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IN THE FLORIDA SUPREME COURT
CASE NO. 82,412

CALVIN WILEY,

Defendant/
Petitioner,

vs.

CARRIE LINN YOUNG ROOF,

Plaintiff/
Respondent.

PETITIONER, CALVIN WILEY'S BRIEF ON THE MERITS

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INTRODUCTION

Petitioner, Calvin Wiley, seeks review of the Second District Court of Appeal's decision below, which overturned the trial court's order granting his (along with the other defendants') motion to dismiss. In this brief, the petitioner will be referred to as "petitioner" or "Wiley". The respondent, plaintiff below, will be referred to as "respondent".

References to the record will be by use of "R" followed by the appropriate page number. References to the appendix will be made by the use of "App" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Respondent filed her initial complaint on April 18, 1991. After its dismissal, she filed a four-count first amended and supplemental complaint, on October 9, 1991, claiming that the petitioner had sexually abused her nineteen years earlier, when she was fifteen years old. (App-1)

Petitioner asserted, in moving to dismiss, that the statute of limitation had extinguished respondent's cause of action and that it was therefore time-barred, pursuant to Florida Statute § 95.11(3)(o) (1991).

The trial court concluded that each count of the amended complaint sounded in tort, and that the complaint demonstrated on its face that the statute of limitation for such tort actions had run. Thus, the trial court dismissed the amended complaint. (R-64)

The respondent appealed this dismissal to the Second District Court of Appeal on December 18, 1991. While that appeal was pending, however, the Florida Legislature amended Florida Statute § 95.11 (1991), thereby creating a new limitation period for causes of action for intentional torts based on abuse, pursuant to Florida Statutes §§ 39.01, 415.102, or 826.04. See Chapter 92-102, Section 2, Laws of Florida (1992).

Section 7 of the amended statute purported to permit the filing of an action for abuse within, instead of the previous four-year limitation, seven years of the victim's

attaining majority, four years after the victim leaves the dependency of the perpetrator, or four years from the victim's discovery of both the injury and the casual relationship between the injury and the abuse, whichever occurs later. Section 7, however, is irrelevant to this matter; nineteen years had elapsed between the abuse alleged to have occurred when the respondent was fifteen years old and her assertion of a cause of action. She had long attained her majority, and had been long removed from the dependency of the alleged abuser. Nor does her claim involve any issue of "delayed discovery".

Instead, on appeal, the respondent relied on Section 2 of the amended statute to revive her previously extinguished cause of action (which she could not have done in the trial court, because Section 2 was enacted after the dismissal of her cause). That provision purports to resurrect **all** claims for abuse pursuant to Florida Statutes {{ 39.01, 415.102, or 826.04, which were already barred under Section 7, for a circumscribed window of four years from the effective date of the act. Because the respondent's original action was not only barred at the time that she initially filed suit, but dismissed for that reason, this is the only basis upon which she can now allege her suit.

In response to the respondent's attempt to revive her time-barred claim, the petitioner asserted in the appellate court, among other arguments, that:

1. he has a vested right to the defense of time bar afforded by the statute of limitation, which is entitled to due process protection from retroactive legislation; and

2. the trial court's dismissal before the legislature's amendment of the statute created a vested substantive right in the petitioner to assert the defense of time bar, and thus the law in effect at the time of the ruling below must apply to the petitioner, rather than the law at the time of appeal.

The district court of appeal rejected these arguments and declared the statute valid on June 18, 1993.

On October 13, 1993, the petitioner filed an amended brief on jurisdiction in this Court. This Court granted review on January 21, 1994.

SUMMARY OF ARGUMENT

Respondent's First Amended and Supplemental Complaint was property dismissed by the trial court. On the face of the complaint, respondent presented sufficient facts to establish that the claims she attempted to assert were time-barred at the time of her filing of the amended complaint, as a matter of law. The defendant's right in the defense of time-bar vested when the statute of limitation applicable at the time, ran. Furthermore, the dismissal which followed was an adjudication on the merits which also vested the right of the defendant in the extinguishment of the cause of action.

Once extinguished, subsequent legislation cannot resuscitate respondent's cause of action without violating the petitioner's guaranties of due process of both the Florida and United States Constitutions, and it was error for the Second District Court of Appeal to permit it to do so.

ARGUMENT

THE PETITIONER HAS A VESTED RIGHT TO ASSERT THE DEFENSE OF THE TIME BAR OF THE RESPONDENT'S CAUSE OF ACTION ONCE THE STATUTE OF LIMITATION EXTINGUISHES IT, AND THE LEGISLATURE MAY NOT CONSTITUTIONALLY REVIVE IT.

Pursuant to Florida Statute (95.11(3) (1991), "an action for . . . battery . . . or any other intentional tort [must] be commenced within four (4) years," or it would be time-barred. Respondent alleged the occurrence of a battery nineteen years prior to the filing of her complaint; as in Lindabury v. Lindabury, 552 So.2d 1117 (Fla. 3d DCA 1989), the statute of limitation in effect at the time of the filing of her complaint barred such a cause of action.1

Subsequent to the trial court's dismissal here of respondent's complaint for failure to timely bring the action, which was an adjudication on the merits,2 the legislature enacted Florida Statute (95.11(7) (1992), which

1 In Lindabury, the plaintiff alleged that a battery had occurred approximately twenty years prior to filing the suit. The reason for the delay in filing was the plaintiff's failure to discover the abuse until years after the incident because of post-traumatic stress syndrome. The case, under the law prevailing at the time, was property dismissed. In this matter, the respondent has not asserted that she failed to discover the incident or that she suffered from post-traumatic stress syndrome. The circumstances which led to the expansion of the statute of limitation in the newly enacted Florida Statutes (95.11(7) (1992), do not exist in the case sub judice.

