**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.*

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

## REPLY BRIEF OF APPELLANT TRANSPORT MUTUAL SERVICES, INC.

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The Eleventh Circuit Court of Appeals certified: (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" if he "enters into a contingent fee agreement in Florida" with the result that "the fee agreement [is] 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". Appellees *claim* that the court of appeals, having held that under Florida law a contract is void ". . . if either the formation or performance is criminal, tortious or otherwise opposed to public policy" (9 F.3d at 1513), instead certified: "whether one or both attemey-client contracts with which the defendants tortiously interfered are 'void *ab initio*'" as opposed to merely "voidable". Appellees also seek to bar facts admitted at trial although their deposition testimony establishes unauthorized practice of law.

## THE MOTIONS FOR SUMMARY JUDGMENT

Appellants cross-moved for summary judgment in response to appellees' motion based upon The *Florida Bar v. Savitt*, *363* So.2d 559 (Fla. 1978) seeking dismissal of their defense that the contracts allegedly tortiously interfered with were void since ". . . there is no genuine issue of material fact that plaintiffs' conduct does not constitute the unauthorized practice of law . . ." (R10-209). An affidavit of appellees' "client's" brother, Gerassimos Miliaresis established that Yanakakis had given him a printed label (Exhibit "B") identifying unadmitted appellee as an "attorney-at-law" with a Miami, Florida address, a fact which Yanakakis did not then deny and at trial admitted. Appellants also showed that Yanakakis had given Nikolas advice: Chandris' maritime law cure obligation would be breached if it attempted to transfer him from Miami (Yanakakis Dep., Sept. 21, 1989,

pp. 41-42); his case was worth ". . . definitely . . . more than a million and a half or more than two million.. ." *(Ibid.,* p. 129) and by offering his services to Miliaresis that he was in need of a 'lawyer". Yanakakis' also admitted that he had discussed his "lack of ability to practice law in Florida", telling the injured seaman "I will find a local attorney for here Florida] when the case comes to a legal representation" *(Id.,* p. 39) thus acknowledging that he had entered into a contract for legal services in a case he ***intended*** be brought in Florida. Yanakakis contacted Leesfield "in November 1984" (48) since Miliaresis 'left it up to . . . [him] . . . to select a member of the Florida Bar" to "represent him with whatever legal rights he had" (49). Appellee testified that Leesfield ". . . said he would take it" (51) and as a result "[Miliaresis] hires the law firm of Mr. Leesfield" and that the injured seaman had agreed ". . . the contingency fee [was] to be paid {for] all the work we will have to do for him" (61). This involved "a great number of sessions discussing the issues" (69) with "full understanding that I would be part of the contingency fee . . ."; that ". . . time and effort and what type of work I will do would determine the final . . . [remuneration] . . . from the firm" (84) and that this was to include 'legal research" (85). At his deposition Leesfield admitted a "co-counselor" relationship stating: "Mr. Yanakakis ***was*** available and did consult with us on matters of liability, damages and law" (p. 372).

By moving to dismiss appellees argued that appellants' defense was infirm whatever the facts. In granting appellees' motion the district court improperly relied upon affidavits of law in holding that Yanakakis could enter into a contract for legal services in Florida. It found that Yanakakis had been a Florida domiciliary since 1979 and a resident since 1980; that he had given G-erassimos Miliaresis Exhibit "B" and that the "genesis" of the second Authority to Represent was the first. Without

basis, it held that Leesfield decided where to institute suit and that if it had been brought in federal court, Yanakakis — despite his testimony that he intended "legal representation" be delegated — would have had a "reasonable expectancy' of admission *pro hac vice.* Although there was no evidence when Exhibit "B" had been given, the court decided "the 'Authority to Represent' was not based on the representation inferred from the card". It also held that Yanakakis was entitled to advise his "client" on federal law and that Leesfield's *oral* contingent fee agreement was valid and could not be affected by Yanakakis' unauthorized practice.

