IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,917

JEAN NADD a/k/a JOHN NADD,
JOHN R. NADD and JOHN SCOTT NADD,

Petitioner,

v.

LE CREDIT LYONNAIS, S.A.,

Respondent.

PETITIONER'S AMENDED BRIEF ON THE MERITS

On Review from the District Court of Appeal, Fifth District,
State of Florida
Consolidated Case Nos. 98-01342, 01343

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STATEMENT OF FONT SIZE

Pursuant to this Court's Administrative Order dated July 13, 1998, Petitioner hereby certifies that this Brief utilizes 12 point Courier New type font, a font that is not proportionately spaced, and that this font type and size results in not more than 10 characters per inch.

I. . . . . STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal from an order of the Fifth District Court of Appeal. That order reversed the trial court order entering final judgments in two actions for Petitioner, John Nadd. The order also certified the following two questions as ones of great public importance, meriting a definitive answer from this Court:

1.Does Florida's statute of limitations [§95.11 *Fla. Stat.* (1995)] bar the registration in Florida, pursuant to the Uniform Foreign Money Judgments Recognition Act (UFMJRA) [§§55.601-55.607, *Fla. Stat.*], of two money judgments obtained in France in 1978 and 1979?

2.If Florida's statute of limitations is applicable, which provision applies: subsection (1) [§95.11(1), *Fla. Stat.*], which requires that an action (or proceeding) on a judgment or decree of a court of record in this state be brought within twenty years; or subsection (2)(a) [§95.11(2)(a), *Fla. Stat.*], which requires that an action (or proceeding) on a judgment of a foreign country or another state be brought within five years? 741 So.2d at 1165.

Petitioner respectfully submits that the issues presented by these questions are 1) whether a proceeding for recognition of a foreign judgment under the Uniform Out of Country Foreign Money Judgment Act ("UFMJRA") must be commenced within the five-

year limitations period applicable to civil actions and proceedings on foreign judgments; and 2) if not, whether the UFMJRA, which was enacted in 1994, can be constitutionally applied to revive the right to enforce French judgments as to which the limitations period had expired in 1983 and 1984, in view of this Court's decision in *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994).

A. . . . . Procedural Background

Respondent Le Credit Lyonnais, S.A. ("LCL") obtained French judgments against Mr. Nadd. The judgments were respectively entered, of record, in France on May 9, 1978 and October 1, 1979 ("the Judgments"). (R.5-14, 17-26).

At the time the Judgments were entered in France, the only means of enforcing a French judgment in Florida was the commencement of a common law action. This right was subject to a five-year limitations period, which runs from the date the judgments were entered in the originating jurisdiction. *Fla. Stat*. §95.11(2)(a); *Turner Murphy Co. v. Specialty Construct.,* 659 So. 2d 1242 (Fla. 1st DCA 1995). LCL did not commence such actions during those five-year limitations periods. Accordingly, the rights to bring the Judgments to Florida for enforcement expired, respectively, on May 9, 1983 and October 1, 1984, by operation of section 95.11(2)(a).

B. . . . . Trial Court Proceedings

LCL commenced the instant actions by filing the Judgments and supporting affidavits in the Orange County Circuit Court Clerk's office on October 4, 1995 and October 6, 1995, pursuant to Florida's enactment of the Uniform Out-of-Country Collection of Foreign Money Judgments Act (the "UFMJRA"), section 55.601 *et seq., Florida Statutes.* At the same time, LCL filed complaints in each action, also seeking recognition and enforcement of the judgments under the UFMJRA. (R.1-2, 15-16). Florida adopted the UFMJRA in 1994, ten and eleven years after the respective expirations of the limitations period for the Judgments' recognition and enforcement in Florida.

