IN THE

SUPREME COURT OF FLORIDA

APPEAL NO. 68,972

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

Plaintiff-Appellant,

versus

COOK, INC.,

Defendant-Appellee,

Certified Question from the United States Court of Appeals For the Eleventh Circuit

REPLY BRIEF OF APPELLANT

Herbert L. Allen
Lavinia K. Dierking
Duckworth, Allen, Dyer, P.A.
Post Office Box 3791
Orlando, Florida 32802
Telephone: (305) 841-2330
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF AUTHORITIES

CASES

PRELIMINARY STATEMENT

Part I hereof will reply to those portions of Defendant's brief that meet Plaintiff's opening arguments by addressing those issues as Defendant has raised them.

References to Plaintiff's opening brief and cross-references to Defendant's brief are made where appropriate.

Part II hereof will reply to the brief of the Amicus Curiae.

PART I. REPLY TO ANSWER BRIEF OF APPELLEE

I. THE ELEVENTH CIRCUIT'S CERTIFICATION

The Eleventh Circuit Court of Appeals in its certification of the instant matter to this Court indicated that its statement of the question certified was not designed to limit the inquiry of the Supreme Court of Florida, to wit

> [T]he particular phrasing used in the certified question is not to restrict the Supreme Court's consideration of the problems involved and the issues as the Supreme Court perceives them to be in its analysis of the record certified in this case. This latitude extends to the Supreme Court's restatement of the issue or issues and the manner in which the answers are to be given, whether as a comprehensive whole or in subordinate or even contingent parts. Martinez v.Rodriguez, 394 F.2d 156, 159 n. 6 (5th Cir. 1968).

Bates v. Cook, Inc., 791 F.2d 1525, 1528 (11th Cir. 1986).

However, Defendant-Appellee Cook, Inc. throughout its answer brief misuses this direction stating, "the Court should instruct how Florida law is applied to determine where a trade secret misappropriation cause of action arises under Florida's borrowing statute." (Emphasis added.) Answer Brief of Appellee, p. 6. Such an instruction would be a misapplication of the "significant relationships" test which is not tied automatically to the law that determines

the merits of the dispute (lex causae) but rather is a balancing of interests involved. As demonstrated by the language of the American Law Institute, even when a limitation's problem is involved, the "significant relationships" test still mandates a balancing of the interests of the parties involved:

> An action will be maintained if it is not barred by the statute of limitations of the forum unless the action would be barred in some other state which, **with respect to the issue of limitations, has a more significant relationship to the parties and occurrence.** § 142 Restatement (Second) of Conflict of Laws, 55 U.S.L.W. 2597 (May 27, 1986). (Emphasis added.)

An application of the "significant relationships" test which would depend on this Honorable Court's determination of where a cause of action for theft of trade secrets occurs would thwart the "more flexible, modern approach to this aspect of conflicts of law" (the analysis of contacts and interests) already adopted by this Court in Bishop v. Florida Specialty Paint Co., 389 So.2d 999, 1001 (Fla. 1980) and fling conflicts principles back to the era of vested rights. Surely, defendants could not argue for the adoption of the "significant relationships" test and then ask for it to be applied in such a manner as to nullify its purpose, i.e., to separate lex causae, lex loci delicti, and the merits of the dispute from the choice of law decision.

II. THE TRIAL COURT ERRED IN ITS APPLICATION OF THE "SIGNIFICANT RELATIONSHIPS" TEST AND ITS DETERMINATION THAT PLAINTIFF'S TRADE SECRET MISAPPROPRIATION CAUSE OF ACTION AROSE IN INDIANA

A. Factual disputes existed which prohibited the entry of summary judgment.

The problem facing the lower court is accurately summarized in the article, Millhollin, Interest Analysis and Conflicts Between Statutes of Limitation, 27 Hastings L.J. 1 (1975) (hereinafter cited as Millhollin, Interest Analysis):

> The actual effect of most borrowing statutes has been to compound, rather than simplify, the choice of law problem. This result is surprising because the policies underlying these statutes are well defined and generally accepted. The courts, however, in interpreting the statutes, have created a decisional chaos hardly equalled in any other branch of law. This confusion is due mainly to the language which makes the choice of law reference depend upon where the cause of action arose. Id. at 25.

