IN THE STATE OF FLORIDA SUPREME COURT

CHARLES WHITE and ROSANNA SANTINI,

Appellants,

v.

CASE NO: 73,784

PEPSICO, INC., a Delaware corporation;

Appellees.
_____/

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF PEPSICO, INC.

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TABLE OF CONTENTS

TABLE OF CITATIONS AND OTHER AUTHORITIES

Other Authorities

STATEMENT OF JURISDICTION[1]

Fla. Const. art. V., § 3(b)(6) allows that the Florida Supreme Court may exercise its jurisdiction to:

> review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is not controlling precedent of the supreme court of Florida.

Fla.R.Civ.P. 9.150 reiterates this constitutional mandate and creates the procedural mechanism by which the certification process operates. In this case, bound by Fla. Const. art. V., the Florida Supreme Court may only review the question of law

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[1]Due to the overly-expansive nature of Plaintiffs' initial brief and the limited nature of this Court's jurisdiction in this action, Defendant includes this brief jurisd ctional section.

Throughout this brief, Pepsico, Inc. is referred to as "Defendant." Charles White and Rosanna Santini are referred to as "Plaintiffs". In their brief before the Court of Appeals, Eleventh Circuit, Appellants refer to the district court docket number to denote citations to their Record Excerpt. When making reference to Plaintiffs' Record Excerpt, Defendant's Appendix before the United States Court of Appeals, Eleventh Circuit and/or Hearing Transcript of Oral Argument before Magistrate William C. Turnoff, Defendant shall refer to each document's page number.

Citations to Plaintiffs' Record Excerpts,' prepared by Plaintiffs before the United States Court of Appeals, Eleventh Circuit, are denoted as R.___. References to Defendant's brief before the United States Court of Appeals, Eleventh Circuit are denoted as B.___. Citations to the Defendant's Appendix before the United States Court of Appeals, Eleventh Circuit are denoted as A.___ References to the oral argument before Magistrate William C. Turnoff are abbreviated as Tr.___ References to documents in the record, (by district court docket number), which are not in the Record Excerpt, Appendix or Transcript, shall be denoted as Doc.___

References to Plaintiffs' initial brief before this Court are denoted as AB___. Citations to the Defendant's Appendix attached to this answer brief are denoted as BA___.

certified by the United States Court of Appeals, Eleventh Circuit:

> Whether in actions that accrued before 1984, service on a registered agent pursuant to Fla. Stat. Ann. Sections 48.081(3) and 48.091(1) conferred upon a court personal jurisdiction over a foreign corporation without a showing that a connection existed between the cause of action and the corporation's activities in Florida.

See, BA. 1-2. Plaintiffs and Defendant, therefore, are bound to address the issue "certified" by the Court of Appeals.[2] The scope of Defendant's brief is, therefore, limited to the issue presented by the United States Court of Appeals, Eleventh Circuit, to this Court for Certification.

STATEMENT OF THE CASE

On February 27, 1989, the United States Court of Appeals, Eleventh Circuit, pursuant to Fla. Const. art. V., § 3(b)(6), certified the following question to this Court for legal resolution:

> Whether in actions that accrued before 1984, service on a registered agent pursuant to Fla. Stat. Ann. Sections 48.081(3) and 48.091(1) conferred upon a court personal jurisdiction over a foreign corporation without a showing that a connection existed

[2] In many places throughout their brief, Plaintiffs ignore the jurisdictional limitations imposed on this Court by Fla. Const. art. V., § 3(b)(6), as well as implicit limits imposed by federalism and comity. E.g., Plaintiffs' request for relief at AB.15.

between the cause of action and the corporation's activities in Florida.

See, BA. 1-2.[3]

SUMMARY OF ARGUMENT

In this products liability lawsuit, Plaintiffs failed to allege, nor could they ever have alleged sufficient facts to show compliance with Florida's long-arm statutes, Fla. Stat. §§ **48.081, 48.181, 48.193.** From the onset of this action, Plaintiffs proceeded to serve Defendant under Florida long-arm statutes **§§ 48.181, 48.193.** Plaintiffs served Defendant's registered agent, CT Corporation with process on June **5, 1987,** relative to a lawsuit which accrued on May 5, **1983.** (R.2); **(A.2;10-11).** **To** obtain personal jurisdiction in any cause of action accruing prior to April 25, 1984, the Florida long-arm statutes require a sufficient connection between the claim and any activities of the Defendant in Florida.' No such nexus exists in this cause of action since:

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[3]Due to Plaintiffs' failure to provide this Court with supporting references to the appropriate pages of the record or transcript (of oral argument before Magistrate William C. Turnoff) the statement of the case provided in Plaintiffs' initial brief carries the danger of inaccuracy and misstatement. For this reason, Defendant cannot adopt the unsupported statements made in Plaintiffs' statement of the case. Rather, by way of background, Defendant respectfully directs this Court's attention to the Statement of the Case provided in Defendant's Answer Brief to the United States Court of Appeals, Eleventh Circuit. **B. 1-3.** The pertinent pages are annexed hereto as BA. **3-4.**

'This requirement is commonly termed the "connexity" requirement.

(1) Charles White's alleged injury occurred in Montego Bay, Jamaica;

(2) White claims he purchased the subject bottle in Montego Bay, Jamaica and,

(3) There is no allegation, nor can there ever be any allegation by Plaintiffs that any business activity of PEPSICO in the state of Florida was connected in any manner to Appellants' injuries in Jamaica.

Service under Fla. Stat. s 48.081(3)(1973), prior to 1984, required a sufficient connection between Plaintiffs' products liability claim and Defendant's business activities in Florida so that a trial court, in Florida, could assert in personam jurisdiction over a foreign corporate Defendant. See e.g., Mallard v. Aluminum Co. of Canada, Ltd., 634 F.2d 236, 241 (5th Cir. January 15, 1981), cert. denied, 454 U.S. 816 (1981); Utility Trailer Manufacturing Co. v. Green Cornett and Betty Cornett, 526 So. 2d 1064 (Fla. 1st DCA 1988), rev. denied, 534 SO. 2d 398 (Fla. 1988); Hartman Agency, Inc. v. Indiana Farmers Mut., 353 So. 2d 665, 666 (Fla. 2d DCA 1978) (Grimes, J.); American Motors Corporation v. Abrahantes, 474 So. 2d 271, 273 (Fla. 3d DCA 1985); Moo Young v. Air Canada, 445 So. 2d 1102, 1104 (Fla. 4th DCA 1984), pet. for review dismissed, 450 So. 2d 489 (Fla. 1984); General Tire and Rubber Co. v. Hickory Springs Manufacturing, Co., 388 So. 2d 264, 266 (Fla. 5th DCA 1980).

