087

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. 93,367

IN THE MATTER OF AMENDMENT TO FLORIDA RULE OF CIVIL PROCEDURE 1.070(j) - TIME LIMIT FOR SERVICE.

_____/

AMENDED BRIEF ON RETROACTIVITY

CARUSO, BURLINGTON,
BOHN & COMPIANI, P.A.
Suite 3A/Barristers Bldg.
1615 Forum Place
West Palm Beach, FL 33401
(561) 686-8010
Attorneys for Academy of Florida Trial Lawyers

CERTIFICATE OF TYPE SIZE & STYLE

Appellant hereby certifies that the type size and style of the Initial Brief of Appellants is Times New Roman 14pt.

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii-v
PREFACE	1
SUMMARY OF ARGUMENT	2-3
ARGUMENT	4-16
CONCLUSION	17

TABLE OF AUTHORITIES

PAGE

ARROW AIR, INC. v. WALSH
645 So.2d 422 (Fla. 1994) 10

BRADDOCK v. BRADDOCK
542 P.2d 1060 (Nev. 1975) 14

BRAXTON v. UNITED STATES
817 F.2d 238 (3d Cir. 1987) 5

CERNIGLIA v. CERNIGLIA
679 So.2d 1160 (Fla. 1996) 4

CLAUSELL v. HOBART CORP.
515 So.2d 1275 (Fla. 1987) 10

COLLINS v. WAINWRIGHT
311 So.2d 787 (Fla. 4th DCA 1975) 7

DUKE POWER CO. v. CAROLINA ENVIRONMENTAL STUDY GROUP, INC.
483 U.S. 59
98 S.Ct. 2620
57 L.Ed.2d 595 (1978) 10

EASTERN ENTERPRISES v. APFEL
524 U.S. 498 (1998) 15

EX PARTE COLLETT
337 U.S. 55
69 S.Ct. 944
93 L.Ed. 1207 (1949) 8

FIRESTONE TIRE & RUBBER CO. v. ACOSTA
612 So.2d 1361 (Fla. 1992) 13

FLOYD v. UNITED STATES
900 F.2d 1045 (7th Cir. 1990) 5

GAINS v. ORANGE COUNTY PUBLIC UTILITIES
710 So.2d 139 (Fla. 1st DCA 1998) 13

GRECO v. PEDERSEN
583 So.2d 783 (Fla. 2d DCA 1991) 5

HEARNDON v. GAINES
710 So.2d 87 (Fla. 1st DCA 1998) 12, 13

HERNANDEZ v. PAGE
580 So.2d 793 (Fla. 3d DCA 1991) 5

IN RE: WILL OF MARTELL
457 So.2d 1064 (Fla. 2d DCA 1984) 11

LIFE CARE CENTERS OF AMERICA, INC. v. SAWGRASS CARE CENTER, INC.
683 So.2d 609 (Fla. 1st DCA 1996) 8

LINDH v. MURPHY
521 U.S. 320 (1997) 15

LOWE v. PRICE
437 So.2d 142 (Fla. 1983) 7, 10

MAHER v. BEST WESTERN INN
667 So.2d 1024 (Fla. 5th DCA)
rev. dismissed., 676 So.2d 1368 (Fla. 1996) 5

MENDEZ-PEREZ v. PEREZ-PEREZ
656 So.2d 458 (Fla. 1995) 4

NATKOW v. NATKOW
696 So.2d 315 (Fla. 1997) 4

OLSON v. HICKMAN
25 Cal.App.3d 920
102 Cal.Rptr. 248 (1972) 14

PEARLSTEIN v. KING
610 So.2d 445 (Fla. 1992) 4

PETRUCELLI v. BOHRINGER & RATZINGER, G.M.B.H.
46 F.3d 1298 (3d Cir. 1995) 6, 9

STATE FARM MUTUAL AUTOMOBILE INS. CO. v. LaFORET
658 So.2d 55 (Fla. 1995) 10

TACO BELL CORP. v. COSTANZA
686 So.2d 773 (Fla. 4th DCA 1997) 5

TUCKER v. STATE
357 So.2d 719 (Fla. 1978) 4

UNITED STATES v. AYER
857 F.2d 881 (1st Cir. 1988) 5

WALKER & LaBERGE, INC. v. HALLIGAN
344 So.2d 239 (Fla. 1977) 8, 10

WARREN v. SHANDS TEACHING HOSPITAL
AND CLINICS, INC.
700 So.2d 702 (Fla. 1st DCA 1997) 6, 11

WHEELER v. STATE
344 So.2d 244 (Fla. 1977)
cert. denied., 440 U.S. 924
99 S.Ct. 1254
59 L.Ed.2d 478 (1979) 7

