IN THE STATE OF FLORIDA
SUPREME COURT

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

CHARLES WHITE and
ROSANNA SANTINI,

Plaintiffs-Appellants,

-vs-

PEPSICO, INC., a Delaware corporation,

Defendant-Appellee,

and

ALUMINUM COMPANY OF AMERICA, a Pennsylvania corporation d/b/a ALCOA; and DESNOS & GEDDES, LTD., a Dutch Antilles corporation,

Defendants.
_____/

Case No.: **73,784**

United States Court of Appeals No.: **88-5135**

United States District Court No.: 87-10038-CIV-KING

REPLY BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS, CHARLES WHITE AND ROSANNA SANTINI

SULLIVAN, WARD, BONE, TYLER,
FIOTT & ASHER, P.C.
By: CHRISTIAN B. FELDEN
Attorney for Plaintiffs-Appellants
Poinciana Professional Park
2590 Golden Gate Parkway
Suite **101**
Naples, Florida **33942**

SULLIVAN, WARD
BONE, TYLER,
FIOTT & ASHER
ATTORNEYS AND COUNSELO
PROFESSIONAL CORPORATIOI
000 MACCABEES CENTEI
25800 NORTHWESTERN HV
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-02
(313)746-0700

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SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222

(313) 746-0700

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STATUTES

SULLIVAN. WARD.
BONE, TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELORE
PROFESSIONAL CORPORATION
2000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI48037-0222

(313) 746-0700

STATEMENT OF QUESTION PRESENTED

DID THE UNITED STATES DISTRICT COURT ERR IN ADOPTING THE MAGISTRATE'S REPORT RECOMMENDING DISMISSAL OF PLAINTIFFS* COMPLAINT FOR LACK OF PERSONAL JURISDICTION WHERE UNDER FLORIDA LAW, A COURT ACQUIRES PERSONAL JURISDICTION OVER A FOREIGN CORPORATION WHERE THE CORPORATE DEFENDANT IS QUALIFIED TO TRANSACT BUSINESS IN FLORIDA AND THE CORPORATE DEFENDANT'S DESIGNATED RESIDENT AGENT IS SERVED IN FLORIDA?

Plaintiffs-Appellants say "Yes"

Defendant-Appellee says "No"

The District Court says "No"

SULLIVAN, WARD,
BONE, TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELORE
PROFESSIONAL CORPORATION
2000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI 48037-0222
(313) 746-0700

ARGUMENT

THE UNITED STATES DISTRICT COURT ERRED IN ADOPTING THE MAGISTRATE'S REPORT RECOMMENDING DISMISSAL OF PLAINTIFFS' COMPLAINT FOR LACK OF PERSONAL JURISDICTION WHERE UNDER FLORIDA LAW, A COURT ACQUIRES PERSONAL JURISDICTION OVER A FOREIGN CORPORATION WHERE THE CORPORATE DEFENDANT IS QUALIFIED TO TRANSACT BUSINESS IN FLORIDA *AND* THE CORPORATE DEFENDANT'S DESIGNATED RESIDENT AGENT IS SERVED IN FLORIDA.

Although this Statement of the Argument was already included in the initial Brief filed with this Honorable Court on behalf of Plaintiffs-Appellant Charles White and Rosanna Santini, it is repeated here because Defendant-Appellee Pepsico, Inc.'s Brief on Appeal served merely to cloud the issue by its discussion of irrelevant considerations and its reliance on distinguishable case law.

In its Brief, Defendant gave little attention to the consistent construction which panels of the Florida District Court of Appeals have given to Section 48.081(3), F.S.A. Defendant has ignored the emphatic recognition by these panels that, under this statute, a foreign corporation which voluntarily registers and qualifies to do business in Florida is subject to the process of the Florida courts no matter the nature of the claim and notwithstanding its lack of connexity with the entity's Florida business. Junction Bit and Tool Co v Institutional Mortaaae Co, 240 So2d 879 (Fla. 4th DCA 1970), Cassidv v Ice Oueen Int'l, Inc, 390 So2d 465 (Fla. 3rd DCA (1980), Dombroff v Eagle-Picher Industries, Inc, 450 So2d 923 (Fla. 3rd DCA 1984), Pet. for Rev. Den. 458 So2d 272 (Fla.

SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313) 746-0700

1984), Ranaer Nationwide, Inc v Cook, 519 So2d 1087 (Fla. 3rd DCA 1988).

Defendant chose to give attention to this line of authority only by extracting some sort of meaningless distinction between a "resident agent" and a "registered agent." However, all that is important is that each of the cases involved a foreign corporation which (1) had voluntarily registered and was qualified to do business in Florida; and (2) was properly served through its designated registered agent which it had hired for that particular purpose. In all these cases, service upon the registered agent under Section 48.081(3) conferred jurisdiction over the non-resident corporation, even absent connexity.

Rather than raising a valid distinction between the instant cases and Plaintiffs' cited authority, Defendant offers case citations and statutes which have no bearing on this action.

As expected, none of the authority cited by Defendant (which authority required a connection between the cause of action and the foreign corporation's Florida business) addressed jurisdiction obtained by service upon a registered agent under Section 48.081(3). Rather, Defendant's cases pertained to foreign corporations which were apparently not registered to conduct business within Florida and which were insufficiently subject to service of process under Sections

SULLIVAN, WARD,
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HW'
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313) 746-0700

48.181 and 48.193, (e.g. service upon a representative which was not a registered or business agent of the entity).

In Junction Bit, supra, the District Court of Appeals distinguished service upon registered agents under Section 48.081(3) from other modes of service upon representatives of foreign corporations and relaxed the connexity requirement in the former as follows:

> We do not believe that the due process clause requires the imposition of such a limitation on service of process under F.S. 1969, Section 48.081(3), F.S.A., on the resident agent of a foreign corporation, the very nature of the agency makes it reasonable to conclude that service on the agent will adequately notify the corporation of the suit and provide it with an opportunity to defend. Hence, the notice requirement of the due process clause is fully satisfied... The other requirement imposed by due process - that the foreign corporation have certain minimum contacts with the state - is not questioned here. We believe, however, that such minimum contacts would seem patently established where, as here, the foreign corporation has actually qualified under Florida law to transact business in this state and has appointed a resident agent for service of process as required by F.S. 1969, Section 48.091 (F.S.A.).
>
> 240 So2d at 882.

Indeed, it is this constitutional consideration which allows service upon a foreign corporation's resident agent to serve as an exception to the connexity requirement which otherwise restricted the jurisdiction of Florida courts over a foreign entity at the time this action arose.

SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI 48037-0222
(313) 746-0700

However, to further cloud this simple issue, Defendant ignores Junction Bit and argues that due process considerations preclude the holding of Junction Bit and its progeny. Yet, even Defendant's own cited authority recognizes that service of process statutes which allow service upon a registered agent without connexity do not violate due process.

Particularly, in Perkins v Benauet Consolidated Mining Co, 342 US 437 (1951), the United States Supreme Court considered this identical constitutional attack and held "[W]e hold that the 14th Amendment leaves Ohio free to take or decline jurisdiction over the corporation." 342 US at 438.

In Confederation of Canada Life Insurance Co v Veaa Y. Arminan, 144 So2d 805 (Fla. 1962), the Florida Supreme Court also upheld the constitutionality of the assertion of jurisdiction by Florida courts over a foreign corporation which was registered to conduct business (insurance in particular) within the state and which appointed the state's commissioner of insurance to receive service of process. The Supreme Court, citing Perkins, held that foreign corporations qualifying to do business within the state become amenable to service of process upon the registered agent even as to causes of actions not arising out of its transactions within the state:

> If a suit in personam on a cause not arising in the state of the forum may be properly brought against a foreign corporation which has not registered to do business or designated an agent for accepting service of process without offending the requirement of due process, as was held in the Perkins case, logic and

SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313) 746-0700

> reason compel the conclusion that such an action may be properly brought against a foreign corporation which has by registering to do business in this state and by designating the commissioner of insurance as its agent pursuant to 624.0221, F.S.A. subjected itself to the "service of all legal process issued against it in any civil action or proceeding in this state." The Perkins case makes clear that notice to the corporation must be fair and ample. In this case it is not contended that the petitioner corporation did not have fair and ample notice of the suit against it.
>
> 144 So2d at 810.