## THE TESTIMONY AT TRIAL

Appellees claim this Court cannot consider trial testimony although asserting it demonstrates appellants' "outrageous" conduct. Appellees "proved" tortious interference by testimony that an appellant — in planning through an intermediary to inform Miliaresis that Greek law might apply to his suit — violated the Florida Code of Ethics for Insurance Adjusters, Fla. Stat. 626 et *seq.,* which the trial court refused to hold applied to adjusting claims by third parties as opposed to insureds. Appellees were unable to prove the intermediary contacted the seaman or that conduct in Florida caused contract termination a year later in Greece. The trial court also ignored the controlling maritime law rule that shipowners *can* settle 'behind the backs" of counsel absent "oppressive conduct" (*Lewis v.* S/S *BAUNE,* 534 F.2d 1115 (5th Cir. 1976)), which Miliaresis denied. (R33-860-63, 89495). Prior to trial the court ruled that the Jones Act, 46 U.S.C. Section 688, would have been applied to the Miliaresis case although not decided in state court; and the jury was never told — based upon *Sigalas v. Lido* Maritime, Inc., 776 F.2d 1512 (11th Cir. 1985) and *Kukias v. Chandris Lines, Inc., et al.,* 839 F.2d 860 (1st Cir. 1988) — that it might not. Because

the jury was also told that appellants could be liable for "careless indifference" (R35-1521, 1528) and to assess appellants' justification on a basis joining the "interest of Nikolas" with that of appellees (R35-1463), it awarded $2,600,000 punitive damages despite "interference" only in telling Miliaresis when *he* asked in Greece if he could settle directly that he would have to discharge Yanakakis, the only appellee the seaman recognized as his "attorney".

Appellees seek to bar their trial testimony because it demonstrates awareness of Florida law and bankrupts argument that they did "nothing wrong": Yanakakis admitted he knew he had no right to conduct settlement negotiations since he intended to hire a Florida law firm "in the front" (R22-171); and retained Florida counsel because aware he could not represent Miliaresis in court (R22-208). Yanakakis also testified that Exhibit "B" had been given to Gerassimos on October 10, 1984 when he came to his office to discuss whether Nikolas could be transferred (R22-154). Appellees further admitted their fee sharing was to be based upon joint responsibility and in proportion to effort "as lawyers in the State of Florida . . ." (R22-204); that Leesfield "assisted" (R28-54) Yanakakis' practice of law and that Yanakakis' efforts might entitle him to as much as 70% of damages in lieu of fees. (R22-214, 215).

## APPELLEES' ARGUMENTS

On appeal, appellees claimed that the unadmitted attorney had *not* given advice to the client and hence abandoned the trial court's mistake that Yanakakis could give advice in Florida on federal law. The Eleventh Circuit was "unable to conclude that *Savitt* is controlling", since "merger" of the product of an unadmitted attorney with that of a Florida Bar member is applicable only to partners or associates of the same firm. Since this means unauthorized practice would be established if Yanakakis

advised the firm, appellees now claim that the *Savitt* "advice on federal law" limitation — that the unadmitted advice-giver be in Florida "on a transient basis" — is "not a permissible restraint" and is "simply unlawful". Appellees, having unsuccessfully argued Florida law in federal court, argue federal law here: they failed to challenge the "transient basis" *Savitt* requirement in the court of appeals. Appellees also claim Yanakakis was permitted to enter into a Florida contingent fee agreement because *he* could have begun Miliaresis' suit in Massachusetts, in Florida federal court; and even in Florida state court although a *pro hac vice* applicant had to be "a practicing attorney in another state"[1]. The court of appeals held, however: "In 1980 . . . [Yanakakis] . . . discontinued the practice of law and moved to Florida where he established his domicile" (9 F.3d 1509, 1511). Having "established' alleged "facial legality', appellees answer "no" their own question 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". Appellees again rely on affidavits which address whether an out-of-state attorney may contract for his or her legal services in Florida and ignore whether this is so when the attorney is a Florida resident who acts in this State through an admitted attorney because he is not. They further claim Leesfield's "contractual relationship" with Miliaresis is flawed only by "technical omissions" since "oral contingency fee contracts were fully enforceable" although in federal court appellees acknowledged: ". . . the disciplinary rules arguably (sic) required contingent fee contracts to be in writing" (Appellees' Brief p. 34). Appellees, having previously described illegal contracts as those ". . . expressly prohibited by law . . ." (*Ibid*, p. 38) do not mention that in Florida contracts are void if violative of policy designed to

