Case No. 82,934

in the
Supreme Court of Florida

CHANDRIS, S.A, a foreign corporation, CHANDRIS INC., d/b/a CHANDRIS CRUISE LINES, a foreign corporation, TRANSPORT MUTUAL SERVICES, INC., a foreign corporation, NIKOLAS MILIARESIS, a foreign citizen, and MATRONA MILIARESIS, a foreign citizen,

Defendants-Appellants,

-against-

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

Plaintiffs-Appellees,

Amended

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

BRIEF OF APPELLANT TRANSPORT MUTUAL SERVICES, INC.

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I. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

pursuant to a December 27, 1993 decision and order (9 F.3d 1509) the United States Court of Appeals for the Eleventh Circuit certified to this Court, pursuant to its authority provided by virtue of Article V of the Florida Constitution [Fla. Const. art. v, Section 3(b)(6)], what the court of appeals described as two questions of first impression under Florida law:

1. Whether an out-of-stats 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; and

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.

Appellants before this Court, Chandris, S.A. (hereinafter "Chandris") and Transport Mutual Services, Inc., (hereinafter "TMS"), were appellants in the Eleventh Circuit and defendants in suit brought for alleged tortious interference with Florida contingent fee retainer agreements for attorneys' services in a personal injury

case. TMS and Chandris appealed to the court of appeals from a $3,650,000 judgment entered in favor of appellees jointly after an 18 day "two step" jury trial in the United States District Court, Southern District of Florida (Mishler, J., sitting by designation). The first verdict, finding appellants liable and determining the basis for the trial court's entry of judgment for compensatory damages, was returned May 1, 1991 and the second, which assessed punitive damages, on May 9, 1991. Appellees' suit sought damages in lieu of fees which appellees allegedly would have earned had appellants not interfered and was based upon two "Authorities to Represent" which were executed in Miami, Florida, on October 16, 1984 (Ex. "87")[1] and March 18, 1985 (Ex. "86").

The earlier of these agreements identifies only appellee Basil Yanakakis, who, although a domiciliary of Florida since 1979 and a continuous Florida resident since 1980 was not a member of the Florida Bar, as the "attorney for Nikolas Miliaresis, an injured seaman. The later, which like the October 16, 1984 Authority was signed only by Miliaresis and Yanakakis, refers to both Yanakakis and appellee Leesfield & Blackburn, P.A. as "attorneys". The subject of both was a claim for damages which appellees prosecuted in Florida state court for personal injuries sustained at Cozumel, Mexico, on October 3, 1984

[1]The prefix "Ex." refers to exhibits introduced at trial.

by Mr. Miliaresis, a citizen and resident of Greece. On that date Miliaresis, who was employed as a member of the crew of the Panamanian flag cruise ship S/S AMERIKANTS managed by appellant Chandris S.A., sustained severe injury to his right lower leg in a mooring line accident. The underlying claim on behalf of Nikolas and Matrona Miliaresis, his wife, was brought to suit in Florida state court on February 6, 1985, i.e., forty days *before* the second authority identifying the Leesfield firm as "attorneys", by filing a complaint identifying only appellees Leesfield & Blackburn, P.A. as counsel for plaintiffs. This claim was settled without appellees' participation by Nikolas Miliaresis in Greece on March 12, 1986 upon his agreement to discharge his attorneys, the basis for the claim of tortious interference.

Suit for tortious interference was commenced in the United States District Court for the Southern District of Florida on September 9, 1987 by the fling of a complaint in which only the March 18, 1985 Authority to Represent was mentioned. This was superseded on October 5, 1988 by a second amended complaint which again invoked only the March 18, 1985 agreement (R3-40-2).[2] On January 18, 1991, appellees moved the federal district court for partial summary judgment dismissing appellants' defense that

[2]Citations are to the record on appeal to the Eleventh Circuit, which has been forwarded to this Court.

Yanakakis' unauthorized practice of law barred recovery for tortious interference. Appellants cross-moved for judgment dismissing appellees' complaint on the grounds that the contracts were void and thus incapable of being tortiously interfered with, based upon the unauthorized practice of law of appellee Yanakakis, a crime in Florida pursuant to Section 45423, Florida Statutes, and the failure of the March 18, 1985 Authority to Represent to comply with Florida Disciplinary Rules (Accord. Folder 1-252; R15-253). In an opinion and order dated March 5, 1991, the district court granted appellees' motion to strike the defense of unauthorized practice and as a result denied appellants' cross-motion. The district court held — without citation to any authority — that Yanakakis, despite his Florida residence and non-admitted status, was permitted to enter into a contingent fee retainer agreement for the prosecution of a personal injury case which he intended be brought in a court in the State of Florida. The court concluded, also without proof, that the "choice of the forum [for the case in state court] was [appellee] Leesfield's", and that 'Yanakakis could reasonably have anticipated that had the forum been the U.S. District Court, an application for permission to appear *pro hac vice* would have been granted" (R15-262-12). The district court also held that Mr. Yanakakis' practice of law in Florida in connection with the Miliaresis' suit for damages was excusable (despite his continuous residence in this State) because "Yanakakis

was permitted to advise Nikolas on international law and maritime law", a conclusion for which, once again, no authority was cited. The court additionally held: 'Were we to find that Yanakakis engaged in the unauthorized practice of law . . . we would nevertheless find that such activity did not affect the validity of the retainer agreement with Leesfield" although Florida DR 3-101 to 104 forbade assisting unauthorized practice. Considering the question of the "validity of the retainer agreement with Leesfield", the federal district court held: "the validity of a retainer agreement does not depend upon the execution of a written contract" (R15-262), despite contrary provision in personal injury cases of DR 2-106(E)[3] and DR 2-107(A)(2)(a).

After its summary judgment motion was denied, appellant TMS on March 19, 1991 moved for reargument and for certification, pursuant to 28 U.S.C., Section 1292(b), to the Eleventh Circuit Court of Appeals of the question whether Yanakakis' unauthorized practice barred appellees' suit (R16-274). This motion also asserted that the district court's decision had the effect of invalidating Florida law forbidding unauthorized practice in any case potentially involving jurisdiction of the federal courts (R16-274); and as a result implicated 28 U.S.C. 2283, the "Anti-Injunction" statute, authorizing direct appeal of such a

[3]West's F.S.A., Vol. 35, p. 269.

federal district court decision to the Supreme Court of the United States. Among reasons urged for district court certification was Rule 9.150 of the Florida Rules of Appellate Procedure authorizing this Honorable Court to, in turn, accept certification from the Eleventh Circuit. On March 25, 1991 this motion, too, was denied (R16-279). An eighteen day jury trial followed.

Appellees' judgment for $500,000 compensatory damages in lieu of fees was, however, based upon an arbitrarily selected Authority to Represent percentage[4] which was applied to the jury's finding that $1,500,000 had been the "true value" of Nikolas Miliaresis' claim for damages. On appeal to the court of appeals, appellants asserted that the district court's refusal to dismiss appellees' complaint for reasons of authorized practice and assisting that practice constituted error; and also raised numerous other appeal issues arising from appellant's failure of proof and with respect to rulings during trial. In its decision of December 27, 1993, the court of appeals, after holding that under Florida law a contract cannot be the source of rights if either the contract's formation or

[4]The percentage used, 33⅓%, according to both Authorities to Represent, applied only in the event the case settled prior to institution of suit, *after* which the fee became 40% of any sum recovered. In the event of the filing by any party of a notice of appeal or following any step to enforce a judgment, the percentage became 50%.

performance is illegal, and that the unauthorized practice of law was proscribed by Florida statute, held that ". . . 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" (9 F.3d 1513). The court also held that 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" (Ibid.), and as a result certified both questions to this Court for determination.

