrationMediation/Neutral/Education/NeutralCorner/index.htm.

that private arbitration agreements are enforced according to their terms. *See Volt Information Sciences, Inc. v. Board of Trustees of Leland Standard Junior University*, 489 U.S. 468, 478 (1989). The Supreme Court has also stated, however: "The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." *Id.* at 477.

The Supreme Court has applied the FAA to invalidate statutes which require a judicial forum to resolve claims that contracting parties have agreed to resolve by arbitration. *See Southland Corporation v. Keating*, 465 U.S. 1, 10; (1984). Similarly, it has held that when a state law prohibits the arbitration of a particular type of claim, the law is displaced by the FAA. *See AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1747 (2011).

The inapplicability of §§ 95.011 and 95.11 of the Florida Statutes to arbitrations does not render them state statutes requiring a judicial forum for the resolution of otherwise arbitrable claims, nor does it render them state laws which prohibit the arbitration of a particular type of claim. Neither statute decrees that statute of limitations issues are to be decided by a court, rather than arbitrators. Neither statute prohibits the arbitration of a particular type of claim. Plainly and simply, by their own terms, the statutes do not reach claims filed in arbitration. The inapplicability of those two sections of the Florida Statutes to claims filed in arbitration does not cause them to be preempted by the FAA, nor does it cause

them or the Appellate Court's construction of them to be violative of the Supremacy Clause of the United States Constitution.

IV. Conclusion

PIABA respectfully submits that this Court should affirm the decision of the Second District Court of Appeal in *Raymond James Financial Services, Inc. v. Phillips,* No. 2D10-2144 (November 16, 2011); answer negatively the question certified to this Court as one of great public importance; and hold that §§ 95.011 and 95.11 of the Florida Statutes do not apply to arbitrations filed in Florida or arbitrations to which Florida law applies, in the absence of parties having included a provision in their arbitration agreement stating that statutes of limitation applicable to actions in court are applicable to any claim submitted to arbitration.

Dated: June ___, 2012.

Respectfully submitted,

JOHNSON, POPE, BOKOR,
RUPPEL & BURNS, LLP

By:_____

Scott C. Ilgenfritz
Post Office Box 1100
Tampa, Florida 33601-1100
Telephone: (813) 225-2500
Facsimile: (813) 223-7118
Email: scotti@jpfirm.com
Florida Bar # 394084

David A. Weintraub, Esq.
David A. Weintraub, P.A.
7805 S.W. 6th Court
Plantation, Florida 33324
Telephone: (954) 693-7577

Lisa A. Catalano, Esq.
St. John's University School of Law
Securities Arbitration Clinic
8000 Utopia Parkway, 2nd Floor
Queens, New York 11439
Telephone: (718) 990-6626

Jeffrey R. Sonn, Esq.
Sonn and Erez, PLC
Broward Financial Centre
500 E. Broward Blvd., Suite 1700
Fort Lauderdale, Florida 33394-3005
Telephone: (954) 763-4700

Attorneys for Amicus Curiae
Public Investors Arbitration
Bar Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this ____ day of June, 2012, true and correct copies of the foregoing were served, by regular U.S. mail, on the following:

Alex J. Sabo, Esq.
Bressler, Amery & Ross, P.C.
2701 S.W. 14th Avenue, Suite 300
Miramar, Florida 33027

Ronald D. Shindler, Esq.
Fowler White Burnett
1395 Brickell Avenue, 14th Floor
Miami, Florida 33131

Jon Polenberg, Esq.
Polenberg Cooper, P.A.
1351 Sawgrass Corp. Parkway
Suite 101
Ft. Lauderdale, Florida 33323

Raquel A. Rodriguez, Esq.
Jeremy Colvin, Esq.
McDonald Hopkins LLC
200 S. Biscayne Blvd., Suite 3130
Miami, Florida 33131

Edward Mullins, Esq.
Astigarraga Davis
701 Brickell Avenue, 16th Floor
Miami, Florida 33131

Veronica Tejada Lacayo, Esq.
Veronica Tejada Lacayo, P.A.
2525 Ponce De Leon Blvd., Suite 300
Coral Gables, Florida 33134

Anna V. Tumpovskiy, Esq.
Tumpovskiy Law Group
450 North Park Road
Penthouse Suite 800
Hollywood, Florida 33021

Bradford D. Kaufman, Esq.
Joseph C. Coates, III, Esq.
Jason M. Fedo, Esq.
Greenberg Traurig, P.A.
777 S. Flagler Drive, Suite 300E
West Palm Beach, Florida 33401

Leah A. Sevi, Esq.
Carlton Fields, P.A.
200 Central Avenue, Suite 2300
St. Petersburg, Florida 33701

Matthew J. Conigliaro, Esq.
Carlton Fields, P.A.
215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301

George Guerra, Esq.
Dominique Heller, Esq.
Wiand Guerra King, P.L.
3000 Bayport Drive, Suite 600
Tampa, Florida 33607

Hala Sandridge, Esq.
Fowler White Boggs, P.A.
P.O. Box 1438
Tampa, Florida 33601-1438

Robert J. Pearl, Esq.
The Pearl Law Firm, P.A.
7400 Tamiami Trail North, Suite 101
Naples, Florida 34108

Scott C. Ilgenfritz

CERTIFICATE OF COMPLIANCE

Counsel for the Public Investors Arbitration Bar Association, Inc., certifies that the *amicus* curiae brief submitted by PIABA is typed in 14 point Times New Roman, in compliance with Rule 9.210, Florida Rules of Appellate Procedure.

Scott C. Ilgenfritz

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