As prescribed in section 55.604(2) of the UFMJRA, Nadd timely filed notices of objections to the Judgments' recognition and enforcement within thirty days of their filing. (R.35-37, 38-41). He also filed motions to dismiss the complaints. The objections included defenses grounded on service of process, notice and opportunity to defend, due process and whether French courts would reciprocally enforce a similar Florida judgment.[1]

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[1] These defenses included *Fla.Stat*. §55.605(g), which denies recognition where the foreign jurisdiction would not give recognition to a similar judgment rendered in this state. There is no treaty between the United States and France that would require judgments rendered in the United States to be enforced in France. They also included *Fla.Stat*. §55.605(2)(a), which denies registration where the Defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend. Mr. Nadd did not reside at the address where process was served on him by mail at

The objections, and the motions to dismiss the complaints, also included the defense that the actions for recognition were time-barred pursuant to section 95.11(2)(a), *Florida Statutes.* These defenses raised issues of fact and law for resolution by the circuit court as required by *Fla. Stat*. §55.604(3).

On December 28, 1995, Nadd served motions for summary judgment in both actions contending, *inter alia*, that the facts supporting the statute of limitations defense were undisputed and that, therefore, Nadd was entitled to judgment as a matter of law. (R.66-91, 92-110). In opposing the motions, LCL contended that section 95.11(2)(a) did not apply to "proceedings" under the UFMJRA, because "mere proceedings" were not "actions" within the meaning of section 95.11(2)(a). LCL also contended that, if the statute of limitations did apply, it was equitably tolled because, it alleged, Nadd had fled France, moved to Florida and concealed himself by changing his name from "Jean" Nadd to "John" Nadd. (R.133-45). The lower court denied Nadd's summary judgment motion on the ground that the equitable tolling contention presented a material issue of fact. (R.203,

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the time such process was allegedly served. As a result, he had no knowledge of the proceedings purportedly commenced through that defective service of process. Similarly, there was no effort made to achieve service of process on the Defendant in any manner that would comport with applicable notions of due process and fundamental fairness. Recognition may be denied on this ground as well. (R. 35-37; 38-41).

205).

Thereafter, Nadd initiated discovery directed towards his defenses and LCL's concealment allegations. On June 10, 1996, LCL moved to have the Judgments recognized pursuant to the UFMJRA. (R.779-856, 857-925). These motions effectively sought summary judgment on all of Nadd's defenses, including the statute of limitations, reciprocity and due process. In response to Nadd's motions to compel related discovery (R.256-91), LCL sought and obtained a stay of all discovery until the lower court could determine whether, as a matter of law, the section 95.11(2)(a) limitations period applied to proceedings under the UFMJRA. (R.451-52, 456-57). Nadd also renewed his summary judgment motion, this time supporting it with an affidavit[2] showing that Nadd did not conceal himself in Florida. (R.535-53, 554-72). The parties submitted extensive memoranda of law on all of these issues. (*Id.;* R.779-856, 857-925, 480-529).

On June 18, 1997, the lower court entered an order resolving

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[2] Nadd's affidavit showed, among other things, that Nadd, upon moving from Paris to Pensacola and then Orlando, had left a forwarding address with French postal authorities; had registered with the French Consulate giving his Florida address; was listed in the Pensacola and Orlando phone books as Jean Nadd; that he did not change his name to John until approximately 1992 when he became a United States citizen; and that he was easily located by anyone wishing to find him at all times. (R.329-440).

the issue of the statute of limitations' applicability in Nadd's favor. (R.573-75). Specifically, the court, following the only other UFMJRA decision on point,[3] held that section 95.11(2)(a), the five-year statute of limitations for actions on foreign judgments, was fully applicable to LCL's recognition proceedings under the UFMJRA. The same order denied Nadd's renewed summary judgment motion on the ground that disputed issues of fact existed as to whether Nadd concealed himself in Florida, thereby tolling the limitations period. *Id.*

Upon receipt of this order, Nadd renewed his discovery requests into the factual basis for LCL's fraudulent concealment allegations, and subsequently moved to compel this discovery. (R.576-81, 582-86). Rather than provide this discovery, LCL withdrew its fraudulent concealment allegations, with prejudice. (R.587-615). Accordingly, on April 14, 1998, the lower court entered final judgments in each of the two actions. (R.625, 626). LCL took an appeal from those final orders to the Fifth District Court of Appeal. (R.627-30, 631-34).