As Millhollin points out, it is a circular argument to decide where a cause of action arises for borrowing statute purposes. "Only by assuming the solution in advance can one say that a cause of action arises 'where' an event occurred because the event occurred there." Id. Under this method a court can only decide where a cause of action arises by looking at the law of the state where the event supposedly

took place. What then is the solution to choice of law and borrowing statutes? -- a flexible interpretation considering the policies and interests of each state in having its law applied.

In light of the foregoing, Defendant's argument that the trial court was not making factual determinations, but only deciding the legal significance of events, can be seen as it really is -- circular. The trial court was deciding the merits of the case -- what Defendant's wrong was and where it took place -- which was improper for summary judgment. In fact the trial court recognized a factual dispute:

> Although a limited amount of defendant's use of the trade secrets in further developing their introducer sets arguably took place in New Jersey, the primary locus of defendant's wrongful use was in Indiana. (R.E.7, p. 25).

Such an admission by the trial court prohibited a finding as a matter of law that Indiana law should be applied. Instead, the trial court should have, as presented in Reese, The Second Restatement of Conflict of Law Revisited, 34 Mercer L. Rev. 501 (1983) (hereinafter cited as Reese, Second Restatement) and in Millhollin, Interest Analysis, determined which state had the most significant relationship to the occurrence, separating the policies and interests of the states from the merits of the case.

Additionally, Defendant incorrectly asserts at page 15 of the Answer Brief that the trial court did not make a determination that this case involved no theft of trade secrets. Plaintiff respectfully points out that at page 25 of the court's order the following statement appears:

> The alleged wrong in this case is defendant's wrongful use of the trade secrets, rather than a wrongful procurement of the information. (R.E.7, p. 25).

This was yet another incorrect factual determination by the trial court particularly in light of the Pretrial Stipulation. Said stipulation made it clear that the issues before the trial court included, inter alia, the **misappropriation** of Dr. Littleford's trade secrets from Dr. Parsonnet and Ms. Linn:

> 2. A Concise Statement of the Nature of the Action.
>
> ... Plaintiff alleges that Defendant Cook took such information given to it by Mr. Junker and/or others without authority to do so manufactured and sold products incorporating the developments of Plaintiff Littleford. Plaintiff alleges that as a result, Defendant Cook has enjoyed a significant head start in the manufacture of products embodying Littleford's invention. Plaintiff Littleford further alleges that the action of Defendant Cook in the alleged misappropriation of the confidential information was willful and intentional and was engaged in with a reckless disregard of Plaintiff Littleford's rights....
>
> ***

3. A Brief General Statement of Each Party's Case.

A. Statement of the Plaintiff's Case.

> In connection with proving the technical feasibility of his developments and in accordance with sound and cautious medical practice, Dr. Littleford in January 1978 commenced a careful clinical evaluation of the subclavian introduction technique and related apparatus. This clinical evaluation involved hospitals in Nashville, Tennessee, Newark, New Jersey, Lakeland, Florida, The Miami Heart Institute and Dr. Littleford's own hospital in Orlando, as well as others. During this clinical evaluation, Defendant Cook meddled into the relationship between Dr. Littleford and one of the clinical evaluators, and ingratiated itself to this other physician so as to obtain information regarding Dr. Littleford's trade secrets. As a result, Cook was able to receive a benefit from the trade secret information of Dr. Littleford, and to take to market a commercial product a full year or more prior to any licensee of Dr. Littleford (R.170, pp. 171, 173).

Finally, Plaintiff submits that Defendant argues first that there were no factual disputes during summary judgment and then nullifies its own argument at page 17 of its Answer Brief by stating that the propriety of summary judgment may be an issue which this Court feels it should not address. The Defendant asserts that the

> ripeness of this case for summary judgment is a federal procedural law issue involving Rule 56, Fed. R. Civ. P. It is therefore an issue which is appropriate for the Eleventh Circuit's consideration.