2 A Final Judgment dismissing an action as time-barred by the applicable statute of limitation constitutes an adjudication on the merits. Allie v. Ionata, 503 So.2d 1237 (Fla. 1987); Florida Rule of Civil Procedure 1.420.

not only extended the statutes of limitation for cases relating to abuse,3 but also purported to resurrect all previously-barred abuse claims for a window of four years.4 Based on this amendment, the appellate court here found that the respondent's cause of action had been revived. However, while the legislature clearly has the power to extend or to shorten the statutory time periods limiting when actions may be brought, the courts of this state, as well as others, have consistently declared that the legislature's revival of actions already barred under a pre-existing statute of limitation is violative of the defendant's vested substantive right of defense of the limitation statute. Such legislative action violates the guaranties against deprivation of life, liberty, or property without due process of law under both the Florida (Section 12,

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3 Section 7 of the amended statute permits the filing of an action for abuse within, instead of the previous four-year limitation, seven years of the victim's attaining majority, four years after the victim leaves the dependency of the perpetrator, or four years from the victim's discovery of both the injury and the casual relationship between the injury and the abuse, whichever occurs later. Section 7, however, is irrelevant to this matter; nineteen years had elapsed between the abuse alleged to have occurred when the respondent was fifteen years of age, and the respondent's assertion of a cause of action. She had long attained her majority, and had been long removed from the dependency of the alleged abused. Nor does her claim involve any issue of "delayed discovery".

4 "Notwithstanding any other provision of law, a plaintiff whose abuse or incest claim is barred under section 1 of his act, has four (4) years from the effective date of this act or commence and action for damages." Chapter 92-102, Section 2, Laws of Florida.

Declaration of Rights) and United States Constitutions (Fifth and Fourteenth Amendments).

The great preponderance of authority across the United States favors the view that one who has been released from a claim or demand by the operation of a statute of limitation is protected against its revival by a change in the limitation law. Limitation of Actions, 51 Am Jur 2d { 44. Florida is in agreement with this position. See Bradford v. Shine, 13 Fla. 393 (1871). According to this view, after a cause of action has become barred by the statute of limitation, the defendant has a vested right to rely on the statute as a defense, the defense of time bar in such a situation being considered a vested right or property which cannot be appropriated by legislation which would operate to revive the cause of action, either by repeal of the statute or by affirmative act, such as the lengthening of the limitation period. Limitation of Actions, 51 Am Jur 2d {44; see also Corbett v. General Engineering & Machinery Co., 37 So.2d 161 (Fla. 1948).

Even if the expiration of the limitation period does not operate to vest the right of the defendant in the defense of the time bar, the dismissal in this action is an adjudication on the merits which cannot constitutionally be abolished retroactively by the legislature.

A. Florida Law Provides The Petitioner With A Vested Right In The Bar Of The Cause Of Action Once The Running Of The Statute of Limitation Extinguishes It: The Legislature May Not Revive It Thereafter.

i. Florida Law Permits the Extension of a Statute of Limitation, So Long As the Increase in Limitation Time is not Applied Retroactively to Actions Previously Extinguished.

The Florida courts have specifically stated that an existing period of limitation may be extended, so long as the increase in limitation time is not applied retroactively to causes of action previously extinguished. In Corbett, the Supreme Court of Florida announced the law of Florida regarding the nature of the time bar afforded by statutory limitation of claims, and how the time bar may be altered, in the context of worker's compensation cases. There, the injury had occurred in August 1946, and the claim was filed in October 1947. In the interim, however, and before the expiration of the existing statutory limitation period in August 1947, the legislature extended the limitation period from one year to two. The Corbett Court stated that, if the legislature exerts its power to increase the period of time in which a person may assert a cause of action, the change may only apply to those actions which have not already been extinguished under the pre-existing statute, and which therefore does not impair a vested right. Id. at 162. The Court quoted the California Supreme Court decision in Davis & McMillan v. Industrial Accident Comm'n, 246 P. 1046, at 1047 (Ca. 1926) with approval, explaining that a person has no vested right in the running of the statute of limitation

"unless it has completely run and barred the action." 37 So.2d at 162. Thus, the action at issue in Corbett was not time-barred, the limitation period having been extended prior to the extinguishment of the claim. See also Mazda Motors of America, Inc. v. S.C. Henderson & Sons, Inc., 364 So.2d 107 (Fla. 1st DCA 1978), cert. denied, 378 So.2d 348 (Fla. 1979) (action for damage to personalty permitted; prior to expiration of three-year limitation statute, legislature extended limitation period to four years); Martz v. Riskamm, 144 So.2d 83 (Fla. 1st DCA 1962) (when statute barring dower interest unless claim therefor was filed within three years of husband's death was amended to eliminate limitation during three-year window applicable to facts, widow's dower interest was not barred, though claim was not filed within three years of husband's death).

In Celotex Corp. v. Meehan, 523 So.2d 141 (Fla. 1988), this Court again addressed the constitutionality of a newly-enacted limitation statute, this time in the context of a wrongful death action. The amendment challenged in Celotex contained a "window" similar to that of (95.11(7), but the law in question was enacted in New York, rather than in Florida. While the Celotex Court held the complaint filed timely under the New York law, as duly noted by the Second District Court of Appeal below, the Celotex Court noted that such a law would be valid in Florida only if passed **before** the claim had been time-barred. 523 So.2d at 146 (emphasis

in original). (This caveat was neglected by the Second District below.)

> ii. Even if Florida Law Ordinarily Construes Limitation Statutes as Applying Only to the Remedy, this Statute Applies to Both the Substantive Statutorily-Created Right and its Remedy, and the Remedy Cannot be Amended Without Impact on the Right.

In Walter Denson & Son v. Nelson, 88 So.2d 120 (Fla. 1956), the Florida Supreme Court concluded that a defendant has a vested interest in the defense of time bar once the statute of limitations has expired. The Denson, Court considered, as in Corbett, the bar afforded by statutory limitation of claims in the context of a worker's compensation case. The Court ruled that the act extending the time within which an award could be modified was applicable only to claims pending at the time of its enactment, provided the change in the law is effective before the cause of action is extinguished by the force of a pre-existing statute. 88 So.2d at 122. The Court explained, in so holding, that ordinarily statues of limitation are construed as being applicable only to the remedy and not to the substantive right. Id.

The Denson Court was aware that there exist limitation provisions, such as the four-year statute originally in effect here, pursuant to which the trial court dismissed this matter, which constitute a component of the definitions of their respective causes of action (the latter being created by the same or another statute, rather than being a

common law cause of action) and which operate substantively as a limitation upon the liability created by the statute. In other words, when the statute creates a new liability, and the time limitation thereon is directed to the newly-created liability with such specificity that it qualified the right of action, then the limitation modifies the right created and is part and parcel of it. As discussed infra, this concept has been addressed in depth in both federal and other state courts.

The passage of the time specified in the statute of limitation for a statutorily-created cause of action extinguishes the plaintiff's right to file a claim; the cause of action ceases to exist. The lapse of time not only bars the remedy, but also destroys the liability of the defendant to the plaintiff; on the expiration of the limitation period, it was as if liability had never existed.

