

THE SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL BROOM, KEVIN
BROOM and ANDREA BROOM,

Respondents,

v.

MORGAN STANLEY DW INC.,
and KIMBERLY ANN
BLINDHEIM,

Petitioners.

NO. 82311-1

PETITIONERS' FOURTH
STATEMENT OF
ADDITIONAL AUTHORITIES

C/A NO. 60115-6-I

COME NOW the Petitioners Morgan Stanley DW Inc. and
Kimberly Anne Blindheim and submit the following additional authorities
to the Court pursuant to RAP 10.8:

The following authority pertains to the issue of whether an
arbitrator "exceed[s] the arbitrator's powers," RCW 7.04A.230(1)(d),
where the arbitrator is engaged in an interpretation of the terms of the
parties' arbitration agreement. *See Supplemental Brief of Petitioners
Morgan Stanley DW Inc. and Kimberly Anne Blindheim*, pp. 13-14, n 13:

1. In *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. ____,
2010 U.S. LEXIS 3672 (April 27, 2010), the United States Supreme Court
held that an arbitration award may not be vacated under section 10(a)(4) of
the Federal Arbitration Act ("FAA"), 9 U.S.C. § 10(a)(4), which permits

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2010 MAY 20 AM 8:01
BY KATHALYN CASSETER
CERK

vacatur “where the arbitrators exceeded their powers,” merely because the arbitration panel “committed an error—or even a serious error.” Slip opinion, p. 7. Citing *Major League Baseball Players Assn. v. Garvey*, 532 U.S. 504, 509 (2001), the Court stated: “It is only when [an] arbitrator strays from interpretation and application of the agreement and effectively ‘dispense[s] his own brand of industrial justice’ that his decision may be unenforceable.” *Id.*

The following authority pertains to the issue of whether NASD arbitrators possess authority to dismiss claims based upon statutes of limitations. *See, e.g.*, Petitioners’ Answer to Amicus Briefs Filed By Washington State Association for Justice Foundation and Public Investors Arbitration Bar Association, pp. 10-20:

2. In *Dailey v. Legg Mason Wood Walker, Inc.*, 2009 U.S. Dist. LEXIS 114134, *7-9 (W.D. Pa. December 9, 2009), the district court held that the arbitrators had not “exceeded their authority” within the meaning of section 10(a)(4) of the Federal Arbitration Act, 9 U.S.C. §10(a)(4), when they ruled that certain of plaintiff’s federal and state securities law claims were barred by statutes of limitations. The court noted that to support a motion to vacate “it is not enough that a court finds that the arbitrators erred, but rather it must find that their decision escaped the bounds of rationality.” *Id.* at *7. The court went on to state: “Although

Plaintiff insists that statutes of limitation do not apply to arbitration cases, the law is to the contrary.” *Id.* at *8. Citing NASD’s Arbitrator’s Manual which “expressly approves the application of statutes of limitation in NASD/FINRA arbitrations,” a “plethora of FINRA/NASD arbitration awards dismissing claims based on statutes of limitation, and a decision of the Court of Appeals for the Fourth Circuit upholding the confirmation of an arbitration award on statute of limitations grounds,” the court concluded that “[f]ar from being ‘completely irrational,’ the arbitration panel’s decision was well supported in the law.” *Id.* at *8-9.

RESPECTFULLY SUBMITTED this 17th day of May, 2010

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 
Michael T. Garone, WSBA #30113
mgarone@schwabe.com
Facsimile: 503-796-2900
Attorney for Petitioners

DECLARATION OF SERVICE

I, Michael T. Garone, hereby certify that I mailed a copy of the foregoing PETITIONERS' FOURTH STATEMENT OF ADDITIONAL AUTHORITIES to the following parties via United States first-class mail with postage prepaid on the 17th day of May, 2010:

<p>Michael T. Schein Kevin P. Sullivan Sullivan & Thoreson 701 5th Ave., Suite 4600 Seattle, WA 98104-7068</p> <p>Of Attorneys for Respondents</p>	<p>David Paltzik, Esq. Greenberg Traurig, P.A. 2375 E. Camelback Road, Suite 700 Phoenix, AZ 85016</p> <p>Bradford D. Kaufman, Esq. Jason M. Fedo, Esq. Greenberg Traurig, P.A. 777 S. Flagler Drive, Suite 300 East West Palm Beach, FL 33401</p> <p>Ira Hammerman Kevin Carroll Securities Industry 11001 New York Ave. NW Washington, DC 20005</p> <p>Of Attorneys for Amicus The Securities Industry and Financial Markets Association for Justice Foundation</p>
---	---

<p>George M. Ahrend Attorney at Law P. O. Box 2149 Moses Lake, WA 98837</p> <p>Bryan P. Harnetiaux Attorney at Law 517 E. 17th Avenue Spokane, WA 99203</p> <p>Of Attorneys for Amicus Washington State Association for Justice Foundation</p>	<p>Carl J. Carlson Carlson & Dennett PS 1601 Fifth Avenue, Suite 2150 Seattle, WA 98101</p> <p>Joseph C. Long University of Oklahoma Law School 2609 Acacia Court Norman, OK 73072</p> <p>Of Attorneys for Amicus Public Investors Arbitration Bar Association</p>
<p>Larry H. Vance Winston & Cashatt 601 W. Riverside Avenue, Suite 1900 Spokane, WA 99201</p> <p>Of Attorneys for Associated General Contractors of Washington</p>	

SCHWABE, WILLIAMSON & WYATT,
P.C.

By: 
 Michael T. Garone, WSBA #30113
mgarone@schwabe.com
 Facsimile: 503-796-2900
 Attorney for Petitioners

CERTIFICATE OF FILING

I, Michael T. Garone, hereby certify that I filed the original and one copy of the foregoing PETITIONERS' FOURTH STATEMENT OF ADDITIONAL AUTHORITIES on the Clerk of the Washington Supreme Court, 415 12th Ave SW, P.O. Box 40929, Olympia, WA 98504-0929, via Federal Express on the 17th day of May, 2010, with postage prepaid.

SCHWABE, WILLIAMSON & WYATT,
P.C.



By: _____

Michael T. Garone, WSBA #30113
mgarone@schwabe.com
Facsimile: 503-796-2900
Attorneys for Petitioners