Plaintiff points out that the Eleventh Circuit, pending direction from the Florida Supreme Court on which choice of

law rule to apply, has already directed the disposition of this case. In footnote 1 of its certification opinion, the Eleventh Circuit made this telling remark:

> The district court found that, under either of the tests, (a) or (b), above, the cause of action arose in Indiana. This court cannot dispose of the case on this basis. **It has concluded that the case must be remanded for reconsideration by the district court of the choice of law issue, under the correct standard.** If Indiana law is the correct state to which the court is to look, the content of the limitations law of that state with respect to theft of trade secret cases must be reexamined by the district court. And, if Indiana is not the correct state, the district court must proceed, with assurance that it is applying the correct test, to identify the correct state and apply its limitations law. Bates v. Cook, Inc., 791 F.2d at 1526. (Emphasis added.)

B. The trial court incorrectly applied the Restatement § 145 factors.

1. The principal place of defendant's wrongful conduct was Indiana.

Despite Defendant's attempt to ignore the theft aspect of the instant case, Plaintiff, as noted previously herein at pages 5-6, made it clear at the time of the Pretrial Stipulation (which Defendant signed) that issues before the trial court included the theft of trade secrets from Dr. Parsonnet and Ms. Linn in New Jersey and Mr. Junker in Florida. The place of the wrong in trade secret cases includes the place where the defendant misappropriates the

plaintiff's trade secrets. National Instrument Laboratories, Inc. v. Hycel, Inc., 478 F.Supp. 1179, 207 U.S.P.Q. 989 (D. Del. 1979).

Plaintiff has not, as Defendant contends, failed to look at the place of Defendant's conduct, which Defendant conveniently claims is its home state of Indiana (the place of manufacture). Rather, Plaintiff has followed the spirit of the "significant relationships" test and presented all relevant contacts. See Brief of Appellant at pages 5-11 for discussion of contacts. Furthermore, Defendant's contention that "no actions of Cook relating to the alleged trade secret misappropriation occurred outside Indiana" is illfounded. The Eleventh Circuit appropriately summarized the contacts in this case in its opening remarks:

> This is a complex theft of trade secrets case, brought in Florida state court and removed to federal court. **It involves a complicated series of significant events that occurred, and significant contacts that existed, in Florida, Indiana, New Jersey, Tennessee, and California.** Bates v. Cook, Inc., 791 F.2d at 1526. (Emphasis added.)

The truth of the matter is that Mr. Junker disclosed only part of the trade secret information during an interstate telephone communication from Florida, and under the analysis of Petrites v. J. C. Bradford & Co., 646 F.2d 1033 (5th Cir. 1981), that is a Florida contact, not one in Indiana. Mr.

Bates of Cook obtained additional trade secret information from Mr. Junker during a meeting in California, which is not an Indiana contact. See Brief of Appellant, pp. 7-8. Finally, Dr. Parsonnet (New Jersey) supplied still further trade secret information of Dr. Littleford to Defendant Cook. Brief of Appellant, pp. 8-11.

2 & 3. The place of defendant's conduct was not entitled to decisive weight among the § 145 factors; the injury to Plaintiff was felt most keenly in Florida.

Comment f to § 145, contrary to Defendant's contention, does not "clearly" point to the place of Defendant's conduct as the decisive contact in trade secret misappropriation cases. Rather, as noted in Appellant's opening brief, pp. 39-40, the place of a defendant's conduct becomes decisive only if the place of a plaintiff's business or headquarters bears merely a slight relationship to defendant's activities and plaintiff's loss. In the instant case, the trial court recognized that Plaintiff's Florida residence was the place where the effect of lost sales was felt most severely (R.E.7, p. 28). Additionally, Florida is a place where Defendant Cook has had ongoing business activity as part of its interstate enterprise.

