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AUCTION RATE SECURITIES - LOUISIANA

Fishman v. Morgan Keegan & Co., Inc.

United States Court of Appeals, Fifth Circuit - July 1, 2014 - Fed.Appx. - 2014 WL 2943201

Following the collapse of the ARS market, the Fishmans, who purchased ARS underwritten by Morgan Keegan, filed claims under federal and state securities laws, alleging that Morgan Keegan failed to disclose material information about how and when it placed bids for its own account in ARS auctions.

After holding a bench trial on the Fishmans' two remaining claims — under section 10(b) of the Securities Exchange Act of 1934 and section 712 of the Louisiana Securities Law, the District Court ruled in favor of Morgan Keegan on both the federal and state law causes of action.

The Fishmans appealed only the state law ruling, contending (1) that the Louisiana statute at issue does not require proof of loss causation and (2) the proper time to determine what the plaintiffs "could have known" as required by the statute is the time of sale, not a later time.

In response, Morgan Keegan argued that (1) the Fishmans' claim was time barred, (2) the Fishmans waived their argument regarding loss causation, and (3) the Fishmans could have known of Morgan Keegan's alleged omission at the time of purchase.

The Court of Appeals affirmed the District Court's ruling, finding that loss causation is a required element of a section 712 claim and that the Fishmans waived that argument by failing to raise it before the District Court.

In light of the foregoing, the Court of Appeals declined to address the Fishmans' remaining argument regarding section 712's knowledge element.