IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,881

DCA NO. 97-02376

EXECU-TECH BUSINESS SYSTEMS, INC.,
on behalf of itself and
all others similarly situated,

Petitioner,

- versus -

NEW OJI PAPER COMPANY LTD.
n/k/a OJI PAPER COMPANY LTD.,

Respondent.

INITIAL ANSWER BRIEF OF RESPONDENT ON THE MERITS

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CERTIFICATE OF INTERESTED PERSONS, ETC.

Counsel for Respondent certifies that the following persons and entities have or may have an interest in the outcome of this case.

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   (defendant)

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10. Execu-Tech Business Systems, Inc.
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27. Mitsubishi Corporation
(defendant)

28. Mitsubishi International Corporation
(defendant)

29. Mitsubishi Paper Mills Ltd.
(defendant)

30. Honorable Estella M. Moriarty
Broward Circuit Judge
(trial judge)

31. New Oji Paper Company
(defendant/respondent)

32. Fabrice V. Nijhof
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34. Geoffrey Oliver, Esq. (counsel for defendant Nippon Paper)

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STATEMENT OF THE CASE

Respondent Oji Paper Company Ltd. ("Oji") is a Japanese manufacturer of thermal facsimile paper which has its principal place of business in Tokyo, Japan (A047).[1] On May 23, 1997, the trial court (E.M. Moriarty, J.) ruled that the petitioner, Execu-Tech Business Systems, Inc. ("petitioner"), had not met its burden to establish jurisdiction over Oji (A 148-53). The dismissal was without prejudice; the trial judge advised the petitioner that if it could present sufficient proof that the court had jurisdiction, it could refile its claim against Oji (A 153). On June 2, 1997, the trial court entered its Order dismissing Oji for lack of in personam jurisdiction.

Instead of refiling its claim, petitioner appealed to the District Court of Appeal for the Fourth District. On January 21, 1998, the Court of Appeal affirmed the trial court order. On April 1, 1998, that Court certified a conflict between its decision and the decision of the Second District Court of Appeal in Wilcox v. Stout, 677 So.2d 335 (Fla. 2nd DCA 1994), which the former contrasted as not containing "a 'minimum contact' component." The opinions of the District Court of Appeals are reported at 708 So.2d 599 and 1998-2 Trade Cases (CCH) ¶ 72,041.

1. The Allegations of the Complaint

Petitioner's Complaint alleges that the eight defendants in this case, all manufacturers or wholesalers of thermal facsimile paper, violated Florida's Deceptive Trade Practices Act, Florida Statute §§ 501.202 - 501.213, by conspiring to fix the price of jumbo rolls of thermal facsimile paper. Petitioner alleges that the conspiracy occurred from February 1990 through March 1992. The Complaint does not specify where the conspiracy occurred, let alone what connection Oji or any other alleged conspirator had with Florida.

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[1] "A____" refers to the appendix filed in the District Court of Appeal.

The allegations of conspiracy are found in paragraphs 30 and 31 of the Complaint, quoted here in full for the convenience of the Court:

> 30. For the purpose of forming and effectuating the combination and conspiracy, defendants and their co-conspirators did those things they combined and conspired to do, including:
>
> (a) participated in telephone conversations, meetings and discussions concerning the existing and future prices of jumbo rolls sold in North America;
>
> (b) agreed to increase prices of jumbo rolls sold in North America;
>
> (c) Issued price increase announcements to their customers, and increased prices, in accordance with their agreement;
>
> (d) directed their co-conspirator trading houses to implement price increases to jumbo roll customers in North America; and
>
> (e) participated in telephone conversations and otherwise contacted each other to maintain continued adherence to their conspiratorial agreement.
>
> 31. These unfair methods of competition and/or unfair or deceptive acts or practices had the following effects among others:
>
> (a) defendants sold jumbo rolls in North America at artificially high and non-competitive levels;
>
> (b) converters and others in the State of Florida (and throughout the United States) sold fax paper made from defendants' jumbo rolls at artificially high and non-competitive levels;
>
> (c) U.S. buyers of jumbo rolls and of fax paper were deprived of the benefits of free and open competition in the purchase of jumbo rolls and fax paper; and
>
> (d) price competition among defendants in the sale of jumbo rolls for import into North America was restrained, suppressed and eliminated.

(A 010-11). The Complaint does not allege that the conspiracy took place in the State of Florida, nor does it allege that any overt act in furtherance of the conspiracy occurred within the state (A 001-13). Further, the record affirmatively shows that Oji did not sell its paper directly into the United States (A 047). There is no evidence that anyone else sold Oji-manufactured paper in Florida.

2. <u>The Motion to Dismiss</u>

On February 3, 1997, Oji moved to dismiss the complaint for lack of in personam jurisdiction. Oji argued that it fell outside the scope of the Florida long-arm statute, 48.193, Fla. Stat. (1995), because, among other things, Oji did not conduct business in Florida nor did it commit a tortious act with the State. Oji also argued that it lacked the minimum contacts necessary to satisfy due process (A 035-44). Oji supported the motion with the affidavit of its General Manager, Katsuhiko Tsusima ("Mr. Tsusima"), the individual who is now in charge of Oji's sales of this kind of paper (A 046-52).

a. Oji Sold Its Paper in Japan

Oji is a Japanese corporation with its principal place of business in Tokyo, Japan (A 047). Oji manufactured thermal fax paper in Japan, then sold it in Japan to Elof Hansson K.K., an independent Japanese company, for export (A 046-49). Elof Hansson K.K. sold the paper to its sister company Elof Hansson Paper & Board, Inc. ("EHPB"), with its principal place of business in New York (A 003, 048). EHPB sells paper to converters in the United States (A 048). Converters convert—by slitting, cutting, and repackaging—jumbo, 2000-pound rolls of paper into 8½-inch-wide "finished" rolls that are ready for use in fax machines. Converters typically buy from two or more manufacturers. There is no evidence that Oji-manufactured paper was sold in Florida (A 048).

b. Oji Does Not Conduct Business in Florida

Oji submitted the affidavit of Mr. Tsusima, the General Manager of the Communications Paper Sales Department in Oji's headquarters in Tokyo (A 046-52). His duties and responsibilities include the sale of jumbo rolls of fax paper for both domestic and foreign use (A 046-47). Mr. Tsusima stated in his affidavit that, among other things:

(1) Oji has no manufacturing plant, office, telephone, or any other physical presence in Florida.