WILEY v. ROOF
641 So.2d 66 (Fla. 1994) 13

WILSON v. CLARK
414 So.2d 526 (Fla. 1st DCA 1982) 14

WOOD v. ELI LILLY & CO.
701 So.2d 344 (Fla. 1997) 13

ZLOTOGURA v. GELLER
681 So.2d 778 (Fla. 3d DCA 1996) 12, 13

87 Harv. L. Rev. 693 (1974) 8

Fed.R.Civ.P. 4(j) 5

Fla.R.Civ.P. 1.070(j) 1, 4-7, 10, 12, 14

Fla.R.Civ.P. 4(m) 5

PREFACE

The Academy of Florida Trial Lawyers hereby files this Brief on the issue of the retroactivity of the proposed amendment to Fla.R.Civ.P. 1.070(j), filed by this Court on September 24, 1998. The Academy is completely in favor of the amendment proposed by this Court, and believes that, consistent with prior case law and the United States Supreme Court's amendment to Federal Rule 4(m), this Court should provide that the amendment will apply to cases pending on its effective date. This would permit the amendment to be applied to pending cases, consistent with the general principle governing procedural amendments, and would ameliorate the harsh effects of the prior provision.

SUMMARY OF ARGUMENT

This Court should not grant a rehearing regarding its decision to include language with the amendment to Fla.R.Civ.P. 1.070(j) that the rule change is to be applied to pending cases "insofar as just and practicable." This is the precise language utilized by the United States Supreme Court when it amended Fed.R.Civ.P. 4(j), which was the model for Fla.R.Civ.P. 1.070(j). This language is consistent with the general principle that procedural amendments apply to pending cases. No party can claim that this violates any legitimate expectation, because this Court has clearly stated that no party has a vested right in a procedural rule. Furthermore, the language is not vague and there is no indication that it would result in opening the floodgates of litigation or appeals. A similar amendment, utilizing the same effective date language, was adopted by the United States Supreme Court approximately six years ago, and there has been no suggestion of any proliferation of appeals in the federal court.

The Rehearing Defendants claim that applying the rule amendment to pending cases involving them would result in depriving them of a vested right in a statute of limitations. This is an issue that should be addressed by the courts in which such cases are pending, as this Court authorized by including the language that the amendment is to apply to pending cases insofar as it is just and practicable. This should not be an issue directly addressed by this Court in this rule change

proceeding. However, an analysis of the argument presented by the Rehearing Defendants clearly demonstrate that they have no vested right that would be affected by the application of the rule amendment in their cases, since in none of those cases has the claim against them been extinguished with finality prior to expiration of the relevant statute of limitations. Therefore, for these reasons, the motion for rehearing should be denied.

ARGUMENT

Before addressing this issue in depth, a discussion of the semantics would be appropriate. It is respectfully submitted that applying the rule change to pending cases is not truly a retroactive application. In PEARLSTEIN v. KING, 610 So.2d 445 (Fla. 1992), this Court applied Rule 1.070(j) to a case filed prior to the effective date of the rule. This Court specifically stated, however, that that was not a retroactive application (610 So.2d at 446):

> Rules of procedure are prospective unless specifically provided otherwise. TUCKER v. STATE, 357 So.2d 719 (Fla. 1978). Applying the 120-day limit to causes of action pending on January 1, 1989, however, is not a true retroactive application.

This Court has characterized retroactive application of rule changes in the context of the recent amendment to Rule 1.540(b), MENDEZ-PEREZ v. PEREZ-PEREZ, 656 So.2d 458 (Fla. 1995); CERNIGLIA v. CERNIGLIA, 679 So.2d 1160 (Fla. 1996). However, those cases addressed arguments that that rule amendment should apply to cases in which the judgment was final prior to the effective date of the rule change. It is respectfully submitted that that is a truly retroactive application of a rule change, and that the language at issue in this proceeding merely applies the amendment prospectively, i.e., to pending cases, but see NATKOW v. NATKOW, 696 So.2d 315, 317 (Fla. 1997).