[1]West's F.S.A., Vol. 35, Integration Rule, Art. 2, p. 23.

protect the public. ***Robert G. Lassiter & Co. v. Taylor, 128*** So.14 (Fla. 1930). In arguing ***United Yacht Brokers, Inc. v. Gillespie, 377*** So.2d 761 (Fla. 1977), they fail to note that the Florida law at issue was not enacted for the public's protection. They ignore the "minimum standard below which no attorneys conduct may fall" established by the Disciplinary Rules (F.S.A. Vol. 35, pps. 231-32); that violation subjected an attorney to discipline ***(Ibid.);*** and that Leesfield in "assisting" Yanakakis' practice violated DR 3-101(A). Appellees argue they did "nothing wrong" based on irrelevant ethics opinions without mentioning others which establish that The Florida Bar has long advised referrals which contemplate division of fees by out-of-state attorneys resident in Florida are agreements aiding unauthorized practice of law.

Appellees attempt to disguise unauthorized practice and assisting by alleging "unique circumstances" and a "special relationship with the client". They claim Yanakakis was employed as an "expert" and had an ". . . isolated, carefully limited contractual relationship." Yanakakis was referred to Miliaresis by a hospital chaplain because he knew Yanakakis as a 'lawyer" (R22-14, 16, 18, 22), although not then aware that he was "not permitted to perform a lawyer's function" in this State (R22-22, 23)[2]. Soon thereafter, Nikolas' and Gerassimos' concern for transfer led Yanakakis to identify himself as an "attorney" and to offer his services to assure this would not happen. Yanakakis, however, insisted that for him to become his lawyer Miliaresis had to sign the Authority to Represent "retaining" him to prosecute the seaman's claim for damages. Sworn to secrecy according to Yanakakis at the Miliaresis' insistence and according to them at his,

[2]Massachusetts law forbids such a referral (see, Mass. Statutes 221 Section 44A). The October 16, 1984 Authority was as a result not even "facially legal" and the "special relationship" was formed contrary to the law of that State.

Yanakakis described himself as Miliaresis' 'friend" or "advisor", but one interested in being paid for his *assistance* (R22-62, Ex. *84).* Because prior to October 10, 1984 Yanakakis had mailing labels printed implying bar membership his unauthorized practice was not "isolated". Because all contact with Miliaresis took place through Yanakakis, what was "carefully limited" was Leesfield's opportunity to establish a "contractual relationship" with a "client" he never met. Hiring Leesfield demonstrates Yanakakis never intended to seek admission *pro hac* vice — permission would not be wanted by someone practicing law illegally whenever opportunity presented.

Appellees must convince this Court: (1) although Yanakakis gave Miliaresis advice in Florida concerning important legal rights and intended to bring suit or settle in Florida, the October 16, 1984 Authority was not illegal since he was entitled to act as "accepting attorney" in a case brought in Florida and could give his "client" advice directly before Leesfield agreed to "get involved." To so hold this Court must adopt the *Spanos v. Skouras Theatres Corp., 364* F.2d 161 (2nd Cir. 1966), holding that U.S. *Constitution Art. 4* Sec. 2 cl. 1 "privileges and immunities" bars the states from restricting out-of-state attorneys' practice in federal law cases which the Supreme Court of the United States has overruled, although had the court of appeals thought this was required it would have so held as a matter of federal law; (2) After November 1984 whatever Yanakakis did was not unauthorized due to *Savitt* "merger" despite constituting a co-counselor relationship between an admitted attorney and a resident unadmitted attorney to provide services and divide fees in a personal injury case in Florida state court. Thus, appellees must also persuade this Court to ignore DR 2-106(E) and 2-107(A)(2) although barring formation of the contract and "contractual arrangement" which is the basis of appellees' judgment for tortious interference; And, (3), because

Leesfield had no written contract with Miliaresis, oral contingent fee retainers in personal injury cases must not have been void although a violation of DRs 2-106(E) and 2-107(A)(2)(a).