(2) Oji is not licensed or registered to do business in Florida or doing business in Florida.

(3) Oji does not know of any instance in which it advertised, sold, shipped, or solicited the sale of thermal facsimile paper in Florida or entered into any contracts in Florida.

(4) Oji is not aware, after a reasonable inquiry, of any instance in which any of its officers, employees or independent contractors attended meetings in Florida with respect to thermal fax paper, nor is it aware that any of its officers, employees or independent contractors ever resided in or worked in Florida during the relevant time (A 047-49).

The Tsusima affidavit was uncontroverted; petitioner did not file a counter affidavit, or any other form of evidence that contradicted any of the assertions made by Mr. Tsusima. Instead, petitioner scheduled a hearing on the motion for May 23, 1997 and then served a notice to take deposition duces tecum, pursuant to Fla.R.Civ.P. 1.310(b)(6) (A 053), of an Oji officer, director, managing agent or other designated person who had knowledge of Oji's dealings in the State of Florida. Oji designated Mr. Tsusima, the individual who had executed the affidavit, and cooperated with petitioner's counsel in

making arrangements to take Mr. Tsusima's deposition in Japan, where Mr. Tsusima resides (A 122-23). Petitioner instead chose to depose a representative in Oji's Seattle office.

At no time did Petitioner serve interrogatories, a request for production of documents, request for admissions, or any other discovery request on Oji (A 111-23).

At the hearing on the motion to dismiss, petitioner filed without advance notice the affidavit of Gregory A. Waddell, the director of finance of non-party Paper Systems, Inc., a converter who purchased facsimile paper in bulk form (jumbo rolls) for conversion and resale (A 127). Attached to the affidavit are invoices and related documents apparently reflecting a sale of Oji thermal facsimile paper from EHPB to Paper Systems in Springboro, Ohio (A 129-32), though the affidavit says Paper Systems also has a manufacturing plant in Ocala, Florida. Neither the invoices nor the affidavit indicate that any Oji paper was actually shipped to Florida for processing, or subsequently sold in Florida. Also attached to the affidavit are documents which appear to relate to sales made by one of the other defendants.

Petitioner also tendered at the hearing what appears to be part of an unauthenticated expense report that refers to an "IATA trade show" in Miami (A 106). Apparently created by EHPB, the expense report contains only the following notations: "Oji paper - IATA registered supplier" (A 106) and "Yamamoto - Oji paper vendor" (A 107). This report -- which is undated -- was attached to the affidavit of petitioner's counsel without any explanation as to its meaning. When the trial judge reviewed this exhibit (A 144), she correctly noted that it did not show any meaningful connection between Oji and the State of Florida (A 144-48).

c. <u>The Plea Agreement</u>

On October 6, 1995, Oji agreed to plead guilty to a "violation of Section 1 of the Sherman Act (15 U.S.C. § 1) in connection with a conspiracy to fix prices on sales of jumbo thermal facsimile paper in the United States from July 1991 until at least

early 1992." (A087) The plea was entered in the United States District Court for the District of Massachusetts in December 1995 (A 087-94). The plea agreement does not state that Oji entered into a conspiracy in the State of Florida, that Oji sold any paper in Florida, or any paper that was resold in Florida. Nor does it say that prices to Florida consumers were affected, or that any other overt act occurred here. In fact, Florida is not mentioned anywhere in the plea agreement, which contains only a general description of the offense. While the Complaint in this action alleges a price-fixing conspiracy involving all of the defendants, and petitioner argues that two of the other defendants are Oji's jurisdictional agents, the plea agreement does not specify with whom Oji conspired (A 087-94).

SUMMARY OF ARGUMENT

Petitioner has failed to meet its burden to prove that Oji was present in Florida or amenable to jurisdiction under Florida's long-arm statute when the action was commenced. Any Oji participation in a price-fixing conspiracy did not touch the State of Florida. There is no proof that thermal facsimile paper manufactured by Oji was sold in Florida, at any time or price.

The conspiracy theory of jurisdiction which petitioner urges this Court to adopt would violate due process, if not always, at least in this case. No overt act by any co-defendant in furtherance of the alleged conspiracy occurred in Florida. Finally, Oji lacks the minimum contacts with Florida that would support a Constitutional exercise of jurisdiction over it.

For these reasons, the trial court's order dismissing Oji and the Court of Appeal decision affirming that order should be affirmed.

ARGUMENT

I. OJI IS NOT SUBJECT TO JURISDICTION PURSUANT TO FLORIDA'S LONG-ARM STATUTE

A. The Burden is on Plaintiff to Prove a Jurisdictional Basis

This Court has articulated the following framework for analyzing challenges to the exercise of personal jurisdiction over a foreign defendant:

1. The court must first determine whether the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of Florida's long arm statute; and if it does,

2. The court must determine whether there are sufficient minimum contacts to satisfy due process.

Doe v. Thompson, 620 So.2d 1004, 1005 (Fla. 1993); Venetian Salami Co. v. Parthenais, 554 So.2d 499 (Fla. 1989). A defendant who contests jurisdiction must file an affidavit in support of its position, as Oji did here. The burden then shifts to the plaintiff to prove, by affidavit, facts demonstrating that the court can exercise jurisdiction over the defendant. Doe, 620 So.2d at 1006; Venetian Salami, 554 So. 2d at 502-03. The trial judge correctly concluded that petitioner's affidavits, belatedly submitted at the hearing, did not create the need for an evidentiary hearing.[2]

B. Oji Is Not Doing Business in Florida

Petitioner first argues that Florida Statute § 48.193(a) authorizes jurisdiction over Oji:

> Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself … to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts: (a) Operating, conducting, engaging in, or carrying on business or business venture in this state having an office or agency in this state.

