IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,934

CHANDRIS, S.A.; CHANDRIS INC.,
d/b/a CHANDRIS CRUISE LINES; and
TRANSPORT MUTUAL SERVICES, INC.,

Defendants, Appellants,

vs.

BASIL YANAKAKIS; IRA H. LEESFIELD;
and ROGER BLACKBURN, d/b/a LEESFIELD
& BLACKBURN, P.A.,

Plaintiffs, Appellees.
_____/

ON CERTIFIED QUESTIONS FROM THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF APPELLEES

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I. STATEMENT OF THE CASE AND FACTS

A. A regrettable, but necessary introduction.

The Court of Appeals has certified two narrow legal questions to the Court: whether one or both of the attorney-client contracts with which the defendants tortiously interfered are "void *ab initio,*" or, as the phrase is defined in *Black's Law Dictionary*, "void from the inception" (thereby effectively excusing the defendants' tortious conduct by rendering it non-actionable). The Court of Appeals has also specified with considerable particularity the procedural and factual foundation upon which these questions rest. It has specified the ruling of the trial court to which the questions are pertinent as the denial of the defendants' pre-trial motions for summary judgment. It has specified the evidence to be considered in determining the propriety of that ruling as only the evidence which was before the trial court on the defendants' pre-trial motions for summary judgment. And it has specified that this limited evidence must be viewed in a light most favorable to the plaintiffs, with all conflicts in the evidence resolved in the plaintiffs' favor. It has even provided the Court with an appropriate statement of the facts, viewed in the proper light.

These specifications of the procedural and factual foundation for the certified questions could not have been stated more plainly. Regrettably, the defendants have asked the Court to ignore them, and to answer the certified questions on an entirely different procedural and factual foundation. They have argued that the trial court erred, not in denying their pre-trial motions for summary judgment, but in denying their post-trial motions for judgment n. o. v. (which the trial court properly declined to consider, since the issue had been resolved pre-trial and was not tried thereafter). They have stated the relevant facts, not on the limited evidence which was before the trial court on their pre-trial motions for summary judgment, but on evidence which was adduced at trial (on an entirely different issue). And they have stated the facts, not in the light most favorable to the plaintiffs, but in the light most favorable to themselves (and ignored the conflicting evidence in the

process). They have also argued some sub-issues which are not even implicated by the narrow questions which have been certified to the Court.

In our judgment, given the clarity and precision with which the Court of Appeals specified the procedural and factual foundation of the certified questions, the defendants simply could not have been confused about any of these things -- and their effort to divert the dispute down an entirely different avenue and into a more favorable arena here was obviously purposeful. Indeed, the defendants concede as much by suggesting that their obvious reformulation of the issues is justified by the Court of Appeals' standard caveat that its "statement of the questions to be certified is not meant to limit the scope of inquiry" by this Court, and that the Court is free to restate the questions as it sees fit. Most respectfully, this Court is certainly not bound by the wording of the certified questions, or even to the conceptual perspective from which they were derived, but it is clearly bound to honor the procedural and factual foundation upon which the Court of Appeals squarely rested them.

To be specific, this Court is not free to "review" the trial court's denial of the defendants' post-trial motions for judgment n. o. v., when the ruling of the trial court which the Court of Appeals is reviewing is the denial of the defendants' pre-trial motions for summary judgment. It is not free to bottom its answers to the questions on evidence adduced at trial, when the only evidence which the Court of Appeals deems relevant to its review is the evidence which was before the trial court at the time that pre-trial ruling was made. And it is not free to view the evidence in a light most favorable to the defendants, when the Court of Appeals has plainly stated that, in its review of the trial court's pre-trial ruling, the evidence must be viewed in a light most favorable to the plaintiffs.

In short, the Court may restate the questions as it sees fit, but the questions clearly must be answered within the procedural and factual context in which they have been presented to the Court -- not in an entirely different context which has no relevance to the

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particular issue on appeal which gave rise to the questions in the Court of Appeals -- and the defendants' effort to misdirect this Court down that impermissible avenue is, we respectfully submit, a highly improper tactic. We detected this impropriety in our initial reading of the defendants' briefs, and we promptly moved the Court to strike the briefs and require resubmission of them, so we would not have to devote the bulk of our responsive brief to a restatement of the case and facts. Unfortunately, the Court denied our motion, so we have no choice but to restate the case and facts at considerable length here -- to refocus the Court upon the narrow questions which have been certified to it, and to place those questions back upon the procedural and factual foundation upon which they plainly rest.

In the process, we hope to provide the Court with the broader context in which the narrow questions arise, and with a considerably different perspective on the import of the questions -- because it is important that the Court understand that it is the defendants who are the wrongdoers here, not the plaintiffs, and that the answers to the questions which the defendants have proposed will simply excuse them from their tortious conduct (which the jury found so outrageous that substantial punitive damages were assessed), at the considerable expense of some very well-respected lawyers who were representing a deserving client in the highest standards of their profession. We apologize for the length of what follows, but the defendants' purposeful refusal to respect the procedural and factual foundation specified by the Court of Appeals simply leaves us no choice.

B. The relevant procedural background.

In their Amended Complaint (R3-40), the plaintiffs, Basil Yanakakis, Ira Leesfield, Roger Blackburn, and Leesfield & Blackburn, P.A., alleged that they were retained in Miami, Florida, by a Greek seaman, Nikolas Miliaresis, to prosecute a Jones Act and general maritime claim on his behalf against the defendants, Chandris, S.A. and Chandris, Inc. (hereinafter sometimes simply "Chandris"). The complaint alleged the creation of an

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advantageous business relationship between Mr. Miliaresis and the plaintiffs by virtue of an oral contract for legal representation made at the end of November, 1984, which was thereafter formalized by a written agreement executed on March 18, 1985. During trial, the complaint was amended to conform to the evidence by adding an allegation that the advantageous business relationship was also represented by an earlier written agreement between Mr. Miliaresis and Mr. Yanakakis, executed on October 16, 1984 (R31-474-475).

The complaint further alleged that the plaintiffs filed an action on Mr. Miliaresis' behalf on February 6, 1985 (which was later amended to name Chandris, S.A., and Chandris, Inc. as defendants), and that these defendants employed Transport Mutual Services, Inc. (hereinafter TMS) to adjust the claim on their behalf. According to the complaint, Chandris and TMS thereafter intentionally induced Mr. Miliaresis to discharge the plaintiffs and settle his claim directly with Chandris, in a manner which amounted to tortious interference with the plaintiffs' advantageous business relationship with Mr. Miliaresis. Compensatory and punitive damages were sought against all three defendants.

There was little question below that the defendants did, in fact (and in combination) -- through a large cast of players located in Miami, New York, London, and Piraeus, Greece -- engage in a persistent, elaborate, expensive, purposeful, and ultimately successful effort to induce Mr. Miliaresis to fire his attorneys, and to settle directly with them for a small fraction of what his lawsuit was worth. In fact, the principal player in this elaborate conspiracy admitted to "controlling" ten prior lawsuits in that fashion (R33-971; depo of Hamilton, pp. 155-56).[1/] Indeed, he testified that it was TMS' policy to encourage seamen to resolve their lawsuits in that manner; that he considered that to be his function; that he was aware of the risk that his conduct in that regard might be judged tortious interference;

[1/] Portions of Mr. Hamilton's deposition were read to the jury at R26-3-11 -- but were not retranscribed by the court reporter. The deposition appears in the record with the exhibits, and references are to its pages.

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but that the potential claims had always been settled by paying the seamen's attorneys a sum of money "[t]o facilitate the expedient termination of the file" (R33-957; depo. of Hamilton, pp. 39-40, 156-159). It is worth noting that this type of conduct, as onerous as it is to the seamen involved, also directly subverts a principal purpose of the Jones Act itself -- to ensure access to United States courts by foreign seamen and thereby remove the competitive advantage in international shipping enjoyed by foreign shipowners doing business with the United States whose jurisdictions provide only *de minimis* recoveries to injured seamen.[2/] In any event, Mr. Yanakakis, Mr. Leesfield, and Mr. Blackburn would not be bought off in that fashion, and brought the instant action instead.

We will not belabor the details of the defendants' tortious conduct here, because those facts, as interesting (indeed outrageous) as they are, are not directly germane to the narrow questions which have been certified to the Court. The unseemly details are collected in the brief which the plaintiffs filed in the Court of Appeals, at pages 7-26, to which the Court may refer if it desires. We mention the defendants' conduct here, however, to emphasize that it amounted to a hornbook paradigm of tortious interference with an advantageous business relationship, and that the defendants therefore had no defense whatsoever to the core of the plaintiffs' lawsuit. Their defense was bottomed instead on several largely collateral matters, and one of the defensive positions they argued below in an effort to escape the consequences of their plainly tortious conduct was the defense inherent in the questions which have been certified to this Court -- that they were free to interfere with the plaintiffs'

[2/] One of the tactics utilized by the defendants in inducing Mr. Miliaresis to settle behind his attorneys' backs, for example, was to frighten him into thinking that his lawsuit might be governed by Greek law, which would provide him a miniscule recovery of only $4,000.00 (PX 84; entry of 2/15/85). Predictably, however, the trial court ruled below that the Jones Act would have governed Mr. Miliaresis' claim as a matter of law, and it rejected the defendants' efforts to limit the value of Mr. Miliaresis' claim to the recovery provided by Greek law (R17-294; R32-665-681; R33-920; R34-1052).

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advantageous business relationship (and subvert the purpose of the Jones Act in the process) because the attorney-client contracts (which they discovered after-the-fact) from which that relationship derived were void *ab initio*, and would therefore support no action for tortious interference. We will detail the procedural background by which that defense was rejected in a moment. For the moment, we return to matters of general background.

By agreement, the issue of the amount of punitive damages to be assessed against the defendants, if any, was severed out for a separate trial, to be held only if the jury returned a verdict on liability which would support an award of punitive damages (R27-299). The remaining factual issues were thereafter submitted to the jury on a special interrogatory verdict form, and the jury returned the following findings of fact (among others):

(1) The plaintiffs had an advantageous business relationship with Mr. Miliaresis established by a written retainer agreement of October 16, 1984; a written retainer agreement of March 18, 1985; and an oral understanding between them;

(2) All three defendants interfered in this business relationship by inducing Mr. Miliaresis to discharge the plaintiffs in order to settle his claim directly with the defendants;

(3) All three defendants' interference with the business relationship was intentional, wanton, and with reckless indifference to the plaintiffs' rights;

(4) All three defendants used methods considered unfair according to contemporary business standards;

(5) All three defendants engaged in conduct violating the Florida Code of Ethics governing insurance adjusters;

(6) All three defendants misrepresented material facts or concealed material facts from Mr. Miliaresis in obtaining settlement of his claim;

(7) The defendants' interference with the plaintiffs' business relationship proximately caused damage to the plaintiffs;

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(8) The defendants were not justified in pursuing a legitimate economic interest in settling the claim with Mr. Miliaresis in the manner in which it was settled; and

(9) The fair value of Mr. Miliaresis' lawsuit, had the defendants not induced him to discharge the plaintiffs and settle for less, was $1,500,000.00 (R18-302; R36-1529-1531).[3/]

Because these findings of fact would support an award of punitive damages, the issue of the amount of punitive damages to be assessed against the defendants, if any, was thereafter tried to the same jury, which returned a verdict assessing punitive damages of $550,000.00 against TMS and $2,600,000.00 against Chandris (R40-2056-2057). Because the jury had found the existence of an advantageous business relationship in the written retainer agreements (which provided for 40% of the gross recovery in the event suit were filed), the trial court entered a final judgment against all three defendants assessing the plaintiffs' compensatory damages at $600,000.00 (R19-331). The final judgment also assessed punitive damages of $2,600,000.00 against Chandris, and assessed punitive damages of $550,000.00 against TMS (R19-331).

The issue giving rise to the certified questions first appeared as an affirmative defense in the defendants' answer, which alleged "that the contract for representation at issue is void and unenforceable, inasmuch as the contract was entered into and accepted in Miami, Florida by the Plaintiff, BASIL YANAKAKIS, who is not and never has been licensed to practice law in the State of Florida" (R4-85-4). The plaintiffs moved for summary judgment on this

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[3/] The jury's valuation of the underlying lawsuit accepted the most conservative of the two expert opinions which the plaintiffs presented on the issue, that the *settlement* value of the case was $1,500,000.00 (R41-44). This expert also opined that the value of the case was $3,000,000.00 if tried to verdict (*id.*) The plaintiffs' second expert valued the case in excess of $3,000,000.00 if settled, and in excess of $3,500,000.00 if tried to verdict (R29-350-354). The defendants' expert fixed the settlement value of the claim at $350,000.00 to $375,000.00 (R34-1163). The defendants ultimately settled with Mr. Miliaresis, after inducing him to fire his lawyers, for only $256,000.00 (R33-898-899; R34-1110) -- nearly $100,000.00 *less* than the *minimum* settlement value given to the case by their own expert at trial.

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affirmative defense (R10-209). The defendants filed cross-motions for summary judgment on this issue (R15-253; accordion folder #1). In addition to (1) challenging Mr. Yanakakis' contract as void, the memoranda submitted with the defendants' motions asserted (2) that the Leesfield firm's contract was also void, because it had its genesis in Mr. Yanakakis' contract, and (3) that the contracts were void as well for two technical omissions, in that they were not signed by a member of the Leesfield firm and did not expressly state the manner in which the fee was to be divided between the lawyers.

The evidence before the trial court on the cross-motions for summary judgment consisted of a handful of depositions and several affidavits, the details of which we will set out in the restatement of facts which follows. After reviewing this limited evidence, the trial court filed a "Memorandum of Decision and Order" which granted the plaintiffs' motion for summary judgment, and denied the defendants' cross-motions for summary judgment (R15-262). The trial court concluded that neither Mr. Yanakakis' contract nor the Leesfield firm's contract was void *ab initio*. And, relying upon this Court's decision in *United Yacht Brokers, Inc. v. Gillespie*, 377 So.2d 668 (Fla. 1979), it disposed of the defendants' incidental challenges to the technical omissions in the contracts by concluding that, at best, they merely rendered the contracts voidable, rather than void, and were therefore unavailable as defenses to the plaintiffs' action for tortious interference.