B. THE ISSUES CERTIFIED AND THE REASONS THEREFORE

In its decision certifying issues the court of appeals acknowledged that the facts established as "essentially undisputed" included that Yanakakis had been a Florida resident at the times of the Authorities to Represent and continuously thereafter; that he had discontinued his practice of law in Massachusetts in 1980 and moved to Florida where he established his residence and domicile; he had nonetheless entered into a contingent fee agreement with the injured Greek seaman in Miami; thereafter entered into a second fee agreement also in Miami with Mr. Miliaresis which mentioned the Leesfield firm as "attorneys" but which was silent with respect to distribution of fees; upon meeting an attorney from the Leesfield & Blackburn, P.A. Miliaresis "orally retained" the

firm to "assist Yanakakis" who had previously agreed that he "would represent him and find a local attorney for him"; and that "at some point Yanakakis gave Miliaresis' brother a label that stated: 'Basil S. Yanakakis, Attorney at Law, Suite 801, New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132' " (9 F.3d at 1512). In footnotes 4 and 5 of its decision the court of appeals acknowledged that Miliaresis contended that Yanakakis "never explained that he could not practice in Florida" or that "a Florida firm need be retained".

In the court of appeals' decision (9 F.3d 1511, fn. 2) the court also stated that it was "difficult to discern . . . what ruling . . . [defendants] seek to review"; and that "[w]e conclude that the defendants seek to review the district court's denial of their motion for summary judgment, not the district court's granting summary judgment". The court of appeals so stated despite the fact that immediately after these motions were decided appellant TMS sought appellant review of what, because its motion pursuant to 28 U.S.C. Section 1292(b) was denied, was a non-appealable interlocutory order. See, F.R.Civ.P. 54(b) expressly providing that orders entered by a federal district court on motion and cross-motion for summary judgment not having the effect of dismissing all claims against any party are not final and can be recalled at any time. Appellants motion for judgment after trial renewed

their motion to dismiss on grounds of unauthorized practice and assisting (R19-337,338). Title 28 U.S.C. Section 1291 provides for appeal from "final orders" and includes right to appeal from all prior non-final orders, of course. Moreover, in *Florida* the court has an "affirmative duty" to avoid allowing a party to recover a substantial benefit from his or her own wrongdoing. *Local* 234 of ***United Association of Journeymen and Apprentices of United States and Canada v. Henley and Beckwith, 66*** So.2d 818 (Ma. 1953). Perhaps for these reasons the court of appeals provided explicitly that its statement of the questions certified ". . . is not meant to limit the scope of inquiry by the Supreme Court of Florida". (9 F.3d 1514).

In seeking partial summary judgment dismissing the defense of unauthorized practice and opposing appellants' summary judgment motion based upon this defense, appellees relied on Yanakakis' pre-trial deposition; and its argument was all but exclusively that this Court's holding in *The Florida Bar v. Savitt, 363* So.2d 559 (Fla. 1978) permitted Yanakakis to do what they admitted he had done. Appellees did not directly challenge any of the factual assertions raised by affidavits submitted by appellants in support of their cross-motion of Nikolas and his brother Gerassimos Miliaresis. Appellees claimed instead that Yanakakis' activity, which they characterized as limited to advising the firm on matters of international

law, had been "merged" with that of Leesfield & Blackburn, P.A. In appellees memorandum of law (R10-21-17) they also agreed that Yanakakis had found Florida counsel for Miliaresis; and admitted, in addition, by citing *The Florida Bar v. Kaufman, 452* So.2d 526, 527 (Fla. 1984), that "unauthorized practice of law includes consulting with clients about legal matters".

Yanakakis' deposition testimony, in fact, contains admissions that he had before the first Authority to Represent given legal advice to Miliaresis concerning his rights under the maritime law doctrine of maintenance and cure and about the value of his case, in addition to later advising Mrs. Miliaresis, on whose behalf suit was also brought, with respect to her right to damages. Apparently for this reason the district court in granting appellees' summary judgment motion and denying that of appellants held that ". . . Yanakakis was permitted to advise Nikolas in international law and maritime law' (R15-262-12). In addition, after finding that "Gerassimos received the business card" identifying Yanakakis as an "attorney-at-law" with a Miami, Florida address, the district court held that it was not clear "when" the card was received and without any basis concluded that "the October 16, 1984 authority to represent was not based on the representations inferred from the card" (R15-262-12). Although the decision of the court of appeals refers to

appeal from denial of summary judgment, this Court's unlimited scope of inquiry permits consideration of the trial record, aspects of which are contrary to conclusions of the district court in its opinion granting and denying summary judgment.

At trial, Yanakakis admitted that he had given Gerassimos the mailing sticker/card before execution of the first Authority to Represent when the injured seaman's brother came to his office to discuss his concern about Nikolas' maritime law maintenance and cure right to continued treatment in Miami (R22-151,152,154). Further, at trial Yanakakis admitted that in discussion with both soon thereafter he had advised that Nikolas had to sign the earlier Authority in order for him to "be his lawyer" (R22-162). Also, Yanakakis volunteered that after this agreement was signed he had initially intended to hire a lawyer "in the front" to handle negotiation of settlement; and that he knew that he could not appear in court in Florida to protect the seaman's right to continuing "cure" i.e., medical treatment, in Florida. Moreover, there never was a factual basis for tbe district court's conclusion that the "choice of the forum [for the Miliaresis case] was Leesfield's"; and there was none established at trial other than that since Yanakakis knew on October 16, 1984 he could not without special permission appear in any Florida court, his inaction then and throughout demonstrated that

he never had any intention of attempting to qualify for admission ***pro hac vice*** in either state or federal court. Also during trial, appellee Yanakakis admitted all of the acts condemned as unauthorized practice of law by this Court in ***The Florida Bar v. King, 468*** So.2d 982 (Fla. 1985), a case which appellant, Chandris S.A. cited in seeking summary judgment (Accord Folder - 252), which the district court ignored. In addition, appellee, Ira Leesfield admitted at trial that he and his firm had "assisted" Yanakakis' practice of law in the Miliaresis' case (R28-54).

In denying appellant's motion after trial for dismissal despite the verdict, the district court held that it was "not clear . . . that Yanakakis was engaged in unauthorized . . . practice of law" and that there was "no evidence presented at trial . . . that Mr. Yanakakis . . . did anything in violation of the standards . . . in ***Savitt".*** (Supplemental Record 4-390). The reason for this determination was appellants' claim in both their post-trial and summary judgment motions that Yanakakis' activities were ***not*** excused by Savitt; but rather that he had violated the "standards of ***Savitt"*** in, among other things, "advising Nikolas" on "international law and maritime law", which, paradoxically in light of this Court's specific contrary holding in that case, the district court had earlier held — despite his acknowledged Florida residence — he had the right to do (R15-262-12). In certifying, the court of appeals

concluded that it was "unable to agree that *Savitt* is controlling". In addition, it observed that ". . . defendants . . . point to a line of cases in which lay ***persons*** were found to have engaged in unauthorized practice". (9 F.3d at 1513). This Court's unauthorized practice of law decisions do not generally describe individuals never admitted in any jurisdiction found to have violated Florida Statutes Section 454.23 as 'lay persons" in the sense used by the court of appeals, but, instead typically refer to the respondent as a person, as is Yanakakis, who is "not a member of the Florida Bar".