The requirement that a contract not be illegal in formation or performance is fatal to argument that the Authorities are "facially legal" and merely "voidable" which would mean that this State cannot regulate practice by an attorney admitted out of state, and is powerless to prevent profit from crime (454.23 Fla. Stat. (1983)), because this Court, a non-party to the "voidable" contract, cannot object to it. This case raises issue of principle more important than its potential impact on Florida law barring unauthorized practice.[3] Out-of-state attorneys *will* "flock to Florida" should appellees prevail since entitled to earn fees whenever a "client" retains them. Their right to practice will be unrestricted in federal law cases. In others, if the "attorney" does not give advice to his "client" co-counselor status will "merge" the out-of-state attorney's practice with that of admitted attorneys. In the remainder, the attorney practicing illegally will simply rely on contract "voidability." In short, appellees ask this Court to dismantle Florida law forbidding unauthorized practice of law.

## POINT I

## THE COURT MAY CONSIDER THE ENTIRE RECORD

This Court need depend only upon proof established at the time of summary judgment to conclude that Yanakakis committed unauthorized practice of law which Leesfield assisted, and that the contract and "contractual

[3]Appellees' argument means that Florida is powerless to find void *ab initio* any other illegal contract, including those entered into and performed exclusively in Florida, if legal in another state.

relationship" upon which appellees' judgment is based are void. Nonetheless, there are five reasons why appellees' reading of the court of appeals' decision is wrong: (1) In Florida the courts have an "affirmative duty' to determine whether a contract or relationship is illegal. Cooper *v. Paris,* 413 So.2d 774 (Fla. 1992); Local No. 234 *of United Assn. of Journeymen v. Henly & Beckwith, 66* So.2d 818 (Fla. 1953). This duty requires no fact be ignored and the court of appeals did not certify questions expecting answers arrived at in violation of Florida law; (2) The court of appeals' jurisdiction was based upon diversity, certification establishes the issues to be substantive and it had the same duty this Court has (*Erie Railroad Co. v. Tompkins, 304 U.S. 64* (1937)); and this Court, were appellees' contention sound, should correct the court of appeals' *mistake* on this Florida law issue; (3) In moving for judgment appellees asserted there was "no genuine issue of material fact" and cannot now say — because it is necessary to explain why they attempt to deny access to their trial testimony — that facts were later admitted demonstrating their contention was wrong; (4) The grant and denial of summary judgment pursuant to Rule 54(b) F.R.Civ.P. could have been recalled; and, (5), the trial court considered their testimony in denying appellants' motion for judgment n.o.v., holding that ". . . there was no evidence presented at trial . . . that Mr. Yanakakis and/or the law firm of Leesfield & Blackburn did anything in violation of the standards discussed in *Savitt*" (R10-209). *Denis v. Liberty Mutual Insurance Co.,* 791 F.2d 846 (11th Cir. 1986), is inapposite since its holding, that it is not ordinarily proper to raise issues or assert facts for the first time on appeal, is inapplicable when illegality appears. The court of appeals in fact, is powerless to direct this Court to ignore any part of the record, which is why it did not "restrict . . . consideration of . . . the issues as the Supreme Court perceives them to be" and transmitted "[t]he entire record in this case".