Background:

As is noted in this Court's proposed amendment to the rule, Fla.R.Civ.P. 1.070(j) was patterned after Fed.R.Civ.P. 4(j), now recodified as Fla.R.Civ.P. 4(m). While intended to be an instrument of case management, the federal rule was roundly criticized by federal appellate courts as unduly harsh and as an "instrument of oppression," UNITED STATES v. AYER, 857 F.2d 881, 885-86 (1st Cir. 1988); FLOYD v. UNITED STATES, 900 F.2d 1045, 1047 (7th Cir. 1990); BRAXTON v. UNITED STATES, 817 F.2d 238, 241 (3d Cir. 1987).

Fla.R.Civ.P. 1.070(j) was similarly criticized by Florida appellate judges, see MAHER v. BEST WESTERN INN, 667 So.2d 1024 (Fla. 5th DCA) (Griffin, J., dissenting), rev. dismissed., 676 So.2d 1368 (Fla. 1996); TACO BELL CORP. v. COSTANZA, 686 So.2d 773, 774 (Fla. 4th DCA 1997) (Pariente, J., concurring specially). Judge Schwartz criticized the rule as follows, HERNANDEZ v. PAGE, 580 So.2d 793, 795 (Fla. 3d DCA 1991) (Schwartz, C.J., specially concurring):

> [A]nother, quite ill-considered, but - as this case illustrates - quite successful attempt to elevate the demands of speed and efficiency in the administration of justice over the substantive rights of the parties which the system is in business only to serve [Citation omitted].

In GRECO v. PEDERSEN, 583 So.2d 783, 785 (Fla. 2d DCA 1991), the Second District expressly adopted Judge Schwartz' concern.

In 1993, the United States Supreme Court adopted an amendment to Fed.R.Civ.P. 4(m), which is consistent with the rule change now proposed by this

Court, Order of the United States Supreme Court Adopting and Amending the Federal Rules of Civil Procedure (April 22, 1993). In that Order, the Supreme Court stated:

> The foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 1993, and shall govern...insofar as just and practicable, all proceedings in civil cases then pending.

In the Motion for Rehearing filed by Shands Hospital and related parties (hereafter "Rehearing Defendants")[1], they acknowledged that the United States Supreme Court makes its rules changes applicable to pending cases "in virtually all situations" (Motion for Rehearing p.3). That is consistent in Florida jurisprudence as well, see cases cited infra p.4-5.

In PETRUCELLI v. BOHRINGER & RATZINGER, G.M.B.H., 46 F.3d 1298 (3d Cir. 1995), the court specifically relied on that language in the Supreme Court's order to apply the amended rule 4(m) to a case that had been dismissed prior to its adoption. The Third Circuit specifically noted, 46 F.3d at 1305: "Because we believe it to be 'just and practicable,' we conclude that Rule 4(m) applies retroactively to these proceedings."

---

[1]/The Motion for Rehearing was filed by Shands Hospital and other parties who are defendants in an action in which Rule 1.070(j) has become an issue, see WARREN v. SHANDS TEACHING HOSPITAL AND CLINICS, INC., 700 So.2d 702 (Fla. 1st DCA 1997). Other parties who are defendants in similar cases have subsequently joined in that motion. For ease of reference, those parties will be referred to collectively as "Rehearing Defendants."

General Rule - Procedural Amendments Apply to Pending Cases:

The Academy of Florida Trial Lawyers would respectfully suggest that this Court should utilize language similar to that of the United States Supreme Court in adopting the amendment to Rule 1.070(j). The general principle is that procedural rule changes are applied to all pending cases, LOWE v. PRICE, 437 So.2d 142, 144 (Fla. 1983):

> Decisional law and rules in effect at the time an appeal is decided govern the case even if there has been a change since time of trial. WHEELER v. STATE, 344 So.2d 244 (Fla. 1977), cert. denied., 440 U.S. 924, 99 S.Ct. 1254, 59 L.Ed.2d 478 (1979); COLLINS v. WAINWRIGHT, 311 So.2d 787 (Fla. 4th DCA 1975).