C. FACTS RELEVANT TO TEE QUESTIONS CERTIFIED

The October 16, 1984 Authority to Represent was executed in Jackson Memorial Hospital, Miami, Florida by Yanakakis and by Nikolas Miliaresis and was witnessed by Nikolas' brother, Gerassimos Miliaresis (R14-245; G. Miliaresis Aff., p. 2) who had been flown from Greece to Miami by appellants after the accident (R14-245; G. Miliaresis AK, p. 1). This agreement identified Yanakakis as "an attorney from the Commonwealth of Massachusetts" and as Nikolas Miliaresis' "attorney", retained to prosecute a claim for damages against "Chandris Lines Co. owner of S/S AMERIKANIS", the vessel aboard which he was hurt. The second alleged Authority to Represent, identifying Yanakakis and

appellee, Leesfield & Blackburn, P.A., as "attorneys", was also signed by Yanakakis and not by the appellee law firm or any of its members. Miliaresis could not read or write English nor could he speak it fluently (R14-245; N. Miliaresis Aff., page 1; R31-521); and Yanakakis described Nikolas Miliaresis' knowledge of English as "practically" none (Accord. Folder No. 2; Yanakakis Dep., Sept. 21, 1989, p. 91). Although he failed to retain a copy, Yanakakis claimed that he had provided the seaman a Greek translation of the Authorities to Represent (Yanakakis Dep., January 22, 1991, p. 106; R22-62), which Miliaresis denied (R14-245; N. Miliaresis Aff., pp. 2-3; R31-517). According to Nikolas Miliaresis, the only aspect of the retainer agreement that was ever explained to him by Yanakakis *was* the "fee" that Yanakakis would take. He further testified that he was never told that there was going to be a division of attorneys' fees between Yanakakis and any other lawyer (R14245; N. Miliaresis Aff., p. 3). Neither Authority reflects even that fees would be divided among attorneys. Instead, prior to the execution of the alleged retainer agreements Yanakakis informed Mr. Miliaresis that he was a qualified lawyer who could "handle the matter" for Mr. Miliaresis in Miami; and that he had "associates" who would assist him (R14-245; N. Miliaresis Aff., pp. 2-3). Yanakakis advised Gerassimos Miliaresis that he was "a lawyer who could handle [Nikolas'] affairs in Florida" and that he could make a

claim against the vessel's insurer in Miami (R14-245; G. Miliaresis Aff., pp. 2, 4). Despite the fact that the October 16, 1984 Authority to Represent provided that Nikolas Miliaresis employed only Yanakakis as his "attorney", Yanakakis insisted that he orally disclosed to Nikolas and Gerassimos that if it should prove necessary for suit to be filed that the case would be handled by an admitted lawyer (R22-163). Yanakakis denied that it would have been appropriate to memorialize this intention in writing (R22-175). Both Nikolas and Gerassimos testified that Yanakakis had never disclosed that he was not a Florida attorney, or that an admitted Florida attorney would have to be retained to prosecute Miliaresis' claim (R14-245; N. Miliaresis Aff.; G. Miliaresis Aff.; R31-532; R32-686, 718-19). They also asserted that he described the attorneys from appellees Leesfield & Blackburn, P.A., only one of whom Miliaresis ever met, as his "associates" (R14-245; N. Miliaresis Aff., pp. 2-4; G. Miliaresis AK, pp. 2-3; R31-516-17, 522-23; R32-718-19).[7]

[7]Serving to corroborate Nikolas Miliaresis testimony that Yanakakis orally described to the seaman the attorneys from appellee law firm as his "associates" was the testimony of Mark Dresnick, a former non-equity partner at appellee's law firm who was the only attorney from the firm to ever meet Nikolas (Leesfield Dep. p. 4; Blackburn Dep. p. 8). Mr. Dresnick testified that at the request of Yanakakis he wrote to Nikolas Miliaresis in

(Footnote continued on next page)

Yanakakis' first contact with the injured seaman occurred October 7, 1984 when he made a bedside visit to Miliaresis in Jackson Memorial (Yanakakis Dep., September 21, 1989 p. 23; R22-42, 145) pursuant to the request of a hospital chaplain, Father Demosthenes Mekras, prelate of St. Sophia's Greek Orthodox Church in Miami. Father Mekras testified that he sent Yanakakis to see Miliaresis because he knew of Yanakakis' "legal background" as "a lawyer" (R22-14, 16, 18, 22) and, hence, wished Yanakakis to advise the seaman on "what would be a proper thing to do legally" (R22-18). Father Mekras also testified that at some point he became aware that Yanakakis had no right to perform the functions of a lawyer in Florida (R22-22, 23). Yanakakis claimed that his initial hospital visits to Miliaresis were "social visit[s]" in order to ". . . somehow help him morally to uplift his spirit . . ." (Yanakakis Dep., September 21, 1989, p. 28; R22-43). However, sometime after Yanakakis first visit a private investigator retained by TMS inquired of hospital personnel as to whether Mr. Miliaresis could in the future be *taken* to London, England for follow-up care. The seaman and his brother Gerassimos learned of this inquiry

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(Footnote continued from previous page)
February, 1985 and indicated to Mr. Miliaresis that the firm would be "working as attorneys in association with Basil Yanakakis" (Dresnick Dep. pp. 118-19). This letter was written in English.

(Yanakakis Dep., Sept. 21, 1989 pp. 33, 35; Dep. Jan. 22, 1991 p. 60; R22-146, 147) and expressed concern to Yanakakis that Miliaresis might be involuntarily transferred, something which no appellant ever intended to do (R33-784, 785). At or about that time Yanakakis disclosed to both Miliaresis brothers that he was a "lawyer" (Yanakakis Dep., Sept. 21, 1989, p. 31; R22-51; R32-649) and told them that, in his opinion as an attorney, pursuant to a shipowner's maintenance and cure obligation under maritime law, appellant Chandris S.A. was required to allow the seaman to remain in Jackson Memorial for treatment (Yanakakis Dep., Sept. 21, 1989, pp. 41-42; R22-150). At trial, Yanakakis testified that because neither was reassured by this advice he invited Gerassimos Miliaresis to visit his office to discuss this concern for his brother's future. Pursuant to this invitation Gerasimos Miliaresis visited Yanakakis at his office on October 10, 1984 (Yanakakis Dep., Jan. 22, 1991, p. 60; R22-151, 152) where Yanakakis gave him the printed mailing sticker identifying himself as: "Basil S. Yanakakis, Attorney at Law, Suite 801 New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132" (Affidavit of G. Miliaresis; R22-154; See, Appellants' Ex. "B").[5]

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[5]At his deposition Yanakakis denied ever having had printed *mailing* labels with his Florida address which indicated that he was an attorney at law (Yanakakis Dep.,

(Footnote continued on next page)

Yanakakis further admitted that on October 15, 1984 when again visiting Miliaresis in Jackson Memorial he told the injured seaman and his brother that he could not take steps necessary to insure that the seaman would not be transferred unless they agreed that Yanakakis also "be his lawyer" (R22-162). Thus, Yanakakis insisted that Miliaresis sign a contingent fee retainer agreement in which the seaman acknowledged his retention for purposes of prosecuting a claim for damages arising from his October 3, 1984 accident (R22-162, 168, 171). Yanakakis took a form Authority to Represent from one of the attorneys with whom he shared office space (Yanakakis Dep., Jan. 22, 1991, pp. 69-70; R22-54) and brought it to the hospital where it was executed after he had adapted it by identifying the claim and himself as "an attorney from the Commonwealth of Massachusetts" (Yanakakis Dep., January 22, 1991, pp. 69-70; R22-54, 56, 57, 58, 186).[6] Although the October 16, 1984 Authority to Represent provided for a 3345% fee to which Yanakakis was "entitled'

(Footnote con tinued from previous page)
Jan. 22, 1991, p. 92). After the mailing sticker was produced by Gerasimos Yanakakis, Yanakakis admitted to having had stickers printed (R22-154).

[6]At trial Yanakakis claimed that "attorney from the Commonwealth of Massachusetts" was the "best phrase possible" to convey that he was not admitted in Florida (R22-167, 168).

in the event settlement was achieved without filing suit, Yanakakis never intended to negotiate settlement directly, but, instead, "anticipate[d] that . . . [he would] . . . employ in the front a lawyer to do the negotiations" (R22-171).