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[3] *Vrozos v. Sarantopoulos*, 195 Ill. App. 3d 610, 552 NE 2d 1093 (App. Ct. Ill. 1990).

C. . . . . Appellate Proceedings

On September 10, 1999, the Fifth District Court of Appeals reversed the trial court's order and vacated the final judgments for Nadd. *Le Credit Lyonnais, S.A. v. Nadd*, 741 So.2d 1165 (Fla. 5th DCA 1999). The appellate court held that the trial court erred in applying section 95.11(2)(a)'s five-year limitations period to bar "registration" under the UFMJRA. It held that

> Florida's five-year statute of limitations directed at actions brought on judgments of foreign countries does not apply to the registration, filing or recording of a foreign judgment pursuant to the UFMJRA, and that the applicable statute of limitations are the ones pertinent to Florida's domestic judgments.

741 So.2d at 1172. The court vacated the final judgments for Nadd because the UFMJRA recognition proceeding had been commenced within the twenty-year period applicable to actions on Florida judgments, measured from the date the judgments were entered of record in France. *Id.*

The court began its analysis by stating that there were no decisions in other UFMJRA states addressing this question, and that decisions under the analogous Uniform Enforcement of Foreign Judgments Act (the "UEFJA", Florida Statutes §55.501 et seq.) had produced "a marvel of diversity and non-uniform results." The court placed these decisions in three categories. The first consisted of jurisdictions that had applied their

statute of limitations applicable to the commencement of actions on foreign judgments to bar "registration" outside that period. 741 So.2d at 1170, *citing, e.g., Lawrence v Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203 (Tex.App. 1994). Others, the court noted, had "given more credence to foreign [sister state] judgments under the UEFJA than is due their domestic judgments." *Id., citing, e.g., Drllevich Constr., Inc. v. Stock*, 958 P.2d 1277, 1998 Ok 39 (Okla. 1991). This "super-reciprocity" was achieved by applying the "registration state's" statute of limitations applicable to "enforcement" of domestic judgments, and beginning that period on the date the judgment was "registered" in the forum state. *Id.* In Florida, this would mean that a foreign judgment would be good for an additional twenty years after it was "registered," and registration could occur for as long as the judgment could be enforced where rendered. Because French judgments are valid in France for thirty years, the judgments at issue here, once "registered," would have a potential life of fifty years under this analysis.

The Fifth DCA rejected both of these approaches in favor of what it termed a "more moderate approach:"

> If the foreign judgment is enforceable in the originating jurisdiction, it can be registered in the forum state. But its enforcement and effect in the forum state turns on compliance with the forum state's

> statute of limitations, which is applicable to domestic judgments, gauged from the date the judgment was rendered; not the registration date.

741 So.2d at 1171, *citing, e.g., Hunter Technology, Inc. v. Scott*, 701 P.2d 645 (Colo. App. 1985). The effect of this holding is that LCL's Judgments can be "registered" in Florida at any time within section 95.11(1)'s twenty-year period, but they may not be enforced beyond that point.

The appellate court adopted this approach because, in its view, it best accomplished the legislature's intent, which it described as follows:

> achieving enforcement of Florida judgments abroad by according foreign judgments reciprocity of treatment in Florida was the primary purpose for adopting the UFMJRA, as well as the UEFJA.

Id. at 1172. The court reached this view even though section 95.11(2)(a) requires the commencement within five years of an "action" on a judgment and "action" is statutorily defined as "a civil action or proceeding." *Fla. Stat*. §95.011. Some UEFJA states, such as Georgia,[4] had held their statutes of limitations on actions on judgments to be inapplicable to "mere proceedings" under the uniform law. The plain language of section 95.011, the court acknowledged, meant that this "semantical solution appeared to be unavailable in Florida." 741 So.2d at 1171.