When the case came on for trial, the defendants attempted to resurrect the issue of the enforceability of the contracts indirectly. Counsel for the defendants acknowledged that the issue had been adjudicated on the cross-motions for summary judgment, but argued that the evidence on the issue was nevertheless admissible since it related to the defendants' "state of mind" (R21-7-41). Although we believed (and continue to believe) that the evidence had no relevance whatsoever to that issue, the trial court agreed with the defendants and allowed the evidence to be admitted as relevant to that different issue, but it declined to reconsider

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its prior order on the cross-motions for summary judgment (R21-41-44). The issue of the enforceability of the plaintiffs' contracts was *not* tried thereafter, and the jury was *not* asked to return any findings of fact on the issue. Nevertheless, the defendants raised the issue again in their post-trial motions for judgment n.o.v. In its order denying those motions, the trial court explicitly stated that the issue had been resolved prior to trial, and would not be revisited post-trial (SR1-390-6-7).

In their briefs on appeal, the defendants stated the facts underlying the issue of the enforceability of the plaintiffs' contracts from the evidence adduced at trial (solely on the issue of the defendants' "state of mind"), rather than on the evidence before the trial court at the time it disposed of the cross-motions for summary judgment (TMS' initial brief, pp. 10-13; Chandris' initial brief, p. 8). Nowhere in their briefs did the defendants challenge the propriety of the trial court's grant of the plaintiffs' motion for summary judgment. Neither did they directly complain of the denial of their own motions for summary judgment. In their first issue on appeal, however, they did argue that the trial court erred in failing "to dismiss appellees' complaint," and in failing "to dismiss plaintiffs' claim," because the plaintiffs' contracts were void *ab initio* (TMS' initial brief, pp. 33-40; Chandris' initial brief, pp. 11-18). These arguments asserted not only that Mr. Yanakakis' contract was void as illegal and that the Leesfield firm's contract was irrevocably tainted in turn by that illegality, but also that the absence of a signature by a member of the Leesfield firm and an explicit disclosure of how the fee was to be divided rendered the contracts void as well.

We responded to these contentions by pointing out that the issue of the enforceability of the contracts had been resolved prior to trial on cross-motions for summary judgment; that the only evidence relevant to the issue was, according to *Denis v. Liberty Mutual Insurance Co.*, 791 F.2d 846 (11th Cir. 1986), the evidence before the trial court on the cross-motions for summary judgment; and that it was therefore inappropriate for the defendants to rely

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upon evidence adduced at trial on the different issue of the defendants' "state of mind" (plaintiffs' answer brief, pp. 27-30). We also pointed out that, before the defendants could be excused from their tortious conduct, they had to convince the Court that the contracts were void *ab initio*, not merely voidable; and, relying on this Court's decision in *United Yacht Brokers, Inc. v. Gillespie*, *supra*, we argued that the technical omissions in the contracts rendered them, at best, merely voidable, not void *ab initio*, and that they were therefore unavailable as a defense to the plaintiffs' action for tortious interference (plaintiffs' answer brief, pp. 30-31, 36-38). And, of course, we argued that the fact that Mr. Yanakakis was not a member of The Florida Bar did not render his contract void *ab initio*, and that the Leesfield firm's contract was not tainted in turn by any illegality in Mr. Yanakakis' contract.

It was against this background that the Court of Appeals formulated the two questions presently before this Court. It explicitly stated that the issue before it was the propriety of the trial court's denial of the defendants' pre-trial motions for summary judgment:

> To state a truism, we review rulings not cases. It is difficult to discern from defendants' briefs what rulings they seek to review. Chandris, S.A., and Chandris, Inc., assert that "[t]he court erred by failing to dismiss plaintiffs' claim because contracts which are illegal and violate Florida public policy cannot be tortiously interfered with." (Appellants' Brief at 11.) Similarly, Transport Mutual Services, Inc., argues that "[t]he court's failure to dismiss appellees' complaint was error because contracts which are illegal or violative of Florida public policy cannot be tortiously interfered with." (Appellants' Brief at 33.) *We conclude that the defendants seek to review the district court's denial of their motions for summary judgment*, not the district court's grant of plaintiffs' motion.

(Slip opinion, p. 750 n. 2; emphasis supplied).

The Court of Appeals also explicitly rejected the defendants' reliance upon the evidence which had been adduced at trial, and limited the factual foundation for the certified questions as follows: "On review, *only* that evidence which was before the district court on

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motion is subject to appellate reveiw. *See Denis v. Liberty Mut. Ins. Co.*, 791 F.2d 846, 849 (11th Cir. 1986)." (Slip opinion, p. 750; emphasis supplied). The Court of Appeals also plainly stated that, given the nature of the ruling challenged by the defendants, this limited evidence was to be viewed in a light most favorable to the plaintiffs: "We resolve any disputed facts in the light most favorable to the *plaintiffs* who opposed the motion for summary judgment at issue." (Slip opinion, p. 750; emphasis supplied).

The certified questions also ask this Court *only* two things: whether Mr. Yanakakis' contract was void *ab initio* because he was not a member of The Florida Bar, and if so, whether the Leesfield firm's contract was void as well because "born of a fee agreement that is void." (Slip opinion, p. 753). Because the defendants' incidental complaints about the technical omissions in the contracts were squarely controlled by this Court's decision in *United Yacht Brokers, Inc. v. Gillespie, supra*, the Court of Appeals did *not* certify to this Court any question concerning the effect of those technical omissions upon the plaintiffs' cause of action for tortious interference. And with that unfortunately lengthy, but necessary, restatement of the procedural background to the certified questions behind us, we turn to the facts upon which the answers to those questions must depend.

C. The relevant factual background.

The Court of Appeals' opinion contains a brief statement of the relevant facts, viewed in the proper light, with appropriate record references. We will elaborate upon that statement somewhat here, in the interest of completeness. (Where we simply repeat a factual statement made in the Court of Appeals' opinion, we will not reiterate the record references provided in the opinion; where we add a fact, however, we will supply an appropriate record reference.) We begin on October 3, 1984, when Nikolas Miliaresis, a Greek seaman, was injured in Cozumel, Mexico, while working on a ship owned and operated by Greek shipping companies. He was airlifted to a hospital in Miami, Florida, where his leg was amputated.

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At the request of a Greek Orthodox priest, Father Demosthenes Mekras, Basil Yanakakis -- who spoke the seaman's language, and who was active in the Church and frequently performed charitable activities at the priest's request -- visited Mr. Miliaresis on October 7 to give him comfort and moral support (depo. of Yanakakis (I), pp. 24-26; (II), p. 44).[4/]

Mr. Yanakakis was born in Greece, and came to the United States in 1952 (depo. of Yanakakis (I), pp. 12-13). He obtained an L.L.M. degree from Harvard Law School in 1955 and a J.D. degree from Suffolk University Law School in 1959, and became a professor at Suffolk shortly thereafter (*Id.*, p. 14).[5/] He was admitted to The Massachusetts Bar in 1964. Between 1964 and 1979, he practiced law in Boston and continued as a professor at Suffolk, specializing in international and maritime law. In addition, he was admitted to practice before the United States District Court of Massachusetts, the First Circuit Court of Appeals, the United States Court of Customs and Patent Appeals, the United States Tax Court, and the United States Supreme Court. In 1980, he gave up his teaching duties and moved to Florida where he established his domicile. Upon moving to Florida, he became involved in real estate and managed personal investments. He was not a member of The Florida Bar. However, he remained a member in good standing of The Massachusetts Bar, and occasionally practiced law in Massachusetts while living in Florida (R13-239; depo. of Yanakakis (I), pp. 17-18).

After responding to Father Mekras' initial request, Mr. Yanakakis made daily visits

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[4/] There are two depositions of Mr. Yanakakis in the record, at accordion folder #2. The first, taken on September 21, 1989, will be referenced as depo. of Yanakakis (I); the second, taken on January 22, 1991, will be referenced as depo. of Yanakakis (II).

[5/] The deposition states that Mr. Yanakakis received an L.L.B. degree from Harvard Law School, but this is a typographical error by the court reporter. Mr. Yanakakis obtained his first L.L.B. degree from Athens University in Greece, and then an L.L.M. degree from Harvard, followed by an additional J.D. degree from Suffolk (which he needed for admission to The Massachusetts Bar).

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to Mr. Miliaresis, and consulted frequently with Mr. Miliaresis' physician, who was Mr. Yanakakis' friend (depo. of Yanakakis (I), pp. 24-31). Mr. Yanakakis did not volunteer to Mr. Miliaresis that he was a lawyer during any of the early visits (*Id.*, pp. 26-31). During one of the visits, however, Mr. Miliaresis' brother asked Mr. Yanakakis what he did for a living; Mr. Yanakakis replied that he was a lawyer in Massachusetts, and did not practice law in Florida (*Id.*, p. 31). At some point during the daily visits, Mr. Miliaresis informed Mr. Yanakakis that Chandris wanted to ship him home to Greece, and that he did not want to go; and he asked for Mr. Yanakakis' help in finding a local lawyer to represent him and help him remain in Miami for his medical treatment (depo. of Yanakakis (I), pp. 33-35; (II), pp. 53-61). Mr. Miliaresis also asked Mr. Yanakakis to represent him and protect him from Chandris' efforts to move him to Greece (depo. of Yanakakis (II), p. 95).

In response to this request, Mr. Yanakakis reiterated that he was not licensed to practice law in Florida; agreed to find a local lawyer whom Mr. Miliaresis could hire; and explained that he would assist the local lawyer with his expertise in Greek law and maritime law and in any other way that he could (depo. of Yanakakis (I), pp. 38-39; (II), pp. 61, 95-99, 106-10). To facilitate this, Mr. Yanakakis had Mr. Miliaresis sign a retainer agreement on October 16, typed in English and translated by hand into Greek, which recited that Mr. Miliaresis retained "BASIL S. YANAKAKIS, ATTORNEY from the Commonwealth of Massachusetts as my attorney to represent me . . ." (depo. of Yanakakis (II), pp. 106-10). Mr. Yanakakis gave Mr. Miliaresis no legal advice during this period of time, other than simple generalities about Greek law and general maritime law (*Id.*, pp. 99-100).

Additionally, at some point, Mr. Yanakakis gave Mr. Miliaresis' brother a mailing label that stated: "Basil S. Yanakakis, Attorney at Law, Suite 801, New World Tower, 100 North Biscayne Boulevard, Miami, Florida, 33132." The affidavit of Mr. Miliaresis' brother, which attested to the delivery of this label, does not provide any date for the

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delivery (R14-245). Neither does the label affirmatively assert that Mr. Yanakakis was licensed to practice in Florida -- and because Mr. Yanakakis testified that both Mr. Miliaresis and his brother were fully informed that he was not a member of The Florida Bar (and because the evidence must be viewed in a light most favorable to the plaintiffs), no reasonable inference can be drawn from the label, in the face of the direct evidence to the contrary, that Mr. Yanakakis held himself out as licensed to practice in Florida.

In early November, at the recommendation of Judge Peter Fay, Mr. Yanakakis contacted Mr. Leesfield to discuss representation of Mr. Miliaresis (depo. of Dresnick, pp. 37-39, 59; depo. of Leesfield, pp. 15-17).[6/] Mr. Leesfield agreed to take the case if Mr. Miliaresis wished to hire him, and an associate in the Leesfield firm, Mark Dresnick, together with Mr. Yanakakis and an investigator, met with Mr. Miliaresis on November 30 (depo. of Dresnick, pp. 32-46). Mr. Dresnick left the meeting with an oral authorization to represent Mr. Miliaresis and to proceed with the filing of a lawsuit on his behalf (depo. of Dresnick, pp. 75-76; depo. of Yanakakis (I), pp. 51-52). The Leesfield firm thereafter obtained medical authorizations from Mr. Miliaresis; prepared the complaint; filed a Jones Act action in state court on Mr. Miliaresis' behalf on February 6, 1985; and confirmed the agreement to represent in a writing delivered to Mr. Miliaresis (depo. of Dresnick, pp. 107, 116-23; depo. of Leesfield, pp. 222-27, 268).

Although Mr. Yanakakis could easily have been admitted *pro hac vice* to act as co-counsel with the Leesfield firm in the litigation, he did not apply; instead, the Leesfield firm appeared as counsel of record, and Mr. Yanakakis assisted the firm by advising it about legal matters within his areas of expertise, and by handling communications with Mr. Miliaresis (depo. of Yanakakis (I), pp. 62-71; depo. of Dresnick, pp. 119-20; depo. of Leesfield, pp.

[6/] The depositions of Mr. Dresnick and Mr. Leesfield also appear in the record in accordion folder #2.

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146-47, 165, 371-76, 378-81). It is worth emphasizing that Mr. Yanakakis' participation in the case was a single, isolated transaction, arising from the unique circumstances of his special relationship with Mr. Miliaresis and his special expertise in Mr. Miliaresis' legal situation, and that Mr. Yanakakis had been involved in no other lawsuit in Florida (depo. of Yanakakis (I), p. 21). It is also worth emphasizing that Mr. Miliaresis was not a resident of Florida, but a citizen of Greece who found himself in Florida quite by accident, because of an injury suffered in Mexico while in the employ of Greek shipping companies.

On March 18, 1985, the prior oral agreement was formalized; Mr. Miliaresis executed a written contingent fee agreement retaining "the Law Offices of Leesfield & Blackburn and Basil S. Yanakakis as my attorneys . . . ." This agreement was signed by Mr. Yanakakis and Mr. Miliaresis, but not by Leesfield & Blackburn. The agreement was silent as to the distribution of fees between Mr. Yanakakis and the Leesfield firm. However, there was a "full understanding" that the contingent fee would be divided between Mr. Yanakakis and the Leesfield firm based on their respective contributions to the result (depo. of Yanakakis (I), pp. 84-86; depo. of Leesfield, pp. 238-40, 246, 265).[7/] Mr. Miliaresis returned to Greece sometime thereafter; and as noted previously, the defendants then successfully subverted the Jones Act, and deprived the plaintiffs of their contingent fee, by inducing Mr. Miliaresis to discharge his attorneys in 1986 and settle directly with them for a very small fraction of what his case was actually worth. The plaintiffs refused to have their silence purchased -- and the Court knows the rest.