The creation then of another cause of action, with another limitation period, to apply retroactively to events occurring before the new cause of action is established, is akin to enacting an ex post facto law. Thus, to construe the amendment in question here retroactively to create liability would be to deprive the petitioner of his property without due process of law.

iii. Florida Law Similarly Permits the Repeal of a Statute of Repose, So Long As The Newly-Enacted Limitation Statute is Not Permitted to Revive Causes of Action Barred by the Expiration of the Repose Period.

An analogous issue arises with respect to the repeal of statutes of repose. In Walker v. Miller Electric Manufacturing Co., 591 So.2d 242 (Fla. 4th DCA 1991), the Fourth District Court of Appeal applied the reasoning of Denson to a product liability action brought by the personal representative of a decedent's estate against the manufacturer and seller of an allegedly defective machine. The appellate court held that when the twelve-year period for bringing the action expired during the time that the statute of repose was in effect, the cause of action was barred, despite that a newly-enacted statute of limitation existed when the action accrued. The court held that the repeal of the statute of repose after the cause of action was extinguished did not affect the defendant's right not to be sued. 591 So.2d at 245.

This reasoning is not innovative. In Melendez v. Dreis & Krump Mfg. Co., 515 So.2d 735 (Fla. 1987), the Court explained that a statute of repose cuts off a right of action within a specified time limit after the delivery of a product, regardless of when the cause of action accrues. Id. at 736. Thus, the court held, the legislative amendment abolishing the statute of repose in a product liability action would not be construed to operate retrospectively as

to a cause of action which accrued before the amendment's effective date.

And in Bauld v. J.A. Jones Construction Co., 357 So.2d 401 (Fla. 1978), the Court again explained that, rather than establishing a time limit within which a cause of action may be brought, measured from the time of accrual of the action, statutes of repose cut off the right of action after a specified time measured from the delivery of the product. The Bauld Court held that the revision of a statute of limitation which cut off the employee's right to sue, but which also provided a one-year grace period in which to bring an action after the statute became effective, was reasonable, despite that its effect was to bar the action seven months earlier than under the pre-existing statute. Thus, the amended statute barred the action.

As recently as two years ago, in Firestone Tire & Rubber Co. v. Acosta, 612 So.2d 1361 (Fla. 1992), this Court, agreeing with the Walker Court and again affirming the Denson decision, in the context of a product liability claim, held that the repeal of a statute of repose did not re-establish a cause of action that had previously been extinguished by operation of law. The Acosta Court underscored the context of its holding:

> We emphasize that our holding in these cases is controlled by the fact that the statute of repose periods in issue had expired prior to the statute's repeal. We also emphasize that this decision does not affect causes of action brought

against manufacturers of products where the statute of repose period **had not expired** at the time the statute was repealed.

612 So.2d at 1364 (emphasis in original).

iv. Once the Cause of Action is Barred by the Running of the Statutory Time Limitation, Petitioner Acquired a Vested Right in the Defense of the Statute of Limitation.

A retrospective provision of a legislative act is invalid only when vested rights are adversely affected or destroyed, or when a new obligation or duty is created or imposed, or an additional disability is established, in connection with transactions or considerations previously had or expiated. McCord v. Smith, 43 So.2d 704 (Fla. 1949). Thus, due process considerations preclude retroactive application of a law that revokes substantive rights. In Talmadge v. District School Board of Lake County, 406 So.2d 1127 (Fla. 5th DCA 1981), the court considered the constitutionality of a statute which had originally provided indemnification of public employees for judgments against them based on acts committed within the scope of their employment, but which had been amended to bar actions against public employees for acts committed within the scope of their employment unless accomplished in bad faith. This amendment had passed after the Talmadge complaint was filed; in it, the legislature specified that it applied to "all actions pending ... from the date this act shall take effect...." Id. at 1128. The Talmadge case was therefore dismissed.

On appeal, the Fifth Circuit noted that retroactive legislation is usually invalid if it impairs a vested right, and simply held that, to the extent that the amendment changed the law retroactively, it was unconstitutional.

In Meli v. Admiral Insurance Co., 413 So.2d 135 (Fla. 3d DCA 1982), the Third District considered the same amendment and, again, whether it could be retroactively applied to a cause of action accruing four years earlier. The Meli Court also held that the substantive statutory right could not be abrogated retroactively by amendatory legislation.

The substantive right acquired by the defendant, when a statute of limitation has expired, to **not** be sued cannot be denied. The court in Wasson v. State, 60 S.W. 2d 1020 (Ark. 1933) explained that after a cause of action has become barred by the limitation period, the defendant has a vested right to rely on the statute in defense, and the legislature cannot divest him of that right by reviving the cause of action.

Likewise, due process considerations preclude retroactive application of a law that creates substantive rights.5 For this reason, in Florida Patients Comp. Fund v. Scherer, 558 So.2d 411, 414 (Fla. 1990), this Court held that an attorneys' fees statute for malpractice actions did

5 While, as a general rule, it is true that disposition of a case on appeal is made in accordance with the law in effect at the time of the appellate court's decision, the rule does not apply when a substantive right is altered. State v. Lavazzoli, 434 So.2d 321 (Fla. 1983).

not apply to a medical malpractice action arising out of an injury that occurred before the effective date of the statute, even though the patient discovered the injury after the effective date of the statute.

This right is similar to the substantive statutory right, immunity from suit, enjoyed by the defendant in Walker & LeBerge v. Halligan, 344 So.2d 239 (Fla. 1977). In LeBerge, the legislature attempted to retroactively withdraw the immunity after the commission of the alleged tort, i.e. after the right had vested, via an amendatory statute. The Court held that the statute could not be applied retrospectively.

The expiration of an existing statute of limitation is a substantive property interest which is valuable and protected by constitutional due process guarantees. In the matter at hand, the petitioner acquired such a constitutionally-guaranteed right when the limitation period in effect at the time expired. This right would be violated if Florida Statute § 95.11(7) (1992) were applied to this matter retroactively; accordingly, this court should reverse the decision of the Second District Court of Appeal, and rule that Florida Statute § 95.11, as amended by Chapter 92-102, Section 2, Laws of Florida (1992), is unconstitutional for violating the defendant's right to due process of law.

v. Once the Cause of Action is Barred by an Adjudication on the Merits, Petitioner Acquired a Vested Right in the Defense of the Statute of Limitation.