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[2] Petitioner cites Ford v. United States, 273 U.S. 593 (1927) (affirming conviction after trial, noting that three of four overt acts occurred within the jurisdiction) and United States of America v. Nippon Paper Industries Co., Inc., 109 F.3d 1 (1st Cir. 1997), cert. denied, ___ U.S. __, 118 S.Ct. 685 (1998) (reversing dismissal of indictment), for the proposition that foreign nationals are "subject to" the laws of the U.S. as a result of conspiratorial conduct (Pet. Brief at 10). Those decisions are of no moment here because they involve the subject matter jurisdiction of the court, not personal jurisdiction over the foreign national.

To fit within Section 48.193(a), the activities of the defendant "must be considered collectively and show a general course of business activity in the State for pecuniary gain." Skernick v. Ainsworth, 591 So.2d 904, 906 (Fla. 1991) quoting Dinsworth v. Martin Blumenthal Associates, Inc., 314 So.2d 561, 564 (Fla. 1975).

First, the Complaint provides no basis for finding that Oji is carrying on a general course of business activity in Florida. Indeed, the sole reference to Oji in the Complaint is in paragraph 11:

> 11. Defendant New Oji Paper Co., Ltd. ("New Oji Paper") is a Japanese corporation with its principal place of business in Tokyo, Japan. New Oji Paper was formed in October 1993 when Oji Paper Co., Ltd. ("Oji") merged with Kanzaki Paper Manufacturing Co., Ltd. During the class period, Oji manufactured jumbo rolls in Japan and sold them for import to customers in the United States through its Japanese trading house Elof Hansson K.K. and its U.S. trading house, Elof. In October 1995, New Oji Paper plead guilty to price fixing in North American jumbo roll market and was fined $1.75 million (A 005).

The affidavit of Mr. Tsusima established that Oji has none of the indicia of doing business in the State of Florida. Petitioner did not proffer evidence sufficient to controvert the affidavit of Mr. Tsusima, so it was unnecessary for the trial court to hold an evidentiary hearing.[3] Counsel for the petitioner admitted that they did not have any evidence that Oji had sold paper in Florida (A 146-47). There is no evidence of "an office or agency in this state," or of any other form of business activity undertaken by Oji in Florida.

1. EHPB Was Not Oji's Agent, Nor Does the Record Show It Doing Business in Florida

[3] The Court of Appeal was unpersuaded by petitioner's arguments that Mr. Tsusima's affidavit lacked evidentiary value and that petitioner should have been permitted to take additional jurisdictional discovery. Petitioner has not briefed these arguments to this Court, so it has waived and abandoned these claims of error. Raskin v. Community Blood Centers of South Florida, Inc., 699 So.2d 1014 (Fla 4th DCA 1997), review denied, 707 So.2d 1124 (Fla. 1998); Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958, 960 (Fla. 4th DCA 1983).

Petitioner's assertion that EHPB is Oji's agent for jurisdictional purposes, and that EHPB sold millions of dollars of fax paper in Florida (Petitioner's Brief at 10-11) are belied by the record. Oji sold fax paper free and clear in Japan to Elof Hansson K.K., which in turn sold it to EHPB in the U.S. EHPB and Elof Hansson K.K. are subsidiaries of Elof Hansson, a Norwegian company, which is independent of Oji (A048). There is not a shred of evidence that EHPB sold one dollar's worth of Oji paper in Florida. Petitioner had obtained EHPB's documents through discovery before the hearing (see A106-07), so it is fair to assume that evidence of Florida sales by EHPB would have been offered if any existed. Nor was any evidence presented that EHPB was Oji's agent or "alter ego" (see Petitioner's Brief at 11).

2. A Manufacturer's Placing Product into the Stream of Commerce Does Not Satisfy the Long-arm Statute

Petitioner cites to a number of cases where jurisdiction was found to exist over foreign manufacturers who place their products into the stream of commerce, for the proposition that Oji "carried on the business of selling fax paper in Florida" (Petitioner's Brief at 11-13). These authorities are inapposite because they address the due process question of whether the defendant had sufficient minimum contacts with the forum, after first finding that other facts brought the defendant within the applicable long-arm statute. Placing goods into commerce did not alone create the statutory basis for jurisdiction. Moreover, none of these cases arose under section 48.193(1)(a), upon which petitioner relies.[4]

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[4] See, e.g., Ford Motor Co. v. Atwood Vacuum Machine Co., 392 So.2d 1305, 1308 (Fla 1988) (analyzing constitutionality of Section 48.193); Law Offices of Evan I. Fetterman v. Intel-Tel Inc., 480 So.2d 1382, 1835 (4th DCA 1985) (analyzing Sections 48.181 and 48.193(1)(f)(2), which are inapplicable here); JCB, Inc. v. Herman, 562 So. 2d 754 (3rd DCA 1990) (involving a personal injury claim); Devaney v. Rumsch, 228 So.2d 904 (Fla. 1969) (analyzing applicability of section 48.181); In re Perrier Bottled Water, 754 F.Supp. 264 (D.Conn. 1990) ("Defendant took extensive, affirmative steps to send its product into all fifty states."); Copiers Typewriters Calculators, Inc. v. Toshiba Corp., 576 F.Supp. 312 (D.Md. 1983) (direct shipments to forum state).

This effort by petitioner to by-pass the requirements of the long-arm statute is unavailing:

> The Florida "long-arm" statutes…require more activities or contacts to sustain service of process than are currently required by the decisions of the United States Supreme Court. Therefore, any analysis of the question of whether jurisdiction in personam has been acquired over a foreign corporation must necessarily start with an analysis of the statutes.

Evan I. Fetterman, 480 So.2d at 1384 quoting Youngblood v. Citrus Associates of New York Cotton Exchange, Inc., 276 So.2d 505 (Fla. 4th DCA), cert. denied, 284 So.2d 26 (Fla 1973). It is a well-established tenet of Florida law that the requirements of the long-arm statute and of the due process clause are neither equivalent nor synonymous in all cases. Venetian Salami, 554 So.2d at 502. For the same reason, the burden is on petitioner to show a factual basis for the exercise of jurisdiction; it is not up to Oji to show that Florida was excluded from the sales efforts of EHPB or other downstream resellers (see Petitioner's Brief at 13-14).