There were two additional items before the trial court when it ruled on the cross-motions for summary judgment. One of those items was the affidavit of Arthur J. England,

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[7/] Although not directly expressed on the record, it should be obvious from all the remaining facts that Mr. Miliaresis was in no position to pay Mr. Yanakakis an hourly consulting fee, and that the only way in which he could obtain the benefit of Mr. Yanakakis' considerable expertise was to retain his services on a contingent fee basis.

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Jr., a former Chief Justice of this Court (R13-232). Mr. England's expertise on Florida law governing the "unauthorized practice of law" cannot legitimately be challenged here, of course. After stating his understanding of the facts, which was essentially identical to the facts recited above, Mr. England opined, among other things, that the contingent fee contracts at issue here were valid and enforceable under Florida law; that Mr. Yanakakis' arrangement with Mr. Miliaresis was consistent with custom and practice and violated no ethical standard in Florida; and that Mr. Yanakakis did not engage in the "unauthorized practice of law" (R13-232-6-7).

The plaintiffs also filed the affidavit of Emmett Abdoney, who was Chairman of The Florida Bar Commission on Professional Ethics at the time. Mr. Abdoney opined, among other things, that it was common practice for out-of-state attorneys to enter into contingency fee arrangements like the one in issue here; that there is no ethical impropriety in doing so as long as Florida counsel is engaged to do the necessary legal work in Florida; and, in effect, that Mr. Yanakakis' contractual relationship with Mr. Miliaresis did not amount to the "unauthorized practice of law" (R10-217-2-3; R13-232-8-10). And it was on these facts and legal opinions that the trial court determined that none of the contracts in issue here were void *ab initio*, and that the defendants' cross-motions for summary judgment on the issue should be denied. We remind the Court once again that it is the propriety of *that* ruling, and that ruling alone -- on the limited evidence before the trial court at the time, viewed in a light most favorable to the plaintiffs -- which is the subject of the two narrow questions which have been certified to this Court.

II. CERTIFIED QUESTIONS

A. WHETHER AN OUT-OF-STATE ATTORNEY, WHO RESIDES IN FLORIDA BUT IS NOT ASSOCIATED WITH A FLORIDA LAW FIRM, ENGAGES IN THE UNAUTHORIZED PRACTICE OF LAW WHERE THAT ATTORNEY ENTERS INTO A CONTINGENT FEE AGREEMENT IN

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FLORIDA, THEREBY RENDERING THAT FEE AGREEMENT VOID.

B. WHETHER A FEE AGREEMENT OF A FLORIDA LAW FIRM BORN OF A FEE AGREEMENT THAT IS VOID AS THE UNAUTHORIZED PRACTICE OF LAW IS ITSELF VOID.

III. SUMMARY OF THE ARGUMENT

We are allotted only 50 pages in which to respond to the 65 pages of the defendants' briefs; and because the defendants have refused to honor the procedural and factual foundation specified for the certified questions, we have had to devote nearly 16 of those 50 pages to a restatement of the case and facts. Space for argument is therefore at a premium here. And because we would like to devote the limited remaining space to as thorough an argument as we can make on the important questions before the Court, we simply do not have the space available to repeat that argument here in abbreviated form. Requesting the Court's indulgence, we turn directly to the merits.

IV. ARGUMENT

A. MR. YANAKAKIS' CONTRACTUAL RELATIONSHIP WITH MR. MILIARESIS WAS NOT ILLEGAL, AND HIS CONTRACT WAS THEREFORE NOT VOID *AB INITIO*.

1. A contextual introduction.

As always, context is important. And to place the first certified question in its proper context, we should first explain its import to the larger controversy between the parties. The gravamen of Mr. Yanakakis' claim was, of course, that the defendants tortiously interfered with his contractual relationship with Mr. Miliaresis -- and to defeat that claim in the manner in which the defendants are attempting to defeat it in this case (after successfully defeating Mr. Miliaresis' Jones Act claim against them by inducing him to accept a small fraction of what it was worth), it was necessary for the defendants to prove that Mr. Yanakakis had no

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valid contractual relationship whatsoever with Mr. Miliaresis. To do that, it was necessary to demonstrate that Mr. Yanakakis' contractual relationship was void *ab initio* -- *because*, where tortious interference claims are concerned, the law of Florida recognizes a difference between contractual relationships which are void *ab initio,* and those which are only voidable at the instance of a party to the contract. An action for tortious interference will lie in the second case, but not in the first.

The seminal decision is *United Yacht Brokers, Inc. v. Gillespie,* 377 So.2d 668 (Fla. 1979), in which the defendants sought to avoid liability for their tortious interference with an oral brokerage agreement on the ground that the agreement was unenforceable, since it violated a statutory requirement that brokerage agreements must be in writing. This Court rejected this defense in no uncertain terms as follows:

> It has long been established that an injured party may sue the party who defaults on a contract and may also maintain an independent cause of action against a wrongdoer who induced the breach [citation omitted]. This separate cause of action recognizes that economic relations are entitled to freedom from unreasonable interference. It may seem improper that a cause of action in tort should be permitted to arise, as in the instant case, from an otherwise unenforceable agreement. In this regard, Dean Prosser was quoted in *Allen v. Leybourne,* 190 So.2d 825, 828 (Fla. 3d DCA 1966), a case in which a suit for tortious interference with a contract to make a bequest was permitted, despite the unenforceability of the contract. We find his reasoning most persuasive:
>
> > The agreement need not, however, be enforceable by the plaintiff as a contract. . . . The law of course does not object to the voluntary performance of agreements merely because it will not enforce them, and it indulges in the assumption that even unenforceable promises will be carried out if no third person interferes. Accordingly, it usually is held that contracts which are voidable by reason of the statute of frauds, formal defects, lack of consideration, lack of mutuality, or even uncertainty of terms, or harsh and unconscionable

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> provisions, or conditions precedent to the existence of the obligation, can still afford a basis for a tort action when the defendant interferes with their performance.
>
> W. Prosser, Handbook of the Law of Torts, § 129 at 932 (4th ed. 1971). In this case it is entirely reasonable to assume that absent the alleged interference, United would have been paid its commission regardless of the enforceability of its agreement with Johnson.
>
> Although we do not condone [the plaintiff's] failure to comply with section 537.05(2), neither will we permit [the defendants] to use it as a shield to limit their liability for tortious interference, , . .

377 So.2d at 672. That is clearly the law in Florida, and there are a number of decisions in accord .[8/]

To be contrasted with ***United Yacht*** and its progeny are the decisions relied upon by the defendants: *Thomas* v. ***Ratiner,*** 462 So.2d 1157 (Fla. 3d DCA 1984), ***review denied, 472*** So.2d 1182 (Fla. 1985), and ***Sunbeam Corp. v. Masters of Miami, Inc., 225*** F.2d 191 (5th Cir. 1955). In these cases, the contracts interfered with were void ***ab initio,*** because they were illegal or criminal in their inception or purpose, and the defendants were therefore held privileged to interfere with them. ***See Restatement (Second) of Torts, $774.*** In Thomas, for example, a defendant was held privileged to interfere with an attorney's retainer contract obtained in violation of §877.02(2), Fla. Stat., which made it criminal for any person in the employ of a hospital to solicit a retainer contract on behalf of an attorney. Similarly, in

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[8/] ***PRN*** *of* ***Denver, Inc. v. Arthur J. Gallagher &*** Co., 531 So.2d 1001 (Fla. 3d DCA 1988); *Landry* ***v. Hornstein, 462*** So.2d ***844*** (Fla. 3d DCA 1985); ***Scussel v. Baker, 386*** So.2d 1227 (Fla. 3d DCA 1980); ***Calvary Church, Inc.*** v. ***Siegel,*** 358 So.2d 1134 (Fla. 3d DCA), *cert.* ***dismissed, 364*** So.2d 882 (Fla. 1978); ***Allen v. Leybourne,*** 190 So.2d 825 (Fla. 3d DCA 1966). ***See Restatement*** (Second) of ***Torts,*** $766, Comment *f.* ***See also Cross v. American Country Insurance,*** 875 F.2d 625 (7th Cir. 1989) (under Illinois law, action for tortious interference with a contingency fee agreement will lie notwithstanding that the agreement does not comply with the technical requirements of the disciplinary rules).

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Sunbeam Corp., a defendant was held privileged to interfere with so-called "Fair Trade Contracts" entered into under a statutory scheme which had been declared unconstitutional by this Court. *See also Agudo, Pineiro & Cates, P.A. v. Harbert Construction Co,, 476* So.2d 1311 (Fla. 3d DCA 1985) (discussing the rule, but finding the record insufficient to demonstrate its applicability), *review denied,* 486 So.2d 596 (Fla. 1986).

It is this second line of cases into which the defendants hope to force the facts in this case, because success in that regard will render their tortious conduct (and their subversion of the Jones Act) privileged, and neatly excuse them from liability for the consequences of their own illegal conduct. For their reverse-claim of illegality, they rely upon $454.23, Fla. Stat. (1983), which makes it a misdemeanor of the first degree for " [a]ny person not licensed or otherwise authorized by the Supreme Court of Florida [to] practice law . . . . " in Florida. We will demonstrate in due course that this provision is violated not merely by the practice of law without a local license, as the defendants contend; instead, it is violated only if this Court declares a *particular* practice like that in issue here to constitute *the unauthorized* practice of law. And for the several reasons which follow, we respectfully submit that this Court will *not* make such a declaration in this case; that Mr. Yanakakis' contractual relationship with Mr. Miliaresis was *not* unauthorized, and was therefore neither illegal nor criminal; that the contractual relationship was therefore *not* void *ab initio;* and that the defendants were therefore *not* privileged to interfere with it in any fashion without incurring liability for the damages caused by their own illegal conduct.

2. The facial legality of Mr. Yanakakis' contract.

Initially, we cannot help but observe that the defendants' complaints about Mr. Yanakakis' contractual relationship with Mr. Miliaresis are fraught with considerable irony. Mr. Stearns, who is a member of The New York Bar, represented TMS throughout the proceedings in the United States District Court for the Southern District of Florida, and he

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presently represents TMS in this Court. Like Mr. Yanakakis, he is not a member of The Florida Bar. He has engaged in the full-blown practice of law in this state, however, by the simple expedient of being temporarily admitted for that purpose ***pro hac*** vice -- a label which is largely a formality, and generally obtainable on request. See Rule 1-3.2(a), Rules Regulating The Florida Bar. Frankly, the only difference we can perceive between Mr. Stearns' practice of law in this state and Mr. Yanakakis' contractual relationship with Mr. Miliaresis is that Mr. Stearns applied for the temporary label, and Mr. Yanakakis did not -- and it is the de ***minimis***, largely formal nature of this difference, we think, that plainly proves, without more, the facial legality of Mr. Yanakakis' contractual relationship.

We remind the Court that Mr. Yanakakis was a member in good standing of The Massachusetts Bar, and was admitted to practice in (among other federal courts) the United States District Court of Massachusetts, the United States Court of Appeals for the First Circuit, and the United States Supreme Court. Mr. Miliaresis' causes of action arose under the Jones Act and general maritime law (and, according to the defendants at least, perhaps under Greek law), and they were therefore governed exclusively by federal law. As a result, under the authority of either of the two written contracts in issue here, Mr. Yanakakis could actually have prosecuted Mr. Miliaresis' claims (without the assistance of any Florida attorneys) in a Massachusetts federal (or state) court -- and this Court could not have declared his contractual relationship with Mr. Miliaresis illegal, or proscribed its performance in that fashion by declaring it to be the "unauthorized practice of law." That point was settled in ***Sperry*** v. ***Florida,*** 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963), where the United States Supreme Court held that this Court could not regulate the practice of law by a nonlawyer patent practitioner residing in Florida, where the practice was authorized by federal law and conducted in the appropriate federal forum.

A similar conclusion was reached more recently by this Court in ***The Florida Bar re***

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Advisory ***Opinion -- Nonlawyer Preparation of Pension Plans,*** 571 So.2d 430 (Fla. 1990). In that proceeding, The Florida Bar asked this Court to approve an advisory opinion declaring nonlawyer involvement in the design and preparation of pension plans in Florida to be the unauthorized practice of law. Relying upon ***Sperry,*** this Court declined to approve the proposed opinion, holding instead that the practice of nonlawyers in this essentially federal area had been preempted by federal law. There are other decisions in essential accord. See, e. g., ***The Florida Bar v. Kaiser,*** 397 So.2d 1132 (Fla. 1981) (given ***Sperry,*** practice of naturalization and immigration law in Florida by lawyer admitted only in New York is not the unauthorized practice of law in Florida, but attorney would be enjoined from publishing advertising designed to mislead public into believing he was a member of The Florida Bar). ***Cf. The Florida Bar v. Moses, 380*** So.2d 412 (Fla. 1980) (where state administrative agencies have the authority to permit nonlawyers to practice before them, Court would not declare such practice to be the unauthorized practice of law if agency exercised its authority properly).

Most respectfully, these decisions plainly prove that Mr. Yanakakis' contractual relationship with Mr. Miliaresis could have been legally performed in at least one manner, so we fail to see how the Court could legitimately declare that contractual relationship void ***ab initio,*** or "void from the inception, " simply because it was entered into in Florida. Moreover, Mr. Yanakakis' contract for representation could have been legally performed without the assistance of Florida attorneys not merely in Massachusetts, but in Florida as well -- because Mr. Yanakakis could have prosecuted Mr. Miliaresis' federal causes of action in a federal court in Florida (just as Mr. Stearns defended TMS in the instant action), by the simple expedient of being temporarily admitted ***pro hac vice*** for that purpose (as Mr. Stearns was admitted in the trial court below). ***See generally*** Annotation, ***Right to Appear Pro Hac Vice,*** 33 A.L.R. Fed. 799 (1977).