A final judgment dismissing an action as time-barred by the applicable statute of limitation constitutes an adjudication on the merits. Allie v. Ionata, 503 So.2d 1237 (Fla. 1987); Florida Rule of Civil Procedure 1.420. This cause has therefore been adjudicated on the merits.

In the context of statutes permitting attorneys' fees awards, the Florida's First District Court of Appeal elucidated:

> 'If ... a right has somehow vested under a statute, repeal of the statute does not divest a holder of the right.' Mitchell v. Doggett, 1 Fla. 356 (1847). A substantive, vested right is 'an immediate right of present enjoyment, or a present, fixed right of future enjoyment.' City of Sanford v. McClelland, 121 Fla. 253, 163 So. 513, 514-15 (1935).

Division of Workers' Compensation, etc. v. Brevda, 420 So.2d 887, 891 (Fla. 1st DCA 1982). Thus, until judgment has been entered properly awarding fees, any right under a fee statute constitutes nothing more than an expectation - not a vested right. But when a judgment **has** been entered, as in the instant case, the contingent interest matures into a vested right, protected from impairment by the due process clauses of both the Florida and United States Constitutions.

An adjudication on the merits is a substantive property interest which is valuable and protected by constitutional due process guarantees. In the matter at hand, the petitioner acquired such a constitutionally-guaranteed right

when the trial court dismissed this action. This right would be violated if Florida Statute (95.11(7) (1992) were applied to this matter after the fact; accordingly, this court should reverse the decision of the Second District Court of Appeals, and rule that Florida Statute (95.11, as amended by Chapter 92-102, Section 2, Laws of Florida (1992), is unconstitutional for violating the defendant's right to due process of law.

B. Federal Law Provides The Petitioner With A Vested Right In The Defense of Time Bar Once The Statute Of Limitation Extinguished The Cause of Action, And The Legislature May Not Revive It Thereafter.

In William Danzer & Co. v. Gulf & S.I.R. Co., 268 U.S. 633 (1925), the Supreme Court of the United States considered this issue. The Court held that Congress could not constitutionally revive rights of action or claims for reparation against carriers, which had become barred by the statute of limitations (under the Interstate Commerce Act), by providing (in the Transportation Act) that the period during which the railroads, etc., had been under federal control should not be considered as a part of the period of limitation. This holding is distinguished from that of Campbell v. Holt, 115 U.S. 620 (1885) (breach of contract); the latter action belonged to the class in which statutory provisions fixing the time within which suits must be brought to enforce existing causes of action are held to apply to the remedy only. The facts in Campbell were also unique in that the case involved an amendment to the Texas

Constitution intended to permit access to the courts following the civil war, in recognition of the fact that access had been denied due to the war.

Danzer, on the other hand, belongs, as does the instant matter to the class previously discussed, in which limitation provisions constitute a part of the definition of the cause of action created by the same or another statute and operate as a limitation upon liability. As the Danzer Court explained:

> Plaintiff's cause of action was created and limited by the Interstate Commerce Act. ... Plaintiff's right to file his claim with the commission had expired several months before the passage of the Transportation Act. But, if the period of federal control is to be excluded, the complaint was filed within time. During the period between such expiration and the passage of the Transportation Act, plaintiff had no right to file a claim with the commission and had no cause of action. It is settled by the decisions of this court that the lapse of time not only barred the remedy but also destroyed the liability of defendant to plaintiff. On the expiration of the two-year period, it was as if liability had never existed.

268 U.S. 16 636. See also Link v. Receivers of Seaboard Air Line R. Co., 73 F.2d 149 (4th Cir. 1934) (when the time for bringing action is provided as condition annexed to enjoyment of right, failure to bring action within the time limited destroyed right, and not merely the remedy). Thus, the Danzer Court concluded that to construe the amendment retroactively to create liability would be to deprive the defendant of its property without due process of law in contravention of the Fifth Amendment. Id. at 637.

In the earlier case of Davis v. Mills, 194 U.S. 451 (1904), the Supreme Court considered the provision of the Montana Code of Civil Procedure which imposed a time limitation of three years within which actions to enforce a special statutory director's liability could be maintained. The Davis Court explained that ordinary limitations of actions are treated as laws of procedure and as belonging to the lex fori, effecting only the remedy and not the right. But when the statute creates a new liability, and the limitation thereon "was directed to the newly created liability so specifically as to warrant saying that it qualified the right," then the "limitation goes to the right created and accompanies the obligation everywhere." Id. at 454.

Instead of applying the rationales of Danzer and Davis v. Mills in the instant case, the Second District Court of Appeals here relied upon Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945), as well as upon Campbell, to rule that when the lapse of time has not vested the defendant with title to real or personal property, the legislature may constitutionally repeal or extend a limitation period, even after a claim has been barred. Chase Securities was unique in that it involved the passage of a statute to extend the time within which claims arising out of the stock market crash of 1929 could be brought, and did not deprive any defendant of a prior ruling in its favor. Another feature of Chase Securities which

distinguishes it from the case before this Court now, however, is that it affirmed the decision of the Minnesota Supreme Court in Donaldson v. Chase Securities Corp., 13 N.W. 2d 1 (Minn. 1943), which had held that the running of the limitation period, which the defendant had relied upon as a bar, merely extinguished the remedy and not the right.6 See also Campbell. The Supreme Court explained in Chase Securities why it was not controlled by its earlier decisions in Danzer and Davis v. Mills:

> In the Danzer case, it was held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking of property without due process of law. Read with the Danzer case, Davis v. Mills stands for the proposition that the result may be the same if the period of limitation is prescribed by a different statute if it "was directed to the newly created liability so specifically as to warrant saying that it qualified the right." 194 U.S. 454.

Chase Securities, 325 U.S. at 312, n.8. Clearly, then, neither Campbell nor Chase Securities can be said to apply to the abuse statutes here, which both create a cause of action as well as limit the time within which a suit

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6 While the Second District relied upon Chase Securities and Campbell, these cases are further distinguished from the case at hand. Here, the defendants' rights were reduced to a judgment on the merits. See Allie v. Ionata, 503 So.2d 1237,1241 (Fla. 1987). The Chase Court repeatedly asserts that in that case the "defendant's statutory immunity had not been fully adjudicated. 327 U.S. at 310. Likewise, in Campbell (which acknowledged vested rights as a result of the running of the statute of limitations) in regards to real and personal property, the statute of limitations was repealed before the action was commenced. Such was not the case here.

therefor may be brought, because the time limitation is directed to a liability created by statute so specifically as to warrant saying that it qualifies the right to bring the action.