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[4] See, e.g., *Wright v. Trust Company Bank*, 219 Ga. App. 551, 466 S.E.2d 74 (Ga. App. 1995)

The Fifth DCA's alternative "solution" to section 95.11(2)(a)'s clear applicability to UFMJRA proceedings was to simply reject the result mandated by the statutes' words, suggesting that such words could take on different meanings when viewed "in the **large context of the text**." 741 So.2d at 1172 (emphasis added). From this "large context of the text," the court concluded that section 95.11(2)(a)'s five-year period would not apply to UFMJRA recognition proceedings because that would run counter to the Legislature's goal of achieving reciprocity.

Freed from the constraints of the statutes' plain language, the court adopted, for proceedings on foreign judgments, the twenty-year limitations period for actions on judgments of "a court of record of this state." *Fla. Stat.* § 95.11(1). The court did not address the obvious conflict between this holding and section 95.11(1)'s express applicability to **Florida** judgments. Instead, the court selected the twenty-year period because it apparently believed that a foreign judgment became a Florida judgment upon its "filing, registration or recording." This is apparent in its companion holding that this twenty-year period would commence on the date the judgment was rendered in France, the equivalent of the entry of a Florida judgment. This would mean that the French judgment would receive no greater dignity, that is, enforceable life, than a Florida judgment,

thereby avoiding "super-reciprocity." 741 So.2d at 1172.

The court did not address Nadd's argument that its result was barred by this Court's decision in *Wiley v. Roof*, 641 So.2d 66 (Fla. 1994). In *Wiley*, this Court held 1) that a due process property right attaches to the expiration of an applicable limitations period; and 2) that any subsequent legislative attempt to revive that extinguished right violates due process. The UFMJRA was not enacted until 1994, some ten and eleven years after the right to commence common law actions on the 1978 and 1979 Judgments had, in fact, expired under section 95.11(2)(a). Accordingly, the Fifth DCA's holding had the effect of extending the applicable limitations period from five to twenty years, thereby reviving LCL's long-expired rights to enforce its French judgments in Florida. This is the very result *Wiley* prohibits.

II. SUMMARY OF ARGUMENT

The appellate court erred in two general respects. First, the court rejected the result mandated by the plain language of the UFMJRA and 95.11(2)(a), because it found that result to be inconsistent with its view of the legislature's true intent: the achievement of reciprocity of enforcement for Florida judgments in foreign countries. The legislature's intent, however, must always be determined by giving the statute's words their plain and ordinary meaning. Where these words are unambiguous, the court is not free to engage in statutory construction at all.

This is always the case where, as here, the legislature has chosen to define the statute's terms. The appellate court's error is manifest in its characterization of the contrary result as the product of an "over-emphasis on definitions of words." The correct result is that mandated by the legislature's words, regardless of the court's view of the wisdom of that result.

Beyond this error, the court's analysis proceeded from the mistaken premise that the UFMJRA authorizes domestic enforcement upon the completion of the clerical task of "registration, filing or recording." 741 So.2d at 1172. In fact, the UFMJRA sets forth procedures for the judicial resolution of defenses to recognition, after notice and a hearing on objections to recognition and enforcement, if any are made. "Recognition" is not achieved unless and until these objections are waived or judicially resolved. If issue is joined on these objections, the circuit court, after appropriate proceedings to resolve questions of law and fact, must enter an order granting or denying recognition. It is only after this proceeding is completed in favor of the judgment creditor that the foreign judgment may be "recognized."

A recognition proceeding under the UFMJRA is, therefore, an "action [proceeding] on a foreign judgment" that must be commenced within five years after the judgment is entered in the foreign country. *Fla. Stat*. §95.11(2)(a). Once recognition is

achieved, the foreign judgment may be enforced in the same manner as a Florida judgment. *Fla. Stat*. §55.604(5). It is at this point that the twenty-year statute applicable to actions on judgments of the courts of this state applies to limit enforcement to twenty years. *Fla. Stat.* §95.11(1).