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Indeed, Mr. Yanakakis could have prosecuted Mr. Miliaresis' case in a Florida state court (since state courts have concurrent jurisdiction over Jones Act and maritime claims), as out-of-state attorneys frequently do, by the same simple expedient (as Mr. Stearns has in this Court). *See Huff v. State,* 569 So.2d 1247 (Fla. 1990); Rule 1-3.2, Rules Regulating The Florida Bar ("A practicing attorney of another state, in good standing, who has professional business in a court of record of this state may, upon motion, be permitted to practice for the purpose of such business upon such conditions as the court deems appropriate . . ."). In short, Mr. Yanakakis could legally have performed his contract with Mr. Miliaresis without the assistance of local attorneys in a number of different ways, in Massachusetts and Florida and probably nearly everywhere else; his contract with Mr. Miliaresis was therefore legal on its face; and it should therefore be simply impossible for this Court to declare his contractual relationship with Mr. Miliaresis void *ab initio* here.

3. The legality of Mr. Yanakakis' contract, as performed.

In hindsight, of course, an application for temporary admission *pro hac* vice might have been prudent, since it would have deprived the defendants of any basis for the hyperbolic assault which they have launched against the plaintiffs here in an effort to avoid the consequences of their own plainly illegal conduct. The fact remains, however, that Mr. Yanakakis did not apply for the formal label, and elected to perform his contract another way -- so the question remains whether a facially legal attorney-client contract which can be legally performed in one manner can nevertheless be declared void *ab initio* if subsequently performed in a different way. Frankly, we think the answer to that question has to be "no," since the phrase "void *ab initio*" means "void from the inception" -- and we think that any incidental conduct in carrying out a facially legal contract which might amount to the unauthorized practice of law should render the contract, at worst, merely voidable. See *Restatement (Second)* of *Torts, 9774,* Comment *b* (void contracts are "not contracts at all").

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Nevertheless, the defendants have argued to the contrary here, and we would be remiss if we did not respond to the defendants' argument on its own terms, so we will also demonstrate that the manner in which Mr. Yanakakis performed his contractual relationship with Mr. Miliaresis did not amount to the unauthorized practice of law,

The question presented by the defendants' "void as performed" argument boils down to this specific question on the facts in this case (viewed in a light most favorable to the plaintiffs, as they must be): is it illegal for an out-of-state attorney to enter into a contract in Florida (with a Greek citizen injured in Mexico who has claims against Greek shipping companies) to perform legal services as co-counsel with Florida attorneys in litigation arising under federal and maritime law, where the contract is an isolated transaction arising out of unique circumstances and a special relationship with the client, and where the role of the out-of-state attorney is simply to act as liaison with (and interpreter for) the client and give legal advice to the Florida attorneys on matters of federal, maritime and Greek law, and the act of representation of the client in Florida courts is undertaken solely by the Florida attorneys? We believe the answer to this question is "no," as both Mr. England and Mr. Abdoney opined in their expert affidavits below.

In elaborating on that negative answer, ***Sperry v. Florida, 373*** U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963), is once again as good a starting place as any. In that case, as previously noted, the United States Supreme Court held that this Court could not regulate the practice of law by a nonlawyer patent practitioner residing in Florida, where the practice was authorized by federal law and conducted in the appropriate federal forum. That ***Sperry*** is still the law is demonstrated by this Court's more recent decision in ***The Florida Bar v. Kaiser,*** 397 So.2d 1132 (Fla. 1981), where the Court observed that, given ***Sperry, the*** practice of naturalization and immigration law in Florida by a lawyer admitted only in New York does not amount to the unauthorized practice of law in Florida.

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And it was the rationale of ***Sperry*** which apparently motivated the en banc Court in ***Spanos v. Skouras Theatres Corp.,*** 364 F.2d 161 (2nd Cir. 1966) (en banc), cert. denied, 385 U.S. 987, 87 S. Ct. 597, 17 L. Ed.2d 448 (1966), to hold that an isolated contract for legal services between a New York client and an attorney admitted only in California, which contemplated that the California attorney would provide legal advice in New York to the client's New York attorneys in a federal antitrust suit pending in a New York federal court, in which the New York attorneys appeared as counsel of record, was not illegal -- a holding which, if still good law, would be squarely in Mr. Yanakakis' favor here. The ***Spanos*** Court did not rest this conclusion on ***Sperry,*** however; it rested the conclusion instead on the "privileges and immunities clause" of the United States Constitution.

The defendants have argued that ***Spanos*** was subsequently "overruled" in its entirety by the United States Supreme Court, but this contention is plainly untenable. In ***Norfolk & Western Railway Co. v. Beatty*** , 400 F. Supp. 234 (S.D. Ill.), *aff'd*, ***423*** U.S. 1009, 96 S. Ct. 439, 46 L. Ed.2d 381 (1975), lawyers licensed only in Missouri attempted to obtain ***pro hac vice*** status in Illinois state courts to file federal actions arising under the Jones Act and the Federal Employers' Liability Act, ***without*** the assistance of local counsel. The Illinois courts had no objection to the Missouri lawyers practicing in a supporting, consulting, and advisory role in the litigation (as Mr. Yanakakis did in the instant case), but required the plaintiffs to obtain local counsel to appear as counsel of record in the state court proceedings (as Mr. Miliaresis did in the instant case by hiring the Leesfield firm). The Missouri lawyers challenged this rule in federal court on constitutional grounds, and a three-judge district court panel upheld the rule -- holding that the Constitution did not prevent a state from controlling the practice of law in its own courts with a reasonable requirement that a local attorney be engaged to appear as counsel of record in the state courts. As the citation to the decision reflects, the United States Supreme Court affirmed this holding.

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Later, in ***Leis v. Flynt,*** 439 U.S. 438, 99 S. Ct. 698, 58 L. Ed.2d 717 (1979), the United States Supreme Court was faced with a similar question. In that case, after an Ohio State court had denied two out-of-state lawyers permission to appear ***pro hac vice*** in a state criminal prosecution, the attorneys contended that the Due Process Clause of the Fourteenth Amendment entitled them to practice in Ohio State courts whether admitted ***pro hac vice*** or not. The Supreme Court disagreed, observing:

> We do not question that the practice of courts in most States is to allow an out-of-state lawyer the privilege of appearing upon motion, especially when he is associated with a member of the local bar. In view of the high mobility of the bar, and also the trend towards specialization, perhaps this is a practice to be encouraged. But it is not a right granted either by statute or the Constitution. . . .

439 U.S. at 441-42, 58 L. Ed.2d at 721-22. In a footnote which followed, the Court disagreed with the *Spanos* Court's conclusion that the "privileges and immunities clause" of the federal constitution ***prohibited*** a state from regulating the practice of law in the state by out-of-state attorneys, but it did ***not*** quarrel with the ***Spanos*** Court's additional conclusion that the contractual arrangement in issue there was perfectly legal.

It is therefore apparent from ***Norfolk*** & ***Western*** and *Leis* that this Court may constitutionally regulate ***pro hac vice*** admissions by out-of-state attorneys in litigation brought in Florida courts, and even the type of behind-the-scenes legal advice to which Illinois had no objection in ***the Norfolk & Western*** case. There is nothing in either of these decisions, however, to support the notion that it is ***illegal*** to do what the Illinois courts ***approved*** of in ***Norfolk & Western --*** i. e., for a Greek citizen temporarily in Florida to engage an out-of-state attorney with expertise in his federal and maritime causes of action and in Greek law to give legal advice to Florida attorneys in a lawsuit involving federal, maritime and possibly Greek law, prosecuted on the client's behalf in a Florida State court by lawyers admitted to practice in Florida. We do not deny the Court's power to regulate that type of practice, but

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we do insist that, for the reasons which motivated the ***Sperry*** and *Spanos* decisions in the first place, such an arrangement should not be declared ***the unauthorized*** practice of law,

It is settled, of course, that not every act which amounts to the practice of law in Florida by a nonlawyer or a non-admitted lawyer amounts to ***the unauthorized*** practice of law. Such practice is only unauthorized, and therefore illegal, if this Court declares it so:

> Inherent in our supervisory power is the authority to prohibit the ***unauthorized*** practice of law. Fla. Bar Integr. Rule, Art. XVI. Implicit in the power to define the practice of law, regulate those who may so practice and prohibit the unauthorized practice of law is the ability to ***authorize*** the practice of law by lay representatives . The unauthorized practice of law and the practice of law by non-lawyers are not synonymous. . . , Section 454.23, Florida Statutes (1977) ("Any person not licensed ***or otherwise authorized*** by the Supreme Court of Florida . . . ." who practices law is guilty of first degree misdemeanor) (emphasis supplied); Fla. Bar Integr. Rule, Art. XVII (qualified law students authorized to represent clients in legal intern programs).

The Florida Bar v. Moses, 380 So.2d 412, 417 (Fla. 1980). The defendants are therefore plainly wrong in asserting that $454.23, Fla. Stat. (1983), is violated by any act of a non-admitted lawyer that amounts to the practice of law -- and this Court is just as clearly free to declare Mr. Yanakakis' isolated, carefully limited contractual relationship with Mr. Miliaresis legal if no compelling reason exists to declare it unlawful.

It is equally well settled, of course, that the touchstone for determining whether the practice of law by a nonlawyer or a non-admitted lawyer should be declared authorized or unauthorized is whether the public will be harmed by the practice: "The single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation. " ***The Florida Bar*** v. Moses, 380 So.2d 412, 417 (Fla. 1980). The same point is put another way in ***State ex rel. The Florida Bar*** v. ***Sperry,*** 140 So.2d 587, 595 (Fla. 1962), ***vacated on other grounds,***

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373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963):

> The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice is frequently misunderstood. It is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons . . . .

Accord The Florida Bar v. Brumbaugh, 355 So.2d 1186 (Fla. 1978); ***The Florida Bar re Advisory Opinion HRS Nonlawyer Counselor, 5 18*** So.2d ***1270*** (Fla. 1988); ***The Florida Bar v. Schramek,*** 616 So.2d 979 (Fla. 1993).

And absent the probability of such harm, of course, the practice of law by a nonlawyer or a non-admitted lawyer is ordinarily deemed authorized. See ***generally In Re Advisory Opinion -- Non-Lawyer Preparation of Notice to Owner and Notice to Contractor,*** 544 So.2d 1013 (Fla. 1989) (although laypersons' completion of notices required by Mechanics' Lien Law is arguably the practice of law, Court would not declare it the unauthorized practice of law where the persons were knowledgeable and the practice would present no significant risk of harm to the public). ***Compare The Florida Bar re Advisory Opinion -- Nonlawyer Preparation of Living Trusts,*** 613 So.2d 426 (Fla. 1993) (preparation of "living trusts" by nonlawyers declared the unauthorized practice of law because of the clear potential for harm to the public).

Most respectfully, since this is the test -- the protection of the public from the harm that would be caused by unqualified, incompetent, unethical or irresponsible representation -- we fail to see any reason why Mr. Yanakakis' isolated, carefully limited contractual relationship with Mr. Miliaresis, in which he involved himself only in matters of federal law, should be declared unlawful here. Mr. Yanakakis is a licensed attorney -- and the day has long since passed when Florida was so parochial that it would declare a lawyer, qualified to practice law in Massachusetts and in various federal courts including the United States

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Supreme Court, unqualified to practice ***federal*** law in any fashion in Florida simply because he had not taken an examination on Florida law.

Mr. Yanakakis is also undeniably an expert in the several specialized fields of federal, maritime and Greek law, the practice of which, according to ***Sperry,*** this Court simply cannot prohibit. And, although this Court may constitutionally regulate his practice of law in Florida State courts, he did not practice law in any Florida court; he only assisted licensed Florida attorneys in their representation of Mr. Miliaresis in a Florida court with advice on the law in his several areas of expertise. It also cannot be denied that, given Mr. Miliaresis' unhappy circumstances, the nature of his causes of action, and Mr. Yanakakis' expertise in those areas, Mr. Miliaresis obtained a considerable benefit from Mr. Yanakakis' expert legal assistance which would have been exceedingly difficult for him to duplicate if he had been restricted to hiring only Florida lawyers.

All things considered, neither Mr. Miliaresis nor the public were harmed in any way by the joint representation in issue here. In fact, we think the facts of this case call for a conclusion the other way around. We think that ***disapproval*** of such an arrangement here could cause considerable harm to the public, because such a ruling would deprive Florida citizens (and citizens of other nations temporarily in Florida) of access to qualified, knowledgeable attorneys from other jurisdictions who might provide expert legal assistance to them in their time of need -- a practice which is common in Florida, according to the affidavit testimony of Mr. England and Mr. Abdoney.

For example, such a ruling would prohibit a Florida citizen from retaining a Harvard Law School professor like Laurence Tribe or Alan Dershowitz to represent him and assist his local attorneys in litigation challenging the constitutionality of a statute under the United States Constitution, or in the defense of a criminal prosecution. Such a ruling would also prohibit a Florida citizen from retaining a professor at the University of Florida Law School

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who was not admitted to The Florida Bar to assist him in litigation in Florida involving his or her area of expertise. (Such a ruling might even have an inhibitory effect upon the perfectly ordinary practice of out-of-state attorneys referring out-of-state clients to Florida attorneys.) In our judgment, no distinctions can be drawn between these rather ordinary examples and the instant case simply because two of these professors live in Massachusetts and Mr. Yanakakis does not, or because the third professor presently teaches law in Florida and Mr. Yanakakis does not -- because each arrangement amounts to the practice of law in this state. And as long as Mr. Yanakakis' employment as an expert is an isolated event, as it clearly was in this case -- and as long as Mr. Yanakakis' non-admitted status is disclosed and local attorneys are hired to practice in the state courts, as happened in the instant case -- no good reason suggests itself for distinguishing the examples from the instant case.