C. The Law Of Other Jurisdictions Provides The Petitioner With A Vested Right In The Defense of Time Bar Once The Statute Of Limitation Extinguished The Cause Of Action It, And The Legislature May Not Revive It Thereafter.

In Davis & McMillan v. Industrial Accident Comm'n, 246 P. 1046 (Ca. 1926), cited by the Florida Supreme Court in Corbett, supra, 37 So.2d 161, the Supreme Court of California considered whether an amendment to the statute of limitation enlarging the period within which an action may be brought as to pending causes is permissible. The court held that impermissible retroactive legislation is that which takes away or impairs vested rights acquired under existing laws, or creates new obligations, or imposes new duties, or attaches a new disability with respect to transactions already passed. Prior to the time that the statute of limitation has expired, the legislature may extend the time before an action will be outlawed. The court explained:

> ". . . It is clear from the decisions of the courts of this state as well as those of other jurisdictions that a person has no vested right in the running of the statute of limitation **unless it has completely run and barred the action . . . ."**

246 P. at 1047 (emphasis added.)

In Board of Education v. Blodgett, 40 N.E. 1025 (Ill. 1895), the Illinois Supreme Court expressly rejected the reasoning of the United States Supreme Court in Campbell, explaining that the Campbell Court had held that when a statute of limitation runs to bar a remedy but does not operate to affect the right, a defendant acquires no vested interest in the running of the period so that a subsequent legislative enactment which removes the bar does not deprive him of due process under the United States Constitution. The Campbell Court had distinguished between statutes running against real or personal property, as in adverse possession, in which the right and title to the property itself is lost be the plaintiff and becomes vested in the defendant, and statues imposing a procedural bar against pursuit of an otherwise valid claim, such as an action to collect a debt, in which the running of the limitation period leaves the underlying right intact. The Blodgett Court noted, however:

> Immunity from prosecution in a suit is as valuable to the one party as the right to the demand or to prosecute the suit is to the other. ... It is a right founded upon a wise and just policy. Statutes of limitation are not only calculated for the repose and peace of society, but to protect against the evils that arise from loss of evidence and the failing memory of witnesses. It is true that a man may plead the statute when he justly owes the debt for which he is sued.... But it is nevertheless a right given by a just and politic law and, when vested, is as much to be protected as any other right that a man has.

40 N.E. at 1045.

The Supreme Court of Utah had occasion to consider this issue in Del Monte Corp. v. Moore, 580 P.2d 224 (Utah 1978), in which an employee sought an additional workmen's compensation award in connection with his back injury. The Court held that when the injury occurred in 1968 and was still alive viable under the then-existing six-year limitation period when the statute was amended in 1973 to extend the time to eight years, the claimant had eight years from the time of the injury to file his supplemental claim for additional compensation. The court noted that "if the statute has run on a cause of action, so that it is dead, it cannot be revived by any such statutory extension." Id. at 225.

In Unicorn Developers, Ltd. v. Comm'r of Labor, 556 N.Y. S.2d 811 (Sup. 1990), a public contractor brought a proceeding to withdraw and nullify orders rendering administrative proceedings as judgments as a result of the retrospective application of amendments to the labor laws. The court held that the amendments, if retroactively applied, would have impaired the contractor's due process rights by eliminating his vested right to a defense in bar.

> The right to a defense in bar is a vested right which may not be impaired by the retroactive application of a statutory amendment. ... A statutory amendment may not be retroactively applied where the effect thereof would be to resurrect a claim that time-barred.

556 N.Y. S2d at 814-15.

The same is true in tort cases. In Haase v. Sawicki, 121 N.W.2d 876 (Wis. 1963), the Supreme Court of Wisconsin construed the validity of an amendment to the limitation period for wrongful death actions. The trial court had dismissed the action because barred by the two-year statute of limitation in effect at the time of death. The petitioner contended, however, that the limitation period applicable was the retroactive three-year statute in effect at the time that the action was brought. The appellate court held that a retrospective extension of the limitation period for wrongful death actions to causes of action barred by the prior limitation period was an unconstitutional taking of property without due process of law. The court explained that statutes of limitation extinguish the right as well as the remedy, "'for ... limitation are not treated as statutes of repose.'" Id. at 878.

> The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards judicial remedies as any other right and it is a right which enjoys constitutional protection.

Id. (Citations omitted.) When the cause of action is dependent upon the statute for its existence (i.e., a cause of action for wrongful death did not exist at common law), a statute of limitation extinguishes the right as well as the remedy. Thus, a statute which attempts to reinstate a cause of action that has been barred is constitutionally objectionable, because the statute seeks to impose a new

duty or obligation even though none existed when the retrospective statute was enacted. Therefore the court found that the very statute creating the liability also put a limit to its existence. The court cited the Supreme Court in Danzer, supra, 268 U.S. 633, which held that the retrospective extension of the limitation period after its expiration amounted to a taking of property without due process of law, and approved the dismissal of the wrongful death action.

Although some courts have drawn a distinction between a statutory bar which invests persons with a constitutionally protected title to property and a bar which merely constitutes a defense to a personal demand, the Wisconsin court refused to draw that distinction. Neither should this Court.

Another Wisconsin court explained what is meant by the term "to extinguish the right:"

> What is meant ... is not actual satisfaction of the right by the operation of the statute of limitation. The idea is that a right to insist upon the statutory bar is a vested property right protected by the constitution the effect of which is to forever prevent the judicial enforcement of the demand affected by it, against the will of the owner of the prescriptive right. Deprivation of the remedy under such circumstances, that there can be no adverse restoration of it, is a destruction or extinguishment of the right to which such remedy relates.

Eingartner v. Illinois Steel Co., 79 N.W. 433, 434 (Wis. 1899).

The Wisconsin Supreme Court again considered this issue in Betthauser v. Medical Protective Co., 498 N.W. 2d 40 (Wis. 1992), in which a patient brought a medical malpractice action against his doctors. The court held that the medical malpractice statute of limitation enacted after the patient's injury, which would have prohibited the action when brought, did not apply retroactively to the Betthauser cause of action. The court reasoned that the statute was a substantive law which created and destroyed rights and which could not be applied retroactively. The Betthauser Court rejected the rationale of Chase Securities, citing Haase instead.