Yanakakis has been a domiciliary of the State of Florida since 1979 and a continuous resident since 1980 (Yanakakis Dep., Sept. 21, 1989, pp. 6, 21; R22-136-37). The only State in which Yanakakis was ever admitted was the Commonwealth of Massachusetts, where he last practiced in 1979. Yanakakis joined the Massachusetts bar in 1964 at age forty and thereafter taught "International law" at Suffolk University Law School in Boston (Yanakakis Dep., Sept. 21, 1989, pp. 14-15; R22-35, 131, 132). In February, 1979 he abandoned his teaching career upon moving to Florida. Yanakakis did not complete the Florida bar examination of which he claimed to have taken only a portion in 1980 (Yanakakis Dep., Sept. 21, 1989 pp. 6, 19; R22-32). He managed family investments in Florida (Yanakakis Dep. Sept. 21, 1989 pp. 11-12; R22-32, 138) and maintained an office for that purpose in Miami which, since 1980, he shared with Florida attorneys (Yanakakis Dep., Jan. 22, 1991 p. 7; R22-138, 139). Yanakakis always intended to bring suit on the Miliaresis' behalf in a court in the state of Florida (R22-171) and all appellees admitted that Yanakakis and Leesfield &

Blackburn, P.A. jointly handled the Miliaresis' case as "co-counselors" to each other (R22-210, 215; Dresnick Dep., 71, 98; Leesfield Dep. p. 88, 91). Yanakakis also testified that during the first week of November, 1984 he spoke by telephone to appellee Ira Leesfield concerning the Miliaresis case (R22-72). Yanakakis claimed that he told Leesfield that he was not admitted in Florida and that he wished to engage him and his firm as attorneys of record, since he knew he could not represent Nikolas Miliaresis in court (Yanakakis Dep. R22-208). Prior to trial appellee Leesfield testified repeatedly that as of March, 1985, when the second Authority to Represent was signed, he ". . . didn't know one way or the other. . ." whether Yanakakis was an admitted attorney in Florida, and that he had never spoken to Yanakakis about whether he was admitted to practice law in Florida (Accord Folder 2; Leesfield Dep. p. 14, 50). At trial, Leesfield changed his testimony to agree with that of Yanakakis, stating that when Yanakakis contacted him regarding entering a "co-counselor' relationship he had told him that he "wanted to associate with him because he was not admitted to the Florida Bar" (R28-54). On November 29, 1984 Yanakakis again called Leesfield who this time "agreed to get involved" (R22-73, 75, 176).

Leesfield described the relationship that he and his firm had with Yanakakis as of the end of November, 1984

as a "team" formed to prosecute the Miliaresis case (R28-14,15,16). Leesfield acknowledged that the fee that his firm was to receive was to be based upon the contingent fee retainer agreement in existence as of that date of which he was aware (R28-66, 69). Leesfield testified otherwise prior to trial on this issue as well, stating at his deposition of January 5, 1991 that he did not know whether there was an Authority to Represent which pre-dated the March 18, 1985 alleged agreement (R30-111-12), the October 16, 1984 Authority to Represent having been withheld although demanded in discovery. Leesfield further admitted that fee sharing by appellees would be on the basis of joint responsibility with respect to the case and in proportion to the legal services performed by each (R30-153, 189-90); and that beginning in late November, 1984, he and his firm had "assisted" appellee Yanakakis' practice of law in Florida in connection with their joint or "team" handling of the Miliaresis' case (R28-54).

Yanakakis also admitted that he and Leesfield had discussed sharing fees pursuant to both the October 16, 1984 and March 18, 1985 Authorities to Represent (R22-205). His fee arrangement with Leesfield & Blackburn, P.A. provided for sharing ". . . [i]n proportion to the time, the effort performed by. . . [him] . . . and them *as* lawyers in *the State of Florida* in connection with the [Miliaresis'] case" (R22-204). Yanakakis was to monitor the activities of

the firm and would serve as the "team's" maritime and Greek law expert (R22-75, 76, 209; R30-167); and it was in this capacity that Yanakakis became "associated" with Leesfield & Blackburn, P.A. (R22-127, 128). Yanakakis testified that he carried out these duties, all of which were performed in Florida, by researching Greek law, obtaining authorizations for the release of Miliaresis' medical records, discussing legal matters with Leesfield & Blackburn, P.A. and, in general, monitoring the case (R22-76, 88, 89, 209, 241). Yanakakis also advised appellee Leesfield & Blackburn, P.A concerning service of process, which involved a determination of the applicability of provisions of the Hague Convention to a suit brought in Florida state court (Leesfield Dep. pp. 378-379; Dresnick Dep. p. 119). Indeed, Yanakakis testified that during December, 1984 and January, 1985, Dresnick was in constant contact with him, asking him "legal questions" and discussing 'legal problems of [the] case together" and that the two ". . . had a great number of sessions discussing the issues." (R22-78; Yanakakis Dep., Sept. 21, 1989, p. 69). Yanakakis' involvement as an attorney in the prosecution of the case was all encompassing, and was described by appellee Leesfield in summary as follows: "Mr. Yanakakis was available and did consult with us on matters of liability, damages, and law" (Leesfield Dep. p. 372). Also, prior to his retaining Leesfield & Blackburn, PA, Yanakakis had independently advised Miliaresis on

maritime law including the shipowner's maintenance and cure obligation, so understandably important to any grievously injured seaman and an indeed valuable right, as well as the value of Nikolas' claim for damages (R22-150; Yanakakis Dep., Sept. 21, 1989, pp. 129). Yanakakis also advised Mrs. Miliaresis that she was ". . . entitled to indemnification in case of judgment . . ." (Yanakakis Dep., Sept. 21, 1989, p. 81), and that she could recover for appellant's damages for loss of society. Yanakakis, accordingly, never denied that he had given legal advice to the client in Florida and, instead, admitted he had. During cross-examination at trial, he claimed that his efforts as "[a] lawyer[] in the state of Florida" constituted as much as fifty percent of the total expended prosecuting the Miliaresis' suit, and that he would share accordingly in the proceeds of this interference suit. But he also claimed that his time and effort in relation to the total had not finally been determined and that the correct proportion might be 55/45, 60/40 or even 70/30, without identifying whose percentage, his or the firm's, was greater (R22-214, 215; Yanakakis Dep., Sept. 21, 1989, pp. 84-85).

SUMMARY OF ARGUMENT

Appellee Yanakakis engaged in unauthorized practice of law both in holding himself out as an admitted Florida attorney and advising his alleged clients Nikolas and Matrona Miliaresis as well as acting as co-counsel with

and, hence, advising, Leesfield & Blackburn, P.A.; and the remaining appellees assisted that practice. The legal rights claimed by appellees in this case are based solely upon written retainer agreements both of which were illegal and a violation of Florida public policy and thus established no rights with which appellants could have interfered. Appellee Yanakakis was not an attorney admitted to the practice of law in Florida on October 16, 1984 and was not an out-of-state attorney employed by an interstate law firm, in Florida on a transient basis; but, instead, had been for more than four years a domiciliary and continuous permanent resident of this State. At the time the first Authority to Represent was executed he used printed material implying his Florida Bar membership and thereafter acted in Florida as *if* he *were* an admitted Florida attorney. Because Yanakakis was a Florida resident and domiciliary long before the execution of the first Authority to Represent, he could not, either then or thereafter, comply with the requirement of both Authorities to Represent that he act as an "attorney" without continuing to practice law in the State of Florida until the Miliaresis' case was ended. In addition, since Yanakakis and the other appellees with whom he associated agreed to mutually act as co-counselors, that commitment and their agreement to share fees pursuant to the second Authority to Represent required that the Leesfield firm and its members assist Yanakakis' practice,

although assisting unauthorized practice of law was a violation of Florida Disciplinary Rule 3-101. The contingent fee retainer agreements were illegal in both their formation and performance. For this reason neither Yanakakis nor the appellee law firm or its members can recover damages in lieu of fees, which — had not appellants allegedly interfered — they would have earned as a result of unauthorized practice of law and assisting that practice.