Moreover, we think this Court would be (or at least should be) embarrassed to declare the isolated transaction in issue here so fraught with the possibility of "incompetent, unethical, or irresponsible representation" that it must be declared harmful to the public, and therefore unauthorized, when Mr. Yanakakis is a member in good standing of the Bar of the highest court in this nation; when he could have performed his contract in a perfectly legal way in the federal courts of this nation; and when he could even have performed his contract with perfect legality in the courts of this state, without the assistance of any Florida lawyers, by the simple expedient of applying for temporary admission ***pro hac*** vice. Surely, as a matter of common sense, the public policy of this state simply is not offended by Mr. Yanakakis' isolated contractual relationship with the Greek citizen who he assisted in a time of dire need with his considerable expertise in this case.

We need not rely on common sense alone, however, because there is ample legal precedent for that commonsensical conclusion, In this age of light-speed communication and exceptional mobility, the population of this nation and its extensive commerce move freely

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across state lines, and the distinctions between the individual states and their separate licensing schemes have been considerably blurred. In the course of that national commerce, of course, law is frequently practiced across state lines -- and the courts of this nation, including this Court, have therefore been quite liberal in accommodating that modern reality in questions pertaining to the unauthorized practice of law. ***See generally The Florida Bar re Amendments to the Rules Regulating The Florida Bar, 593*** So.2d 1035 (Fla. 1991) (recognizing that Florida's extensive ties to interstate commerce require relaxation of rules governing the practice of law, and acceptance of the practice of law by non-admitted attorneys acting as in-house corporate counsel).

For example, in one of the earlier decisions on the question -- ***Appell v. Reiner, 43*** N.J. 313, 204 A.2d 146 (1964) -- a New York attorney not licensed to practice law in New Jersey represented New Jersey residents in a matter involving the compromise of claims held by New York and New Jersey creditors, and practiced law in New Jersey in the process. The trial court declared his practice in New Jersey illegal, and held that he was entitled to no fees as a result. The New Jersey Supreme Court disagreed, explaining as follows:

> The Chancery Division correctly delineated the generally controlling principle that legal services to [be] furnished to New Jersey residents relating to New Jersey matters may be furnished only by New Jersey counsel. We nevertheless recognize that there are unusual situations in which a strict adherence to such a thesis is not in the public interest. In this connection recognition must be given to the numerous multi-state transactions arising in modern times. This is particularly true of our State, situated as it is in the midst of the financial and manufacturing center of the nation. An inflexible observance of the generally controlling doctrine may well occasion a result detrimental to the public interest, and it follows that there may be instances justifying such exceptional treatment warranting the ignoring of state lines. This is such a situation. Under the peculiar facts here present, having in mind the nature of the services to be rendered, the inseparability of the New York and New Jersey transactions, and the substantial nature of the New York claim, we conclude that plaintiffs agreement to furnish services in

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New Jersey was not illegal and contrary to public policy.

204 A.2d at 147-48.

Shortly thereafter, the New Jersey Supreme Court was faced with a similar question in *In re Estate of Waring*, *47* N.J. 367, 221 A.2d 193 (1966). In that case, a New York law firm had handled the affairs of a family of New Jersey residents for many years. When one of the family members died, because of the special relationship which the firm had with the family, the decedent's estate was administered in New Jersey by the New York law firm. New Jersey counsel was engaged to represent the estate in the New Jersey courts. The probate court ultimately disallowed an award of fees to the New York firm for its services as co-counsel in the matter. The New Jersey Supreme Court reversed, explaining as follows:

> As both Appell and Spivak illustrate, questions of unlawful practice will turn on the particular facts presented . . . . Here the facts clearly negate unlawful practice , , . . There is nothing in the record to indicate that the New York law firm is engaged in any widespread practice of participating in the handling of New Jersey estates . . . or that this was not a situation in which admission pro hac vice might have been sought and granted. . . . The firm was in good faith retained by the executors because of its long-standing representation of the Waring family and its familiarity with the family affairs, and, on its recommendation, the executors retained New Jersey counsel to handle the New Jersey aspects of the estate. . . .
>
> . . . .
>
> . . . As indicated earlier in this opinion, the subject must be viewed practically and realistically and must be dealt with in commonsensible fashion and with due regard for the customary freedom of choice in the selection of counsel; thus viewed and dealt with, there appears to be little room for doubt that, on the particular showing in the record before us, the out-of-state firm properly participated in the handling of the estate and so restricted its activities as to avoid any fair charge that it was wrongfully practicing law in New Jersey. . . .

22 1 A.2d at 198-99. Incidentally, *Spanos, Appell*, and *Estate of Waring* have been followed

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by a Florida court, which concluded that a lawyer admitted only in South Carolina could legally recover a fee for services rendered to his client in Florida and Alabama, See *Lamb* v. *Jones,* 202 So.2d 810 (Fla. 3d DCA 1967), *cert. denied,* 210 So.2d 867 (Fla. 1968).

Similar questions were presented to this Court more than a decade later, and six years before the transaction in issue here arose, in *The Florida Bar* v. *Savitt,* 363 So.2d 559 (Fla. 1978). In that case, The Florida Bar charged a New York lawyer, who supervised the Miami office of an interstate law firm with its principal office in New York, with the unauthorized practice of law in Florida. The Bar and the firm ultimately negotiated a settlement of the charge, and moved this Court to approve the stipulated settlement. This Court complied. One of the stipulated provisions explicitly allowed the type of activities which the New Jersey Supreme Court had approved in *Appell* and *Estate of Waring:*

> . . . transitory professional activities "incidental" [see, e. g., *Appell v. Reiner, 43* N.J. 313, 204 A.2d 146 (1964)] to essentially out-of-state transactions; and professional activities that constitute "coordinating-supervisory" activities in essentially multi-state transactions in which matters of Florida law are being handled by members of The Florida Bar [see, e. g., *In re The Estate of Waring, 47* N.J. 367, 221 A.2d 193 (1966)];. . .

363 So.2d at 560.

We will pause in our analysis of *Savitt* here because we think that this provision, without more, plainly supports a conclusion that Mr. Yanakakis' conduct did not amount to the unauthorized practice of law in Florida on the facts in this case. The transaction in issue here was not merely a multi-state transaction; it was a multi-national transaction. Mr. Miliaresis was a Greek citizen, who was injured in Mexico and was in Florida only temporarily and quite by accident, who possessed federal causes of action against Greek shipping companies. Mr. Miliaresis and Mr. Yanakakis developed a special relationship because of the commonality of their language and Mr. Miliaresis' pressing need for a friend and representative in Florida. Mr. Miliaresis hired Florida lawyers to be his principal

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attorneys and handle his legal matters in Florida courts, and Mr. Yanakakis' activities were limited to giving legal advice to the Florida attorneys in the specialized areas in which he was an expert -- federal, maritime and Greek law. Most respectfully, if the conduct of the New York attorneys in ***Appell*** and ***Estate of Waring*** was legal, then Mr. Yanakakis' contractual relationship with Mr. Miliaresis was clearly legal as well.

There is more. ***Savitt*** contains an additional provision which fully validates Mr. Yanakakis' conduct here:

> 2. Pursuant to the foregoing provisions of this order, the above-named firm and its members, associates or employees properly may conduct the following activities, which shall not constitute the unauthorized practice of law:
>
> (a) communicate, consult and deal with the personnel in the Florida office in all respects, including discussion of, and advice upon, legal matters, preparation and review of legal documents, and any other act which may constitute the practice of law, so long as such activities merely constitute assistance to a member of The Florida Bar and, if the result of such activities is utilized, it is the product of, or is merged into the product of, a member of The Florida Bar for which The Florida Bar member takes professional responsibility; . . .

363 So.2d at ***560. See also The Florida Bar,*** 327 So.2d 15 (Fla. 1976) (amending Code to provide that nonlawyers do not engage in the unauthorized practice of law where their work is "merged" into the work of an admitted attorney). That, of course, is essentially all that happened in the instant case -- and the two circumstances cannot legitimately be distinguished simply because Mr. Savitt was a member of an interstate law firm, and Mr. Yanakakis was not, because the size and scope of an attorney's business organization obviously has no relevance to the question of whether the attorney's practice of law in Florida is authorized.

Savitt contains an additional, cumulative provision which also validates Mr. Yanakakis' conduct here:

> (c) give legal advice concerning a right or obligation governed

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> by federal law, as permitted in *Spanos* **v.** *Skouras Theatres* ***Corp., 364*** F. 2d 161 (2d Cir. 1966), cert. *den.*, 385 U.S. 987 [87 S. Ct. 597, 17 L. Ed.2d 448] (1966); and provided that, if the lawyer giving the legal advice is not a member of The Florida Bar, the lawyer is in Florida on a transitory basis and it has initially been made clear to the client and immediately confirmed in writing that the lawyer is not a member of The Florida Bar; . . .

363 So.2d at 561.[9/]

The defendants ignore the authorization set out in subparagraph (a) and focus solely on the authorization set out in this subparagraph, and they claim that it does not authorize Mr. Yanakakis' contractual relationship with Mr. Miliaresis because Mr. Yanakakis was not in Florida "on a transitory basis." It is certainly true that Mr. Yanakakis was not in Florida "on a transitory basis," but it must be remembered that this provision was a stipulation reached in a negotiated settlement of charges carrying a penalty of contempt, rather than an actual adjudication of the legal point by this Court on facts which presented the question. It therefore cannot be accepted as a defmitive resolution of the question, much less the last word on the point -- especially when the limitation imposed by the phrase "on a transitory basis" is not a permissible restraint upon the giving of legal advice on federal law.

As we have already taken some pains to point out, this Court may ***not*** lawfully restrict a nonlawyer or non-admitted lawyer ***residing in Florida*** from giving legal advice on questions of federal law which he is otherwise qualified to give. ***See Sperry v. Florida, 373***

[9/] In the instant case, Mr. Yanakakis initially made it clear to Mr. Miliaresis that he was not a member of The Florida Bar, and the initial written contract confirmed the point by plainly reciting that he was an "ATTORNEY from the Commonwealth of Massachusetts" -- so the concluding limitation of this subparagraph should not be an issue here. Moreover, even if the "written confirmation" requirement was technically breached by the indirect manner in which the point was expressed in the contract, that would not justify a conclusion that the contractual relationship was void ***ab initio,*** rather than merely voidable. ***See United Yacht Brokers, Inc. v. Gillespie,*** 377 So.2d 668 (Fla. 1979) (failure to comply with statute requiring that brokerage agreements must be in writing rendered contract merely voidable, rather than void ***ab initio).***

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U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963); ***The Florida Bar v. Kaiser, 397*** So.2d 1132 (Fla. 198 1). As a matter of strategy, Mr. Savitt may have been well advised to stipulate to this impermissible limitation upon his firm's activities in Florida, in order to reach a negotiated compromise of the charge of unauthorized practice pending against him -- but we are not willing to so stipulate. We must insist instead that, given ***Sperry*** and ***Kaiser,*** the "transitory" limitation imposed by subparagraph (c) of the list of permissible activities set forth in ***Savitt*** is simply unlawful. And, of course, with that unlawful limitation removed, subparagraph (c) fully validates Mr. Yanakakis' isolated and carefully limited contractual relationship with Mr. Miliaresis in this case.[10/]

In addition, that ***Savitt*** is neither definitive nor the last word on the point is made clear by subparagraph (f) of the stipulation, which permitted Mr. Savitt's firm to --

> (f) Engage in such other professional activities and in such manner as may be permitted, recognized or accepted hereafter by reason of any court decision, or rule or regulation of the Florida Supreme Court or custom or practice which may hereafter be promulgated or accepted by this Court in respect to the practice of law in the State of Florida.

363 So.2d at 561. Most respectfully, although we believe that the ***Savitt*** decision explicitly permits Mr. Yanakakis' isolated and carefully limited contractual relationship with Mr. Miliaresis, if it does not, then this subparagraph certainly recognizes that the Court may now permit such a relationship if no compelling reason exists to declare it unlawful.

Savitt is not the only pronouncement of this Court which recognizes the modern reality that the 50 states are members of a federal coalition and that our society is highly mobile. There are others in which this Court has permitted non-admitted lawyers to practice

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[10/] On the point of ignoring a ***stipulated*** limitation contained in one of this Court's disciplinary decisions in favor of following the law required by federal decisions, see ***The Florida Bar re Advisory Opinion -- Nonlawyer Preparation of Pension Plans, 571*** So.2d 430, 433 (Fla. 1990), where this Court did precisely that.

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law in Florida, where the public would not be harmed by the practice. For example, in ***The Florida Bar re Amendments to the Rules Regulating the Florida Bar, etc., 593*** So.2d 1035 (Fla. 1991), this Court rejected a proposal by The Florida Bar which would have prohibited the use of out-of-state corporate counsel by corporations operating in Florida unless the attorneys became members of The Florida Bar. A modified proposal was submitted thereafter, which this Court approved in ***The Florida Bar re Amendments to Rules Regulating The Florida Bar,*** 19 Fla. L. Weekly S210 (Fla. Apr. 21, 1994). Chapter 17 of the Rules Regulating The Florida Bar now permits members in good standing of the Bar of another state to reside in Florida and practice law as "authorized house counsel" to business organizations in Florida, without becoming members of The Florida Bar.

In the same opinion, this Court also approved a new rule authorizing members in good standing of the Bar of another state to reside in Florida and practice law with four governmental agencies before admission to The Florida Bar. Chapter 13 of the Rules Regulating The Florida Bar authorizes members in good standing of the Bar of another state to reside in Florida and practice law as an "authorized legal aid practitioner" before admission to The Florida Bar. And Chapter 16 of the Rules Regulating The Florida Bar authorizes members in good standing of the Bar of a foreign country to reside in Florida and give legal advice concerning the laws of that country with no requirement that they ever apply for admission to the Florida Bar. Most respectfully, it is but a small step, if it is a step at all, for this Court to recognize that the facts in the instant case fall squarely within the category of cases represented by these recent rules; that the modern spirit which motivated adoption of these recent rules should inform resolution of the instant case as well, since its facts do not raise the spectre of harm to the public; and that it can readily and legitimately conclude that Mr. Yanakakis' carefully limited contractual relationship with Mr. Miliaresis, undertaken for the client's undeniable benefit and in conjunction with members

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of The Florida Bar, did not amount to criminal conduct in this state.