This Court has explicitly acknowledged the general rule in prior procedural amendments. For example, in the conclusion to the 1961 amendments to the Rules of Civil Procedure, this Court stated, IN RE AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE, 131 So.2d 475, 476 (Fla. 1961):

> Each and all of the foregoing amendments shall become effective on the *1st* day of *October*, 1961, and shall be applicable to all cases then pending as well as to those instituted thereafter. [Emphasis supplied.]

See also, IN RE FLORIDA SUMMARY CLAIMS PROCEDURAL RULES, 211 So.2d 553 (Fla. 1968):

> These amendments shall become effective midnight, September 30, 1968, and from that date shall apply to all summary claims procedures then pending or thereafter filed. [Emphasis supplied.]

The reason procedural amendments generally apply to pending cases is because it promotes the interest of justice and does not, by definition, impair vested rights. Procedural rules are those "designed to make the process of litigation a fair and efficient mechanism for the resolution of disputes." J. ELY, "The Irrepressible Myth of Erie," 87 Harv. L. Rev. 693, 724 (1974). This Court has stated that, "no one has a vested right in any given mode of procedure," WALKER & LaBERGE, INC. v. HALLIGAN, 344 So.2d 239, 243 (Fla. 1977), quoting EX PARTE COLLETT, 337 U.S. 55, 71, 69 S.Ct. 944, 953, 93 L.Ed. 1207 (1949); see also, LIFE CARE CENTERS OF AMERICA, INC. v. SAWGRASS CARE CENTER, INC., 683 So.2d 609, 613 (Fla. 1st DCA 1996).

There can be no question that the rule amendment in this case is procedural. It is obviously designed to make the process of litigation a fair and efficient mechanism for the resolution of disputes, and does not define, limit, or expand any party's substantive rights. Therefore, application to pending cases is appropriate. The language utilized by the United States Supreme Court in amending Rule 4(m) is justified here for those reasons, and provides relief from such application if it is not "just and practicable." This Court's adoption of that language would enable Florida courts to ameliorate the harsh effects of the prior rule on pending cases, and promote the determination of cases on their merits rather than procedural technicalities.

The Language Adopted by this Court Is Not Vague:

Rehearing Defendants challenge the provision that the amendment shall apply to pending cases "insofar as just and practicable," claiming that there is no legal standard articulated for that phrase. They also raise the "parade of horribles" argument that that language would open the floodgates to further appeals. The United States Supreme Court utilized the identical language in its amendment to Rule 4(m) approximately six years ago, and there has been no suggestion of any proliferation of appeals in the federal courts. Moreover, that exact language was applied by the United States Court of Appeals for the Third Circuit in PETRUCELLI v. BORINGER AND RATZINGER, supra, without any concern being expressed regarding vagueness or ambiguity. In fact, the Rehearing Defendants have not cited any federal decision which even suggests that those courts have experienced difficulty in applying that language. Therefore, it is respectfully submitted that the language adopted is unambiguous, and that an unsubstantiated fear of future appeals is an insufficient justification to reconsider that choice of language.

Application to Pending Cases Does Not Threaten Legitimate Expectations:

Rehearing Defendants claim that application of the procedural amendment to pending cases is unfair, because it "threatens the legitimate expectations and rights of the petitioners in Case No. 91,718 to believe that their case will be judged on

the rule in existence at the time of the filing of the case..." (Motion for Rehearing p.4). The key word in that assertion is "legitimate," because as case law in Florida clearly holds, no person or entity has a right to assume that procedural rules will remain unchanged throughout their litigation. Thus, the Rehearing Defendants' expectations were not, as a matter of law, legitimate.

As noted previously, the general principle is that amendments to procedural rule changes apply to all cases pending at the time of the amendment, LOWE v. PRICE, supra. This Court has stated that "no one has a vested right in any given mode of procedure," WALKER & LaBERGE v. HALLIGAN, supra, 344 So.2d at 243. Thus, the Rehearing Defendants had no legitimate expectation that Rule 1.070(j) would remain the same throughout their litigation.