Even if greater weight was given to Defendant's conduct herein, Defendant seems to overlook the fact that Plaintiff

sought recovery for theft of trade secrets and repeatedly contended that the theft (Defendant's conduct) occurred in Florida and New Jersey and that the introducer sheath was developed in Florida and New Jersey. See, Brief of Appellant, pp. 5-11. Accordingly, the case of Permagrain Products, Inc. v. U.S. Mat & Rubber Co., Inc., 489 F.Supp. 108, 208 U.S.P.Q. 541 (E.D. Pa. 1980) cited by Defendant would support application of Florida or New Jersey law. Footnote one of Permagrain indicates that in applying a "significant relationships" test to determine which state's law to apply, the Permagrain court gave significant weight to the alleged location of the theft of the trade secrets.

Defendant's other authorities are simply not relevant to the matter at hand: Perfect Subscription Co. v. Kavaler, et al., 427 F.Supp. 1289, 194 U.S.P.Q. 394 (E.D. Pa. 1977) (Contains no discussion of conflict of laws rules.); FMC Corporation v. Varco International, Inc., et al., 217 U.S.P.Q. 135 (5th Cir. 1982) (Court proceeded on assumption that Texas law applied but left open either party raising issue of which state law to apply.); Gilson v. Republic of Ireland, 223 U.S.P.Q. 956 (D.C. Cir. 1984) (Court recognized that Ireland, the place where the alleged misappropriation took place, was the place with the most significant relationship to plaintiff's trade secret claim, but applied

trade secret law of United States instead since parties did not raise Ireland law.)

4. Patent law is not applicable to the instant case.

Patent cases are distinct and have no bearing on trade secret cases. Patent cases necessarily involve misuse because the invention itself is of public record in the Patent and Trademark Office -- so there is no question of theft -- but of the use of the patented device without remuneration to the patentee.[1] Whereas, trade secret cases can involve several aspects, one of which is the outright theft or subversion of an owner's invention/device. Defendant should heed Permagrain which noted the situs of the theft as a significant factor under the "significant relationships" test.

---

[1] In addition, patent cases have a much more restrictive venue requirement than trade secret cases. 28 U.S.C. 1400(b) provides that a civil action for patent infringement may be brought only where a defendant resides or where a defendant has committed acts of infringement and has a regular and established place of business. Whereas an action for misappropriation of trade secrets (a creature of state law), if pursued in a federal forum, is governed by the general venue statute 28 U.S.C. 1391(a).

5. **The Restatement § 6 factors do not support the application of Indiana law.**

First, the trial court at pages 26-27 of its opinion merely gave lip service to the § 6 contacts by simply listing the same without providing any analysis let alone any detailed analysis of the application of the § 6 factors to this case. (R.E.7, pp. 26-27 and 30).

Second, Plaintiff is well aware that the analysis made by the trial court was made to determine which state's statute of limitations to apply and not which state's trade secret law to apply. However, it was the trial court who presented a statute of limitations analysis linked to the merits of the dispute; while it was Plaintiff who pointed out at page 16 of its opening brief that the trial court erred in its analysis by adhering to two fallacies:

> 1) that Florida's borrowing statute is procedural and thereby the significant relationships test as adopted by Bishop v. Florida Specialty Paint Co., 389 So.2d 999 (Fla. 1980), was not applicable; **and**
>
> 2) **that the significant relationships test in both statute of limitations and borrowing statute questions is automatically linked to the law that determines the merits of the dispute (the lex causae).**

Moreover, for Defendant to make the transparent argument that § 6 was complied with because subsection (1) thereof required the court to apply Florida's borrowing statute is

tantamount to labeling the entire Eleventh Circuit stupid. The Eleventh Circuit recognized what Defendant obviously did not, i.e., what good is a choice of law rule (the borrowing statute) without directions as to its application -- the entire thrust of the certification by the Eleventh Circuit.