Consequently, Defendant's assertion that the Legislature could not have intended Section 81.083(3) to be interpreted to relax the connexity requirement where the due process clause would thereby be violated is entirely misplaced. Moreover, the absurdity of Defendant's logic becomes even more apparent considering that the Legislature amended its statutorv scheme to terminate the ambiguity in Section 48.081(3), codify the case law interpretation of that statute and to expressly state:

> (2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of the state, **whether or not the claim arises from that activity.**
>
> 48.193(2), F.S.A. (1983) [Emphasis added].

Obviously, had the Legislature agreed with Defendant that the due process clause required connexity in this situation, it would not have codified the case law interpretation of Section 48.081(3) (1963) in such a manner.

SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313) 746-0700

Defendant further argues that Section 48.081(5) F.S.A. (1983) contains the only codified exception to the connexity requirement under the Florida long arm statutes. This section relaxes the connexity requirement where a foreign entity maintains a business office within the state and the service is effectuated upon that entity's "business agent." Defendant apparently reasons that the Legislature did not intend to extend the exception to the connexity requirement to other circumstances.

However, merely because the Legislature expressly codified an exception to the connexity requirement in Section 48.081(5) does not require a finding that the Legislature did not intend to recognize a similar exception where service is effectuated under Section 48.081(3). As noted, both the United States Supreme Court and the Florida Supreme Court have long recognized that service upon a registered agent appointed for that particular purpose by a corporation qualified to conduct business within the state satisfies due process considerations even in the absence of connexity. Perkins, supra, Confederation of Canada Life Insurance, supra. The Florida District Court of Appeals has consistently held that where Section 48.081(3) does not offend due process principles, it should not be interpreted as requiring connexity. See Junction Bit, supra, at 880-882.

Consequently, the Legislature did not have to expressly codify an exception to the connexity requirement in Section

SULLIVAN, WARD, BONE, TYLER. FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI 48037-0222
(313)746-0700

48.081(3) where it has long been established that service consistent with that statute is constitutional. Moreover, where the Legislature subsequently codified case law interpretation of the ambiguous statute, that codification serves as a more reliable indicia of the Legislature's intent in enacting Section 48.081(3) **(1969)** than does the language of an unrelated portion of the statute.

Finally, Defendant points out that the **1984** amendments to the Florida long arm statutory scheme which effectively removed the connexity requirement in all situations has not been retroactively applied to causes of actions accruing prior to the effective date of the amendments. American Motors Corp v Abrahantes, **474** So2d **271, 274 (1985).** In response, Plaintiff would alternately assert that Abrahantes was wrongfully decide and that the statutory amendments should be held to be applicable to this action.

In this regard, Plaintiff initially acknowledges that the order of certification describes the certified issue as follows:

> Whether, in actions that accrued before **1984,** service on a registered agent pursuant to Fla. Stat. Annot. Section 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.

Although this statement of the issue may not on its face incorporate a reference to the retroactivity of the **1984**

SULLIVAN, WARD. BONE, TYLER. FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI 48037-0222
(313)746-0700

amendments, the certified issue arguably cannot be fully resolved without consideration of the retroactivity issue. Moreover, the opinion of the United States Court of Appeals in this action further stated that "we do not intend the particular phrasing of this question to limit the Supreme Court of Florida in its consideration of the problems posed by the entire case." And, it is well-settled that when an issue is certified to the Florida Supreme Court, that court is interested in the entire decision of the certifying court and not just the "question" certified. Confederation of Canada Life Insurance Co v Vega Y. Arminan, supra, at **807**. Because consideration of the retroactivity of the **1984** amendments is necessary for a proper resolution of this appeal was raised in Defendant's Brief on Appeal, and might indeed render the primary issue raised in this appeal moot, Plaintiff will briefly address the issue here.