A plain reading of Fla. Stat. s 48.081 aided by a brief historical reference to its statutory ancestors, supports Defendant's claim that the Florida Legislature engrafted a connexity requirement on foreign corporate service attempted

under §§ 48.081 (1)-(3); 48.181 and 48.193. Since the Florida Long-Arm Statutes must be read in pari materia, Youngblood v. Citrus Associates of the New York Cotton Exchange, Inc., 276 So. 2d 505 (Fla. 4th DCA), cert. denied, 285 So. 2d 46 (Fla. 1973); creating an exception for service under § 48.081(3) would necessarily abrogate the connexity requirements found in §§ 48.181 and 48.193.

A thorough examination of Florida and Federal case authority requiring connexity when any type of service is attempted under the Florida Long-Arm statutes, indicates the Florida Legislature did not intend to allow for a connexity exception for service on a foreign corporation's registered agent (under § 48.081(3)) unless there was a showing that the agent was also a resident business agent for the corporation.

Finally, a careful examination of the case authority cited by Plaintiffs in support of their position that service on the Defendant's "registered" agent, absent connexity in this action, [Junction Bit & Tool Co. v. Institutional Mortgage Co., 240 So.2d 879 (Fla. 4th DCA 1970)], reveals the authority is either misapplied to the facts before this Court, where there was a failure to effectuate service on a resident "business" agent, or officer, or the opinion is unsupported by the legal authorities it relies on and, therefore unsound.

ARGUMENT

I.

IN ACTIONS ACCRUING PRIOR TO APRIL 25, 1984, SERVICE ON A FOREIGN CORPORATION'S REGISTERED AGENT PURSUANT TO FLA. STAT. § 48.081(3) DOES NOT ALLOW A FLORIDA TRIAL COURT TO ASSERT PERSONAL JURISDICTION OVER A FOREIGN CORPORATION WHERE THE CAUSE OF ACTION SUED ON DID NOT ARISE FROM THE ACTIVITY OF THE FOREIGN CORPORATE DEFENDANT WITHIN FLORIDA.

Preliminary inquiry turns on the issue whether Plaintiffs satisfied the statutory requirements of acquiring personal jurisdiction under Florida's (the forum state's) Long Arm Statutes, as written in 1983. See, Preqean v. Sonatrach, Inc., 652 F.2d 1260 (5th Cir. 1981). On this issue, Plaintiffs carry the initial burden of alleging sufficient jurisdictional facts to bring the case within Fla. Stat. § 48.081 (1973). Accord, Electro Engineering Products Co. v. Lewis, 352 So. 2d 862 (Fla. 1977). Plaintiffs concede their cause of action does not arise out of Defendant's business activities within the State of Florida.' Rather, Plaintiffs assert the United States District Court acquired in personam jurisdiction over Defendant since service was effected under Fla. Stat. § 48.081(3). Plaintiffs' assertion, that a trial court, in Florida, can acquire personal jurisdiction over a non-resident foreign corporation absent connexity with the State of Florida under Fla. Stat.§

'Hereinafter, this standard is referred to as the "connexity" requirement.

48.081(3)[6], is unsupported by a fair reading of Fla. Stat. § 48.081 (1983) interpreted against the backdrop of contemporary United States Supreme Court case authority and Florida Supreme Court case precedent.

A. *An* historical review of Fla. Stat. § 48.081 (1983) and conventional state and federal case authority reveals the Florida Legislature must have engrafted the connexity requirement into the general provisions of the private corporate service statute

A brief historical review of the statutory ancestors (and enabling legislation) to Fla. Stat. § 48.081 (1973) provides helpful guidance. Section 48.081 traces its genesis to 1892 Fla. Laws, art. 6 § 1019.

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[6] The allegations of Plaintiffs' complaint and amended complaint affirmatively demonstrate that there is no personal jurisdiction over Defendant in this cause of action initiated in the State of Florida. Specifically, paragraphs 9 and 10 of Plaintiffs' Amended Complaint affirmatively show a lack of connexity between Plaintiffs' cause of action and any business activities of Defendant in the State of Florida:

> 9. That on or about May 5, 1983, the Plaintiffs were on their honeymoon at the Holiday Inn, Montego Bay, Jamaica, and on that day purchased a bottle of PepsiCola.
>
> 10. That on or about May 5, 1983, the said Pepsi-Cola bottle exploded causing the bottle cap to strike the Plaintiff, CHARLES WHITE, in his right eye with such force that the Plaintiff, CHARLES WHITE, was seriously and permanently injured.

(R.2-3). Since (1) Plaintiffs purchased the subject bottle in Jamaica, and (2) the alleged accident occurred in Jamaica, not in Florida, there is no connection between this cause of action and any activities of Defendant, in the State of Florida.

> Process against a corporation, domestic or foreign, may be served:
>
> (1 Upon the president or vice-president or other head of the corporation. In the absence of such head:
>
> (2 Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:
>
> (3 Upon any director of such company; or, in the absence of all of the above:
>
> (4 Upon any business agent resident in the county in which the action is brought.
>
> (5 If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State.

As framed against the background of contemporary United States Supreme Court case authority, § 1019 clearly required connexity along with service on the statutory-designated agent of a foreign corporation. In St. Clair v. Cox, 106 U.S. 350 (1882), the United States Supreme Court ruled:

> A corporation of one state cannot do business in another state without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose. '[T]hese conditions must be deemed valid and effectual by other states and by this court, provided they are not repugnant to the constitution or laws of the United States or inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense.' [106 U.S. at 359-360, citing, Paul v. Virginia 8 Wall. 168, 181, 75 U.S. 168 (1868).] The state may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business within her limits, that it shall stipulate that in any litigation arising out of its transactions in the state, it will accept as sufficient the service of process on its agents or

persons specially designated, and the condition would be eminently fit and just.