## POINT II

## WHETHER YANAKAKIS COMMITTED UNAUTHORIZED PRACTICE WHICH LEESFIELD ASSISTED IS A MATTER EXCLUSIVELY OF FLORIDA LAW

Appellees rely upon an overruled case in claiming any limitation on an out-of-state attorney giving "advice on federal law" is "unlawful" despite Article V, Section 15 of the Florida Constitution which delegates to this Court responsibility to establish rules for practice of law and authority to bar unauthorized practice. Integration Rule, Art. 16, FSA 35, p. 144. The Florida *Bar v. Moses, 380* So.2d 412 (Fla. 1980). *Spanos v. Skouras Theatres Corp., supra,* held that "privileges and immunities" barred state restriction of an out-of-state attorney's practice in federal law cases. *Norfolk* & *Western v. Beatty,* 423 U.S. 1009 (1975) held the states can bar practice by an out-of-state attorney in suit pursuant to the FELA (45 U.S.C. Section 50 et *seq.). Leis v. Flynt, 439* U.S. 438, 443 (1979) held that *Spanos* ". . . must be considered to have been limited, if not rejected entirely, by Norfolk & Western" (439 U.S. at 443, n. 4); and that "[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 . . ." (439 U.S. at 443). *Spanos (364* F.2d at 171, n. 2) misread *Sperry* v. *Florida,* 373 U.S. 379 (1963) in holding that reference to a state's bar to practice of "non lawyers" in federal cases meant that a lawyer in any state is entitled to practice in every state. Sperry was a preemption case, and the Supreme Court has held the existence of federal issues does not preempt state law barring out-of-state attorneys from practice. The states have a "compelling interest" in regulating "practice of professionals within their boundaries" which, when practice of law is involved, 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).

This Court had held "that those who hold themselves out to practice 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 Kearny, 63* So.2d 630,631 (Fla. 1953). Preemption by virtue of *pro hac vice* admission in federal court is not a factor — the Miliaresis case was brought in state court. It is, in any event, improper for one court to make a determination for another, such as by suggesting #at Yanakakis would have had a "reasonable expectancy" of special admission had the seaman's case been brought in federal court. See, *Weil v. Neary, 278* US. 160, 171 (1929). Moreover, no federal court would grant *pro hac* vice admission to a long-retired attorney living in this State and could not had he already practiced illegally. The Florida Integration Rule forbidding "engaging in the practice of law in any way" was violated before Leesfield became involved because Yanakakis had given advice to Miliaresis. He had also committed a crime by using professional papers implying membership in the Florida Bar. See, 454.23 Fla. Stat. (1983).

## POINT III

## FLORIDA LAW, INCLUDING ITS DISCIPLINARY RULES, MAKE THE CONTRACT AND "CONTRACTUAL RELATIONSHIP" VOID

The October 16, 1984 and the March 18, 1984 Authorities to Represent are not ". . . written contract[s], signed by the client, and by an attorney for himself or for the law firm representing the client" — both were signed only by an unadmitted attorney and *his* "client". Pursuant to DR 2-106(E) a "written contract" was required in

". . . personal injur[y] cases . . ." where "compensation for services" was "contingent . . . upon successful prosecution or settlement". Rule 2-106(E) provided no Florida attorney accept retention orally in such a case and that such an agreement was void since not the source of any rights: "No attorney or firm may participate in the fee without the consent of the client in writing". It also provided in cases of joint representation that each participating attorney or firm sign the contract or "agree in writing" to be bound by its terms; and assume responsibility to the client for performance of services as if "a partner of the other attorneys involved". DR 2-107(A)(1) forbade fee sharing unless the client consented after full disclosure. Fees had to be shared "in proportion to the services performed and responsibility assumed by each [attorney]" (2-107(A)(2)), and a writing signed by the client consenting "to 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" was required. DR 2-107(A)(2)(c) provided "[e]ach lawyer involved shall be available to the client for consultation concerning the case". They were adopted in ". . . the best interest of the public". *The Florida Bar re: Amendment, 349* So.2d 630, 631 (Fla. 1977). Yanakakis could neither act as a "partner[] with respect to the case" nor "assume. . . legal responsibility' for it; he was not a Florida Bar member and could not contract for his services in connection with a case he intended be brought in Florida. Yanakakis also could not ". . . be available to the client for consultation concerning the case" without being allowed, although a Florida resident, to advise Miliaresis directly, which appellees claim he did not do after Leesfield was "retained" because unauthorized practice of law. In sum, in adopting DRs 2-106(E) and 2-107(A) this Court *declared* void *every* aspect of the "co-counselor" fee sharing agreement at issue in this case because their substantive requirements made the "contract" and "contractual

relationship" in their formation a violation of Florida public policy.