Even procedural or remedial statutes operate retrospectively, STATE FARM MUTUAL AUTOMOBILE INS. CO. v. LaFORET, 658 So.2d 55 (Fla. 1995); ARROW AIR, INC. v. WALSH, 645 So.2d 422 (Fla. 1994). In CLAUSELL v. HOBART CORP., 515 So.2d 1275 (Fla. 1987), this Court adopted a statement of the United States Supreme Court that "our cases have clearly established that 'a person has no property, no vested interest, in any rule of the common law,'" quoting DUKE POWER CO. v. CAROLINA ENVIRONMENTAL STUDY GROUP, INC., 483 U.S. 59, 88, 98 S.Ct. 2620, 2638, 57 L.Ed.2d 595 (1978). In order to be vested, a right "must be more than a mere expectation based on an anticipation of the continuance of an existing law;...," CLAUSELL v. HOBART

CORP., supra, quoting from IN RE: WILL OF MARTELL, 457 So.2d 1064, 1067 (Fla. 2d DCA 1984). Thus, clearly Petitioners have no right or legitimate expectation that a particular procedural rule will remain favorable to them.

It is also important to note that the United States Supreme Court announced its amendment to Federal Civil Procedure 4(m) on April 22, 1993, over one year prior to service becoming an issue in the Shands Hospital case, see WARREN v. SHANDS TEACHING HOSPITAL AND CLINICS, INC., 700 So.2d 702 (Fla. 1st DCA 1997). Thus, it certainly was reasonable to anticipate an amendment to the Florida rule, which was modelled on the federal rule, and that the amendment would apply to pending cases.

Other Arguments of Rehearing Defendants:

The other arguments presented by the Rehearing Defendants are based on the circumstances of their individual cases and, therefore, should not be a concern of this Court with respect to the proposed rule amendment. The short answer to these arguments is that this Court has granted authority to the lower courts to consider these arguments of the Rehearing Defendants by providing that the rule change would apply to pending cases "insofar as just and practicable."

The Rehearing Defendants' arguments are essentially that it would not be "just and practicable" to apply the rule amendment in their cases. That is not a matter for this Court to resolve in this proceeding, but rather is appropriately

determined by the courts in which those actions are pending (subject to review by this Court in the event that jurisdictional prerequisites are satisfied). If a defendant in a particular case actually has a vested right that would be impaired, it can argue that application of the amendment would not be "just and practicable." However, resolution of that issue should be left to the courts in which the Rehearing Defendants are currently proceeding, since those courts are in a better position to analyze the precise circumstances involved and to reach a resolution of what is "just and practicable."

Nonetheless, in an abundance of caution, these other arguments of the Rehearing Defendants will be addressed.

The Rehearing Defendants contend that in the circumstances of these cases, they had a vested right in a statute of limitation, which they claim had expired, and that application of the amended Rule 1.070(j) would deprive them of that vested right. However, the cases they rely upon for this argument are all distinguishable, because in those cases the pertinent statute of limitations had expired without any suit having been filed, e.g., HEARNDON v. GAINES, 710 So.2d 87 (Fla. 1st DCA 1998); ZLOTOGURA v. GELLER, 681 So.2d 778 (Fla. 3d DCA 1996). In each of the cases which the Rehearing Defendants are parties, a complaint was filed within the statute of limitations, and the Rehearing Defendants attempted to have those complaints dismissed based on the provisions of a procedural rule, i.e., Fla.R.Civ.P. 1.070(j). Only if those Rehearing Defendants were successful in

having the complaints dismissed on that procedural basis, would they have an argument that a subsequent complaint was filed outside the statute of limitations. With due respect, that is not a vested right in a statute of limitations, but rather an unjustified expectation that if a procedural rule remains the same, the defendant has the potential for a statute of limitations defense.

The line of cases on which the Rehearing Defendants rely are distinguishable and inapposite. Those cases hold that once a claim has been extinguished by the applicable statute of limitations (or statute of repose), that claim cannot be revived, because a right to be free from that claim has then vested in the defendant, see FIRESTONE TIRE & RUBBER CO. v. ACOSTA, 612 So.2d 1361 (Fla. 1992); WILEY v. ROOF, 641 So.2d 66 (Fla. 1994). However, in each of those cases, the claim was truly extinguished in that an action was never filed within the statute of limitations in existence at the time of the incident. Those cases did not involve situations in which actions were filed within the statute of limitations, but were later dismissed on procedural grounds, and subject to an appeal thereafter.