The appellate court's decision is also contrary to the weight of authority from other jurisdictions. The only other decision addressing the limitations issue under the UFMJRA, as enacted in Florida, is *Vrozos v. Sarantopoulos*, 195 Ill. App. 3d 610, 552 NE 2d 1093 (Ill. App. Ct. 1990). It holds that a proceeding for recognition must be commenced within the same period applicable to actions on foreign country judgments. The Fifth DCA cited *Vrozos*, but did not acknowledge the applicability of its holding. 741 So.2d at 1168, n.19.

Similarly, a thirteen state majority holds that a UEFJA proceeding for recognition of sister state judgment must be commenced within the same limitations period applicable to common law actions to enforce foreign judgments. Further, of the minority states, most turn on the distinction between an "action" and "proceeding," a distinction that is unavailable in Florida, given section 95.011's definition of "action" as a "civil action or proceeding."

Second, the court gave the 1994 enactment of the UFMJRA retroactive application, as it held that this enactment allowed

enforcement of 1978 and 1979 French judgments some ten and eleven years after the right to commence common law actions on those judgments had undeniably expired. Even if the legislature had intended that section 95.11(2)(a) would not apply to UFMJRA proceedings, there is no indication that the legislature also intended to revive the right to enforce foreign judgments as to which the limitations period had already expired. And if that had been intended, the statute would violate Nadd's due process rights as established by this Court's decision in *Wiley v. Roof, supra*.

III. STATEMENT ON JURISDICTION

The jurisdiction of the Supreme Court of Florida arises under Rule 9.030(a)(2)(A)(v), Florida Rules of Appellate Procedure, as the Florida Fifth District Court of Appeals has certified the two questions set forth above to be questions of great public importance. *Le Credit Lyonnais v. Nadd*, 741 So.2d 1165, 1165 (Fla. 5th DCA 1999). This Court has deferred a determination of its jurisdiction, and has ordered that the parties submit briefs on the merits, addressing those questions. Accordingly, Petitioner has not separately briefed the question of jurisdiction. However, it is respectfully submitted that the importance of the certified questions is self-evident from the points and authorities set forth in this brief.

IV. ARGUMENT

A. CONTROLLING PRINCIPLES OF STATUTORY CONSTRUCTION MANDATE APPLICATION OF SECTION 95.11(2)(a)'s FIVE-YEAR LIMITATIONS PERIOD TO RECOGNITION PROCEEDINGS UNDER THE UFMJRA

1. Controlling Principles of Statutory Construction

First, and always, the most important factor in construing a statute is the legislature's intent. *City of Boca Raton v. Gidman,* 440 So.2d 1277 (Fla. 1983). This must be ascertained from the statute's plain language. *Leisure Resorts, Inc. v. Frank J. Rooney, Inc.,* 654 So.2d 911 (Fla. 1995). If the intent is clear from the language used, the court has the absolute duty to give effect to that intent; the court may not redefine the legislature's words. *Englewood Water Dist. v. Tate, 334 So.2d 626* (Fla. 2d DCA 1976). Courts are without power to construe an unambiguous statute in a way that would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be a usurpation of legislative power. *Holly v. Auld,* 450 So2d 217, 219 (Fla. 1984).

It is presumed that the legislature knows the meanings of the words it has chosen to use in conveying its intent. *King v. Ellison,* 648 So.2d 666 (Fla. 1994). Moreover, where the legislature has chosen to define a term, that definition controls over all others. *First Nat'l Bank v. Florida Industrial Com.* 154 Fla. 74, 16 So.2d 636 (Fla. 1994). Only

where there is ambiguity may the court turn to rules of construction to interpret a statute. *Wagner v. Botts,* 88 So.2d 611 (Fla. 1956).