Neither appellees Ira H. Leesfield and Roger Blackburn nor anyone on behalf of their firm ever signed either contingent fee retainer agreement; and, thus, in addition to their inability to recover damages as a result of the illegality of both authorities, their claim of interference is barred for reason of Florida Disciplinary Rules 2-106(E) and 2-107(A)(2)(a) requiring in a personal injury case a written retainer agreement signed by the client and each party attorney as a matter of Florida policy designed for the protection of the public. In re: ***Florida Bar re: Amendment,*** 349 So.2d 630 (Fla. 1977). Moreover, appellee Yanakakis committed unauthorized practice of law in virtually every way possible in a single case, both before and after signing of the October 16, 1984 Authority to Represent. Of course appellees ***must*** argue that Yanakakis engaged in practice of law since otherwise they would concede that their agreement violated Florida Disciplinary

Rule 3-102 forbidding admitted Florida attorneys from sharing fees with a lay person.

Despite all this, appellees claim that *The Florida* Bar *v. Savitt, supra,* and more narrowly upon its provision for "merger" of an out-of-state attorney's acts practicing law in Florida with the product of an admitted Florida attorney, excuses Yanakakis' conduct. His conduct, however, violated the standards of *Savitt,* which permits an out-of-state attorney to advise a client on federal law, i.e., maritime law, in Florida — as Yanakakis admitted he had done — only if in the state on a "transient basis" and even then only if "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. Yanakakis was a four year Florida resident at the time of the October 16, 1984 Authority to Represent, had had no contact with any admitted Florida attorney concerning the Miliaresis case until sometime in November 1984 and thus before that time dealt directly with his alleged client, and the Authority's language "attorney from the Commonwealth of Massachusetts" is not an unambiguous writing advising that Yanakakis was not a Florida Bar member. Moreover, *Savitt* proscribes an out-of-state attorney who is not a member of the Florida Bar from using a professional card which identifies him or her as a

lawyer and which contains a Florida address.[8] It also provides that all that was not therein permitted an out-of-state attorney is forbidden as unauthorized practice (363 So.2d at 562). Since it is impossible to believe that this Court could intend that Florida rules forbidding unauthorized practice be more permissive of conduct of an unadmitted out-of-state attorney/permanent resident than one who resides and actively practices out-of-state and has a continuing affiliation with members of the Florida Bar, it would appear clear, not only that *The Florida Bar v. Savitt* does not aid appellees, it establishes Yanakakis' unauthorized practice. Although the court of appeals observed that "... defendants argue that *The Florida Bar v. Savitt* . . . upon which plaintiffs *rely, is* distinguishable" (9 F.3d 1512), in fact, appellants always asserted that although factually distinguishable it was a controlling statement concerning those activities the best situated out-of-state attorney can lawfully perform. Yanakakis, who was by no means so situated, would nonetheless have violated *Savitt* even if he had *been.* Appellants also claimed that *Sauitt* established that under Florida law it otherwise

[8]This Court has enforced strict compliance with *Savitt, supra,* by disciplining an out-of-state attorney actually engaged in an interstate practice of law who advertised his services in Florida without affirmatively identifying that he was not a Florida Bar member. *The Florida Bar v.* Kaiser, 397 So.2d 1132 (Fla. 1981).

makes no difference whether a person charged with unauthorized practice is *or* is not an admitted attorney in another state.

As the court of appeals also observed "[d]efendants suggest that according to plaintiffs' logic, out-of-state attorneys can flock to Miami and sign up clients with impunity' (9 F.3d 1513). In fact, appellants suggest more. If an unadmitted attorney from out-of-state although retired and domiciled in Florida for years can sign up clients — not in Miami but the whole State, and not just in personal injury matters but in all cases — the requirement that lawyers practicing in Florida pass the Florida Bar examination or be granted admission pro *hac vice* will be abolished. This is precisely what appellees argument for "merger" means. If it is correct countless out-of-state attorneys retired in Florida or who will retire to Florida, in exchange for delivering the client, will be effectively admitted to the practice of law for purposes of attending to that client's legal affairs in Florida, whatever those affairs may be. For this reason, permission to practice law in Florida will be granted, not pursuant to the Florida Constitution by this Court, but by admitted Florida attorneys who have agreed, in exchange for sharing of fees "as Florida attorneys" in a case which the out-of-state attorney produces, that his or her practice in Florida is "merged" with theirs. In short, appellees' "merger"

justification for unauthorized practice/assisting would limit the power of this Court and with that abrogate provision of the Constitution of the State of Florida.

This cannot be law, obviously. This case involved an agreement to share fees in a particular case, not the right to participate in the general revenues of an ongoing multi-state practice of law firm. Florida Disciplinary Rule 2-106(E) required that attorneys affiliated in order to prosecute a personal injury claim and sharing fees for services with respect to it must act as "partners with respect to the case". Disciplinary Rule 2-107(A)(2)(b) and (c) provided in such a case that "each attorney agrees to assume the same legal responsibility to the client for the performance of the services in question as if he were a partner of the other attorney involved and each lawyer shall be available to the client for consultation concerning the case". In no event can "merger" — which when applicable makes the Florida attorney a surety for the unadmitted attorneys acts because both are affiliated with a continuing law firm with a Florida presence — excuse appellees' conduct unless unauthorized practice amounting to a legal partnership involving joint responsibility and equal availability can be "merged"; even when the "attorney" does what he is required to do *in this State* although unadmitted. The requirement that "each attorney" be "available to the client for consultation"

means that Yanakakis, when asked for advice by Mr. & Mrs. Miliaresis, had to do what appellees concede is unauthorized practice of law. Yanakakis' agreement to act as Miliaresis attorney pursuant to the March 18, 1985 Authority to Represent, which the appellee firm was obliged to assist, did not just contemplate that he would, if asked, commit criminal acts, it required him to.

POINT I

YANAKAKIS ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW BY ENTERING INTO BOTH AUTHORITIES TO REPRESENT AND BY SERVING AS AN ATTORNEY IN FLORIDA PURSUANT TO THEM AND AS A RESULT THE AUTHORITIES ARE VOID

As was recognized by the court of appeals, it is well-settled that under Florida law a contract is void and cannot serve as the source of rights ". . . if either the formation or the performance of the contract is criminal, tortious, or otherwise opposed to public policy". See 9 F.3d at 1513, citing *Thomas v. Rather,* 462 So.2d 1157, 1159 (Fla.3d DCA *1984); Sunbeam Corp. v. Master of Miami, 225* F.2d 191 (5th Cir. 1955). In addition, it is beyond question that the unauthorized practice of law is a crime in Florida. Section 454.23, Florida Statutes (1983).[9] In Florida

[9]West's F.S.A., Vol. 15A, p. 14.

unauthorized practice of law is a "contempt of ***court". State v. Sperry,*** 140 So. 2d 587, 589 (1962), rev'd on other grounds, 373 U.S. 379 (1963). The first question — and it is submitted the sole question — is whether the formation and/or the performance of the contingent retainer agreements constituted or required acts by appellees which were either criminal or contrary to public policy. The court of appeals declined to hold that Yanakakis' activity in entering into the alleged contracts and performing pursuant to them was unauthorized practice of law, and was thus a crime, on the grounds that it could find no reported Florida case which had held that a party had engaged in the unauthorized practice of law which involved the precise facts of this case. It is submitted, however, that Florida law unquestionably proscribes as illegal all of the acts of Yanakakis in entering into the retainer agreements and acting pursuant to them as a lawyer in Florida, despite the fact that, not unexpectedly, no previous case reports facts identical in all respects to this one.