Plaintiff doesn't take issue with the purpose of Florida's borrowing statute -- to bar stale claims which arose in another jurisdiction. However, Plaintiff has repeatedly asserted that in using (1) the "significant relationships" test Florida or New Jersey has the most significant relationship to the occurrences or (2) using the rule of lex loci delicti the claim at issue arose in Florida or New Jersey not Indiana. Moreover, even if Indiana protects its resident defendants on statute of limitations issues, Florida has a right to and has established a means to protect its citizens from theft of their trade secrets. F.S. §§ 812.081 and 95.11(3).[2]

Likewise, Plaintiff would justifiably expect that his trade secrets developed in Florida would reap the protection of Florida law. Otherwise, if Florida law is found useless to protect its own citizen's trade secrets, there would be

---

[2] Likewise New Jersey evinces a similar protective intent with its six-year statute of limitations for misappropriation of trade secrets. N.J. Tit. 2A:14-1.

no encouragement albeit reason for persons in Florida to pursue scientific, business or cultural developments.

Defendant Cook on the other hand, a multinational corporation engaging in business activities in Florida could well expect to encounter Florida law. In fact in the case of Paolina v. Channel Home Centers, et al., 668 F.2d 721 (3d Cir. 1982) the Third Circuit in a discussion of long-arm jurisdiction made remarks pertinent to the foreseeability of this Florida action:

> Plainly the Court did not intend to preclude a "tort out/harm in" exercise of long-arm jurisdiction when the forum as a place of harm was clearly and specifically foreseeable. In this case the allegations of the complaint suggest that Air Control [defendant], knowing that Paolino [plaintiff] had an interest in intellectual property recognized by the law of Pennsylvania where he resided, obtained his property in confidence and set out on a course of action which would destroy it. Since Pennsylvania law created that property interest that state's interest in protecting the Pennsylvania resident from its willful destruction was clearly and specifically foreseeable. Inducing a Pennsylvanian to entrust that creature of Pennsylvania law to Air Control on a promise of confidentiality, and then misappropriating it, obviously would cause harm in Pennsylvania no matter where the misappropriation occurred. (Citations omitted.)

Finally, even if Plaintiff's action would have been barred in Indiana if brought there, this does not mean that Plaintiff did not have a cause of action to bring in Florida. The United States Supreme Court teaches that even

a single event can cause rights of action to arise simultaneously in as many legal systems as are prepared to give relief. Clay v. Sun, Inc. Office Ltd., 377 U.S. 179 (1964).

III. THE LEX LOCI DELICTI RULE REQUIRES APPLICATION OF FLORIDA, NOT INDIANA LAW

Pledger v. Burnup & Sims, Inc., 432 So.2d 1323 (Fla. 4th DCA 1983), pet. for rev. denied, 446 So.2d 99 (Fla. 1984) is not a mandate for the application of the lex loci delicti rule to decisions involving Florida's borrowing statute. For, as noted in Plaintiff's opening brief, the Fourth District Court of Appeals in Pledger was merely trying to decide if Bishop v. Florida Specialty Paint Co., 389 So.2d 999 (Fla. 1980) should be extended by a district court of appeals to encompass Florida's borrowing statute. Moreover, the lex loci delicti rule is not even triggered unless there is a finding that a cause of action arose in another state. Once again we have come full circle back to the Eleventh Circuit's question -- for purposes of applying Florida's borrowing statute do you use lex loci delicti or the "significant relationships" test?

Even if the lex loci delicti rule was found to be applicable under Colhoun v. Greyhound Lines, Inc., 265 So.2d

18 (Fla. 1972), it would not mandate application of Indiana law to the instant case. Rather under Florida law a cause of action in tort (as the instant action) is deemed to arise in the jurisdiction where the last act necessary to establish liability occurs. Colhoun at 21. The record before the trial court did not conclusively establish that said last act occurred in Indiana. In fact, the court did not even make a determination regarding the situs of the alleged theft of trade secrets. (R.E.7). Furthermore, Defendant's own authority recognizes that the "locus of defendant's conduct" includes not only the place of misuse but the place of the theft of trade secrets. See Permagrain, supra. (Emphasis added.)

CONCLUSION

Plaintiff respectfully restates its request that the "significant relationships" test be adopted in applying Florida's borrowing statute and that in any event the trial court's order applying the Indiana statute of limitations be deemed incorrect in the application of both the "significant relationships" test and the rule of lex loci delicti. Plaintiff again respectfully submits that (1) arguing where a cause of action arises and (2) tying a choice of law

question to the merits of the case defeats the purpose of the "significant relationships" test which is to balance the interests and contacts of parties without regard to the merits of the dispute.