The law of other jurisdictions also supports our position here, The leading decision is ***Spanos v. Skouras Theatres Corp.,*** 364 F.2d 161 (2d Cir. 1966) (en banc), ***cert. denied,*** 385 U.S. 987, 87 S. Ct. 597, 17 L. Ed.2d 448 (1966), which we have already discussed -- and which, as we have demonstrated, is still good law on the particular point in issue here, notwithstanding that the Supreme Court later rejected its reasoning that the result was compelled by the United States Constitution. The New Jersey decisions have also been previously discussed. It also appears to have been settled for a long time that a non-admitted attorney does not engage in the unauthorized practice of law where, as here, local attorneys are engaged as co-counsel, who then handle the litigation in the local courts. See, e. *g.*, ***Tuppela v. Mathison, 291*** F. ***728 (9th*** Cir. ***1923); Brooks v. Volunteer Harbor No. 4, American Ass'n of Masters, Mates, and Pilots,*** 233 Mass. 168, 123 N.E. 511, 4 A.L.R. 1068 (1919).

The Court will also find instructive the Tenth Circuit's decision in ***Dietrich Corp. v. King Resources Co.,*** 596 F.2d 422 (10th Cir. 1979). In that case, the Court held that a professor of law at the University of Colorado, who was admitted only to The Illinois Bar, could validly enter into a contingency fee contract in association with a Colorado attorney for litigation in Colorado, and that he was not guilty of the unauthorized practice of law in providing legal services to the client and the Colorado attorney in Colorado. In explaining that conclusion, the court relied heavily upon the American Bar Association's Formal Ethics Opinion 316, entitled "The Practice of Law Across State Lines":

> In ABA Comm. on Professional Ethics Opinions No. 3 16 (1967), considering fee sharing arrangements between lawyers admitted in different states, it is stated expressly, "A lawyer admitted in one state for the purpose of the Canons of Ethics is a lawyer everywhere, " and
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> Only lawyers may share in such a division of

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> fees, but in such cases it is not necessary that both lawyers be admitted to practice in the same state, so long as the division was based on the division of services or responsibility. Canon 34 [now Canon 3]. A lawyer in State I is not, for the purposes of dividing fees with a lawyer in State II, a layman in State II.

Having been trained as a lawyer, indeed acknowledged to be an expert in the field of law and accounting and admitted to practice in Illinois, Professor Fiflis is a lawyer for purposes of the Canons. If he were punished for breach of the Canons of Ethics, though he no longer lives in Illinois, no doubt it would have a devastating effect upon his career. If disbarred in Illinois he almost surely would not be allowed to practice his profession anywhere.

There is, of course, a distinction between the ethical framework within which lawyers function and the actual practice of law; each state itself determines what is the practice of law and who may practice law. Professor Fiflis apparently met the residence requirements but did not apply for admission to practice in Colorado until after rendering the services at issue here. Is what he did, providing services in the field of his legal expertise to or through established law firms, with no court appearances as an attorney, the practice of law in Colorado? The cases and ethics opinions we have seen have involved either court appearances as counsel for private clients or the rendering of legal services directly to a client who was not a lawyer or a law firm authorized to practice in the jurisdiction. Law firms have always hired unlicensed student law clerks, paralegals and persons who have completed their legal education but are awaiting admission to the bar, before or after taking a bar examination or fulfilling residency requirements. Virtually every lawyer has served in such a situation and performed services to or through other attorneys for some period prior to his or her own admission to practice in the state where such services were rendered. No one has treated this activity as the unauthorized practice of law, because the licensed attorneys alone remain responsible to the clients, there are no court appearances as attorney, and no holding out of the unlicensed person as an ***independent*** giver of legal advice. See ***Spanos v. Skouras Theatres Corp., 364*** F.2d 161, 169 (2d Cir. 1966). ABA Op. 316, ***supra***, treats this in the context of firm partnerships where not all lawyers are admitted to practice in the same

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state:

> Of course, only the individuals permitted by the laws of their respective states to practice law there would be permitted to do the acts defined by the state as the practice of law in that state, but there are no ethical barriers to carrying on the practice by such a firm in each state so long as the particular person admitted in that state is the person who, on behalf of the firm, vouched ***for the work of all of the others and, with the client and in the courts, did the legal acts defined by that state as the practice of law.*** . . . The important requirement in this respect is simply that the local man must be admitted in the state and must ***have the ability to make, and be responsible for making, decisions for the lawyer group.*** (Emphasis supplied).
>
> In these cases an individual trained in the law acts as a filter between the unlicensed person (here Fiflis) and the lay client, adding and exercising independent professional judgment, and, importantly, is an officer of the local court subject to its discipline.
>
> Thus, we hold that Fiflis was entitled to be treated as a lawyer whose services in the instant case did not constitute the unauthorized practice of law. . . .

596 F.2d at 426. Most respectfully, if *Dietrich Corp.* is accepted as persuasive here, then Mr. Yanakakis' isolated, carefully limited contractual relationship with Mr. Miliaresis, performed in conjunction with Florida lawyers, was simply not unlawful.[11/]

[11/] There are additional decisions which reach essentially the same conclusion. See, e.g., ***Petition of Waters,*** 84 Nev. 7 12, 447 P.2d 661 (1968) (attorney admitted in Texas and residing in Nevada did not engage in the unauthorized practice of law in either California or Nevada by sending letter from Nevada containing legal advice on California law to California prison inmate, where attorney had an agreement with licensed California attorney to act as local counsel if a court appearance became necessary); ***Catoe v. Knox, 709*** P.2d 964 (Colo. App. 1985) (attorney admitted in Florida did not engage in the unauthorized practice of law in Colorado by appearing before a Colorado zoning board with a local attorney to obtain a variance, and where no court appearance was made); ***Lindsey*** v. ***Ogden,*** 10 Mass. App. 142,

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It remains for us to explain the irrelevance of the different decisions which the defendants have selected to support their argument, In our judgment, the defendants' selection demonstrates that they do not really comprehend the nature of the question before the Court, or any of its finer points. The bulk of the decisions upon which they have relied involve untrained and unqualified laypersons, not authorized to practice law anywhere, who engaged in numerous acts which all reasonable persons would label the "unauthorized practice of law." The defendants contend that these cases are relevant here because a non-admitted attorney must be treated exactly the same way as a nonlawyer where the practice of law is concerned. As we have demonstrated, however, that is simply not true. Non-admitted lawyers can practice law in Florida in a number of ways in which a nonlawyer cannot -- and the question whether the practice is authorized or unauthorized turns in any event, not upon the mere status of the practitioner as lawyer or nonlawyer, but upon this Court's perception of whether the public will be harmed by the practice. The defendants' "layperson" cases are therefore plainly beside the point here.

A handful of the decisions relied upon by the defendants are slightly closer to the point -- but only slightly. At least they involve non-admitted attorneys, but they are still beside the point because they are simply not implicated by the facts in this case. In *The Florida* ***Bar*** v. ***Dale,*** 496 So.2d 813 (Fla. 1986), for example, a non-admitted lawyer held himself out as licensed to practice in Florida, and actually practiced several matters involving Florida real estate law, In ***The Florida Bar v. Tate, 552*** So.2d 1106 (Fla. 1989), a non-admitted lawyer held himself out as licensed to practice in Florida; failed to reveal his non-

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406 N.E.2d 701 (1980) (attorney admitted in New York did not engage in the unauthorized practice of law in Massachusetts by giving legal advice on estate plan to Massachusetts domiciliary and overseeing execution of will in Massachusetts), ***Cf. Sequa Corp. v. Lititech, Inc.,*** 780 F. Supp. 1349 (D. Colo. 1992) (following *Dietrich* ***Corp.*** ; consulting services without court appearances is not the unauthorized practice of law). We commend these decisions to the Court as well.

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admitted status; and actually filed pleadings in Florida courts. In *The Florida* Bar *v.* Moran, 273 So.2d 390 (Fla.1973), a non-admitted lawyer held herself out as licensed to practice in Florida. And in ***The Florida Bar v. Arango,*** 461 So.2d 932 (Fla. 1984), ***appeal dismissed,*** 472 U.S. 1003, 105 S. Ct. 2695, 86 L. Ed.2d 712 (1985), a non-admitted lawyer held himself out as licensed to practice in Florida, and actually practiced matters involving Florida law. Most respectfully, these cases are simply not pertinent to the instant case.

In this case, on the evidence viewed in a light most favorable to the plaintiffs (as it must be), Mr. Yanakakis did ***not*** hold himself out to Mr. Miliaresis as licensed to practice in Florida; he fully disclosed that he was licensed only in Massachusetts, and that Florida lawyers would have to be engaged to represent him in Florida courts. Mr. Yanakakis also did ***not*** practice any matters involving Florida law; his expert assistance was provided to Mr. Miliaresis and his Florida attorneys only on questions involving federal, maritime, and Greek law. These *different* facts give rise to an altogether different question here, which requires an entirely different answer -- which is why both Mr. England and Mr. Abdoney , who were familiar with both the facts and the decisions upon which the defendants have relied, opined below that Mr. Yanakakis did ***not*** engage in the ***unauthorized*** practice of law in Florida. We respectfully submit that the decisions upon which we have relied here are far closer to the point, and should carry the day.

We should also respond at least briefly to the defendants' "flock to Florida" argument. According to the defendants, if this Court were to declare Mr. Yanakakis' contractual relationship with Mr. Miliaresis authorized, then out-of-state lawyers will be encouraged to move to Florida in droves and set up law practices here, free from the supervision of The Florida Bar. This argument, in our judgment, is simply empty rhetoric. We seriously doubt that a lawyer could make a living practicing law in Florida without admission to The Florida Bar (except perhaps as a member of an interstate law firm, practicing within the reasonable

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constraints of the *Savitt* decision). Mr. Yanakakis certainly does not make his living in that manner, and has no intention of doing so -- and approval of the isolated, carefully limited, factually unique contractual relationship in issue here will hardly provide him a sufficient economic incentive to encourage a change in that direction. Neither will approval of the isolated transaction in issue here provide a sufficient economic incentive to others to justify the relocation of their out-of-state practices to Florida, since circumstances like those at issue in this case must be exceedingly rare.

It is also worth emphasizing the narrowness of the question before the Court. Approval of Mr. Yanakakis' contractual relationship will not confer a license on non-admitted attorneys to practice Florida law, or even to practice federal law in Florida courts. Mr. Yanakakis did no more than provide consulting services on federal law to Florida lawyers who handled the matter in a Florida court. The United States Supreme Court authorized that type of activity in 1963, in the ***Sperry*** case, and that decision produced no mass immigration of non-admitted attorneys to Florida. In addition, of course, as the defendants have pointed out, there are already a number of decisions on the books which prevent non-admitted attorneys from practicing matters of Florida law, and from holding themselves out as licensed to practice in Florida -- and those decisions remain in place to prevent the mass immigration which the defendants pretend to fear. In any event, Florida has long allowed non-admitted lawyers to practice law in Florida under the temporary designation of counsel ***pro hac vice,*** obtainable on request, and that liberal policy has never encouraged out-of-state lawyers to "flock to Florida" -- so approval of the isolated transaction in issue here, which would amount in the final analysis to no more than a post-transaction designation of counsel ***pro hac vice,*** is highly unlikely to have any different effect.

Finally, we remind the Court that the defendants are asking this Court to hold that

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Mr. Yanakakis' contractual relationship with Mr. Miliaresis amounted to criminal conduct in this state (and they must obtain such a holding, because the privilege which they seek to have conferred upon themselves here to excuse their tortious conduct depends upon such a holding). In Florida, however, as in every other jurisdiction in the United States, the due process clause of the United States Constitution requires that criminal prohibitions be expressly stated with sufficient definiteness that ordinary people can understand exactly what conduct is prohibited -- to put them on definite notice of the line between legal and criminal behavior before-the-fact, so that they can behave accordingly. *Kolender* ***v. Lawson,*** 461 U.S. 352, 103 S. Ct. 1855, 75 L. Ed.2d ***903*** (1983); *D'Alemberte* ***v. Anderson, 349*** So.2d 164 (Fla. 1977); ***Linville v. State,*** 359 So.2d 450 (Fla. 1978). ***See State v. Saiez, 489*** So.2d 1125 (Fla. 1986). See ***generally*** 15 Fla. Jur.2d, ***Criminal*** *Law*, §§3034-35.

Certainly no legitimate claim can be made that the cursory, highly general, and open-ended language of $454.23, Fla. Stat. (1983), put Mr. Yanakakis on notice that his isolated, carefully limited contractual relationship with Mr. Miliaresis, undertaken in conjunction with Florida attorneys, amounted to ***criminal*** conduct in this state. Neither were there any decisions of this Court on the books which would have provided Mr. Yanakakis the definite notice required by the due process clause -- and the proof of that exists, of course, in the very fact that the Court of Appeals could not answer the questions presented here from existing decisions, and had to certify the questions to this Court for exploration and resolution. Most respectfully, if the Court of Appeals could find no statutes or decisions prohibiting the conduct in issue here, then it is a certainty that Mr. Yanakakis was not on notice that the performance of his facially legal contractual relationship with Mr. Miliaresis was illegal, and the due process clause would therefore appear to ***prohibit*** this Court from an after-the-fact declaration that his conduct amounted to ***criminal*** conduct proscribed by ***$454.23.***

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In conclusion, we return to where we began. TMS' counsel, Mr. Stearns, is plainly practicing law in this state in a far more direct manner than Mr. Yanakakis ever did. Mr. Stearns' conduct is plainly legal, however, because he applied for and obtained the temporary label ***pro hac vice.*** Mr. Yanakakis did not -- and that is the only thing that distinguishes the two of them here. Mr. Yanakakis most certainly would have been given the label had he applied, however, so the defendants' position here amounts to no more than this: conduct which would have been perfectly legal if a simple application for ***pro hac vice*** status had been made becomes ***criminal*** if Florida lawyers are engaged instead to handle all aspects of the case implicating Florida law, and such a relationship can be tortiously destroyed with impunity, and with no accountability whatsoever for the damage caused. Most respectfully, that cannot be the law. On the facts in this case (construed in every light most favorable to the plaintiffs, as they must be), Mr. Yanakakis' contractual relationship with Mr. Miliaresis was legal on its face; Mr. Yanakakis engaged in no criminal behavior in this state in performing that contractual relationship in the manner in which he did; and the first certified question plainly must be answered in the negative.