As was repeatedly admitted by appellees the 'legal" activities performed by Yanakakis before and after the October 16, 1984 Authority to Represent included: drafting a contingent fee retainer agreement with regard to a claim that was intended to be brought in state court in Florida and advising Miliaresis as to his rights thereunder, investigating Miliaresis' claim, advising Miliaresis as to

the value of his claim, advising the seaman as to the law of maintenance and cure, obtaining admitted Florida attorneys to represent Miliaresis and negotiating terms of fee sharing with them, researching the law of service of process on a foreign corporation for a suit to be brought in Florida state court, researching international law and conflicts of laws and advising Mrs. Miliaresis on her consortium claim. As was conceded by appellee Leesfield, Yanakakis was consulted by the appellee firm with regard to "liability, damages, and law". Further, there is no doubt despite his initial denial that Yanakakis had printed mailing labels identifying himself as an "Attorney at Law", with a Miami, Florida address which he distributed from his office shared with admitted Florida attorneys. Moreover, as of the time of the initial involvement of Yanakakis in Mr. Miliaresis' case he had long been domiciled in the State of Florida, a fact which the court of appeals may have recognized prevented him from lawfully engaging in any of the activities out-of-state attorneys employed in interstate law firms sanctioned by this Court in ***The Florida Bar v. Savitt, supra.*** As importantly, in opposing the unauthorized practice of law defense raised by appellants before both the district court and the court of appeals, appellees admitted that Yanakakis engaged in the practice of law in advising the firm, but asserted in justification that his actions were lawful. This argument, based upon ***The Florida Bar v. Savitt,*** was correctly

rejected by the court of appeals. They also claim that although he gave legal advice to the firm he gave none to his "clients" who for that reason are designated as Mr. and Mrs. Miliaresis, only. This claim is both legally inadequate and contrary to fact.

Under Florida law Yanakakis engaged in the unauthorized practice of law by entering into the authority to represent. In holding that it was aware of *no* Florida case which unequivocally established whether Yanakakis engaged in the unauthorized practice of law, the court of appeals cited *The Florida Bar v. Tate*, *552* So.2d 1106 (Fla. 1989) but suggested that its holding was not determinative of the issue because in *Tate*, as opposed to in the instant case, the unadmitted, out-of-state, attorney "filed pleadings".[10] The court of appeals also noted that the case

[10]Florida law governs the issue of unauthorized practice in this case. This is so because "[t]he Constitution does not require that because a lawyer has been admitted to the Bar of one State, he or she must be allowed to practice in another . . ." state. *Leis* v. *Flynt*, *439 U.S. 438* at 4.43 (1979). The United States Supreme Court has also held that States have a "compelling interest" in the "practice of professions within their boundaries" and that "[t]he interest of the states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been *'officers* of the *courts'. . .". Goldfarb v. Virginia State Bar, 421* U.S. 773, 792 (1975). Moreover,

(Footnote continued on next page)

did not address the validity of retainer agreements entered into by out-of-state attorneys. Florida law, however, very clearly proscribes each act by Yanakakis in entering into and performing the retainer agreements. The court of appeals also distinguished cases cited by appellants for the proposition that Yanakakis engaged in the unauthorized practice of law on the grounds that they involved "lay persons" as opposed to an out-of-state attorney. It is submitted, however, that Florida law does not distinguish between the two.

Pursuant to Article 2, Section 2 of the Integration Rule of the Florida Bar, West's F.S.A., Vol. 35, p. 22, no person was permitted to "engage in any way in the practice of law" in the state of Florida unless such person is an active member of the Florida Bar in "good standing". A "practicing attorney" from another state in "good standing' who has "professional business in a court" of Florida is

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The Florida Bar v. Savitt, "advice on federal law" exceptions to unauthorized practice of law (see 363 F.2d at 561) was based upon the holding in ***Spanos v. Skouros, Inc.,*** 364 F.2d 161 (2nd Cir. 1968) that U.S.Const. Art. 4, Section 2, cl.1. "Privileges and Immunities" required out-of-state attorney be free in federal law cases to practice where not admitted. This holding, which was obviously unsound, has been overruled. See, ***Norfolk & Western R. Co. v. Beatty, 423*** U.S. 1009 (1975); ***Leis v. Flynt, sup-a,*** 439 U.S. 438, 442 fn. 4.

permitted upon motion to practice ". . . for the purpose of such business upon such conditions as the court deems appropriate under the circumstances of the case" (Ibid.). The sole exceptions to the rule that an individual may not in any way engage in the practice of law unless admitted or specially admitted *was* set forth in *Savitt, supra;* and no case has permitted practice of law in Florida by a non-admitted out-of-state attorney to which the *Savitt* holding does not apply. To the contrary, pursuant to the Integration Rule this Court permanently enjoined an attorney in good standing in the state of Mississippi but not Florida from ". . . either impliedly or expressly holding himself out as an individual licensed to practice law in the state of Florida", ". . . describing himself as a lawyer or attorney" and "giving legal advice and counsel to others . . ." *The Florida* Bar v. Dale, 496 So.2d 813 (Fla. 1986). There is no reason to interpret "others" as only lay persons and not attorneys with whom an unadmitted attorney consults by giving legal advice. It is Florida law "[t]hat those who hold themselves out to practice *in* any field or phase of law must be members of the Florida Bar, amenable to the rules and regulations of the Florida *Courts". Petition of Kearney,* 63 So. 2d 630,631 (Fla. 1953). Thus, the fact that it is conceded that Yanakakis gave advice to the Leesfield firm in Florida is dispositive, even if it could be said, as it cannot, that he gave no advice to Mr. & Mrs. Miliaresis. The court in ***Dale*** also required the

Mississippi attorney respondent ". . . to remove all indicia of his status as a lawyer [in his office in Florida] from public view". In Dale, the out-of-state attorney had not filed pleadings for his "client", yet by holding himself out as an attorney was determined to have engaged in the unauthorized practice. This Court in both *Dale* and *Tate* gave no indication whatsoever that it was at all significant that the respondent was licensed to practice law in another state, and set forth no activities that out-of-state attorneys could perform as attorneys in this State. With the exception of individuals who fall under the rule of *Savitt,* in determining whether authorized practice of law has occurred, it instead has applied identical standards to out-of-state attorneys who have not qualified for special admission as it has to lay persons. Indeed, *Savitt, supra,* very clearly sets forth the only instances in which out-of-state attorneys may in any way engage in the practice of law in Florida; and proscribes any activity by such an attorney not falling within the narrow exceptions therein articulated.

There is no question, nor was any raised by the court of appeals, that the activities of Yanakakis in Florida, when judged by the standards which have been applied to both lay persons and out-of-state attorneys not specially admitted, constituted unauthorized practice of law. In *The Florida Bar v. Brumbaugh*, 355 So.2d 1186, 1191 (Fla.

1978) this Court restated the standard to be employed in determining whether an individual is practicing law. It is as follows:

> . . . if the giving of such advice and performance of such services affect important rights of a person under the law and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

It has consistently been held that unauthorized practice of law consists of activity that falls far short of the actual filing of pleadings. In *The* Florida *Bar v. Snapp, 472* So.2d 459, 460 (Fla. 1985), this Court approved a joint stipulation and an order of a court-appointed referee in an unauthorized practice of law proceeding in which the respondent admitted that the following activities constituted the unauthorized practice of law:

> (a) offering to represent an individual other than himself, for a fee, in a dispute with an insurance company over claims;

(b) offering to represent an individual other than himself, for a fee, in a personal injury dispute;

(c) representing an individual other than himself in court proceedings;

(d) giving legal advice regarding the litigation and settlement of disputes.