106 U.S. at 359-360.

Following a 1915 amendment, the private corporation service of process statute provided:

> Process against any corporation, domestic or foreign, may be served:
>
> (1 Upon the President or Vice-president or other head of the corporation. In the absence of such head:
>
> (2 Upon the Cashier, or Treasurer, or Secretary, or General Manager; or, in the absence of all of the above:
>
> (3 Upon any Director of such company; or, in the absence of all of the above:
>
> (4 Upon any Officer or Business Agent, resident in the State of Florida.
>
> (5 If a Foreign Corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State.

1918, Fla. Laws (Ch. 7752).

The 1918 version of the private corporation service statute remained in identical form through 1957. See, 1927 Fla. Laws § 4251; Fla. Stat. § 47.17 (1955). In 1957, the Florida Legislature repealed Fla. Stat. § 47.17. 1957 Fla. Laws Ch. 57-97 (H.B. No. 147). This repeal was short-lived since, in 1959, the Legislature reinstated Fla. Stat. § 47.17 in similar form to that repealed in 1957. 1959 Fla. Laws Ch. 59-46 (S.B. No. 46).

> Process against a corporation, domestic or foreign, may be served:
>
> Section 1.

(1) Upon the president or vice-president or other head of the corporation. In the absence of such head:

(2) Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:

(3) Upon any director; and in the absence of all of the above:

(4) Upon any officer or business agent resident in the state.

(5) If a foreign corporation shall have none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this State.

Section 2. The provisions of this section shall be cumulative to all existing laws.

Section 3. This act shall not apply to service of process upon insurance companies.

Section 4. This act shall take effect on September 1, 1959.

Along with a comprehensive Civil Procedure reform in 1967, 947.17 was renumbered as 948.081. The 1967 amendment deleted, but did not repeal, the provision that s 48.081 shall be cumulative to all existing laws. Significantly, the 1967 amendment added subsection (5) and a codified exception to the connexity requirement which:

> replaced former section 47.171, which was enacted by L.1957, c.57-97, s2 and repealed by L.1967, c. 67-254, 049.

See, History and Source of Law, Fla. Stat. Ann. § 48.081 (West 1967 & Supp. 1989).'

Following the 1967 amendments, the Legislature added language to § 48.081(3) which allowed an alternative means of service when the corporation failed to designate a "registered" agent in compliance with § 48.091. The 1983 version of the private corporation service statute therefore provided:

> Process against a corporation, domestic or foreign, may be served:
>
> (a) On the president or vice-president or other head of the corporation. In the absence of such head:
>
> (b) On the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:
>
> (c) On any director; and in the absence of all of the above:
>
> (d) On any officer or business agent residing in the state.

'Section 47.171, Florida Statutes had provided for service of process; domestic and foreign corporations:

> When any domestic or foreign corporation shall fail to comply with sections 47.34 and 47.35 [predecessor statutes to §§ 48.091 and 607.3041, relating to the designation of the place for service of process, or in the alternative, with section 47.36 [see, section 48.091 historical notes], relating to the designation of the office of the circuit court as a place for service of process, then process directed to any domestic corporation may be served upon any officer or agent of such domestic corporation resident in the state or transacting business for it in the state. Process directed to any foreign corporation failing to comply with said sections may be served upon any agent of such foreign corporation transacting business for it in Florida.

Fla. Stat. § 47.171 (1957).

D.

(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this State.

(3) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under § 48.091. However, if service cannot be made on a registered agent because of failure to comply with § 48.091, service or process shall be permitted on any employee at the corporation's place of business.

(4) This section does not apply to service of process on insurance companies.

(5) Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

Fla. Stat. § 48.081 (1973).

Although the Florida Legislature amended §§ 48.081, 48.181 & 48.193 in 1984, (effectively removing the connexity requirement from the Florida Long-Arm Statutes), the connexity requirement still governs those actions arising before the effective date of the deletion of this section. Abrahantes, 474 So.2d at 274.[8]

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[8]In Abrahantes, supra, a case strikingly similar to the present lawsuit, plaintiffs were injured in an automobile accident on the Island of Grand Cayman, British West Indies, and brought suit against American Motors Corporation in Florida. In dismissing the complaint for lack of personal jurisdiction, the court stated:

> The plaintiffs' actions do not arise out of AMC's and Jeep's activities in Florida--the accident occurred in the Cayman Islands and the Jeep CJ-5 was neither manufactured nor sold in Florida. Prior to the 1984 amendments, both §§ 48.181 and 49.193 required that there be a 'connexity' between the cause of action and the defendant corporation's activities in Florida. No such connexity exists in the present case.

Id. at 273.

Plaintiffs argued that since they had filed this action subsequent to April 25, 1984, they were entitled to the amended portion of the section that did not require that the cause of action have some connection to the defendant's activities in Florida. Id. at 272-273. However, the Court held that this argument was without merit in that there was no clear intent by the Legislature that the amended section 48.193 be applied retroactively; i.e., to causes of actions occurring before the effective date of April 25, 1984. Id. at 274-275. Accordingly, Judge Jorgenson wrote that:

> While the language of section 4 of chapter 84-2 may reasonably be viewed to evince a legislative intent that the 1984 amendments be applied to suits filed after the effective date although the underlying causes of action accrue before, it does not 'clearly' and 'unmistakably' evince such an intent. Section 4 does not provide that the Act will apply to all actions brought on or after the Act's effective date. In light of the strong precedent holding that long-arm statutes operate prospectively only, we decline to hold otherwise absent an 'express and unequivocal statement' from the legislature indicating a different intent.

Id. at 274.