Because there is no evidence that Oji operates, conducts, engages in, or is carrying on business or a business venture in the state by having an office or agency in Florida, section 48.193(1)(a) does not confer jurisdiction.

C. Oji Did Not Commit a Tortious Act Within the State of Florida

Petitioner next argues that jurisdiction over Oji is conferred by Florida Statute § 48.193(1)(b), which provides that:

> Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself... to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts: ... (b) committing a tortious act within this state.

Petitioner starts with a fatal concession when it states that "[t]he fact that Oji initiated its tortious act—the price-fixing conspiracy—outside Florida's geographic boundaries is irrelevant" (Petitioner's Brief at 14). Unlike the long-arm statutes of some

other states, where a defendant can be amenable to suit if it has tortiously caused an injury in the state, the Florida legislature has dictated that jurisdiction can only exist under this section if the tortious act itself was committed in the state. See Texas Guaranteed Student Loan Corp. v. Ward, 696 So.2d 930, 932 (Fla. 2nd DCA 1997) (unlawful debt collection letters and phone calls made to plaintiff in Florida; court held that "[t]he occurrence of injury alone in Florida does not satisfy Section 48.193(b)…[t]o establish personal jurisdiction, part of the defendant's conduct must occur in Florida"); Phillips v. Orange Co., 522 So.2d 64 (Fla. 2nd DCA), rev. denied, 531 So.2d 1354 (Fla. 1988) (foreign corporation whose shareholders withdrew monies from its Florida subsidiary's accounts in Ohio not within statute); McLean Financial Corp. v. Winslow Loudermilk Corp., 509 So.2d 1373 (Fla. 5th DCA 1987) (fraudulent representations made by telephone by Virginia residents to Florida resident not sufficient to establish jurisdiction); Fitz v. Samuel Friedland Family Enter., 523 So.2d 1284 (Fla. 4th DCA 1988) (no jurisdiction over nonresidents who executed dishonored business checks outside Florida which were tendered to Florida plaintiff); Freedom Sav. & Loan Ass'n v. Ormandy & Assoc., Inc., 479 So.2d 316 (Fla. 5th DCA 1985)(no jurisdiction where injured Florida plaintiff alleged that non-resident had caused a letter of credit to be revoked in Pennsylvania); Jack Pickard Dodge, Inc. v. Yarbrough, 352 So.2d 130, 134 (Fla. 1st DCA 1977) (nonresident defendant did not commit alleged tortious act in Florida and, under the clear wording of Fla.Stat. 48.193, "occurrence of the injury alone in the forum state does not satisfy the statutory test").

A recent concurring opinion from a Court of Appeal judge well articulates the rationale for rejecting petitioner's strained interpretation of the long-arm statute:

> I agree with the majority that (1)(b) should not be read to reach conduct in another state that causes injury to someone in Florida. As the statutory text of (1)(b) itself indicates, jurisdiction turns on the "commission of a tortious act within this state." The statute does not distinguish between intentional torts and negligence. It simply refers to a "tortious act." To draw the distinction of intentional torts, it is necessary to add

> words to the statute. Judges are not free to add to statutory text, especially where the existing language suggests some uncertainty as to the precise legislative intent. Courts lack the power to modify or extend the meaning of statutory text.
>
> Moreover, the legislature did not say "commission of a tort" in this state, but instead made jurisdiction depend on the "commission of a tortious act" here. If the legislature had used "commission of a tort," there might be some theoretical basis to separate the elements of a tort--among which is damages-- and reason that the tort is committed where the last element occurs. But because the statutory locution is "commission of a tortious act," it is plain that the focus of this provision is on the act itself, not its character as a tort. In short, wherever the damage element in a given case might occur, it is the commission by the defendant of the act itself--setting into motion the various elements that combine to make a tort--that is the critical test for jurisdictional purposes. The legislature has therefore said quite clearly that for jurisdiction under (1)(b) the act or omission of the defendant must have occurred within Florida.
>
> Moreover, the text of the statute outside of (1)(b) confirms this reading. Subdivision (1)(f) explicitly addresses the circumstance where acts committed outside of Florida ultimately cause injury within this state. [citations omitted][5]

Thomas Jefferson University v. Romer, 23 Fla.L.Weekly D858 (Fla. 4th DCA, April 1, 1998) (Farmer, J., concurring).

Petitioner's interpretation of the long-arm statute violates the basic tenet of Florida law that language of a statute which is clear and unambiguous must be given its plain and ordinary meaning. Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P., 673 So. 2d 163 (Fla. 4th DCA 1996); See also Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898 (Fla. 1996). The words of a statute, unless indicated otherwise, are presumed to be words of common usage that should also be construed in their plain and ordinary sense. Zuckerman v. Alter, 615 So. 2d 661, 663 (Fla. 1993). In choosing the statutory terms "within" and "act" it is presumed that the legislature knew their plain and ordinary meaning. See Sheffield v. Davis, 562 So. 2d 384 (Fla. 2d DCA 1990); compare § 48.193(1)(f), Fla. Stat. 1995.

Petitioner erroneously relies (Petitioner's Brief at 14-15) on the due process "effects test" of Calder v. Jones, 465 U.S. 783 (1984) and its progeny. In Calder, two Florida employees of a "gossip" magazine were sued in a California court after the magazine published a slanderous article about entertainer Shirley Jones. Unlike Florida, under California's long-arm statute, the state court could exercise jurisdiction over a nonresident to the full extent permitted by the State and Federal Constitutions. The case does not address whether an injury in Florida is, alone, sufficient for purposes of the Florida long-arm statute. The Court instead determined that due process considerations were satisfied because the nonresidents'

> intentional, and allegedly tortious, actions were expressly aimed at California. Petitioner South wrote and petitioner Calder edited an article that they knew would have a potentially devastating impact upon respondent [Shirley Jones]. And they knew that the brunt of the injury would be felt by respondent in the State in which she lives and works and in which the National Enquirer has its largest circulation. Under the circumstances, petitioners must "reasonably anticipate being haled into court there." (emphasis added) (citations omitted)

Calder, 465 U.S. at 790. The other cases cited by Petitioner are also distinguishable on this basis.6

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[5] Section 1(f) of the statute addresses personal injury claims and is inapplicable here.