In Smith v. Westinghouse Electric Corp., 291 A.2d 452 (Md. 1972), the court considered a wrongful death action belatedly filed. Citing Danzer, the court held that when the statute extended the time within which the action could be brought and which purported to have a retroactive effect on any cause of action arising prior to July 1, 1968, that statute was unconstitutional under the due process clause via the Fourteenth Amendment of the United States Constitution.

The Virginia Supreme Court recently addressed whether the expiration of the statute of limitation in a suit alleging a cause of action for childhood abuse afforded the defendant a vested right entitled to the protection of constitutional due process guarantees, in the face of a legislative enactment purporting to reopen such a claim.

Starnes v. Cayouette, 419 S.E.2d 669 (Va. 1992). In Starnes, the court reasoned that "retroactive application of the new rule of accrual [of the amended law] and its provision creating a one-year 'window of opportunity' for the filing of a suit, irrespective of the date of accrual, would violate the defendant's due process rights." Id. at 5. The Starnes Court explained, quoting the dissent in Campbell, supra, 115 U.S. at 631:

> The immunity from suit which arises by operation of the statute of limitation is as valuable a right as the right to bring the suit itself. It is a right founded upon a wise and just policy. Statutes of limitation are not only calculated for the repose and peace of society, but to provide against the evils that arise from loss of evidence and the failing memory of witnesses . . .
>
> The fact that this defense pertains to a remedy does not alter the case. Remedies are the life of rights, and are equally protected by the constitution. Deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away . . . . **[T]he right of defense is just as valuable as the [plaintiff's] right of action. It is the defendant's remedy.**

Id. at 12 (emphasis added).

It should be noted that the court below was aware of the Starnes decision but gave that opinion only passing reference, perhaps because the Virginia Code incorporates a provision which provides:

> If, after a right of action or remedy is barred by a statute of limitation, the statute be repealed, the bar of the statute as to such right or remedy shall not be deemed to be removed by such repeal.

Virginia Code { 2936 (1887). Nevertheless, this Court should afford the clear and persuasive reasoning of that case the in-depth examination it deserves and apply it to the facts at hand.

A Minnesota appellate court has also recently considered this issue, in K.E. v. Hoffman, 452 N.W.2d 509 (Minn. App. 1990), ruling in opposition to the Starnes Court, that there was no vested right in the expiration of the statute of limitation. That court relied solely on the rationale expressed in Donaldson v. Chase Securities Corp., 13 N.W.2d 1 (Minn. 1943), which had held that the running of the limitation period merely extinguished the remedy and not the right. The same cannot be said of the statutorily-created cause of action implicated here, with its corresponding period of limitation.

C. Public Policy Prohibits The Revival Of Unlimited Actions For Violation Of Florida Statutes {{ 39.01, 415.102, or 826.04.

The legislature purports to create an opportunity in which all claims for abuse pursuant to Florida Statutes {{39.01, 415.102, or 826.04, whichever existed and already expired pursuant to the terms of the pre-existing statute of limitation, are resurrected for a window of four years from the effective date of the act. This resuscitation of causes of action long-dead violates the policy which provoked the creation of statutes of limitation in the first instance. Statutes of limitation are not only calculated for the repose and peace of society, but to protect against the

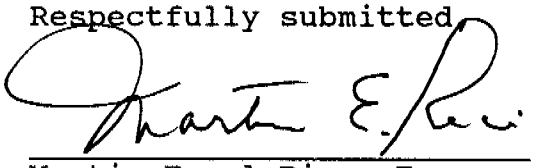
evils that arise from loss of evidence and the death of witnesses, never mind their failing memories. **See**, e.g., Board of Education v. Blodgett, 40 N.E. 1025 (Ill. 1895). The legislature has now created an interim period of time, without limitation, within which any claim, already expired and whether based on events that occurred ten years ago, or fifty years ago, may be brought. This will not only generate havoc in the courthouses, the dockets in which are already over-extended, but work a manifest injustice in the courtroom, where the defense of such actions will be next to impossible, due to lack of evidence.

This Court cannot consider this case and the policy issues it implicates in a vacuum. Should this Court determine that the legislature can resurrect long-dead causes of action in the arbitrary and unjust fashion which it has attempted here, then the courts of this state will soon be forced to host lawsuits in which the lack of evidence will only be surpassed by the emotional chaos they cause the participants and witnesses.

CONCLUSION

Respondent's First Amended and Supplemental Complaint was properly dismissed below and the trial court's order should be affirmed. On the face of the complaint, respondent presented sufficient facts to establish that the claims she attempted to assert were time-barred at the time of her filing of the complaint, as a matter of law. Once extinguished, and the defense of time bar vested as a matter of right in the defendant, subsequent legislation cannot resuscitate respondent's cause of action without violating the petitioner's constitutional guaranty of due process.

Respectfully submitted,



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Florida Bar Number 183594

Joryn Jenkins, Esquire
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(813) 251-6987
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. regular mail to ANTHONY S. BATTAGLIA, ESQUIRE and BRIAN P. BATTAGLIA, ESQUIRE, Post Office Box 41100, St. Petersburg, FL 33742 and BARRY A. COHEN, ESQUIRE and CHRISTOPHER P. JAYSON, ESQUIRE, Post Office Box 73077, Tampa, FL 33672, and RICHARD J. DAFONTE, ESQUIRE, this 14 day of February, 1994.

MARTIN ERROL RICE, P.A.

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IN THE FLORIDA SUPREME COURT
CASE NO. 82,412

CALVIN WILEY,

Defendant/
Petitioner,

vs.

CARRIE LINN YOUNG ROOF,

Plaintiff/
Respondent.
_____/

APPENDIX TO
PETITIONER, CALVIN WILEY'S BRIEF ON THE MERITS

MARTIN ERROL RICE, ESQUIRE
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INDEX TO APPENDIX

ITEM	TAB NUMBER
Circuit Court of Pinellas County First Amended & Supplemental Complaint, Case No. 91-6708-12	1

IN THE CIRCUIT COURT, PINELLAS COUNTY, FLORIDA
CIVIL DIVISION CASE NO. 91-6708-12

CARRIE LINN YOUNG ROOF,

Plaintiff,

vs.