The totality of facts before the trial court in the instant case showed a systematic and continuous relationship between the forum (Florida) and the parties and occurrences. Accordingly, the Florida statute of limitations should be applied. To allow otherwise would permit a defendant who does business in numerous states to avoid litigation in any of those states and do nothing more than provide defendants with safe haven in their home states.

PART II. REPLY TO THE AMICUS CURIAE BRIEF

I. GENERAL STATEMENT

The Answer Brief of Defendant-Appellee Cook, Inc. is at odds with the Amicus Curiae Brief of the American Broadcasting Companies, Inc., which amicus brief was supposedly filed in support of the defendant-appellee. Defendant-appellee seeks in its brief the Florida Supreme Court's application of the "significant relationships" test to Florida's borrowing statute, F.S. § 95.10, whereas, the

amicus adamantly states that the "significant relationships" test is the "wrong" rule for determining where a cause of action arises for borrowing statute purposes. Instead, the amicus through a discussion of the antiquated law of a handful of other states, seeks to have this Court interpret the language of the Florida borrowing statute -- "when the cause of action has arisen in another state...." -- to mean a cause of action arises wherever jurisdiction exists. In essence, the amicus brief seeks the solution with the best results for a foreign corporation over the interests of Florida citizens.

Moreover, only the first five pages of the amicus brief addresses the particular case of Bates v. Cook, Inc., Case No. 68,972, while the real substance of the brief -- found in the Appendix -- addresses an entirely different case with no mention whatsoever of Bates v. Cook, Inc. Even argument IV of the Appendix which was to be changed to address the instant appeal remains unchanged with a discussion of why a Florida action was barred by a Virginia statute of limitations. Plaintiff respectfully points out that although the instant appeal involves significant contacts in Florida, New Jersey, Indiana, California and Tennessee, it has no relationship to Virginia.

II. FLORIDA LAW DOES NOT SUPPORT A JURISDICTIONAL APPROACH TO THE BORROWING STATUTE

The discussion by the amicus of Florida's 1833 borrowing statute is of no avail since the amicus readily admits at page 7 of the Appendix that it found no Florida decision which instructed courts on the interpretation of where a claim "originates" under said borrowing statute. The decisions of Missouri courts interpreting what the amicus deems a similar statute are simply irrelevant to the interpretation of Florida's 1833 statute. However, the amicus then uses this Missouri law to form the backbone of the remainder of its argument that the change made in 1872 to Florida's borrowing statute "obviously" meant that Florida abandoned the "last act" rule. To compound this fallacy, the amicus cites Courtlandt Corporation v. Whitmer, 121 So.2d 57 (Fla. 2d DCA 1960) and Beasley v. Fairchild Hiller Corporation, 401 F.2d 593 (5th Cir. 1968) both of which were prior to the Florida Supreme Court's application of the Florida borrowing statute in Colhoun v. Greyhound Lines, Inc., 265 So.2d 18 (Fla. 1972). Neither Courtlandt, a Florida district court of appeals case, nor Beasley, a federal court case, are the final arbiter on Florida law. Only the Florida Supreme Court serves in that capacity.

The remainder of the amicus brief treats the antiquated law of a handful of other states and how those jurisdictions interpret their borrowing statutes. The law of one such state, Illinois, is discussed at length but the cases the amicus cites to support its position bear dates from the late 1800's to the early 1900's. However, the more recent case of Mitchell v. United Asbestos Corporation, 100 Ill. App. 3d 485, Ill. Dec. 375, 426 N.E.2d 350 (1981) is conveniently treated as a "wrong" decision because it applied a "significant relationships" analysis to the Illinois borrowing statute. Moreover, the amicus brief is devoid of any discussion of the American Law Institute's adoption of the "significant relationships" test for statute of limitations problems:

> An action will be maintained if it is not barred by the statute of limitations of the forum unless the action would be barred in some other state which, **with respect to the issue of limitations, has a more significant relationship to the parties and occurrences.** 54 U.S.L.W. 2597 (May 27, 1986). (Emphasis added.)