Where construction is necessary, the courts should avoid a construction that would place different statutes covering the same general field in conflict. *City of Boca Raton v. Gidman, supra.* Rather, where a more recent statute relates to matters covered in whole or in part by a prior statute, the two should be harmonized so that each statute will be given its intended effect. *Ellis v. City of Winter Haven*, 60 So.2d 620 (Fla. 1952). Implied repeals of statutes are disfavored. *Palm Harbor Special Fire Control District v. Kelly,* 516 So.2d 249 (Fla. 1987). Only where the legislature has clearly expressed its intention to repeal a statute will it no longer apply. *Woodgate Development Corporation v. Hamilton Investment Trust*, 351 So.2d 14 (Fla. 1977). Similarly, interpretations that render statutory provisions superfluous are to be avoided and courts may not presume that a statute employs useless or superfluous language. *Johnson v. Feder,* 485 So.2d 409, 411 (Fla. 1986). Finally, a statute must be construed so as to render it constitutional in purpose and effect, and any doubts about its meaning must be so resolved. *State v. Globe Communications Corp.,* 648 So.2d 110 (Fla. 1994).

2. The Statute of Limitations

Florida's statute of limitations provides:

> 95.11.1 Applicability.—
> **A civil action or proceeding, called "action" in this chapter**, . . .shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere.

Fla. Stat. § 95.011 (1977) (emphasis added). The limitations periods applicable to specific classes of civil actions or proceedings, are found in section 95.11, which includes the following:

> 95.11 Actions other than for recovery of real property shall be commenced as follows:
> WITHIN TWENTY YEARS.—
> An action on a judgment or decree **of a court of record in this state.**
> WITHIN FIVE YEARS.—
> An **action on a judgment** or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, **or a foreign country.**

Fla. Stat. §§ 95.11(1), 95.11(2)(a) (1977) (emphasis added).

These provisions are direct and unambiguous. The phrase "civil action or proceeding" is clear evidence that the legislature intended that the limitations period apply to any activity that has as its object the procurement of a court order or other judicial relief, of any kind. *See, e.g., Lawrence v Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 207-208 (Tex.App. 1994)

3. UFMJRA Procedures For Recognition And Enforcement

Prior to the enactment of the UFMJRA, the only means of enforcing a foreign country judgment in Florida was the commencement of a civil action through the filing of a complaint on that judgment. The UFMJRA was intended to streamline that process. It specifies statutory objections to recognition of a foreign judgment and the procedures applicable to two discreet subjects: recognition and enforcement.

The UFMJRA recognition procedure does not accord automatic recognition and enforceability to foreign judgments upon their filing in Florida. Rather, the act provides a multi-step process that includes notice to the judgment debtor and an opportunity to file a notice of objections, "specifying grounds for non-recognition or non-enforceability [of the foreign judgment] under this act." *Fla. Stat.* 55.604(2). Further, upon application by either party, the circuit court is commanded

> to conduct a hearing, determine the issues and enter an appropriate order granting or denying recognition in accordance with the terms of this act.

Fla. Stat. 55.604(3). If a notice of objection is not filed, the clerk of the court may record a certificate stating that no objection has been filed. *Fla. Stat.* 55.604(4). The foreign judgment may not be enforced unless and until the clerk records a certificate of no objections or the circuit court enters an

order granting recognition. *Fla. Stat.* 55.604(5); *Frymer v. Brettschneider,* 696 So. 2d 1266, 1267 (Fla. 4th DCA 1997), *reh. den.* (March 27, 1998) (where judgment debtor files objections to enforcement, circuit court hearing must be held and "[i]t is only upon entry of the order resulting from such hearing that the foreign judgment may be enforced by a Florida court or a lien on any Florida real property established").

These proceedings are necessary to determine the questions of law and fact set forth in section 55.605. Subsection one of that statute sets forth three preconditions that, if present, conclusively preclude registration and enforcement:

> (1) A foreign judgment is not conclusive if:
>
> The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
>
> The foreign court did not have personal jurisdiction over the defendant.
>
> The foreign court did not have jurisdiction over the subject matter.

