

IN THE
SUPREME COURT OF FLORIDA

CASE NO. 68,972

H. RICHARD BATES,
Personal Representative of the Estate
of Dr. Philip O. Littleford, deceased

Plaintiff-Appellant

vs.

COOK, INC.

Defendant-Appellee

On Certified Question from the
United States Court of Appeals
for the Eleventh Circuit

Amicus Curiae Brief of the
American Broadcasting Companies, Inc.
in Support of Defendant-Appellee

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

INTEREST OF THE AMICUS CURIAE 1

STATEMENT OF THE CASE AND THE FACTS 2

SUMMARY OF ARGUMENT 2

ARGUMENT 4

CONCLUSION 4

CERTIFICATE OF SERVICE 5

TABLE OF AUTHORITIES

Cases

<u>Celotex v. Nance, Fla. Sup. Ct. Case No. 66,938</u>	1
<u>Colhoun v. Greyhound Lines, Inc.,</u> 265 So.2d 18 (Fla. 1972)	2

Statutes

Fla. Stat. §95.10	2, 4
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Note: For authorities relied upon in appendix see page iii of the appendix.

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INTRODUCTION

This brief is filed on behalf of the American Broadcasting Companies, Inc., in support of the defendant-appellee, to call the Court's attention to arguments advanced in an amicus brief filed in another case which is pending before this Court, Celotex v. Nance, Case No. 66,938. The arguments in that brief are directly relevant to the issue in this case.

INTEREST OF THE AMICUS CURIAE

The amicus is a national television network which is interested in the resolution of this case because it is subject to the statutes of limitations of many jurisdictions. Borrowing statutes, such as the statute at issue in this case, reconcile conflicting limitations periods imposed by these different jurisdictions and therefore have a substantial impact on the rights and liabilities of the amicus. The decision in this case can help to clarify which statutes of limitations are applicable to claims against the amicus and other corporate entities which are subject to the jurisdiction of many states.

STATEMENT OF THE CASE AND THE FACTS

The amicus curiae accepts the statement of the case and the facts relied upon by both the appellant and the appellee. The only two facts which are essential to the legal issue briefed by the amicus -- both of which the amicus believes are undisputed -- are as follows:

1. The plaintiff could have commenced and maintained this action against the defendant in Indiana if it had been commenced within the period imposed by the Indiana statute of limitations.
2. The plaintiff's action would have been barred by the Indiana statute of limitations at the time it was commenced in Florida.

No other facts are necessary to the argument advanced in this brief by the amicus.

SUMMARY OF ARGUMENT

Point I: Purpose of the Borrowing Statute. When it enacted the borrowing statute in 1872, the Florida Legislature recognized that economic growth in the state could be encouraged by assuring persons who came here that the state's statute of limitations would not resuscitate claims which had expired in other states. Today, the borrowing statute, section 95.10, Florida Statutes, should be construed in a fashion which is consistent with the original purpose of the enactment. The Court should hold defendants may rely upon the expiration of the statute of limitations of any state which could have exercised jurisdiction over them.

Point II: Colhoun Should be Overruled. In Colhoun v. Greyhound Lines, Inc., 265 So.2d 18 (Fla. 1972), this Court erred in holding that the borrowing statute permits defendants to rely upon only the statute of limitations of the state in which the last act necessary to establish liability occurs. This rule is inconsistent with the original purpose of the borrowing statute and inequitable in its application to contemporary problems such as that which the Court faces in this case.

Thus, the rule allows the plaintiff in this case to argue that a claim which could have been brought in Indiana but which is plainly barred by the statute of limitations of Indiana has been resuscitated in Florida. This result defeats the historical purpose of the borrowing statute and discourages defendants, such as Cook, Inc., from having any contact with Florida because of Florida's lengthier statute of limitations.

Point III: Most Significant Relationships is the Wrong Rule. The choice of laws test adopted by this Court for determining which state's substantive law is applicable to a cause of action is not an appropriate test for determining where a cause of action arose for borrowing statute purposes because that test is not sensitive to the policies behind the borrowing statute.

Point IV: Plaintiff's Action is Barred. The plaintiff's claims in this case are barred by the Florida borrowing statute because the defendant was subject to the jurisdiction of the Indiana courts throughout the limitations period there and this action was not commenced until after that period expired.

ARGUMENT

The amicus adopts and incorporates herein by reference the argument section (pages 5-42) of the amicus curiae brief of the National Gypsum Company filed in Case No. 66,938, a copy of which is included in the appendix of this brief. Point IV of the argument is modified, however, to refer to the Indiana statute of limitations rather than the Virginia statute of limitations which was at issue in the Celotex case. Footnote 26 may be disregarded in that it is irrelevant to this action.

CONCLUSION

This Court should answer the certified question by holding that neither of the alternative tests suggested by the United States Court of Appeals for the Eleventh Circuit should be used to determine where a cause of action for theft of trade secrets arises for purposes of applying the Florida borrowing statute.

The Florida borrowing statute, section 95.10, Florida Statutes, requires application of the statute of limitations of any state where the defendant was amenable to process throughout the applicable limitations period and where the limitations period has expired.

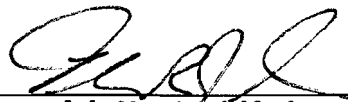
In the instant case, the parties concede that the defendant was subject to the jurisdiction of the Indiana courts and that the Indiana limitations period for filing the action at issue had expired before the claim was filed in Florida. Accordingly, the borrowing statute requires application of the

Indiana statute of limitations and entry of judgment for the defendant against the plaintiff.

Respectfully submitted,

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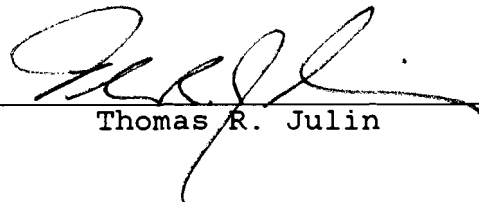
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief and the attached appendix were mailed September 15, 1986, to:

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