As stated, in **1984**, the Florida Legislature amended Section **48.181** and Section **48.193** to remove the connexity requirement from all the Florida long arm statutes. Moreover, Section **4**, Chapter **84-2**, Laws of Florida provides:

> This act shall take effect upon becoming a law and shall apply only to actions brouaht on or after the effective date. (Emphasis supplied).

The act became effective on April **25, 1984.**

In Abrahantes, supra, the Florida District Court of Appeals rejected the contention that the amendments would have

SULLIVAN. WARD.
BONE. TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
2000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313)746-0700

retroactive effect to causes of actions which accrued prior to the effective date.

The Abrahantes Court accurately noted that, in Florida, a statute is not to be given retroactive effect unless its terms show clearly that such an effect was intended. 474 So2d at 274. Reviewing the language of Section 4, Chapter 84-2, the Court of Appeals concluded that, while that act "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 accrued before it, 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." Id.

Plaintiffs submit that Abrahantes (and case law following Abrahantes) was wrongfully decided. Reviewing the plain language of the statute, the act clearly specifies that the amendments would apply "only to actions brought on or after the effective date." The statute did not provide a requirement that the cause of action also accrue subsequent to the effective date. Consequently, to the conclusion reached by Abrahantes, the statute does clearly indicate an intent that it apply to all causes of actions filed after the effective date.

The immediate action was filed on or about April 7, 1987, long after the effective date of the 1984 amendments. Therefore, even if this Honorable Court were to conclude that

SULLIVAN, WARD, BONE. TYLER. FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD. MI 48037-0222
(313) 746-0700

Section 48.081(3) **(1969)** required connexity to causes of actions accruing prior to **1984,** it should nonetheless conclude that the **1984** amendments governed this action.

For the foregoing reasons, as well as the reasons discussed in the initial Brief on Appeal, Plaintiffs-Appellants Charles White and Rosanna Santini respectfully request this Honorable Court to reverse the Order of Dismissal entered by the United States District Court on December **4, 1987.**

Respectfully submitted,

SULLIVAN, WARD, BONE, TYLER,
FIOTT & ASHER, P.C.

By: Christian B. Felden
CHRISTIAN B. FELDEN
Attorney for Plaintiffs-Appellants
Poinciana Professional Park
2590 Golden Gate Parkway
Suite **101**
Naples, Florida **33942**

Date:
wp:dm

SULLIVAN. WARD.
BONE, TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313)746-0700

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PROOF OF SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF Oakland)

CHRISTIAN B. FELDEN, being first duly sworn, deposes and says that on the 24th day of April, **1989**, he served a true copy of REPLY BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS, CHARLES WHITE AND ROSANNA SANTINI, upon all counsel of record:

MYRON SHAPIRO, ESQ.
DAVID WEISS, ESQ.
HERZFELD & RUBIN
801 Brickel Avenue
Suite **1000**
Miami, Florida **33131**

SULLIVAN, WARD.
BONE, TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELOR
PROFESSIONAL CORPORATION
000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313)746-0700

GERALD TAYLOR, ESQ.
RUMBERGER, KIRT, ET AL
11 East Pine Street
P.O. Box 1873
Orlando, Florida 38202

ROBERT M. ROACH, JR., ESQ.
MAYOR, DAY & CALDWELL
1900 Republic Bank Center
Houston, Texas 77002

by placing same in properly addressed envelopes, and depositing same in the United States Mail with postal charges fully prepaid.

Christian B. Felden
CHRISTIAN B. FELDEN

Subscribed and sworn to before me this
24 day of April, 1989

Pat Selesko
NOTARY PUBLIC
Oakland, Oakland County, Michigan
My Commission Expires: 2/3/90

wp:dm

SULLIVAN. WARD,
BONE, TYLER.
FIOTT & ASHER
ATTORNEYS AND COUNSELORS
PROFESSIONAL CORPORATION
2000 MACCABEES CENTER
25800 NORTHWESTERN HWY
POST OFFICE BOX 222
SOUTHFIELD, MI 48037-0222
(313) 746-0700