See also, Firestone Steel Products Co. of Canada v. Snell, 423 So. 2d 979, 980 (Fla. 3d DCA 1982) (holding that "the complaint fails to provide any basis for jurisdiction under section 48.193 inasmuch as neither the commission of the alleged tortious act, nor the resulting injury, occurred within the State of Florida."); Pollard v. Steel Systems Constr. Co., Inc., 581 F. Supp. 1551, 1552 (S.D. Fla. 1984) (holding that "where plaintiff was injured while working in Ecuador and allegations of negligence were all founded upon acts or omissions which occurred in Ecuador, there was not sufficient connexity between defendant's business activity in Florida and the cause of action to permit exercise of long arm jurisdiction under Florida statute."); General Tire & Rubber v. Hickory Springs Mfg., 388 So. 2d 264, 266 (Fla. 5th DCA 1980) (holding that it is "necessary to show first that the cause of action arose from an obligation or cause connected with the activities of the foreign corporation in the state before reaching the question as to whether the corporation

B. § 48.081(3) (1983) must be interpreted as a statute providing an alternative mechanism for service of process, certainly not a statute investing a trial court with absolute personal jurisdiction.

Plaintiffs request this Court read more into § 48.081 than the Legislature intended. The Legislature never intended to provide a connexity exception for service on a foreign corporation under § 48.081(3). Indeed, prior to 1984, the United States Supreme Court never ruled that service on a "registered" agent is sufficient absent any other facts demonstrating "minimum contact" with a forum state, to assert personal jurisdiction over a foreign corporation where the cause of action sued on did not arise from the activity of the foreign corporate defendant within the limits of the forum. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) spoke in terms of general fairness to the foreign corporation. While the Supreme Court held the record before it showed sufficient contacts with the forum to justify the assumption of jurisdiction, it intimated that more contacts were necessary where the cause of action sued upon had no

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was doing business within the state." Therefore, the complaint must be dismissed); Manus v. Manus, 193 So.2d 236 (Fla. 4th DCA 1966) (holding that "since the alleged cause of action against this foreign corporation is not shown to have arisen out of an obligation or cause connected with the activities of this foreign corporation in this state, we cannot reach the question of whether or not this foreign corporation was doing business in this state."); Bloom v. A.H. Pond Co., Inc., 519 F. Supp. 1162, 1168 (S.D. Fla. 1981) (holding that "personal jurisdiction over nonresident defendants in Florida is limited to situations where the cause of action arises from the doing of business in Florida or the cause of action has some other connection to a specified act committed in Florida.").

connection with the Defendant's business activities within the territorial limits of the forum. At the very least, under Perkins v. Benguet and other pre-1983 United States Supreme Court case authority, there appears to have been a constitutional mandate that required more than mere service on a "registered agent" to allow a forum state to subject a foreign corporation to personal jurisdiction in a cause of action initiated in the forum, but having no relation to the corporation's business activities within the state:

> The corporate activities of a foreign corporation which, under state statute, make it necessary for it to secure a license and to designate a statutory agent upon whom process may be served provide a helpful but not a conclusive test. For example, the state of the forum may by statute require a foreign mining corporation to secure a license in order lawfully to carry on there such functional intrastate operations as those of mining or refining ore. On the other hand, if the same corporation carries on, in that state, other continuous and systematic corporation activities as it did here--consisting of directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc., --- those activities are enough to make it fair and reasonable to subject that corporation to proceedings in personam in that state, at least insofar as the proceedings in personam seek to enforce causes of action relating to those very activities or other activities of the corporation within the state.

342 U.S. at 445. (Emphasis added). Though the Perkins court decided there was no federal due process requirement prohibiting the forum state (Ohio) from opening its courts to causes of action (where no connexity exists) or compelling the forum state

to do so, (basing this reasoning on International Shoe Co. v. Washington, 326 U.S. 310 (1945)), it held that mere designation of a "registered" agent, in and of itself, would not prove a conclusive "minimum contacts" test:

> [T]here have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. [Citing, Missouri, K. & T.R. Co. v. Reynolds, 113 N.E. 413 (Mass. App.) 117 N.E. 913 (Mass.) 255 U.S. 565.] [S]ome of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. [Citations omitted]. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. [Citation omitted]. [W]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporation defendant with which the state has no contacts, ties or relations.

342 U.S. at 418, citing, International Shoe Co., 326 U.S. at 159-160. The Supreme Court then ordered remand to the trial court for a determination of the "nature" of business activity Benguet had with Ohio, the forum state.

> [It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation, where the

> cause of action arose from activities entirely distinct from its activities in Ohio.}

342 U.S. at **419.** Thus, the Perkins court, (certainly commanding constitutional authority in **1967, 1973** and **1983)** appears to indicate service on a "registered agent" absent any other facts sufficient to show the nature of business activity between the foreign corporation and the forum state is insufficient to allow the forum state to exercise personal jurisdiction over the foreign corporation defendant. More facts must be alleged to allow the forum state court to assert personal jurisdiction in this case. Herein lies Plaintiffs' problem.

The issue certified to this Court by the Eleventh Circuit, merely asks whether service, absent any other facts describing the nature of the foreign corporation's business contacts with Florida, on a registered agent under s 48.081(3) is sufficient to allow a trial court sitting in Florida to assert personal jurisdiction over a foreign corporation absent connexity. Aided by reference to the Perkins v. Benguet, "suggestion," in the absence of other language to the contrary, the Florida Legislature, in **1967, 1973** and **1983,** must have intended to impose a "connexity" requirement on service of a foreign corporation before personal jurisdiction could attach. Otherwise, the Legislature would have provided Fla. Stat. s 48.081(3) **(1973)** with sufficient elements to meet the inquiry recognized by the Perkins court. For example, the Legislature could have crafted subsection (3) to allow for service on a foreign corporation

"actually transacting" business in Florida.[9] The statute fails to make such a proviso. Perkins teaches that a service-long-arm statute, to be valid, requires more facts indicating the "quality" and "nature" of contacts the foreign corporation has with the forum state, aside from mere service on a "registered" agent, to allow in personam jurisdiction to attach.[10]

In 1967, the Florida Legislature appeared to recognize this requirement when it passed an amendment to (then s 47.17), s 48.081 stating:

> Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business transacted within the state.

1967 Fla. Laws Ch. 67-399 (S.B. No. 877).

Thus, the Florida Legislature attempted to gauge the "amount" and "character" of business contacts a foreign corporation had in Florida, absent connexity with the State, to a Florida trial court's power to exercise personal jurisdiction over the

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[9] See, infra, s C, at p. 26. Since s 48.091 provides no indication of the "actual" character of a foreign corporation's business activity, that section, read in conjunction with subsection (3) satisfies none of the concerns recognized by Justice Burton in Perkins.

