

RESOLUTION 7-04-03

DIGEST

Securities Fraud Actions: Statute of Limitations

Amends Corporations Code section 25506 to increase the statute of limitations for securities fraud actions.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

None known.

Reasons:

This resolution amends Corporations Code section 25506 to increase the statute of limitations for securities fraud actions. This resolution should be approved in principle because the proposed increases do not significantly impact the policies served by statutes of limitations and it brings California law into conformity with federal securities fraud law.

Current law limits the time for commencing a securities fraud action to within one year of discovery of the fraud and within four years of the commission of the fraud. This is less than the two-year/five year federal statute of limitations. Although there are significant differences between state and federal claims for securities fraud (compare *Bastian v. Petren Resources Corp.* (7th Cir. 1990) 892 F.2d 680 with *Bowden v. Robinson* (1977) 67 Cal.App.3d 705), state courts have concurrent jurisdiction with federal courts on many types of federal securities claims (see *Lakewood Bank and Trust Company v. Superior Court* (1982) 129 Cal.App.3d 463, 468), and both types of claims may be brought in the same action. It causes unnecessary confusion, particularly to the lay investor, if the period in which to take action differs. Even where there is no confusion it causes federal claims joined with state claims to be brought sooner than would otherwise be required.

This resolution is a simple measure that would promote uniformity of law and thereby ease the judicial process. This resolution has no significant negative impact on the twin statutory goals of repose and fresh evidence.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 25506 to read as follows:

- 1 §25506
- 2 No action shall be maintained to enforce any liability created under Section 25500, 25501, or
- 3 25502 (or Section 25504 or Section 25504.1 insofar as they related to those sections) unless brought
- 4 before the expiration of ~~four~~ five years after the act or transaction constituting the violation or the
- 5 expiration of ~~one year~~ two years after the discovery by the plaintiff of the facts constituting the
- 6 violation, whichever shall first expire.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Sets time limits on the filing of actions for securities fraud under the state securities laws that are at odds with the federal statutes of limitations on such causes of action.

This Resolution: Brings California's statute of limitations on securities fraud into conformity with federal provisions.

The Problem: On July 30, 2002, the Sarbanes-Oxley Corporate and Criminal Fraud Accountability Act of 2002, H.R. 3763, was signed into law. Section 804 of the Act provides that an action seeking to recover for fraud under the federal securities laws must be brought within the earlier of two years after the plaintiff's discovery of the facts constituting the fraud, or five years after the fraudulent act. California's securities laws, however, set forth much shorter time limits for filing actions.

Actions to recover for securities fraud are usually based upon identical or similar provisions in federal and California law. However, since the passage of the Sarbanes-Oxley Act, the time limits in which to enforce state law causes of action can expire before those applicable to the claims based on federal law. California should adopt Sarbanes-Oxley's "two year/five year" statute of limitations, thus bringing state law into conformity with federal law and preserving the ability of investors and consumers to enforce their state law rights.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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