CALVIN WILEY, WILMA WILEY,
C.W. BILL YOUNG, THOMAS EDWARD YOUNG,
and TONI YOUNG, individually and
jointly and severally,

Defendants.
_____/

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

The Plaintiff, CARRIE LINN YOUNG ROOF, sues the Defendants, CALVIN WILEY (hereinafter Grandfather), WILMA WILEY (hereinafter Grandmother), THOMAS EDWARD YOUNG (hereinafter Father), TONI YOUNG (hereinafter Stepmother), and C.W. "BILL" YOUNG (hereinafter Uncle), jointly and severally and alleges:

JURISDICTION AND VENUE

1. This is an action for injunctive relief or for damages wherein the amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interests, costs and attorney's fees.

2. Plaintiff is a resident of Pinellas County, Florida.

3. Each Defendant is a resident of Pinellas County, Florida.

COUNT I

4. The Plaintiff realleges paragraphs 1, 2, and 3 and incorporates them herein by this reference.

5. On or about March 15, 1973, Defendant Grandfather, in Pinellas County, Florida, intentionally, unlawfully, and violently assaulted the Plaintiff, physically overpowered Plaintiff, and forceably kissed, laid on top of and committed sexual acts and sexual touching of the Plaintiff and exposed his sexual organs to Plaintiff, without Plaintiff's consent and despite Plaintiff's vehement protests and supplications not to do so. The Plaintiff, then and at that time, was fifteen (15) years of age.

Each of the Defendants has since acquiring knowledge of the above conduct of Defendant Grandfather, threatened Plaintiff's mother with physical harm and financial ruin and threatened Plaintiff with physical harm, financial ruin, the taking of her children, her commitment to mental institutions for the purpose of preventing her from disclosing Grandfather's conduct to lawful authorities and seeking lawful redress for the harm done her.

7. As a direct and proximate result of Defendant's Grandfather's conduct Plaintiff was caused and has suffered great pain, suffering humiliation, severe emotional distress and damage.

8. The conduct of Defendant's Grandfather was willful, wanton, malicious and of a gross and outrageous nature for which Plaintiff is entitled to punitive damages.

WHEREFORE, the Plaintiff demands judgment against Defendant Grandfather and Defendant Grandmother, jointly and severally for compensatory damages, punitive damages, costs of suit and such other relief as the Court deems appropriate.

COUNT II

9. Plaintiff realleges paragraphs 1, 2, an 3 and incorporates them herein by this reference.

10. On or about March 15, 1973, Defendant's Father, Grandmother, and Uncle learned and had knowledge that Defendant Grandfather engaged in unlawful sexual battery upon the Plaintiff and committed lewd and lascivious acts in her presence.

11. Defendants Father, Grandmother, and Uncle owed the Plaintiff a duty to report the acts of Defendant Grandfather to lawful authorities and further owed Plaintiff a duty not to interfere with and prevent Plaintiff from seeking and acquiring medical and psychological assistance.

12. Each of the said Defendants, acting in concert with and with agreement and under inducement of Defendant Grandfather intentionally failed to report the conduct of Defendant Grandfather to lawful authorities and further by threats to

Plaintiff's Mother and to Plaintiff of physical harm and financial ruin, prevented Plaintiff from seeking medical and psychological treatment.

13. Each Defendant, Father, Grandmother, Uncle, and Grandfather has threatened Plaintiff's Mother with physical harm and financial ruin and threatened Plaintiff with physical harm, financial ruin, the taking of her children, her commitment to mental institutions for the purpose of preventing her from disclosing Grandfather's conduct to lawful authorities and seeking lawful redress for the harm done her.

As a direct and proximate result of the Defendant's breaches of their duty Plaintiff was caused and did suffer great pain, humiliation, severe emotional distress, and damage.

WHEREFORE, the Plaintiff demands judgment against Defendants Grandfather, Grandmother, Father, and Uncle jointly and severally for damages, costs of suit and for such other relief as the Court deems appropriate.

COUNT III

15. The Plaintiff realleges paragraphs 1, 2, and 3 and incorporates them herein by this reference.

16. Defendant, THOMAS EDWARD YOUNG, as the natural Father of the Plaintiff, owed the Plaintiff a duty to protect her from known and foreseeable sexual abuse by Defendant Grandfather and Defendant Grandmother.

17. Defendant Father prior to March 15, 1973, knew that Defendant Grandfather had engaged in sexual abuse of the Plaintiff since she was approximately four (4) years old and had engaged in sexual abuse of other minor children in the Young and Wiley families, with the aid and encouragement of Defendant Grandmother.

18. Defendant Father breached his aforesaid duty to the Plaintiff by failing to take any steps to prevent Defendant's Grandfather and Grandmother from committing sexual battery upon and lewd and lascivious conduct in the presence of Plaintiff on or about March 15, 1973 and by leaving Plaintiff alone with Defendant's Grandfather and Grandmother on the said date.

19. Each of the Defendants, Father, Grandmother, Uncle, and Grandfather has threatened the Plaintiff's Mother with physical harm and financial ruin and threatened Plaintiff with physical harm, financial ruin, the taking of her children, her commitment to mental institutions for the purpose of preventing her from disclosing Grandfather's conduct to lawful authorities and seeking lawful redress for the harm done her.

20. As a direct and proximate result of Defendant Father's breach of his duty to the Plaintiff, the Plaintiff was caused and suffered great pain, humiliation, severe emotional distress, and damage.

21. Defendant Father's breach of his duty to the Plaintiff was gross and outrageous and was done under such circumstances that the same was intentional and in conscious disre-

gard of the said duty and Plaintiff's safety, welfare and well-being for which the Plaintiff is entitled to punitive damages.

WHEREFORE, the Plaintiff demands judgment against Defendant Father for compensatory damages, punitive damages, costs of suit and for such other relief as the Court deems appropriate.

COUNT IV

22. The Plaintiff realleges paragraphs 1, 2, and 3 and incorporates them herein by this reference.

23. On or about March 15, 1973, Defendants Father, Uncle, Grandfather, and Grandmother did conspire, confederate and agree to take and engage in all steps necessary to prevent Plaintiff from disclosing Defendant Grandfather's sexual battery upon and lewd and lascivious conduct in the presence of Plaintiff. On or about May 26, 1981, Defendant Stepmother joined the said conspiracy.