[10] "Defendant does not challenge Fla. Stat. s 48.081(3) (1973) as unconstitutionally applied in this case. We discuss the constitutional boundaries imposed by the United States Supreme Court only as an indication of the Florida Legislature's intent evinced by the language it used in 9 48.081 (1973).

corporation. The Legislature required "more" than mere service on a business agent or officer resident in the state. Rather, service was required on: (1) a business agent or officer, (2) resident in the State of Florida and the foreign corporation must (3) have a business office within the State a: (4) actually transact business from the office. If a Plaintiff satisfied elements (1)-(4) then service may be had on a resident "business agent" or "officer" on behalf of a foreign corporation absent connexity. No such exception exists for service under § 48.081(1), (2) & (3).[11] While § 48.081(5) provides a helpful gauge to the amount of business a foreign corporation conducts in the State of Florida (in a lawsuit, absent connexity), § 48.081(3) provides no such gauge. Rather, § 48.081(3) requires connexity before personal jurisdiction will attach:

> As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under **s. 48.091**. However, if service cannot be made on the registered agent because of failure to comply with **s. 48.091**, service of process shall be permitted on any employee at the corporation's place of business.

Fla. Stat. § 48.081(3)(1973).[12]

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[11] See, Youngblood v. Citrus Associates of the New York Cotton Exchange, Inc., 276 So.2d 505, 508 (Fla. 4th DCA 1973). See also, supra note 8.

[12] By use of the term "foregoing" the Legislature adds some insight to its intention that subsection 3 be employed as a substitute service mechanism for Fla. Stat. §48.081(1)(a),(b),(c), & 2. Use of the term **"foregoing"** also evinces the legislature's intent to prohibit substitution of subsection 3 for Fla. Stat. § 48.081(5). Thus, the Legislature expressly limited the connexity exception to subsection 5.

Whether intentionally or inadvertently, Plaintiffs blur the distinct lines between § 48.081(3) and § 48.081(5). Plaintiffs insist on using the overly expansive term "resident" agent as "interchangeable" with the term "registered" agent. While, the two terms may cover the same agent in some instances as applied to this action, the terms are distinguishable. Herein lies the dilemma generated by Junction Bit & Tool Co. v. Institutional Mortgage Co., 240 So. 2d 879 (Fla. 4th DCA 1970), a case authority which has become dangerously misread and misapplied over the years.

In Junction Bit, Plaintiff effected service of process on Defendant's (Junction Bit, a foreign corporation) resident agent. Id. at 880. However, it is not stated whether the "resident" agent was also a "business" agent for the foreign corporation. In all likelihood, based on the supporting legal authorities cited by the Fourth District Court of Appeal, the Junction Bit "resident" agent also acted as a "business agent."[13] Specifically, in rendering its opinion, the Fourth District Court of Appeal relies on Hoffman v. Air India, 393 F.2d 507 (5th

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[13] This "suspicion" may be confirmed by the Fourth District Court of Appeals' Youngblood decision. Unlike Junction Bit, Youngblood implicitly went to great length to distinguish service on a foreign corporation's vice-president from service on a foreign corporation's resident business agent. The Court emphasized that Citrus (the foreign corporation) had no offices, bank accounts, telephone listings, books of account or books of record in Florida, no goods stored in the State, no property in the state and no business operations in the State. 276 So. 2d at 506-507. Interestingly, two of the same jurists (Judges Cross and Walden) deciding Junction Bit, rendered the Youngblood opinion.

Cir.), cert. denied, 393 U.S. 924 (1968) (Service on "business agent" under s 48.081(5)) and H. Bell & Associates, Inc. v. Keasbey & Mattison Co., 140 So. 2d 125 (Fla. 3d DCA 1962) (service on head of the corporation/resident "officer" with business address in Florida, transacting business in Florida). Therefore, the danger in applying Junction Bit to this action, where service was effected on CT Corporation, (admittedly not a resident "business agent" of the Defendant), is that such application threatens to reach beyond the scope of authority relied on by the Fourth District Court of Appeal in rendering the Junction Bit opinion (also reaching past the line recognized by the United States Supreme Court Perkins opinion). For that reason, application of the wrongfully analyzed Junction Bit opinion would constitute error in this action.[14]

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[14] Based on the premise that Junction Bit is misapplied beyond the context of service on a resident "business" agent; Cassidy v. Ice Queen Int'l. Inc., 390 So. 2d 465 (Fla. 3d DCA 1980); Dumbroff v. Eagle Pitcher Industries, Inc., 450 So. 2d 923 (Fla. 3d DCA), rev. denied, 458 So. 2d 272 (Fla. 1984) and Eagle Pitcher Industries, Inc. v. Proverb, 464 So. 2d 658 (Fla. 4th DCA 1985); must be either distinguished from the instant lawsuit and/or seen as misapplications beyond the scope intended by the Legislature (and the United States Supreme Court) as expressed in Fla. Stat. s 48.081. Plaintiffs also stake their jurisdictional claim on Ranger Nationwide v. Cook, 519 So. 2d 1087 (Fla. 3d DCA), rev. denied, 531 So. 2d 167 (Fla. 1988). If the facts in Ranger Nationwide indeed support Plaintiffs' argument, then the law is misapplied for the same reason discussed above. However, based on the date of the Ranger Nationwide accident, connexity was no longer required in Florida.

Ranger Nationwide concerned an interstate truck collision which occurred on August 26, 1985, over 16 months and one day after the April 25, 1984 effective date set by the Florida Legislature's Amendments to [ss 48.081, 48.181 and 48.1931 the long-arm statutes. Since the accident occurred after the effective date of the Amendments, there was no longer a connexity requirement to be met. Unlike Ranger Nationwide, Appellants'

In order to qualify as connexity "exempt" under subsection (5), s 48.081 requires a foreign corporation to have a business office within the state that is actually engaged in the transaction of business, and that service may be made upon any officer or business agent residing in the state. For purposes of this statute, a "business agent" has been held to be a person who represents the corporation and who officially speaks for it in local business affairs of the corporation. Dade Erection Services, Inc. v. Simms Crane Services, 379 So. 2d 423 (Fla. 2d DCA 1980). Valdosta Milling Co. v. Garretson, 54 So. 2d 196 (Fla. 1951).