Fla. Stat. 55.605(1). A Florida court **may not** grant recognition to any foreign judgment that falls under a section 55.605(1) prohibition. *Chabert v. Bacquie*, 694 So. 2d 805, 811 (Fla. 4th DCA 1997) ("Hence if Chabert is correct that the French court lacked jurisdiction over him under the Hague Service Convention, then under section 55.605(1)(b) we may not accord recognition to

the French judgment in this case.")

Subsection two sets forth seven "permissive preconditions" which may be applied to prevent recognition of a foreign judgment:

> (2) A foreign judgment need not be recognized if:
>
> The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend.
>
> The judgment was obtained by fraud.
>
> The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state.
>
> The judgment conflicts with another final and conclusive order.
>
> The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.
>
> In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
>
> The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state. For purposes of this paragraph, the Secretary of State shall establish and maintain a list of foreign jurisdictions where the condition specified in this paragraph has been found to apply.

Whether the objections raise mandatory or permissive preconditions to recognition, they must be overruled before the foreign judgment may be enforced as though it were a final judgment of a Florida court:

> The effect of overruling objections and granting recognition of a foreign judgment is that the foreign judgment is **thereupon** immediately enforceable as though it were a final judgment of a Florida court. See §55.604(5), (6), and (7), *Fla. Stat.* (1995).

Chabert v. Bacquie, 694 So. 2d 805, 808 (Fla. 3d DCA 1997) (emphasis supplied).

Importantly, the two French judgments at issue herein have not yet achieved the status of recognition, as the trial court has not ruled on Nadd's section 55.605 objections to recognition.

Clearly, therefore, a foreign judgment is not automatically advanced to the enforcement stage by the ministerial act of registration. Rather, the judgment creditor must successfully traverse the recognition proceedings set forth in section 55.604 in order to achieve recognition and enforcement in Florida.

When the UFMJRA's substance and procedure are properly understood, it becomes clear that the Fifth DCA erred in attributing to the legislature an intent to make the section 95.11(2)(a) limitations period inapplicable to those proceedings. A requirement that UFMJRA proceedings be commenced within five years is no less logical than a requirement that a common law complaint on that judgment be commenced within the same period.

The appellate court appears to have drawn a contrary inference because it confused "recognition" with mere "filing,

registration or recording." This error is revealed by the manner in which the appellate court phrased its holding :

> Accordingly, we hold that Florida's five-year statute of limitations directed at actions brought on judgments of foreign countries, does not apply to the **registration, filing or recording** of a foreign judgment pursuant to the UFMJRA, and that the applicable statute of limitations are the ones applicable to Florida's domestic judgments.

741 So.2d at 1172 (emphasis added). Implicit in the emphasized phrase is the assumption that the act permits **enforcement** on the completion of the clerical task of **filing**. Clearly, the act requires more than "registration, filing or recording" as a condition precedent to enforcement. "Registration, filing or recording" are the beginning of a statutory procedure that must culminate in **"recognition"** and that requires either a failure to object, after notice, or a court order granting recognition after appropriate proceedings to resolve the objections. "Recognition," therefore, is a status achieved only after the resolution of disputed issues of law or fact that are raised and decided in accordance with fundamental notions of due process: notice and an opportunity to be heard.

By relegating UFMJRA practice to the performance of clerical functions, the appellate court misapprehended the "large context of the text" from which it drew its view of the legislature's intent. The appellate decision, therefore, cannot be reconciled either with section 95.11(2)(a)'s clear applicability to

“proceedings,” or with the UFMJRA’s provision for proceedings to resolve substantive disputes through the procurement of a court order.

4. The Legislature Did Not Impliedly Repeal Section 95.11(2)(a), Florida Statutes

The Fifth DCA has usurped the Florida Legislature's power by ignoring the plain and ordinary meaning of the language in the UFMJRA and the limitations statutes to apply a five-year limitations period to the commencement of proceedings to enforce foreign judgments. In construing a statute, courts are not permitted to attribute to the legislature an intent beyond that expressed. *Public Health Trust v. Lopez,* 531 So.2d 946 (Fla. 1988); *Bill Smith v. Cox,* 166 So. 2d 497, 498 (Fla. 2d DCA 1964). Because the UFMJRA contains no express statute of limitations, the Fifth DCA was bound to apply the existing limitations statutes in a way that respects their plain meaning.