[6] See Wood v. Wall, 666 So.2d 984 (Fla. 3d DCA 1996)(non-resident business promoters solicited Florida residents to form a limited partnership and attempted to make a

Petitioner's reliance on Hitt v. Nissan Motor Co., 399 F. Supp. 838 (S.D. Fla. 1975) (Pet. Brief at 15), is equally unpersuasive. In Hitt, a parent company was held liable for the price-fixing conspiracy of a wholly-owned subsidiary which was doing substantial business in Florida. While finding it foreseeable that defendant would have contemplated that price-fixing activities would have effects in the forum state, the court observed that

> something more than the mere allegation that a foreign defendant is involved in a price-fixing conspiracy should be required to achieve jurisdiction in cases such as this one to avoid harassment[.]

Id. at 848. The court went on to find that the "something more" had been demonstrated because there was control by the parent over the decisions and policies of the subsidiary which might implicate U.S. antitrust laws. No such similar relationship exists in this case to justify jurisdiction over Oji.

In any event, there is no proof of injury in Florida due to the resale of Oji Paper at conspiratorial prices. To the extent petitioner relies on the sale of co-defendants' paper in Florida by non-parties to constitute the act or injury within the state, we address the issues raised by that approach below. Because petitioner has not established that any tortious act by Oji took place in Florida, Section 48.193(b) cannot serve as a statutory basis for exercising personal jurisdiction over Oji.

D. Petitioner's Theory of Conspiracy Jurisdiction Is Unconstitutional, at Least as Applied to Oji

Petitioner asks the Court to adopt the holdings in Wilcox v. Stout, 637 So.2d 335 (Fla. 2d DCA 1994), rev. denied, 690 So.2d 1300 (Fla. 1997) and Avnet, Inc. v. Nicolucci, 679 So.2d 7 (Fla. 2d DCA 1996) to create a conspiracy theory of jurisdiction in Florida. Presumably this would require the Court to construe the "through an agent" language of the long-arm statute to include co-conspirators. A non-resident defendant could then be found to come within the statute if it conspired with someone to commit a tort within the state. (We understand that the theory, even as adopted in Wilcox, would still not confer jurisdiction when a co-conspirator is doing business in Florida but has not committed an act in furtherance of the conspiracy here or specifically directed the conspiracy at Florida residents, because that would exceed the bounds of the criminal law principles underlying the theory.)

This Court should not adopt the conspiracy theory because it has grave constitutional infirmities. The U.S. Supreme Court has instructed that the jurisdictional inquiry be made on a defendant-by-defendant basis:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-40 (1958). Conspiracy jurisdiction, by contrast, looks to the relationship with the forum state of a person other than the nonresident defendant.

The U.S. Supreme Court has not yet had the opportunity to rule specifically on the constitutionality of conspiracy jurisdiction. However, in Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 74 S.Ct. 145 (1953), the Court gave strong signals that the theory would be rejected. Bankers Life involved a lawsuit brought in the U.S. District Court for the Southern District of Florida in which there were allegations of a conspiracy to violate the federal antitrust laws. One of the defendants was a Georgia resident who was personally served with the complaint while he was in Florida. That defendant moved to dismiss on the grounds of improper venue. Plaintiff opposed the motion by arguing, as petitioner does here, that other members of the conspiracy resided and carried on the illegal business of the conspiracy in the Southern District of Florida, that a conspiracy is a partnership, and that co-conspirators are each other's agents.

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secret profit at limited partnership's expense); Allerton v. State Dept. of Ins., 635 So.2d 36 (Fla. 1st DCA), review denied, 639 So.2d 975 (Fla. 1994)(non-resident investment advisors' and securities broker's activities were targeted towards a Florida insurance company); Int'l Harvester Co. v. Mann, 460 So.2d 580 (Fla. 1st DCA 1984) (non-resident shareholders of Florida company with physical assets and business operations solely within Florida sold assets of Florida company to Delaware company without consulting with third shareholder, a Florida resident), overruled by Doe v. Thompson, 620 So. 2d 1004 (Fla. 1993). None of these authorities allow long-arm jurisdiction under Section 48.193(b) to be met on the basis of tortious activity outside the state which is not expressly aimed at Florida plaintiffs.

The specific issue presented to the Supreme Court was whether a writ of mandamus was an appropriate remedy for a plaintiff seeking to vacate the trial court's order of dismissal. However, the Court took time to observe that plaintiff's conspiracy venue theory had "all the earmarks of a frivolous albeit ingenious attempt to expand the statute." Id., 346 U.S. at 384, 74 S.Ct. at 149. In addition, in his dissent, Justice Frankfurter stated: "If we now had to decide whether a co-conspirator as such is an 'agent' for purposes of venue under 15 U.S.C. § 15, it cannot be doubted that we would have to conclude that the district judge was right in finding that [defendant] Georgia Commissioner could not be kept in the suit." Id., 346 U.S. at 386, 74 S.Ct. at 150.

The Court of Appeal correctly noted in its opinion below ("SA 1 at p.2") the Supreme Court's subsequent admonition that "[a] non-resident cannot ordinarily be subjected to jurisdiction solely on the basis of 'unilateral activity of another party or third person,'" citing Burger King, 471 U.S. at 475, and Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984).

According to petitioner's reasoning, all that would be needed for a plaintiff to drag a defendant into a distant forum with which it has no contacts and from which it derives no benefits is a simple allegation of conspiracy. Such allegations are, of course, easy to make. Using the familiar argument that the details of a conspiracy are generally known only to the members of the conspiracy, plaintiffs met with motions to dismiss denying the existence of the conspiracy would naturally urge courts to permit discovery into the relationships between and among the various defendants to find evidence of the conspiracy. As a result, the trial courts would be thrust into the position of prematurely evaluating the merits of the underlying substantive issues presented, a trial within a trial. As a result, the threshold due process protections which motions to dismiss serve to provide would evaporate.