As the Valdosta court stated:

> A business agent as contemplated by the law means more than one appointed for a limited or particular purpose. It has reference to one having general authority to act for the corporation within the state and its duties must be closely related to the duties of the officers of the corporation within the state. He must be authorized to manage the business of the corporation or some branch of it within the state and stand in the shoes of the foreign corporation.

Id. at 197 (emphasis added).[18]

Cause of action accrued on May 5, 1983, nearly a full year before the revocation of the connexity requirement. Since the amendments have been held to be prospective in nature, Abrahantes, supra, the connexity requirement applies in full force to this action. Thus, the "dicta" Plaintiffs cite is invalid since connexity was no longer engrafted as a jurisdictional requirement prior to effectuating service on a foreign corporation under the Florida Long Arm statutes.

[18]As Junction Bit appeared to blur the distinction among terminology defining a "resident" agent, a "business" agent and a "registered" agent, so do Plaintiffs. Throughout their initial brief, Plaintiffs refer to a s 48.081(3) "agent" as a "resident"

At least one Court applied the Junction Bit ruling with some hesitation in adopting the absolute reading suggested by Plaintiffs. For example, in Iberia, Lineas Aereas de Espana, S.A. v. Knapp, 260 So. 2d 868, 869 (Fla. 3d DCA), cert. denied, 267 So. 2d 831 (Fla. 1972), the District Court of Appeal, Third District, affirmed the trial court's ruling that personal jurisdiction could be asserted over a foreign corporation where the corporation had qualified to do business in Florida, appointed a registered agent, the cause of action arose out of the corporation's business activities in Florida and it was demonstrated that "[t]he amount of the business so conducted in

agent, never acknowledging the differences illustrated under s 48.081 between a "registered" agent and a "resident" agent. See e.g., AB. 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, & 14.

Plaintiffs have never affirmatively established, before the District Court, that Defendant had a business agent in the state, as defined by Florida case authority. This fact was even more apparent at oral argument before Magistrate Turnoff when the following colloquy occurred:

> THE COURT: CT Corporation was doing business for Pepsico in this state?
> MR. FELDEN: No, Pepsico does do business within the state. They were the registered agents. There's a two part test to the line of cases cited by the plaintiff. The first line of cases -- I'm sorry -- the first prong of the test is if a defendant has a business office, which Pepsico clearly does. It's clearly authorized to do business within the State of Florida.
> CT Corporation meets second prong of the test --
> THE COURT: Where is the business office?
> MR. FELDEN: I don't know. I do not know where the business office is specifically. But the corporation is authorized to do business within the State of Florida...

(Tr.10-11).

In fact, on the service date, Defendant did not have a business office within the State actually engaged in the transaction of business therefrom, a requirement of Fla. Stat. s 48.081 (1973) that Plaintiffs ignored. (Tr.16).

Florida was ... substantial if not extensive." Id. Although citing Junction Bit, the District Court of Appeal appeared to require more than mere service on a "registered" agent. In fact, the Iberia "resident" agent appears to have been a "business" agent working out of an Iberia office in Florida which "for some years had been operated" by the business (resident) agent. Id. at 869.[16] Similarly, in Hertz Corp. v. Abdalia, 489 So. 2d 753 (Fla. 4th DCA 1985), the Fourth District Court of Appeal enforced a "connexity" requirement where service had been effected on Hertz Corporation's "registered" agent, CT Corporation.[17]

Plaintiffs' attempt to sidestep the connexity requirement of Fla. Stat. ss 48.181 and 48.193, by substituting Florida's service of process statute, [48.081] is similar to an attempt made by plaintiffs in Pollard v. Still Systems Constr. Co.,

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[16]Notably, two of the Iberia jurists, Judges Carroll and Barkdull, also sat on the panel rendering the 1962 H. Bell & Associates. 140 So.2d 125 (Fla. 3d DCA 1962) opinion.

[17]See, A-102-108. Although the Court later withdrew its opinion relative to Hertz Corporation, noting that Hertz Corporation had conceded, in its appellate brief, to the jurisdiction of Florida courts, the initial analysis provided by the Court (i.e., that connexity is required even though service was effected on Hertz Corporation's "registered" agent) is helpful in that it indicates that the rule of Junction Bit probably does not reach past service on a resident "business" agent. 489 So. 2d at 754. Recently, on a related appeal involving the same parties and issues presented to the Fourth District Court of Appeal in Abdalia I., the Fourth District Court of Appeal reversed the Circuit Court once more holding that Plaintiffs Amended Complaint continued to lack the requisite facts necessary to show a "connexity" between Hertz International and Florida to enlist the Florida Circuit Court with power to exercise personal jurisdiction over the foreign corporation. See, Hertz International, Ltd. v. Abdalia, 14 F.L.W. 677 (Fla. 4th DCA March 15, 1989).

Inc., 581 F. Supp. 1551 (S.D. Fla. 1984) and was specifically rejected. In Pollard, plaintiffs brought suit against the defendant corporation for an accident which occurred in Ecuador. The Court held that personal jurisdiction over non-resident defendants in Florida is limited to situations where the cause of action arises from the doing of business in Florida or the cause has some other connection to a specified act committed in Florida. Moreover, the Court noted plaintiffs' attempt to avoid the defendant corporation's argument that the cause of action did not arise out of business the corporation had conducted in Florida by use of Fla. Stat. § 48.081. In fact, unlike the case at bar, plaintiffs actually served the vice-president of the defendant corporation. However, the Court held that plaintiffs' attempt to use Florida's service of process statute was futile in that the vice-president was not a business agent as contemplated under the statute and that the purpose of the statute is to insure that the corporation will receive notice of the action, not to obtain jurisdiction. Since the requisite connexity was lacking in this case and service was improper, the District Court dismissed the complaint. See also, Tellschow v. Aetna Casualty & Surety Co., 585 F.Supp. 593, 594 (S.D. Fla. 1984); Limardo v. Corporacion Intercontinental, 590 F.Supp. 1109, 1110-1111 (S.D. Fla. 1984).[18]

[18]Plaintiff served Defendant, Corporacion International, through its "business agent" in Florida, Armando Fiallo. (A.96-100).