Instead, the amicus proceeds to advocate an interpretation of Florida's borrowing statute which would make amenability to process the basis for the choice of the application of foreign statutes of limitations. Amicus Curiae Brief, pp. 19-21. In other words if a claim is

barred in any jurisdiction where it may have been brought, it is automatically barred everywhere. This is obviously a pro-foreign defendant approach as clearly shown by the amicus' own remarks:

> Today, the Florida borrowing statute, if interpreted as the amicus suggests is appropriate, would serve its original purpose of assuring defendants that they would be no worse off here than in foreign jurisdictions in which they could be sued. **A corporation can engage in business activities in any jurisdiction** which has enacted such a borrowing statute **with confidence that** the limitations period applicable to **claims arising from that activity would be no longer than the limitations period of its state of incorporation or principal place of business, or other states where the claim might have been brought.** Brief of Amicus Curiae, p. 21. (Emphasis added.)

This argument is nothing more than the blatant protection of foreign defendants from the laws of the various states in which they enter/engage in business. It totally disregards (1) the longstanding precedent of Clay v. Sun, Inc. Office Ltd., 377 U.S. 179 (1964) which teaches that a single event can cause rights of action to arise simultaneously in as many legal systems as are prepared to give relief and (2) each individual state's right to provide its citizens with the protection of its laws and access to its courts. In essence the amicus argues that even if a Florida plaintiff had a cause of action under Florida law but a foreign defendant was involved, that claim should be

barred if it could have been brought in any other state having a shorter limitations period. Clearly, the chances of a Florida citizen ever being able to bring a cause of action in Florida against a foreign defendant would be miniscule under the theory of the amicus; foreign defendants would be virtually free to enter this state or any state, conduct whatever activities they chose and then seek haven behind some other state's statute of limitations. In summation, Florida's statute of limitations would virtually be inapplicable to foreign defendants -- with Florida citizens/plaintiffs having to forego their own law and remedies to address the law of the other forty-nine states. Such a rule is preposterous. Florida citizens should have the right to expect and receive the benefit/protection of their own laws.

CONCLUSION

Clearly, the concern for fairness to resident plaintiffs and foreign defendants would be served best by a "significant relationships" analysis of Florida's borrowing statute -- an analysis which reviews which state has the most significant relationship to the occurrences and parties, by considering the policies and interest of each state in having its law applied, and not the adoption of a

rule which heeds only the concerns of foreign defendants. An adoption by the Florida Supreme Court of a "significant relationships" analysis of Florida's borrowing statute would merely continue the choice of law philosophy already expressed by this Court in Bishop v. Florida Specialty Paint Co., 389 So.2d 999 (Fla. 1980).

Respectfully submitted,

(for) Lavinia K. Dierking
Herbert L. Allen

Lavinia K. Dierking

Lavinia K. Dierking
Duckworth, Allen, Dyer, P.A.
Post Office Box 3791
Orlando, Florida 32802
(305) 841-2330
Attorneys for Plaintiff-
Appellant/Cross-Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this **REPLY BRIEF OF APPELLANT** has been forwarded by Federal Express to the Clerk, The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, with a true and exact copy of the foregoing furnished by First Class U.S. Mail to C. DAVID EMHARDT, ESQUIRE, Woodward, Weikart, Emhardt & Naughton, One Indiana Square, Suite 2600, Indianapolis, IN 46204, to MICHAEL P. MCMAHON, ESQUIRE, Akerman, Senterfitt & Eidson, Post Office Box 231, Orlando, FL 32802, and to THOMAS R. JULIN, ESQUIRE, Steel Hector & Davis, 4000 Southeast Financial Center, Miami, Florida 33131-2398, on this 19th day of November, 1986.

Herbert L. Allen
Lavinia K. Dierking
Duckworth, Allen & Dyer, P.A.
Post Office Box 3791
Orlando, Florida 32802
(305) 841-2330
Attorneys for Plaintiff-
Appellant/Cross-Appellee