

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

## BLOGS

Limitation of Actions

# Eleventh Circuit Concludes That Franchisee's Kickback-Scheme Claims Were Not Barred by a One-Year Limitations Provision

On interlocutory appeal, the Eleventh Circuit reversed in part a district court's grant of summary judgment for a franchisor on the basis that the appellant-franchisee's claims of illegal and undisclosed kickbacks were barred by the one-year contractual limitations period. *Massey, Inc. v. Moe's Southwest Grill, LLC*, 2014 U.S. App. LEXIS 8765 (11th Cir. May 9, 2014). The appeal stems from an action filed by 39 Moe's franchisees which sought to recover monies provided by approved suppliers to Moe's CEO and affiliates. In purchasing a franchise, each of the three appellant franchisees received a 2002 or 2003 UFOC disclosing the requirement to purchase certain products from the franchisor's approved suppliers, but denying the franchisor or its affiliates would derive any income from these purchases. Each franchisee later received a copy of Moe's 2005 UFOC, which, like those in 2002 and 2003, noted the obligation to buy certain products from approved suppliers, but disclosed that one of Moe's approved suppliers was indirectly related to the CEO and that the CEO had an ownership interest in that supplier and other suppliers. The 2005 document removed the statement that the franchisor's affiliates would not derive income from sales to franchisees.

In granting the franchisor's motion for summary judgment, the district court held the updated disclosures in 2005 provided the appellant-franchisees with notice of their alleged claims and, therefore, such claims were barred by the franchise agreement's one-year limitations provision. On appeal, the Eleventh Circuit disagreed concluding that a question of material fact existed as to when the franchisees discovered the facts giving rise to the alleged kickback scheme, noting that scienter, possible negligence, and membership in an unlawful enterprise were all facts that needed to be "discovered" before the contractual limitations period began to run. The Eleventh Circuit reasoned that a jury could conclude that the subtle modifications made to the 2005 UFOC did not provide sufficient notice of the facts needed to substantiate the alleged claims.

## Related People

### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)