B. THE LEESFIELD FIRM'S CONTRACTUAL RELATIONSHIP WITH MR. MILIARESIS WAS NOT ILLEGAL, AND ITS CONTRACT WAS THEREFORE NOT VOID *AB INITIO*.

The second certified question asks whether, if Mr. Yanakakis' contractual relationship is void ***ab initio,*** the Leesfield firm's contractual relationship is void ***ab initio*** as well, because "born of" Mr. Yanakakis' relationship. Obviously, if the Court has answered the first certified question in the negative, as we have urged it to do, it need not reach this second question. If the Court has answered the first question in the affirmative, however, it must then decide whether the defendants were privileged to interfere with the Leesfield firm's contractual relationship as well, and thereby escape liability for ***all*** the consequences

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of their plainly tortious conduct. For the reasons which follow, we do not believe the defendants have made even an arguable case for ***that*** drastic result in this case, even if they have succeeded in convincing the Court that Mr. Yanakakis' contract or conduct was illegal. And because we are confident of the correctness of our position on the first question, our argument on this point will be brief.

The defendants argue essentially two things here. Unfortunately, their principal argument is devoted to an issue which was ***not*** certified to this Court for resolution. They contend that the Leesfield firm's written contract of March, 1985, is void ***ab initio*** because it was not signed by a member of the firm, and because it did not explicate the manner in which the contingent fee was to be divided. There is a perfectly good reason why the issue raised by this contention was not certified to this Court: the contention is plainly without merit, for three very good reasons. First, prior to 1987 at least, these technical omissions were inconsequential because ***oral*** contingency fee contracts were fully enforceable.[12/] Second, after 1987 at least, although technical omissions like these may render a contract unenforceable as between attorney and client (a point upon which the district courts are not in agreement), they are plainly unavailable as defenses to third persons, like the defendants in this case, who are not parties to the contract.[13/]

Third, and most importantly, and as we took particular pains to explain in the

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[12/] ***See Security Management Corp.*** v. ***Kessler, 599*** So.2d 1033 (Fla. 3d DCA), ***review denied,*** 613 So.2d 8 (Fla. 1992); ***Isaak v. Chardan Corp.,*** 532 So.2d 1364 (Fla. 2d DCA 1988).

[13/] ***See Harvard Farms, Inc. v. National Casualty Co.,*** 617 So.2d 400 (Fla. 3d DCA 1993); ***Weaver v. School Board*** of ***Leon County,*** 624 So.2d 761 (Fla. 1st DCA 1993), ***review denied,*** 634 So.2d 629 (Fla. 1994); ***Ganson v. State, Department of Administration, 554*** So.2d 522 (Fla. 1st DCA 1989), ***rev'd on other grounds,*** 566 So.2d 791 (Fla. 1990). ***Cf. Bar-wick,*** *Dillian & Lambert,* ***P.A. v. Ewing,*** 19 Fla. L. Weekly D203 (Fla. 3d DCA Jan. ***25,*** 1994). ***See also Mark Jay Kaufman, P.A. v. Davis & Meadows, P.A., 600*** So.2d 1208 (Fla. 1st DCA 1992); ***Lee v. Florida Department of Insurance and Treasurer, 586*** So.2d 1185 (Fla. 1st DCA 1991).

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"contextual introduction" with which we began our argument (at pages 17-20, ***supra),*** technical omissions like those of which the defendants complain render a contract, at worst, only voidable; they do ***not*** render a contract void ***ab initio,*** and they therefore provide no defense whatsoever to an action for tortious interference with a contractual relationship. Most respectfully, given this Court's decision in ***United Yacht Brokers, Inc. v. Gillespie, 377*** So.2d 668 (Fla. 1979), and the numerous decisions which follow it -- all of which say exactly that -- there can be no debate about that here (which is why the issue was not certified to this Court in the first place). The defendants hide their head in the sand nevertheless, and argue that the technical omissions render the Leesfield firm's contract void ***ab initio*** because there is some language (we say, loose language) in *FIGA* v. ***R. V.M.P. Corp.,*** 681 F. Supp. 806 (S.D. Fla. 1988), which would tend to support such a conclusion. That case is plainly inapposite here, however.

All that the case holds is that an oral contingency fee agreement (governed by Rule 4-1 .5, which was effective January 1, 1987) is unconscionable and "void, " and will therefore not support application of a contingency risk factor in a "lodestar" assessment of attorney's fees against a losing insurer in a coverage dispute. It says nothing about the validity of oral contingency fee agreements entered into in 1984 -- which, as we have demonstrated, were valid under Florida law. It says nothing about technical deficiencies in written contingency fee agreements -- which, as we have demonstrated, do not render such agreements unenforceable at the claim of a third person not a party to the agreement. And it says nothing at all about the ability of a defendant to escape the consequences of its tortious interference with a contractual relationship on the ground that the contract is technically unenforceable between its parties -- which, as we have demonstrated, is no defense to the plaintiffs' action in the instant case. Moreover, all of the Florida appellate courts which have considered the question have explicitly disagreed with *FIGA* v. ***R. V.M.P.*** ***See the***

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decisions cited in footnote 13, *supra.* That now thoroughly-rejected case therefore provides no reason whatsoever for this Court to declare the Leesfield firm's contractual relationship with Mr. Miliaresis void *ab initio.*[14/]

The defendants' second argument is at least responsive to the certified question, It is devoted to a contention that, if Mr. Yanakakis' contractual relationship is void *ab initio,* then the Leesfield firm's contractual relationship is irrevocably tainted and automatically void *ab initio* as well -- because, although the Leesfield firm itself did nothing wrong, it nevertheless "assisted" Mr. Yanakakis in his illegal endeavor by joining in the joint undertaking. Tellingly, no authority is cited to support the contention; it has simply been floated here as if it followed as a matter of logic. We find no logic in the contention at all, however. Even if we were to assume that Mr. Yanakakis' conduct prior to the time that Mr. Miliaresis hired the Leesfield firm was illegal, the fact remains that it was perfectly legal for Mr. Miliaresis to hire the Leesfield firm -- and we see no reason why he could not validly cure the initial unenforceability of his contract with Mr. Yanakakis by later entering into an enforceable contract with Florida lawyers. Indeed, if the defendants are correct, it would appear that Mr. Miliaresis, having once entered into an illegal contract with Mr. Yanakakis, could never enter into a legal contract thereafter if Mr. Yanakakis were in any way involved in bringing Mr. Miliaresis and the Florida lawyers together. And because no Greek version of the Yellow Pages was available for Mr. Miliaresis to do his own shopping, if the defendants are correct, then it is unlikely that Mr. Miliaresis could ever have obtained any legal representation at all.

[14/] The defendants' reliance upon *Spence, Payne, Masington & Grossman, P.A. v. Gerson,* 483 So.2d 775 (Fla. 3rd DCA), *review denied,* 492 So.2d 1334 (Fla. 1986), is equally misplaced. In that case, the district court held simply that an attorney-client contract procured in violation of a criminal statute prohibiting "ambulance chasing" was unenforceable against the client in an action on a charging lien. There are no facts in the instant case which even arguably implicate that holding.

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Certainly if the Leesfield firm had been ***substituted*** for Mr. Yanakakis, and he had ceased representing Mr. Miliaresis at that time, the defendants could have no legitimate complaint about the legality of the Leesfield firm's contract. Neither, we think, would the defendants have a legitimate complaint if the Leesfield firm had been hired first, and Mr. Yanakakis had been engaged thereafter to provide consulting services on federal, maritime, and Greek law. The defendants' argument about the legality of the Leesfield firm's contract therefore ***necessarily depends*** upon the fact that Mr. Yanakakis was hired first, brought in the Leesfield firm thereafter, and then remained as co-counsel in the three-party relationship which continued (until the defendants destroyed it). But whatever illegality there may have been in Mr. Yanakakis' contractual relationship ***prior*** to the time that the Leesfield firm was enagaged, the fact remains that, ***after*** the Leesfield firm was hired, Mr. Yanakakis' activities were limited to giving the Leesfield firm advice on matters of federal, maritime, and Greek law -- a practice which, as we have previously demonstrated, this Court ***cannot*** declare unauthorized here, because ***Sperry v. Florida, 373*** U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963), simply will not permit such a declaration.

In other words, at all relevant times in the ***joint*** undertaking, Mr. Yanakakis' conduct was perfectly legal, whether his prior conduct was legal or not -- and there is therefore no support whatsoever for the notion that the Leesfield firm "assisted" Mr. Yanakakis in the ***unauthorized*** practice of law. Most respectfully, the Leesfield firm did nothing wrong in this case. No ***unauthorized*** practice of law took place at any time by ***anyone*** after the Leesfield firm was hired by Mr. Miliaresis. And there is therefore no good reason in law, policy, logic or even common sense why this Court should declare the Leesfield firm's contractual relationship with Mr. Miliaresis void ***ab initio*** (and thereby excuse the defendants from the consequences of their own tortious misconduct), simply because Mr. Yanakakis may have engaged in illegal conduct (which, we continue to insist, he did not) prior to the time that

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Mr. Miliareses hired the Leesfield firm.

Indeed, if this Court were to hold otherwise, it is doubtful that any Florida attorney would dare to become involved in any case involving a referral from an out-of-state attorney ever again -- and that would obviously not be in the public interest. Neither does anything which the Leesfield firm did in this case raise the spectre of harm to the public. And because that is the test for drawing the line between the authorized and the unauthorized practice of law in this state, the Leesfield firm's conduct in this case clearly should not be declared unlawful, nor should its contractual relationship with Mr. Miliaresis be declared void *ab initio*. In short, nothing which the Leesfield firm did in this case justifies excusing the defendants from the consequences of their own outrageous violation of Florida law -- and if this second question is reached at all, it must also be answered in the negative.

V. CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that both of the certified questions should be answered "no."

Respectfully submitted,

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By: _____
JOEL D. EATON

Appendix

Basil YANAKAKIS; Ira H. Leesfield; Roger L. Blackburn, d/b/a Leesfield & Blackburn, P.A., a Florida Professional Assoc., Plaintiffs-Appellees,

v.

CHANDRIS, S.A., a Foreign Corp.; Chandris, Inc., d/b/a Chandris Cruise Lines, a Foreign Corporation, Defendants-Appellants,

Matrona Miliaresis, Nikolas Miliaresis, Defendants,

Transport Mutual Services, Inc., a Foreign Corporation, Defendant-Appellant.

No. 91-5542.

United States Court of Appeals, Eleventh Circuit.

Dec. 27, 1993.

Attorney and law firm brought action against seaman, operators of ship on which seaman served and was injured, and its insurer, alleging tortious interference with contracts for legal representation. The United States District Court for the Southern District of Florida, No. 87-1677-Civ-JWK, Jacob Mishler, J., denied defendants' motion for summary judgment, and defendants appealed. The Court of Appeals held that: **(1)** question of whether out-of-state attorney who resides in Florida but is not associated with Florida law firm engages in unauthorized practice of law where that attorney enters into contingent fee agreement in Florida thereby rendering that fee agreement void would be certified to Florida Supreme Court, and (2) question of whether fee agreement of Florida law firm born of fee agreement that is void as unauthorized practice of law is itself void would be certified to Florida Supreme Court.

Questions certified.

1. Federal Courts ⇨392

Question of whether out-of-state attorney, who resides in Florida but is not associated with Florida law firm, engages in unauthorized practice of law where that attorney enters into contingent fee agreement in Florida, thereby rendering that fee agreement void, would be certified to Florida Supreme court.

2. Federal Courts ⇨392

Question of whether fee agreement of Florida law firm born of fee agreement that is void as unauthorized practice of law is itself void, would be certified to Florida Supreme Court.

Appeals from the United States District Court for the Southern District of Florida.

Before KRAVITCH and COX, Circuit Judges, and HOBBS *, Senior District Judge.

PER CURIAM:

This appeal follows a verdict for the plaintiffs in an action for damages alleging tortious interference with contracts for legal

*** Honorable Truman M. Hobbs, Senior U.S. District Judge for the Middle District of Alabama, sitting by designation.**

representation. Basil Yanakakis, a Massachusetts attorney, entered into a contingent fee agreement with an injured Greek seaman. Thereafter, Yanakakis entered into a second fee agreement in which the Florida law firm of Leesfield & Blackburn, P.A., was retained to prosecute the seaman's claim. The defendants, Chandris, S.A., Chandris, Inc., and Transport Mutual Services, Inc., are the operators of the ship on which the seaman served and was injured, and its insurer. Defendants allegedly tortiously interfered with plaintiffs' contingent fee agreements with the seaman. The jury returned a verdict in favor of plaintiffs for $600,000 in compensatory damages, $2.6 million in punitive damages against Chandris, S.A. and Chandris, Inc., and $550,000 in punitive damages against Transport Mutual Services, Inc. The district court entered judgment accordingly. Following a procedural imbroglio, the district court denied defendants' post-trial motions.[1]

Defendants raise a myriad of issues on appeal. Among these, defendants contend that the district court erred in denying defendants' cross-motion for summary judgment. If defendants are correct in that assertion, it will be unnecessary to address the other issues presented on appeal.