These considerations have caused the conspiracy theory to be rejected by many courts and criticized by commentators. See, e.g., Leasco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1326, 1343 (2d Cir. 1972) ("To be sure, the rule in this circuit is that the mere presence of one conspirator . . . does not confer personal jurisdiction over another alleged conspirator."); Bamford v. Hobbs, 569 F.Supp. 160, 169 (S.D. Tx. 1983) ("[T]his theory is disfavored by the courts, and no court has conferred jurisdiction over an alleged conspirator merely because jurisdiction exists as to a fellow alleged conspirator."); In re Arthur Treacher's Franchise Litigation, 92 F.R.D. 378, 411 (E.D. Pa. 1981) ("The Court will adhere to the conclusion that '(m)ere membership in a civil conspiracy does not ipso facto render a member subject to the jurisdiction of the forum of any other member."); Kaiser Aetna v. I.C. Deal, 150 Cal. Rptr. 615, 619, 86 Cal. App. 3d 896, 901 (Ct. App. 1978) ("Allegations of conspiracy do not establish as a matter of law that if there is one resident conspirator, jurisdiction may be exercised over nonresident conspirators…the acts of other parties therefore cannot be imputed to respondents for the purpose of assuming personal jurisdiction over them"); Kipperman v. McCone, 422 F.Supp. 860 873 n.14 (N.D. Cal. 1976)(describing the theory of conspiracy jurisdiction as "frivolous"); I.S. Joseph Co. v Mannesmann Pipe and Steel Corp., 408 F.Supp. 1023, 1024 (D. Minn. 1976) ("This 'co-conspirator' theory has been rejected in this district[.]"); Althouse, The Use of Conspiracy Theory to Establish In Personam Jurisdiction: A Due Process Analysis, 52 Ford. L. Rev. 234, 252 (1983) ("Insofar as conspiracy theory becomes a device to bypass due process analysis, it is plainly unconstitutional").

E. If the Court Nevertheless Adopts the Conspiracy Theory, It Should Incorporate Constitutional and Procedural Protections

Those lower courts which have accepted some form of conspiracy jurisdiction, including the authorities petitioner cites, have generally done so "warily" and only upon a detailed showing that the defendant knew an overt act in furtherance of the conspiracy would be taken in the forum state, thus requiring the same sort of due process component that the Fourth DCA adopted below. See, e.g., Dooley v. United Technologies Corp., 786 F.Supp. 65, 78 (D.D.C. 1992). For example, in Hasenfus v. Secord, 797 F.Supp. 958 (S.D. Fla. 1989), the nonresident defendant participated in meetings in Miami regarding the underlying covert plan and gave Congressional testimony which provided a sufficient basis for finding that defendant played a prominent role in the plot. In Rudo v. Stubbs, 472 S.E. 2d 515, 517 (Ct. App. Ga. 1996), the co-conspirators specifically targeted a resident of Georgia. The court noted that in the past it had rejected a conspiracy theory by which plaintiff tried to rely on imputed acts to bypass the requirements of due process. However, where the alleged conspiracy was specifically targeted at one or more residents of the state and it is reasonable for the party to expect to be haled into court in the forum, jurisdiction under conspiracy theory is permissible as it would not offend due process. Similarly, Bonavire v. Wempler, 779 F.2d 1011 (4th Cir. 1985), a case upon which petitioner places particular reliance, involved a fraudulent scheme directed at a particular resident of the forum state. Pursuant to that scheme, one of the defendants acted as the "soliciting agent" to obtain an investment from plaintiff for the benefit of the other defendants. In other words, there was sufficient evidence to warrant a preliminary finding that the nonresident defendants directed the resident defendant to take particular actions in the forum.

Other cases cited by petitioner are distinguishable because the conduct of the defendant was sufficient to bring it within the scope of the applicable long-arm statute; it was not necessary to impute the conduct of alleged co-conspirators. See Maricopa County v. American Petrofina, Inc., 322 F.Supp. 467, 468-69 (N.D. Cal. 1971); St. Joe Paper Co. v. Superior Court, 120 Cal. App. 3d 991, 175 Cal. Rptr. 94 (Cal. Ct. App. 1981).7

Petitioner's reliance on the Wilcox decision by the Second DCA is misplaced. That case involved a claim of conspiracy to tortiously interfere with business relationships, in which one of the defendants was a resident of Florida and the Complaint alleged that he committed acts in Florida in furtherance of the conspiracy. 637 So.2d at 335. The court specifically limited its decision in stating that:

> Where a civil conspiracy to commit tortious acts has been successfully alleged, and some of those acts are alleged to have been accomplished within the State of Florida, we have no hesitancy in applying well accepted rules applicable to the liability of co-conspirators in the criminal context.

Wilcox, 637 So.2d at 336 (emphasis added). There simply are no such allegations in this case. Petitioner did not allege or produce any evidence to demonstrate that any of the defendants furthered the alleged conspiracy by some overt act in Florida. There simply is no evidence of a conspiracy taking place in Florida.8 Therefore, the other defendants cannot be deemed Oji's jurisdictional agents in Florida.

The Fourth DCA was presented below with the same conspiracy jurisdiction argument made in Wilcox. The court chose instead to adopt the holding of the Delaware Supreme Court in Instituto Bancario Italiano v. Hunter Engineering Co., 449 A.2d 210, 225 (Del. 1982), because it contains a constitutional minimum contacts due process component:

> We therefore hold that a conspirator who is absent from the forum state is subject to the jurisdiction of the court, assuming he is properly served under state law, if the plaintiff can make a factual showing that: (1) a conspiracy to defraud existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

Petitioner criticizes the Fourth DCA for applying a standard which includes an examination of whether the exercise of jurisdiction was foreseeable by the foreign defendant because it purposefully availed itself of the privileges of conducting business activities in Florida (Petitioner's Brief at 18). The test which petitioner urges the Court to adopt would allow jurisdiction to be exercised over any alleged conspirator as long as jurisdiction exists over any co-conspirator. In other words, petitioner would automatically attribute any contacts one alleged conspirator has with the forum to another defendant conspirator on the grounds that co-conspirators act as each other's agents for all purposes. However, as noted above and in Point II below, it is only when there are minimum contacts between the moving defendant and the forum state that the assertion of jurisdiction will pass constitutional muster.9