24. In pursuance of the aforesaid conspiracy the Defendants performed and engaged in the following tortuous conduct:

A. Since March 15, 1973, Defendants Grandfather, Grandmother, Father, and Defendant Stepmother have since May 26, 1981, with the knowledge, consent, and encouragement, intermittently assaulted the Plaintiff by threatening her with great physical harm if Plaintiff disclosed or continued to disclose

Grandfather's acts of March 15, 1973; which threats and Defendants' ability to have the same carried out were reasonably believed by Plaintiff and which threats caused Plaintiff to be in fear for her health and safety.

B. On or about May 26, 1981, and continuing for an indeterminate time thereafter the Defendants exerted undue influence and authority on the Pinellas Park Police Department and did knowing defame Plaintiff to members of that Police Department themselves and through their agents for the purpose of halting an investigation of Defendant Grandfather's sexual battery and lewd and lascivious conduct upon Plaintiff of March 15, 1973 to wit:

i. On the said date the Plaintiff for herself and her stepsister, an unnamed minor, sought to report and have investigated, Defendant Grandfather's sexual assault upon Plaintiff of March, 1973, and upon her stepsister and Defendant's Father and Grandmother complicity in the same and failure to report the abuse against Plaintiff;

ii. The Defendants and their agents then and during an investigation of the allegations slandered Plaintiff by publishing to the members of the Police Department that she was untruthful, not to be believed and was acting for improper vindictive motives;

iii. The Defendants utilized their family name and political influence and their concerted activity to have the investigation quashed and dismissed.

C. Intermittently since about December, 1990, Defendant's Father and Stepmother have invaded the Plaintiff's privacy by openly following Plaintiff in her comings and goings, and by sitting in vehicle outside or near Plaintiff's residence for the purpose of harassing and intimidating Plaintiff, as on November 28, 1990, Plaintiff assisted her stepsister, a minor, in filing a sexual abuse complaint against Defendant Grandfather.

D. Since March 15, 1973, Defendant's Father, Grandfather, and Grandmother have and since May 26, 1981, Defendant Stepmother has, with the knowledge, consent, and encouragement of Defendant Uncle, negligently and intentionally inflicted great emotional distress upon the Plaintiff by:

i. Intermittently threatening Plaintiff with physical harm if she were to disclose Defendant Grandfather's conduct of March 15, 1973 to any person, which threats were reasonably believed by Plaintiff and which threats placed Plaintiff in fear:

ii. Intermittently threatening Plaintiff with commitment to a mental institution if she were to disclose Defendant Grandfather's conduct of March 15, 1973, to any person, which threats were reasonably believed by Plaintiff and reasonably placed Plaintiff in fear;

iii. Intermittently threatening to financially ruin the Plaintiff for life if she were to disclose Defendant Grandfather's conduct of sexual abuse and lewd and lascivious

conduct of March 15, 1973 to any person, which threats were reasonably believed by Plaintiff and reasonably placed Plaintiff in fear;

iv. Intermittently threatening to take or have Plaintiff's minor children taken away from her if she were to disclose Defendant Grandfather's conduct of sexual battery and lewd and lascivious conduct of March 15, 1973, which threats were reasonably believed by Plaintiff and reasonably placed Plaintiff in fear;

v. Intermittently since December, 1990, sitting outside Plaintiff's residence or on the corner of her street and following the Plaintiff in her comings and goings in Plaintiff's clear view for the purpose of intimidating Plaintiff; and

vi. Upon Plaintiff's information and belief, breaking into Plaintiff's motor vehicle in May, 1991, throwing a mailbox through the windshield of her vehicle in July, 1991, and ripping the screens out of the windows to her residence in July, 1991, all for the purpose of intimidating Plaintiff and placing her in fear.

All of which conduct caused Plaintiff severe emotional and psychological harm and distress and caused her sleeplessness, depression, loss of appetite, and hospitalization.

25. As a direct and proximate result of the Defendants concerted actions, Plaintiff has been greatly humiliated, suffered extreme embarrassment, and continues to suffer severe emotional and psychological harm.

26. The Defendants have acted willfully and maliciously in their conduct, the same having been done knowingly and intentionally and in an outrageous disregard of Plaintiff's rights for which Plaintiff is entitled to punitive damages.

WHEREFORE, the Plaintiff demands judgment against Defendant's Grandfather, Grandmother, Uncle, Father, and Stepmother, jointly and severally, for compensatory damages, punitive damages, costs of suit and any other relief deemed appropriate by the Court.

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, CARRIE LINN YOUNG ROOF, by and through her undersigned attorney, and hereby demands a trial by jury.

PHILLIP R. WASSERMAN, ESQUIRE
11125 PARK BLVD., STE. 113
SEMINOLE, FL 34642
813, 572-5055
SPN 488739

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished to Brian Battaglia, Esquire, 980 Tyrone Boulevard, P. O. Box 41100, St. Petersburg, FL 33743, Martin Errol Rice, Esquire, P. O. Box 205, St. Petersburg, FL 33731, and Richard J.

Dafonte, Esquire, 21 9th Street South, Ste 200, St. Petersburg, FL 33705 this 9th day of October, 1991.

Phillip R. Wasserman

PHILLIP R. WASSERMAN, ESQUIRE
11125 PARK BLVD., STE. 113
SEMINOLE, FL 34642
813, 572-5055
SPN 488739

VERIFICATION

STATE OF FLORIDA
COUNTY OF PINELLAS

I, CARRIE LINN YOUNG, being duly sworn, state:

I am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. I have personal knowledge that the facts recited therein are true.

Carrie Linn Young

Subscribed and sworn before me October 9, 1991

Linda K. Johnson
Notary Public

My Commission Expires:

Notary Public, State of Florida
My Commission Expires May 10, 1995
Bonded Thru Troy Fain - Insurance Inc.

MARTIN ERROL RICE, P.A.
Attorney At Law
696 First Avenue North
Post Office Box 205
St. Petersburg, Florida 33731
(813) 821-4884
FAX (813) 821-7961

February 14, 1994

Mr. Sid White, Clerk
The Florida Supreme Court
500 S. Duval Street
Tallahassee, FL 32399

Via Federal Express

RE: Calvin Wiley v. Carrie Linn Young Roof,
Case No. 82,412

Dear Mr. White:

Enclosed find original and seven copies of Petitioner, Calvin Wiley's Brief on the Merits.

Very truly yours,

Martin Errol Rice, Esq.

MER/ms
Encl. (Brief)

P.S. Kindly acknowledge receipt of same and return in the envelope enclosed.