Performance required commission and abetting of a continuing crime despite which Leesfield claims he did nothing wrong and Yanakakis argues "due process" requires this Court proscribe in advance particular conduct. The agreements sued upon had, however, been declared unethical even before adoption of DRs 2-106(E) and 2-107(A). In Professional Ethics Opinion 62-3 (June 29, 1962) issued in response to a Florida lawyer's inquiry whether he could accept referral and share a fee with a Florida resident "former member of the New Jersey Bar, . . , now a minister", The Florida Bar concluded ". . . it would be highly improper for a referral fee to be paid". In Opinion 60-18 (December 14, 1967) advice was asked concerning propriety of "accept[ing] cases referred . . . by a New York bar member residing in Florida" with whom an admitted attorney would "divide the fee". The Committee responded that the out-of-state lawyer referral of 'Florida residents" to an admitted attorney "might constitute the unauthorized practice of law"; and "that it would be definitely improper and unethical if he rendered no services and recovers a division of fees". This conclusion assumes the obvious — an out-of-state lawyer residing in Florida cannot qualify as a lawyer with whom the admitted attorney can share fees for services performed in this State. In Opinion 90-8 (March 1, 1991) the Committee "discusse[d] situations in which it is or is not permissible for a Florida attorney to divide a fee with an out-of-state attorney who is not admitted to the Florida Bar". The first involved "[a] member of an out-of-state bar liv[ing] . . . in Florida" who when approached by a Florida resident refers him or her to an admitted attorney. The Committee stated, ". . . the Florida attorney could not divide a fee with the referring non-Florida attorney" because "the non-Florida attorney cannot practice law in Florida or agree to assume

joint responsibility as required by the rules", and that a "division of fees in such a case would constitute improper fee-sharing with a non-attorney and could constitute aiding in the unlicensed practice of law'.

Appellees' brief contains too many misstatements to note. They claim that Yanakakis gave Miliaresis no advice ". . . other than simple generalities about Greek law and general maritime law" concerning which Yanakakis has "remarkable expertise". This advice included value of the Miliaresis case based upon assurance of applicability of the Jones Act, an assessment said to be impossible to make upon similar facts in *Sigalas v. Lido Maritime, Inc., supra,* 776 F.2d at 1518: "As always, flexibility in application is had at the expense of certainly in outcome". This advice was important and its infirm basis is shown by claim in this Court that "a principal purpose of the Jones Act" is "to remove the competitive advantage . . . enjoyed by foreign shipowners . . . whose . . . [law] . . . providers] *de minimis* recoveries to injured seamen". In *Lauritzen v.* Larsen, 345 U.S. 571, 593 (1953) such "candid and brash appeal" was rejected as improper: "Counsel familiar with the traditional attitude of this Court . . . could not have intended it for us". Appellees also urge this Court be "embarrassed" to uphold Florida law unless illegal practice is "fraught with the possibility of "incompetent unethical or irresponsible representation"'. West Co. 1994 "all cases" database contains but two decisions in which an attorney of unadmitted appellee's name appeared: *Filippou v. Italia Societa Per Azioni Di Navizione,* 254 F.Supp. 162 (D.C. Mass. 1966), a foreign seaman's Jones Act case at which plaintiff represented by "Basil Yanakakis" was dismissed upon finding his complaint incompetent since silent as to important facts; and *Bonskuan v. U.S. Immigration and Naturalization Serv.,* 554 F.2d 2 (1st Cir. 1977), in which "Basil S. Yanakakis" failed to present facts argued on appeal at an administrative hearing he irresponsibly failed

to attend. Are these examples of "considerable benefit from . . . expert legal assistance" which would have been "exceedingly difficult" for Miliaresis "to duplicate if he had been restricted to hiring only Florida lawyers"?

## CONCLUSION

The Court must answer both questions certified "yes".

Dated: New York, New York
August 1, 1994

Respectfully submitted,

By: _____

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## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY a true and correct copy of the foregoing was mailed this 1st day of August, 1994 to:

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