In *The Florida Bar v. Kaufmann, supra,* respondent was permanently enjoined from "[c]ounseling clients about legal matters". *The* Florida Bar v. *Neadel,* 297 So.2d 305 (Fla. 1974) holds that the "advising" individuals in Florida how to obtain foreign divorces constituted the unauthorized practice of law. Indeed, simply "holding oneself out to be an attorney when not so licensed itself constitutes the unauthorized practice of lad'. *The Florida Bar v. Matus, 528* So.2d 895, 896 (Fla. 1988); *The Florida Bar v. Martin,* 432 So.2d 54 (Fla. 1983); *The Florida Bar v. Schell, 422* So.2d 308 (Fla. 1982); *The Florida Bar v. Moran, 2273* So.2d 390 (Fla. 1973); *The Florida Bar v. Tate, supra.* In *Moran,* the method by which the respondent held herself out to be an attorney was similar to that adopted by Yanakakis prior to his convincing Miliaresis to "hire" him "as an attorney". In that case the respondent distributed business cards which stated: "Independent Bar Association of Massachusetts, Lucille E. Moran, Attorney at Law, Specializing in Tax Defenses,

P.O. Box 641, Tavernier, Florida 33070". It was held that such a business card falsely represented and improperly suggested that the respondent was permitted to practice law in the State of Florida and that this constituted unauthorized practice of law.[11] In *The Florida Bar v. King, supra,* the Supreme Court determined that the following activities constituted the unauthorized practice of law, each one of which Yanakakis admitted:

> 1. Respondent conducted interviews of "clients" and based upon their responses selected the particular forms to be used.
>
> 2. Respondent drafted the entries of information for the blanks on the forms.
>
> 3. Respondent had direct contact in the nature of consultation, explanation, recommendations, advice and assistance in the provision, selection and completion of forms.
>
> 4. Respondent suggested, directed, and participated in the accumulation of evidence to be submitted with the completed forms.

"Yanakakis' mailing sticker was more misleading than the business card distributed by the respondent in *Moran, supra,* as it contained nothing which would lead even the most astute reader to believe other than that Yanakakis was an admitted Florida attorney.

5. Respondent gave advice and made decisions on behalf of others which required legal skill and a knowledge of the law greater than that possessed by the average citizen.

6. Respondent selected, negotiated compensation for, and monitored the efforts of, attorneys acting as "counsel of record" for respondent's "clients" and in effect acted as "co-counsel".

Prior to entering into the first contingent fee retainer agreement Yanakakis engaged in the unauthorized practice of Iaw in Florida by providing legal advice to Miliaresis. ***See The Florida Bar v. Dale, supra; The Florida Bar v. Moran, supra. Also*** prior to entering the first alleged contingent fee retainer agreement, Yanakakis provided Gerasimos Miliaresis with a mailing sticker which identified Yanakakis as an "Attorney-at-Law" with a Florida address. The act of providing the sticker, alone, constituted unauthorized practice of law. ***The Florida Bar v. Dale, supra; The Florida Bar v. Moran, supra, The Florida Bar v. Savitt, supra.*** Moreover, Yanakakis' actions in counseling the Miliaresis brothers as to the requirement that a retainer agreement had to be executed prior to his acting on the behalf of Nikolas, offering to represent Miliaresis for a fee in his personal injury claim against the vessel owners and operators, entering into the contingent fee retainer agreement to represent the injured seaman in

a case which was intended to be brought in Florida state court, and informing Nikolas Miliaresis as to the "fee" which Yanakakis could take, which necessarily required to counsel on aspects of Florida law, unquestionably establish that Yanakakis held himself out to be an attorney when not so ***licensed,*** and this constituted the unauthorized practice of law. ***See The Florida*** Bar ***v. Snapp, supra; The Florida Bar v. Dale, supra; The Florida Bar v. Matus, supra; The Florida Bar v. Martin, supra; The Florida Bar v. Schell, supra; The Florida Bar v. Moran, supra.*** After entering the first alleged retainer agreement, Yanakakis, by admission of all appellees, continued his unauthorized practice by advising Leesfield & Blackburn, P.A. on important legal issues, not just those which ". . . required legal skill and a knowledge of the law" greater than of "the average citizen" but of the appellee firm and its members — Yanakakis served as "co-counsel" to appellees Leesfield & Blackburn, P.A. as part of the legal "team" in which he was its "maritime law expert" (R22-75,76,209; R30-167).

Despite massive Florida authority that Yanakakis practiced law illegally, appellees claimed in federal court that Yanakakis' conduct after the first Authority to Represent was "merged" with that of Leesfield & Blackburn, P.A., while his practice of law in Florida prior thereto constituted nothing more than "incidental conduct". Appellees, however, never cited any authority for

"incidental" practice in which Yanakakis engaged being exempted from Florida's prohibition and, in addition, Yanakakis' conduct can in no way be characterized as "incidental". It unquestionably involved advice to the client on the important maritime law right to maintenance and cure, the dominating concern of the accident victim before the first Authority to Represent was signed and the reason for its execution. See, *The Florida* Bar *v. Dale, supra.* In addition, Yanakakis advised Miliaresis of the value of his case, an assessment of which could not be made without considering choice of law questions of considerable subtlety. When hurt, Mr. Miliaresis was serving aboard S/S AMERIKANIS pursuant to an employment contract providing for application of the law of Greece. He was not injured in the United States. As was testified to at trial, Greek law provides little recovery for injury in the course of employment beyond a disability pension. Yanakakis' advice regarding value presumed as a result that United States law would apply, on the facts an indeed difficult decision for even the most astute attorney to make. See, *Kukias v. Chandris Lines, Inc. et al., 839* F.2d 860 (1st Cir. 1988); *Sigalas* v. *Lido Maritime, 776* F.2d 1512 (11th Cir. 1985). Surely, entering into a contingent fee agreement in a case the unadmitted attorney intends to bring in a Florida court where thereafter it is brought is not, and in this case was not, an incidental act. Nor was Yanakakis' conduct, especially in light of his testimony regarding his

proper share of any recovery for tortious interference, "incidental" thereafter. Finally, appellees' arguments are based entirely upon exceptions articulated in *Savitt, supra* which the court of appeals ruled applies to "out-of-state attorneys employed in an interstate law firm" while Yanakakis, of course, was not an employee of any firm.

POINT II

THE "FEE AGREEMENT" OF APPELLEE LEESFIELD & BLACKBURN IS VOID BECAUSE IT REQUIRED YANAKAKIS' UNAUTHORIZED PRACTICE WHICH THE OTHER APPELLEES WERE REQUIRED TO ASSIST; AND BECAUSE IT FAILED TO COMPLY WITH THE DISCIPLINARY RULES GOVERNING CONTINGENT FEE AGREEMENTS IN PERSONAL INJURY CASES

The court of appeals certified as a second question whether the fee agreement of appellee Leesfield & Blackbum, in that court's phrase 'born" of a fee agreement that is void as a result of the unauthorized practice of law, is itself void. The agreement of Leesfield & Blackburn apparently referred to by the court of appeals is the March 18, 1985 Authority to Represent, or it is the agreement in November 1984 by virtue of which according to the court of appeals despite the seaman's denial, ". . . Miliaresis orally retained the Leesfield firm to assist

Yanakakis" (9 F.3d at 1512). It is submitted that if the October 14, 1984 fee agreement is determined to be void as a result of Yanakakis' unauthorized practice of law any later agreement is also necessarily void — Yanakakis is identified as an "attorney" in the Second Authority to Represent as well; and he, in fact, was the sole "attorney" signatory to it. Thus, the March 18, 1985 agreement was illegal in its formation since having as its genesis illegal conduct and because one of its express terms provided that Yanakakis serve as Nikolas Miliaresis' attorney. In addition, since this document is not more under Florida law than some evidence of an oral agreement for retention of the appellee law firm which DR 106(E) states shall be in writing, it was void *ab initio* as a violation of Florida public policy. This agreement, or any purported independent oral agreement between the firm and Miliaresis, since in furtherance of Yanakakis' illegal practice of law — which the court of appeals tellingly held it was designed to "assist" — is itself illegal and void for violation of Florida public policy, As a result both the formation and performance of any alleged agreement to retain the firm was illegal if Yanakakis' activities either before or after March 18, 1985 were illegal.