Other cases relied upon by the Rehearing Defendants take that principle a step further and state that even if a statute of limitations is amended to extend the limitations period, that amendment does not apply if the claim had truly been extinguished prior to the amendment, see WOOD v. ELI LILLY & CO., 701 So.2d 344 (Fla. 1997); GAINS v. ORANGE COUNTY PUBLIC UTILITIES, 710 So.2d 139 (Fla. 1st DCA 1998); HEARNDON v. GRAHAM, supra; ZLOTOGURA v.

GELLER, supra. None of those cases involve a situation in which a complaint was timely filed within the limitations period and, due to a procedural ruling, was dismissed subject to an appeal.

Additionally, those cases are inapposite because the policy considerations underlying statutes of limitations, i.e., timely notice of a claim and opportunity to preserve evidence and locate witnesses, have no application to the Rehearing Defendants. Each of the Rehearing Defendants had notice within the limitations period of the claims against them. Moreover, here, the claims were never truly extinguished, because the procedural ruling which resulted in dismissal of the complaint was not final, but was on appeal when this Court amended Rule 1.070(j).

In WILSON v. CLARK, 414 So.2d 526 (Fla. 1st DCA 1982), the court rejected the argument that a claim had been extinguished by entry of a final judgment, because a timely appeal was still pending. The court stated (414 So.2d at 530):

> By virtue of the fact that this opinion is being rendered based on a timely appeal, it is fair to say that the action appellee professes to have become terminated or extinguished by virtue of the lower court's final judgment is still very much alive. In essence an action continues to have life until there is a final determination on an appeal. 1 Fla.Jur.2d, Actions, 35 (1977); see also BRADDOCK v. BRADDOCK, 542 P.2d 1060, 1064 (Nev. 1975); OLSON v. HICKMAN, 25 Cal.App.3d 920, 102 Cal.Rptr. 248, 249 (1972).

In the cases involving the Rehearing Defendants, the claims have not been "extinguished," because timely appeals are still pending.

Thus, there was no vested right obtained by the Rehearing Defendants, because the claims against them have not been disposed of with finality.

In their Supplemental Authority, the Rehearing Defendants rely on two United States Supreme Court cases that have no relevance here. They rely on EASTERN ENTERPRISES v. APFEL, 524 U.S. 498 (1998), for its discussion of the general view that retroactive amendments are disfavored. They fail to note that that case addressed retroactive statutory amendments that clearly had substantive application. In that case, the United States Supreme Court determined that the statutory amendment operated to divest the petitioner of property retroactively and, thereby, resulted in a valid eminent domain claim. That case has no application to a procedural amendment that is applied to pending cases. As the Rehearing Defendants have acknowledged, the United States Supreme Court routinely applies its rule changes to pending cases.

The Rehearing Defendants also rely on LINDH v. MURPHY, 521 U.S. 320 (1997). That case also involved a statutory amendment, which the Court described as going "beyond 'mere' procedure to affect substantive entitlement to relief," 117 S.Ct. at 2063. That is not the case here, where a procedural amendment is involved.

In summary, the Rehearing Defendants have not presented any valid justification for this Court to deviate from the well-settled principle that procedural amendments apply to all pending cases. As this Court has stated, no party has a vested right in a procedural ruling. The arguments made by the Rehearing Defendants arise solely from the circumstances of their cases, and this Court has authorized the lower courts to determine if application of the amendment to pending cases would be just and practicable. Under these circumstances, the arguments raised by the Rehearing Defendants regarding their alleged vested rights should be determined in the first instance by the lower courts, not by this Court in the context of a rule change proceeding.

CONCLUSION

For these reasons, the rehearing should be denied and the rule should be amended as ordered by this Court with the provision that it applies to pending cases where it is "just and practicable."

Dated: July 16, 1999

Respectfully submitted on behalf of the Academy of Florida Trial Lawyers

CARUSO, BURLINGTON,
BOHN & COMPIANI, P.A.
Suite 3A/Barristers Bldg.
1615 Forum Place
West Palm Beach, FL 33401
(561) 686-8010

By: _____
PHILIP M. BURLINGTON
Florida Bar No. 285862

G:\WPFILES\MISC\MISC\COMMENT.BRF\GG