Prior to trial, plaintiffs moved for partial summary judgment and defendants cross-moved for summary judgment. The defendants argued that an action for tortious interference with business relations could not lie as the fee agreements upon which plaintiffs based their claims were void. First, defendants asserted that by entering into a fee arrangement with the seaman, Yanakakis engaged in the unauthorized practice of law in derogation of Section 454.23, Florida Statutes (1983). The district court denied defendants' motion, finding that Yanakakis's acceptance of the seaman's "authority to represent" was not unauthorized under Florida law and therefore the fee agreement was not void and an action for tortious interference with business relations would lie. The district court found that Yanakakis's conduct fell within the universe of authorized conduct for out-of-state attorneys as defined by the Florida Supreme Court in *The Florida Bar v. Savitt*, 363 So.2d 559 (Fla.1978). We are unable to conclude that *Savitt* resolves the issue. Florida case law does not clearly delineate what acts constitute the unauthorized practice of law by out-of-state attorneys, who reside in Florida, but are not associated with a particular law firm operating in Florida.

Second, defendants argued that the Leesfield & Blackburn fee agreement was void as its genesis was Yanakakis's void agreement. The district court found that even if Yanakakis had engaged in the unauthorized practice of law, such conduct would not affect the validity of the Leesfield & Blackburn fee agreement. That is, the district court held that a fee agreement born of a void fee agreement is not itself void under Florida law. Neither the district court, nor any of the parties, cites a Florida case that supports that conclusion, however.

It appears -that this case raises issues of first impression under Florida law. The resolution of these important questions of law may be determinative. Additionally, because these issues implicate substantial public policy concerns, we defer our decision in this case pending certification of these questions to the Supreme Court of Florida. Accordingly, we certify two questions to the Florida Supreme Court pursuant to Article V of the

1. Defendants' post-trial motions were dismissed by the district court as untimely. This court remanded the case to the district court to dispose of defendants' post-trial motions on their merits.

Florida Constitution. See Fla. Const. art. v, § 3(b)(6).

CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT TO THE SUPREME COURT OF FLORIDA PURSUANT TO ARTICLE V, SECTION 3(b)(6) OF THE FLORIDA CONSTITUTION. TO THE SUPREME COURT OF FLORIDA AND THE HONORABLE JUSTICES THEREOF:

I. Facts

Plaintiffs moved for partial summary judgment striking certain affirmative defenses. Defendants cross-moved for summary judgment. The district court granted plaintiffs' motion and accordingly denied defendants' motions. Defendants appeal that denial.[2]

The facts stated herein are essentially undisputed, except as otherwise noted. We resolve any disputed facts in the light most favorable to the plaintiffs who opposed the motion for summary judgment at issue. See *Integon Life Ins, Corp. v. Browning, 989* F.2d 1143, 1149 (11th Cir.1993). We review a district court's legal conclusions de novo. *Salve Regina College v. Russell, 499* US. 225, 231-33, 111 S.Ct. 1217, 1221-22, 113 L.Ed.2d 190 (1991). On review, only that evidence which was before the district court on motion is subject to appellate review. See *Denis v. Liberty Mut. Ins. Co,,* 791 F.2d 846, 349 (11th Cir.1986).[3]

On October 3, 1984, Nikolas Miliaresis (hereinafter "Miliaresis"), a Greek seaman, was injured while the ship on which he worked was docking in Cozumel, Mexico. Miliaresis was airlifted to a hospital in Miami, Florida, where his leg was amputated, (Affidavit of Nikolas Miliaresis at 1.)

Basil Yanakakis, at the request of a Greek Orthodox priest, visited Miliaresis, who spoke little English, at Jackson Memorial Hospital in Miami, Florida. Yanakakis was born in Greece. He was admitted to the Massachusetts Bar in 1964. Between 1964 and 1979, Yanakakis practiced law and taught at Suffolk Law School. He specialized in international and maritime law, In addition, Yanakakis was admitted to practice before the United States District Court of Massachusetts, the First Circuit Court of Appeals, the United States Court of Customs and Patent Appeals, the United States Tax Court, and the United States Supreme Court. In 1980, however, Yanakakis discontinued the practice of law and moved to Florida where he established his domicile. Upon moving to Florida, he became involved in real estate and managed personal investments. Yanakakis is not, and has never been, a member of the Florida Bar. (Yanakakis Deposition at 3-26.)

2. To state a truism, we review rulings not cases. It is difficult to discern from defendants' briefs what rulings they seek to review. Chandris, S.A., and Chandris, Inc., assert that "[t]he court erred by failing to dismiss plaintiffs' claim because contracts which are illegal and violate Florida public policy cannot be tortiously interfered with." (Appellants' Brief at 11.) Similarly, Transport Mutual Services, Inc., argues that "[t]he court's failure to dismiss appellees' complaint was error because contracts which are illegal or violative of Florida public policy cannot be tortiously interfered with." (Appellants' Brief at 33.) We conclude that the defendants seek to review the district court's denial of their motions for summary judgment, not the district court's grant of plaintiffs' motion.

3. As to the issue of the unauthorized practice of law, the district court primarily had before it the deposition of Basil Yanakakis dated September 21, 1989, the deposition of Mark Dresnick dated January 22, 1991, the affidavits of Nikolas and Gerasimos Miliaresis dated January 25, 1991, and copies of the two contingent fee agreements at issue.

Yanakakis met with Miliaresis in the hospital on several occasions. During those visits Miliaresis learned that Yanakakis was a member of the Massachusetts Bar. Yanakakis told Miliaresis that he was not a member of the Florida Bar. (*Id.* at 23–41.) [4] On October 16, 1984, Miliaresis signed a retainer agreement written in English and titled "Authority to Represent" which stated that Miliaresis retained "BASIL S. YANAKAKIS, ATTORNEY from the Commonwealth of Massachusetts as my attorney to represent me. . . . " The retainer agreement did not state that Yanakakis was not licensed to practice in Florida. (Plaintiffs' Memorandum of Law in Support of its Motion for Partial Summary Judgment Exh. 4.) Yanakakis told Miliaresis he would represent him and find a local attorney for him. (Yanakakis Deposition at 39.) [5] Additionally, at some point, Yanakakis gave Miliaresis's brother a label that stated: "Basil S. Yanakakis, Attorney at law, Suite 801 New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132." (Affidavit of Gerasimos Miliaresis at 2.)

In November of 1984, Yanakakis contacted Ira H. Leesfield to discuss retaining Leesfield & Blackburn, P.A., for prosecution of Miliaresis's claim. Pursuant to arrangements made between Yanakakis and Leesfield, an attorney from that firm met with Miliaresis. At that time, Miliaresis orally retained the Leesfield firm to assist Yanakakis. (Yanakakis Deposition at 48-55.) Soon thereafter, the firm initiated an investigation of Miliaresis's claim. (Dresnick Deposition at 106.) On March 18, 1985, Miliaresis executed an agreement retaining "the Law Offices of Leesfield and Blackburn and Basil S. Yanakakis as my attorneys. . . . " The fee agreement dated March 18 was signed by Yanakakis, but not by Leesfield & Blackburn. The agreement was silent as to the distribution of fees as between Yanakakis and the Leesfield firm. (Plaintiffs' Memorandum of Law in Support of its Motion for Partial Summary Judgment Exh. 5.)

Ultimately, Miliaresis settled directly with defendants and discharged Yanakakis and the Leesfield firm. (Yanakakis Deposition at 91-93.) Plaintiffs filed an action alleging that defendants intentionally induced Miliaresis, by fraud and coercion, to discharge the plaintiffs, thereby tortiously interfering with the plaintiffs' advantageous business relationship with Miliaresis. Following judgment for the plaintiffs, defendants Chandris, S.A., Chandris, Inc., and Transport Mutual Services, Inc., appeal.

II. Contentions of the Parties

Defendants argue that the district court erred in denying their cross-motion for summary judgment because the agreements upon which plaintiffs bottom their claims are void as the unauthorized practice of law and the assistance thereof. Defendants note that Yanakakis was not, and is not, licensed to practice law in Florida. Nonetheless, as a resident of Florida, Yanakakis entered into a contingent fee agreement with Miliaresis in Florida. Therefore, Yanakakis engaged in the unauthorized practice of law in derogation of Section 454.23, Florida Statutes (1983). Moreover, defendants point out that Yanakakis is not a transitory attorney associated with a multistate firm. Thus, defendants argue that ***The Florida Bar v.*** *Savitt,*

4. Miliaresis contends that Yanakakis never explained that he could not practice in Florida as he was not licensed to practice law in Florida. To the contrary, Miliaresis testified that he believed that Yanakakis could, and would, personally handle his claim.

5. Miliaresis argues that Yanakakis never explained that a Florida firm needed to be retained.

363 So.2d 559 (Fla.1978), upon which the plaintiffs rely, is distinguishable. *Savitt*, defendants contend, merely enumerates rules for the practice of law in Florida by attorneys of multistate firms who are not licensed to practice in Florida.

Further, defendants argue this is not a case where an out-of-state attorney is retained by a client, in the state where the attorney is admitted, and where the attorney subsequently associates an attorney who is licensed to practice in Florida or petitions to appear *pro hac vice* before a court in Florida. To the contrary, defendants assert this case involves an out-of-state attorney who moves to Florida, chooses not to seek admission to the Florida Bar, and then enters into an "authority to represent" a client in Florida. Defendants suggest that according to plaintiffs' logic, out-of-state attorneys can flock to Miami and sign up clients with impunity.

In addition, defendants contend that the Leesfield & Blackburn agreement is void and an action for tortious interference will therefore not lie. The district court found that even if Yanakakis's agreements were void, the validity of the Leesfield & Blackburn agreement would not be affected.

Plaintiffs' arguments are equally prolix. Essentially, plaintiffs contend that in *Savitt* the Florida Supreme Court clearly delineates what activities an out-of-state attorney may engage in without running afoul of Florida's statutory prohibition against the unauthorized practice of law. Plaintiffs opine that Yanakakis's fee agreements do square with the rules enumerated in *Savitt;* therefore, the agreements are valid and an action for tortious interference will lie. Further, plaintiffs argue that even if Yanakakis's agreements are void, it would not affect the validity of the Leesfield & Blackburn agreement,

III. Florida Law

In Florida, a contract is void and cannot be the source of rights if either the formation or the performance of the contract is criminal, tortious, or otherwise opposed to public policy. *Thomas v. Ratiner, 462* So.2d 1157, 1159 (Fla. 3d DCA 1984); *see also Sunbeam Corp. v. Master of Miami, 225* F.2d 191 (5th Cir. 1955).[6] Section 454.23, Florida Statutes (1983), proscribes the unauthorized practice of law. However, Florida law does not clearly establish what constitutes the unauthorized practice of law within the context of an out-of-state attorney who resides in Florida.

Plaintiffs argue that *Savitt* is controlling. We are unable to conclude that *Savitt* controls. In *Savitt*, the Florida Supreme Court merely enumerated the activities that out-of-state attorneys employed in an interstate law firm could, and could not, engage in. Defendants, in turn, point to a line of cases in which lay *persons* were found to have engaged in the unauthorized practice of law. We find the defendants' proffered cases equally unpersuasive.[7]

Neither the district court, nor any of the parties, cites a Florida case that unequivocally establishes whether an out-of-state attorney, who resides in Florida but is not associated with a firm, may enter into retainer agreements in Florida.

In *Bonner v. City of Prichard, 661* F.2d 1206, 1209 (11th Cir.1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

7. Defendants cite *The Florida Bar v. Tate, 552* So.2d 1106 (Fla. *1989).* In *Tate,* an out-of-state attorney was found to have engaged in the unauthorized practice of law. *Id.* However, in *Tate,* unlike the instant case, the attorney filed pleadings. Moreover, *the Tate* court did not address the validity of retainer agreements entered into by out-of-state attorneys in Florida.

However, assuming arguendo that Yanakakis's agreements were void as the unauthorized practice of law, was the Leesfield agreement void as a consequence thereof? Plaintiffs argue, and the district court found, that irrespective of the status of Yanakakis's agreements, the Leesfield agreement was valid and an action for tortious interference will therefore lie. Again, Florida law does not appear to provide a definitive answer as to whether a contingent fee agreement born of a void fee agreement is itself invalid. Accordingly, we certify the following two questions to the Florida Supreme Court.

IV. Questions to be Certified

[1, 2] (1) WHETHER AN OUT-OF-STATE ATTORNEY, WHO RESIDES IN FLORIDA BUT IS NOT ASSOCIATED WITH A FLORIDA LAW FIRM, ENGAGES IN THE UNAUTHORIZED PRACTICE OF LAW WHERE THAT ATTORNEY ENTERS INTO A CONTINGENT FEE AGREEMENT IN FLORIDA, THEREBY RENDERING THAT FEE AGREEMENT VOID.

(2) WHETHER A FEE AGREEMENT OF A FLORIDA LAW FIRM BORN OF A FEE AGREEMENT THAT IS VOID AS THE UNAUTHORIZED PRACTICE OF LAW IS ITSELF VOID.

Our statement of the questions to be certified is not meant to limit the scope of inquiry by the Supreme Court of Florida.

> [T]he particular phrasing used in the certified question is not to restrict the Supreme Court's consideration of the problems involved and the issues as the Supreme Court perceives them to be in its analysis of the record certified in this case, This latitude extends to the Supreme Court's restatement of the issue or issues and the manner in which the answers are to be given, whether as a comprehensive whole or in subordinate or even contingent parts.

Martinez v. Rodriguez, 394 F.2d 156,159 n. 6 (5th Cir.1968) (citations omitted).

The entire record in this case, together with copies of the briefs of the parties, is transmitted herewith.

QUESTIONS CERTIFIED.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 15th day of June, 1994, to: Reginald Hayden, Esq., Hayden & Milliken, 5915 Ponce de Leon Blvd., Suite 63, Miami, Fla. 33146; David J. Horr, P.A., One Datran Center, Suite 1110, 9100 South Dadeland Blvd., Miami, Fla. 33156; and to Joseph T. Stearns, Esq., Kenny & Stearns, 26 Broadway, New York, New York 10004.

By: _____
JOEL D. EATON