There is no question that the interest of the appellee law firm and that of Yanakakis in the March 18, 1985 Authority are not divisible. Local 234 of ***United Association***

of Journeymen and Apprentices of United States and Canada v. Henley and Beckwith, supra. A contract which violates a law is "void" under Florida law. *Citizens Bank & Trust v. Mabry*, 136 So. 714 (Fla. 1931). In Florida ". . . a provision that the intention of the parties may not be effectuated in violation of law is implicit in every contract". *H.B. Holding Co. v. Girtman*, 96 So.2d 781,783 (Fla. 1957). A contract is "illegal and can be the source of no rights in the event either its formation or performance is criminal, tortious or otherwise opposed to public policy"; "[w]here a statute imposes a penalty for an act, a contract formed upon said act is considered void in Florida" and will not support claim even for the reasonable value of services performed. *Thomas v. Rather, supra.*

Florida Disciplinary Rule 2-106(E) required that "[e]ach participating attorney or law firm shall sign the contract *or* agree in writing to be bound by the terms of the contract with the client . . .". yet Leesfield & Blackburn, P.A. never signed either contingent fee retainer agreement nor agreed in writing to be bound by them. A contingency fee retainer agreement which is not in writing and signed by the client and attorney in violation of a rule of professional responsibility is ". . . unconscionable and, therefore, void". *Figa v. R.V.M.P. Corp.*, 681 F.Supp. 806, 810 (S.D.Fla. 1988). The March 18, 1985 Authority to Represent also did not comply with Florida

DR 2-107(A)(2)(a), which required that an attorney not divide a fee for legal services unless the client consented in a writing signed by him to the employment of the other lawyer, "which writing shall fully disclose that a division of fees will be made and the basis upon which the division of fees will be made."[12] Even more importantly, DR 2-107(A)(2)(c) has substantive as opposed to formal requirements — permission to share fees requires involved attorneys be independently "available to the client for consultation concerning the case"; and attorneys sharing fees must act as "partners" with respect to it. Since "consultation" with Miliaresis, i.e., as appellees have agreed the giving of legal advice to a client directly in Florida by an individual who is not a member of the Florida Bar is forbidden, this requirement of Florida public

[12]At trial, Mark Dresnick, a former partner of the respondent law firm, admitted that the March 18, 1985 Authority to Represent did *not* comply with Florida DR 2-107(A)(2)(a), but claimed that in 1985, eight years after its adoption by the Supreme Court of Florida (see, *In re: Florida Bar re: Amendment, supra*, it was not the "practice" of the local personal injury bar to comply with its requirements (R23-267). Respondent, Ira Leesfield testified that DR 2-107(A)(2)(a) required only the filing of a closing statement identifying fee division (R30-154) despite the fact that the closing statement requirement (see DR 2-106(E)) was adopted at the same time as DR 2-107(A)(2)(a) and the two requirements as a result were separate and cumulative (R30-155).

policy could not have been met in this case if Yanakakis were not available. Hence, his agreement to act as an "attorney' thereafter required him to continue what appellees concede would be his unauthorized practice. Indeed, Yanakakis' activity in Florida in connection with the Miliaresis' case after March 18, 1985 constituted a continuing crime made possible by the agreement of Leesfield & Blackburn, P.A. to assist its perpetuation.

In Florida, "[a] violation of a statute results in the contract being void as a matter of public policy and thus incapable of supporting a charging lien". *Spence, Payne, Masington v. Philip M. Gerson*, 483 So.2d 775, 777 (Fla.App. 3rd Dist. 1986). It is the law in Florida that the violation need not carry with it criminal sanction; it is enough that the contract be prohibited by statute or public policy intended for the benefit of the public. Robert G. *Lassiter & Co. v. Taylor*, 128 So. 14 (Fla. 1930). As is stated in Corbin, *On Contracts*, 1982 Ed., Section 1513, page 722: "If a particular act is made a crime, of any degree, a bargain, the making or performance which necessarily involves that act is *an* illegal bargain, ***and the same is true*** *even though the act is not a crime, if it is in fact prohibited or penalized*" (emphasis added). The Florida Disciplinary Rule forbidding an admitted Florida attorney from assisting unauthorized practice is a statute establishing Florida public policy and imposing a penalty. The Florida

Disciplinary Rules, "Preliminary Statement" provided that the rules ". . . unlike the ethical considerations are mandatory in character. . ." and that they "state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action". See F.S.A. Vol. 35 at pps. 231-232. Under Florida law there can be no actionable interference with a void contract. ***Sunbeam Corporation v. Masters of Miami, Inc., supra, Ely v. Donoho, 45*** F.Supp. 27 (S.D. Fla. 1942). By permitting recovery of damages for interference with such a contract, the courts aid in upholding it; and the court "should not put its stamp of approval on any contract which has as its genesis criminal activity". ***Agudo, Pineiro & Kates v. Harbert Const.*** ,476 So. 2d 1311, 1318 (Fla. App. 3rd Dist. 1985, dissenting op., Barkdull, J.).

The federal district court, in addition to rejecting all arguments based on Florida law forbidding unauthorized practice, also ignored the fact that failure of both Authorities to Represent to comply with DR 2-106(E) and 2-107(A)(2)(a) — apart from consideration of unauthorized practice — required dismissal of the complaint. It is, of course, not appropriate for any federal court "to change the public policy of Florida . . . [or] to refuse to apply it . . . whether . . . [the court] . . . agree[s] with that public policy ***or*** not". ***Sunbeam Corporation v. Masters of Miami, supra,*** at 197. The district court did just that by holding

that although the March 18, 1985 Authority to Represent violated Florida Disciplinary Rules appellants could not exercise Mr. Miliaresis' "power to void" it (R15-262-13), the predicate of the appellee law firm's judgment. There is some law in Florida where there is no evidence of proscribed activity — such as unauthorized practice of law and assisting such practice — that violation of a Disciplinary Rule requiring a written agreement to pay a contingent fee does *not* impair the right to recover the reasonable value of services performed. But here appellees withdrew claim for the reasonable value of their services and the judgment appealed from is based upon contract only, not damages proved ***quantum meruit.*** In sum, as the appellants argued in district court the complaint had to be dismissed ***if only*** the March 18, 1985 Authority to Represent violated the ***formal*** requirements of Florida DR 2-106(E) and 2-107(A)(2)(a), as the district court held it did. Because the Florida Disciplinary Rules were mandatory, failure to comply with the requirement that a contingent fee agreement in a personal injury case "shall be in writing" alone is a violation of Florida public policy designed for the public's protection, and was a standard below which no lawyer's conduct could be allowed to fall. As a result the second Authority to Represent is void, not voidable.

We note that this argument was presented to the United States District Court for the Southern District of Florida as a proper basis for dismissing the complaint without that court having to decide whether Yanakakis committed unauthorized practice and, hence, whether the other appellees assisted him, issues best considered by this Court, of course. It, too, was ignored (R15-262).

CONCLUSION

It is respectfully submitted that this Court must answer both questions certified "yes".

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Respectfully submitted,

BY: _____

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY a true and correct copy of the foregoing was mailed this 2nd day of December, 1994, to:

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