Thus, prior to April 25, 1984, personal jurisdiction must be established by a twoprong test: (1) service; and (2) the act committed falls under the connexity requirement. Since this accident occurred in Jamaica, Plaintiffs cannot establish the requisite connexity between the alleged act and this forum.

In addition, the Florida case authority cited herein,[19] uniformly regard Fla. Stat. § 48.181 entitled "Service on Non-Residents Engaging in Business of the State" as being read in conjunction with Fla. Stat. § 48.081 and 48.193, which require that the cause of action arise out of the foreign corporate defendant's activities in the state. Fla. Stat. § 48.181(2), Florida Statutes, states:

> If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

Meanwhile, Fla. Stat. § 48.081(3) states:

> As an alternative to all the foregoing, process may be served on the agent designated by the corporation under section 48.091 [entitled "Corporation; Designation of Agent and Place for Service of Process"].

It is apparent that service was made in this case either under Fla. Stat. § 48.181(2), or Fla. Stat. § 48.081(3), since both of these statutes are virtually identical with respect to service on a registered agent. Since 48.081(3) must be read in conjunction with §§ 48.181 & 48.193, Plaintiffs cannot maintain a cause of action in Florida where the alleged action did not occur within Florida.

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[19] See, supra, notes 8 & 11.

C. Fla. Stat. § 48.091 offers no measure of the "nature" and "character" of contacts a foreign corporation has with the State of Florida.

The Court's jurisdictional inquiry next turns on the issue whether Fla. Stat. § 48.091 provides sufficient detail of a foreign corporation's contacts to allow an exemption from connexity. Certainly, Fla. Stat. § 48.091 (1983) provides no gauge to the amount of business or nature and/or character of contacts a foreign corporation has with the State of Florida. Fla. Stat. § 48.091 (1983) provides that:

> (1) Every Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with chapter 607.
>
> (2) Every corporation shall keep the registered office open from 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall keep one or more registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served.

§ 48.091 offers no assistance in gauging the "amount" of business required by a foreign corporation prior to establishing a registered agent in Florida. The requirement that a foreign corporation appoint a registered agent is only based on that

corporation's "intent" to transact business in Florida.[20] Thus, the emphasis indicated by the legislature's evaluation of **§ 48.091** [and Fla. Stat. **§ 607.304** (1983)] is placed on a foreign corporation's "right" to transact business in Florida rather than the actual conduct of business in Florida. Under Fla. Stat. § **607.304 (1983):**

> No foreign corporation shall have the right to transact business in this state until it shall have filed an application for authority to do so with the Department of State. No foreign corporation shall be entitled to file an application for authority under this chapter to transact any business in this state which a corporation organized under this chapter is not permitted to transact.

Since the Legislature speaks in terms of the "right" to transact business in Florida, designation **of** a registered agent, (and submittal of the concomitant application to acquire the "right" to transact business in Florida), under Fla. Stat. § **48.091,** ipso

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[20] In their initial brief, Plaintiffs set forth the premise that service on a foreign corporation's resident agent is treated as an exception to the connexity requirement because of the special status a resident agent enjoys on behalf of the corporation. Plaintiffs base this premise on the statement that:

> When a foreign corporation employs a resident agent to accept service within a state, that corporation anticipated and implicitly consents to be sued within that jurisdiction due to the amount of business it conducts therein.

See, AB. **13-14.** Plaintiffs provide no legal authority for this proposition. In fact, no authority exists to support this flawed proposition. Fla. Stat. **§ 48.091** requires no active level of business contacts prior to allowing a foreign corporation the "right" to transact business in Florida. Thus, designation of a "registered" agent provides no indicia of the "amount" or "character" of contacts a foreign corporation may have with the forum state. Absent any other facts, in **1983,** designation of a registered agent is, therefore, insufficient to confer the State of Florida with personal jurisdiction over a foreign corporation absent connexity.

facto, does not automatically signify a foreign corporation has sufficient contacts with the State of Florida to allow a trial court to exercise personal jurisdiction over the foreign entity.[21] As mentioned by Justice Burton, in Perkins v. Benquet Consolidated Mining Co. the designation of [illegible] may furnish no indication of the nature and character of contacts a particular foreign corporation may have with the state of Florida. As drafted, Fla. Stat. § 48.091 fulfills Justice Burton's prophecy.

D. Florida legislative intent evinced by language found in Fla. Stat. § 48.081 contradicts Plaintiffs' argument.

Unquestionably, Plaintiffs request this Court adopt an interpretation of Fla. Stat. § 48.081 which violates all conven-

[21] The mandatory "authorization" requirement satisfies legitimate state purposes aside from "notifying" a foreign corporation of a lawsuit brought against the company. One important reason a foreign corporation is required to "qualify to transact business in Florida" is to provide the Secretary of State with adequate information to allow the Department of Revenue the ability to track the foreign corporation's intrastate and interstate business activities. See, Fla. Stat. § 220, et. seq. (1983).

Corporations subject to the Florida Income Tax Code include any "business entity authorized to do business in this State,... Fla. Stat. § 220.03 (1983). Therefore, an objective satisfied by §§ 48.091 & 607.304 is to allow the Department of State (Department of Revenue) the ability to judge whether a particular foreign corporation is subject to the state taxing authority. E.g, Fla. Admin. Code V.6, 12C-1.003 (1989). In this light, the requirement that a corporation appoint a "registered agent" certainly would not provide the corporation adequate notice where it could be hauled into a Florida court as a defendant when the company is not actively transacting business in Florida.

tional rules of statutory interpretation in Florida. Plaintiffs' reliance on Junction Bit & Tool Co. requires this Court to ignore the provisions of Fla. Stat. § 48.081(5) (1983), a provision, added in 1967, which created the only codified exception to the connexity requirement under the Florida Long Arm Statutes.