The lessons which evolve from the cases addressing conspiracy jurisdiction are (1) that it operates as part of the application of a state's long-arm statute, not as a replacement for such determination, and (2) it does not replace a strict scrutiny of traditional due process considerations. The acts of a conspirator should only be imputed, if at all, in those instances where the nonresident purposefully directed or participated in ensuring that such acts would be taken in the forum state but not in those instances where there is the absence of a purposeful relationship between the conduct in the forum and the nonresident. Thus, where a defendant targets tortious acts in the forum against a particular plaintiff, such as in Rudo and Bonavire, a finding that the long-arm statute is satisfied may be appropriate under this approach; such finding is not appropriate where, as in this case, there is no evidence that specific Florida residents are targets of a fraud or tort.

F. Oji Is Not Subject to Jurisdiction Under Any Test of Conspiracy Jurisdiction

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7 The remaining authorities petitioner cites provide insufficient facts or analysis to provide any precedential value. See Avnet v. Nicolucci, 679 So.2d 7 (Fla 2nd DCA 1996); Ethanol Partners Accredited v. Wiener, Zuckerbrot, Weiss & Brecher, 635 F.Supp. 15, 18 (E.D. Pa. 1985).

8 In U.S. v. Nippon Paper Industries Co. Ltd., 109 F.3d 1, 2 (1st Cir. 1997), cert. denied, ___U.S.___, 118 S.Ct. 685 (1998) cited by petitioner (Petitioner Brief at 3-4), the court describes a conspiracy originating in Japan.

9 A more complete examination of the due process considerations is set forth, supra, at p.28.

In this case, the Court need not reach the question of whether, and under what circumstances, conspiracy jurisdiction is permissible. Even if the Court were to apply the theory espoused by petitioner, Oji is not subject to jurisdiction in Florida. Petitioner's argument appears to proceed as follows: (1) two of the eight defendants in this action did not contest jurisdiction, perhaps because they have done some business in Florida; (2) Oji and certain other defendants admitted to a "nationwide" criminal conspiracy by entering a guilty plea in federal court; and (3) since the alleged effect of the conspiracy was to inflate prices throughout the United States, and because Florida is one of the United States, by imputation Oji committed a tort in Florida. Petitioner's conspiracy theory of jurisdiction is nothing more than a bootstrapping of unsupported generalizations.

Petitioner first argues that Oji did not rebut its "well-pled" allegations that Oji conspired with the other defendants to fix the prices of fax paper sold in Florida and that such failure required the motion to dismiss to be denied under a conspiracy theory of jurisdiction (Petitioner's Brief at 22). The defect with this argument is that petitioner misstates the allegations of its own Complaint. As set forth above, the Complaint only alleges a conspiracy to fix prices in North America; there are no allegations regarding fax paper sales by Oji or anyone else in Florida. The only documents in the record reflecting sales of Oji paper describe sales made by EHPB not in Florida (A128-32). Hence there was nothing for Oji to rebut on this score.

The only evidence of Oji's participation in the alleged conspiracy is the plea agreement Oji entered into with the Department of Justice involving a violation of section 1 of the Sherman Act, 15 U.S.C. § 1. The plea agreement makes no mention of Florida nor does it specify with whom Oji conspired. There is no evidence that anyone from Oji was in Florida at the time the conspiracy took place, that any paper manufactured by Oji entered into the stream of commerce in Florida, or that Oji sold any paper to anyone in the State of Florida. The affidavit of Mr. Tsusima states that Oji has no information that any officer or employee of Oji was ever in Florida for any meeting (A 046-49). This means there was nobody in Florida to participate in the conspiracy. Petitioner's entire evidence is the undated expense report of someone from EHPB, the connection of which to this case is unclear at best.

Second, that two of the defendants may have been doing business in the State of Florida (or at least for whatever reason decided not to contest jurisdiction) at the time the Complaint was served in 1996 does not make them agents for all purposes of an alleged co-conspirator four years earlier. As petitioner itself notes (Petitioner's Brief at 17), the conspiracy theory of jurisdiction is based on "well established rules of criminal conspiracy." But those rules go only so far as to impute to one defendant that conduct of another conspirator which is part of (in furtherance of) the conspiracy. The defendants who did not challenge jurisdiction may have based that decision on acts wholly unrelated to the alleged conspiracy (e.g., acts involving a different product).

Petitioner's cite to the record is to an unauthenticated invoice for a sale of Appleton paper to an Ohio converter in which directed that the Appleton paper be shipped to its facility in Florida, but with no indication that it was in furtherance of the alleged conspiracy (A127-37). Indeed, in its Answer, Appleton denied participation in any conspiracy, and stated it was acquitted in 1997 by a federal jury of criminal conspiracy charges arising out of the same acts (A016). Likewise, Petitioner states that defendant Kanzaki was "authorized to and conducted business in Florida" (Petitioner's Brief at 2) but does not offer any evidence of overt acts Kanzaki took in Florida in furtherance of any conspiracy.10

In sum, as petitioner seems to conceive it, the theory would permit an exercise of jurisdiction over a foreign defendant whenever any member of the conspiracy commits a tortious act in furtherance in the state. Yet petitioner does not and cannot identify the tortious act in furtherance of the conspiracy which occurred in Florida.

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[10] For the reasons sets forth, infra, at pp.13-18, the necessary tortious act must have been taken in Florida.

