

A Construction Law Update

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Washington Supreme Court Holds Statutes of Limitations Do Not Apply to Arbitration Proceedings

A narrowly-divided Washington State Supreme Court has held that an arbitration panel cannot apply the state statutes of limitations to bar a claim, unless the parties have contractually agreed to allow the arbitrators to do so. According to the Court, a general reference in an arbitration clause to forum rules will not suffice and can be grounds for vacating an arbitration panel's dismissal of claims on the state statute of limitations.

In *Broom v. Morgan Stanley DW Inc.*, an arbitration panel dismissed the plaintiffs' common law and statutory securities claims against a broker on the grounds that the claims were barred by the state and federal statutes of limitations. The plaintiffs sought to vacate the decision, which the superior court granted on the grounds that the award contained a facial legal error because statutes of limitations do not apply to arbitrations. The Court of Appeals and State Supreme Court both agreed, although the latter's decision was on a 5-4 vote.

The grounds for vacating an arbitration award are narrow, and to vacate on the basis of facial legal error is rare. The majority decision by the Supreme Court concluded that arbitration proceedings do not qualify as "actions" for the purpose of applying state statutes of limitations. The Court went on to hold that parties may contractually agree to the applicability of state statutes of limitations, but that they did not do so in the *Broom* case simply by agreeing to apply the forum arbitration rules that allowed arbitrators to interpret provisions such as statutes of limitations. Thus, in order to have arbitrators apply the state statutes of limitations to the dispute, the parties would have to explicitly agree to do so.

Although *Broom* is a securities case, the decision is likely to have wider application to any contract that has an arbitration clause, including many design and construction industry contracts. Private arbitrations may not be compelled and, as such, must be agreed upon as the preferred dispute resolution methodology in the applicable contract. If arbitration is desired, the parties should articulate whether or not state law will apply and, if so, whether it extends to both procedural and substantive aspects of state law.

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