A fair reading of Fla. Stat. § 48.081(1)-(3) (1983), as well as Fla. Stat. §§ 48.181 & 48.193 (1983), leads to the inescapable conclusion that, the Florida Long Arm Statutes, in 1983, required connexity as a condition precedent to allowing a trial court to acquire personal jurisdiction over a foreign corporation. § 48.081 must not be read without reference to the other Florida Long Arm Statutes, prevalent in 1983. The requirements of doing business and connexity as delineated in Fla. Stat. 9 48.181 (1971) must be read in pari materia with Fla. Stat. § 48.081 (1971 & Supp. 1983). Youngblood v. Citrus Associates of the New York Cotton Exchange, Inc., 276 So. 2d 505, 508 (Fla. 4th DCA 1973).

In Youngblood, plaintiffs argued (as in this case), that process served under Fla. Stat. § 48.081 confers in personam jurisdiction over a foreign corporation in Florida courts. Plaintiffs served the vice president of the corporation under section 48.081(1), a person of higher authority, than the registered agent that was served in the case sub judice. In dismissing the complaint for lack of personal jurisdiction, the court stated:

> This statute [48.081], under the circumstances of the instant case cannot be applied

> alone, as to do so would violate a fundamental maxim of statutory construction, that statutes are to be construed to avoid a declaration of unconstitutionality or grave doubts on that score. Therefore, we determined that the requirements of doing business and connexity as delineated in section 48.181, Florida Statutes (1971), must be read in pari materia with section 48.081, F.S.A. (1971).

Id. at 508 (emphasis added)."

Thus, Youngblood stands for the proposition that service, absent connexity, under Fla. Stat. § 48.081 does not confer personal jurisdiction.[23] When read in connection with Fla. Stat.

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[2] 'As an additional rationale for reading the "connexity" requirement into Fla. Stat. 9 48.081, it is respectfully suggested that the statutory rule of construction, "inclusio unius est exclusio alterius" applies herein to restrict the district court from allowing service on a registered agent absent the requisite connexity. See e.g., Askew v. Schuster, 331 So. 2d 297, 298 (Fla. 1976); State v. Hodges, 506 So. 2d 437, 440 (Fla. 1st DCA), rev. denied, 515 So. 2d 229 (Fla. 1987); National Airlines, Inc. v. Wikle, 451 So. 2d 908, 913 (Fla. 1st DCA 1984).

> Where, as in the instant case, the interpretation problem arises because of inconsistent provisions within the statute or with a prior unrepealed portion of the statute, the fundamental rule of statutory construction is that "the last expression of the legislative will prevails." Askew v. Schuster, 331 So. 2d 297, 300 (Fla. 1976); Albury v. City of Jacksonville, 295 So. 2d 297 (Fla. 1974); State v. City of Boca Raton, 172 So. 2d 230 (Fla. 1965); 1A Sutherland Statutory Construction § 22.22 (4th Ed. 1985).

Hodges, 506 So. 2d at 440. Applied to the instant action, the aforementioned doctrine requires this Court to discern the "last expression of the legislative will" relative to the "connexity" requirement as that announced in 1973, when the Florida Legislature passed Fla. Stat. § 48.193. Fla. Stat. § 48.193 (1973) specifically required "connexity" between a plaintiff's cause of action and defendant's business activities in Florida.

[23] In Illinois Central Railroad Co. v. Simari, 191 So. 2d 427 (1966) this Court attached the same connexity requirement to § 47.17.

> It is true that the Zirin decision dealt in terms only

§ 48.181, it is unequivocally clear that Plaintiffs must establish their cause of action arises from Defendant's corporate activity in the State of Florida. This connexity requirement must be read into all the 1983 Florida Long-Arm statutes. When service is coupled with the requisite connexity, personal jurisdiction is established. Therefore, Fla. Stat. § 48.081 (1973), standing alone, "merely provides an alternative method of service." Youngblood, 278 So.2d at 509; April Indus., Inc. v. Levy, 411 So.2d 303, 304-305 (Fla. 3d DCA 1982).

CONCLUSION

This products liability action should have been initiated in Jamaica, not Florida. Jamaica is where Plaintiffs (1) allegedly purchased the subject bottle, (2) where the alleged action occurred and, (3) where acts of negligence, if any, may have occurred. The Florida legislature, Florida case authority and Federal case authority have spoken: Because Plaintiffs' injury

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> with Sec. 47.171, whereas, the court below held that service herein was authorized by both that section and Sec. 47.17. However, the subparagraph (5) of Sec. 47.17, which is applicable here, contains the same language that was construed in Zirin; there is therefore no reason why the same condition [i.e., connexity] should not apply to service attempted under Sec. 47.17.

Id. at 428, citing Zirin v. Charles Pfizer, 128 So. 2d 594 (Fla. 1961). Though creating an exception from connexity for service on a resident business agent or officer in the state of Florida, the Legislature's 1967 amendment certainly did not revoke the connexity requirement imposed on subsections (1)-(3). A construction of Fla. Stat. § 48.081 (1973) is favored which gives effect to every clause and every part of the statute, thus providing a consistent and harmonious whole. Vocelle v. Knight Bros. Paper Co., 118 So. 2d 664 (Fla. 1st DCA 1960) ("Ut Res Magis Veleat Quam Pereat").

has no "connexity" with any activities of Defendant in Florida, personal jurisdiction may not lie in a Florida court in a cause of action accruing before April 25, 1984.

Since effective service was made on Defendant's registered agent, in Florida, connexity is required. No other result would comport with the clear intent of the Florida legislature, Florida case authority and Federal case authority. Absent sufficient facts alleging the requisite connexity, Plaintiffs have failed to meet the burden of proof required to assert personal jurisdiction over Defendant. Given the opportunity to amend their Complaint, Plaintiffs have still failed to allege the requisite connexity. Accordingly, Defendant requests this Court answer the question certified by the Court of Appeals, Eleventh Circuit in the negative, holding that in actions accruing prior to April 25, 1984, service on a registered agent pursuant to Fla. Stat. § 48.081(3) (1973) does not allow a Florida trial court to assert personal jurisdiction over a foreign corporation where the cause of action sued on did not arise from the activity of the foreign corporate Defendant in Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Brief was mailed this 7th day of April, 1989, to Christian B. Felden, Esquire, Sullivan, Ward, Bone, Tyler, Fiott & Asher, P.C., Attorneys for Appellants, Poinciana Professional Park, 2590 Golden Gate Parkway, Suite 101, Naples, Florida 33942.

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