II. THE EXERCISE OF PERSONAL JURISDICTION OVER OJI IN THIS CASE WOULD VIOLATE ITS CONSTITUTIONAL DUE PROCESS RIGHTS

Even if a statutory basis did exist for asserting jurisdiction over Oji, the inquiry does not end. The Court must then determine if due process considerations allow jurisdiction to be exercised: "The mere proof of any one of the several circumstances enumerated in Section 48.193 as the basis for obtaining jurisdiction of nonresidents does not automatically satisfy the due process requirement of minimum contacts." Venetian Salami, 554 So.2d at 502; Marsh Supermarkets, Inc. v. Queen's Flowers Corp., 696 So.2d 1207, 1208 (Fla. 3rd DCA 1997). Such determination must be made on a case by case basis. White v. Pepsico, Inc., 568 So.2d 886, 888 (Fla. 1990). In this case, the exercise of that jurisdiction would violate Oji's due process rights under the Fifth Amendment, which provides protection to aliens against binding judgments of a forum with which it has established no meaningful "contacts, ties or relations." Burger King v. Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 2184 (1985); Mathews v. Diaz, 426 U.S. 67, 77, 96 S.Ct. 1883 (1976).

"[T]he constitutional touchstone" of whether an exercise of personal jurisdiction comports with due process remains whether the defendant purposefully established "minimum contacts" in the forum state. Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 108-09, 107 S.Ct. 1026, 1030 (1987). If so, it is then necessary to determine whether the exercise of jurisdiction would offend traditional notions of "fair play and substantial justice." See Burger King, 471 U.S. at 477-78. The familiar concepts which the Supreme Court articulated in International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154 (1945) and its progeny govern the minimum contacts inquiry. In short, for jurisdiction to be properly exercised, the defendant must engage in conduct that establishes minimum contacts with the forum which

> have a basis in "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Burger King, 471 U.S. at 475, 105 S.Ct. at 2183. "Jurisdiction is proper...where the contacts proximately result from actions by the defendant himself that create a `substantial connection' with the forum state." Ibid quoting McGee v. International Life Insurance Co., 355 U.S. 220, 223, 78 S.Ct. 199, 201 2 L.Ed. 2d 223 (1957). (emphasis in original).

Asahi Metal, 480 U.S. at 109, 107 S.Ct. at 1030. Those contacts must be of a purposeful and continuous nature so as to make the foreseeability that conduct will result in suit in the state so that an exercise of jurisdiction is fair and reasonable. Burger King, 471 U.S. at 476.

The Supreme Court has emphasized that the prime focus of the due process analysis is foreseeability. If a defendant purposefully establishes contacts with the forum state such that it would be foreseeable to be haled into court in that state, the due process concerns are satisfied. Burger King, 471 U.S. at 474. But, in this case, Oji has made no sales in the state of Florida; all of the sales at issue were made in Japan (A 048). Oji has no property, advertisements, telephone numbers, offices or employees in the state of Florida (A 047). Oji has not solicited sales, advertised, manufactured, or engaged in business in Florida.

The possibility that fax paper manufactured by Oji could ultimately end up in Florida (if any indeed did) is not sufficient to establish foreseeability. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980). The "placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum[.]" Asahi Metal, 480 U.S. at 112.

Due to the increased burden on a foreign defendant forced to defend itself in this country, courts apply a higher standard of review to minimum contacts in the international realm. Asahi Metal, 480 U.S. 114, 107 S.Ct. at 1033 ("the unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders"). If the defendant took no action in the forum, a court should be particularly wary of exercising jurisdiction in an international setting: "[T]he 'foreign-acts-with-forum-effects jurisdictional principal must be applied with caution, particularly in an international context." Pacific Atlantic Trading Co., Inc. v. M/V Main Express, 758 F.2d 1325, 1330 (9th Cir. 1985), quoting Kramer Motors, Inc. v. British Leyland, Ltd., 628 F.2d 1175, 1178 (9th Cir.), cert. denied, 449 U.S. 1062 (1980) (internal quotations and citation omitted).

Oji has not purposely availed itself of the privileges of conducting business in this state. Petitioner has failed to establish that Oji had any contact with Florida. There is no evidence that Oji has sold any goods in Florida or that it has received any pecuniary benefit from the state. Its

statement that Oji "actively controll[ed] the prices of fax paper sold in every state, including Florida" (Pet. Brief at 23) contains no citation to the record because there is no such evidence in the record.

Because Oji's contacts with Florida are non-existent, the jurisdictional inquiry should end there. But for completeness, we turn to the second prong of the test, whether it would constitute "fair play and substantial justice" to subject Oji to jurisdiction here. The Supreme Court in Burger King identified five factors to consider to evaluate fairness:

(1) "the burden on the defendant";

(2) "the forum State's interest in adjudicating the dispute";

(3) "the plaintiff's interest in obtaining convenient and effective relief";

(4) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies"; and

(5) the "shared interest of the several States in further fundamental substantive policies."

471 U.S. at 478. Two of these considerations are particularly applicable here. The burden on Oji, a Japanese corporation, to defend in Florida would be great. Florida has no particular interest in adjudicating the dispute, otherwise Florida law would permit indirect purchasers to assert claims of state antitrust violations.

CONCLUSION

THE ORDERS OF THE TRIAL COURT AND THE FOURTH DISTRICT COURT OF APPEAL DISMISSING THE CLAIM AGAINST OJI SHOULD BE AFFIRMED. THE RECORD OF OJI'S ACTIVITY IN FLORIDA IS BARREN. PLAINTIFFS' APPLICATION OF THE CONSPIRACY THEORY OF JURISDICTION IS ILL-ADVISED AND OVERBROAD; IN THE ABSENCE OF AN OVERT ACT IN FLORIDA BY AN ALLEGED CO-CONSPIRATOR, THERE IS NOTHING OF JURISDICTIONAL SIGNIFICANCE TO IMPUTE TO OJI. DUE PROCESS CONSIDERATIONS ALSO PRECLUDE JURISDICTION FROM ATTACHING OVER OJI.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING HAS BEEN SENT BY U.S. MAIL THIS 22ND DAY OF JUNE, 1998 TO: ROBERT C. GILBERT, ESQ., 113 SEVILLA, CORAL GABLES, FL 33134 AND TO DANIEL E. GUSTAFSON, ESQ. AND RENAE D. STEINER, ESQ., HEINS MILLS & OLSON, P.L.C., 608 SECOND AVENUE SOUTH, MINNEAPOLIS, MINNESOTA 55402.

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TABLE OF AUTHORITIES

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STATUTES