The appellate court impermissibly concluded that the UFMJRA's silence on the statute of limitations evidences an intent that the twenty-year statute applicable to domestic judgments should apply instead of the five-year statute applicable foreign judgments. It was also bound to construe the more recently enacted UFMJRA in a manner that harmonizes it with 95.11(2)(a) and does not effect an implied repeal of the latter. *Woodgate Development Corporation v. Hamilton Investment Trust, supra*. Since the legislature has nowhere expressed any intent that section 95.11(2)(a) be repealed, it must be deemed to apply. *Id.* Since the Fifth DCA's construction of the UFMJRA

operates as a repeal by implication of section 95.11(2)(a), it may not be upheld in the absence of positive repugnancy between the UFMJRA and §95.11(2)(a), unless the UFMJRA clearly states that such effect is intended. *New Smyrna v. Mathewson,* 113 Fla. 861, 152 So. 706 (Fla. 1934). There is no such expressed intent and no repugnancy between the UFMJRA and Section 95.11(2)(a), which must therefore be held to govern.

Furthermore, as discussed below, the court's application of the UFMJRA retroactively to revive causes of action extinguished ten and eleven years prior to its enactment, produces an unconstitutional result. A repeal of a statute may not be implied if it will produce an unconstitutional result. *Jacksonville v. Bowden,* 67 Fla. 181, 64 So. 769 (Fla. 1914).

B. APPLICATION OF THE TWENTY-YEAR PROVISION VIOLATES THE BAR AGAINST JUDICIAL LEGISLATION

The Fifth DCA's analysis led it to a remarkable result: section 95.11(1), which expressly applies to judgments of Florida courts, was held applicable to proceedings to recognize French judgments, while section 95.11(2)(a), which applies to foreign judgments, was held inapplicable to proceedings to recognize French judgments.

The appellate court reached this incongruous result by attempting to achieve the "right" degree of reciprocity. It believed that the five-year limitations period would deter

foreign countries from adequately recognizing Florida judgments. The court also feared what it termed "super-reciprocity" by according foreign country judgments more respect, that is, a longer enforceable life, than that accorded Florida judgments.

The Fifth DCA settled on a more "moderate" approach: section 95.11(1)'s twenty-year period, meaning that a French judgment would get the same respect in Florida as a Florida judgment. The twenty-year period would commence when the judgment was entered in France, just as if it had been entered in Florida. If the judgment is "filed, registered or recorded" during its twenty year life, it may be enforced in Florida as though it were a Florida judgment; and to avoid "super-reciprocity," the judgment would no longer be enforceable on the twentieth anniversary of its entry in France.

Such an attempt to balance policy objectives is the exclusive province of the legislature. While the court's goal may be noble, its means are wholly improper, and violate the fundamental principle of separation of powers:

> We do not deem it necessary to cite any of the myriad of cases wherein we have, without exception, held that under our system of three distinct, separate and independent branches of government – executive, legislative and judicial – no one of them should infringe upon the province of either of the others. **Courts construe and interpret the laws, but they do not make them. They should never assume the prerogative of judicially legislating.**

Hancock v. Board of Public Instruction of Charlotte County, 158 So. 2d 519, 522 (Fla. 1963) (emphasis supplied).

The Fifth DCA strayed into this prohibited territory with its strained construction of the limitations statutes. Florida law prohibits an appellate court from attempting to vary the clear legislative intent expressed in the language of a statute even if such change is designed to bring about what the judge may conceive to be a more proper result. *Tatzel v. State,* 356 So. 2d 787, 790 (Fla. 1978); *Vocelle v. Knight Bros. Paper Co.,* 118 So. 2d 664 (Fla. 1st DCA 1960). The proper forum within which to seek change is the legislature. *Tatzel* at 790. This fundamental principle is set forth in this Court's decision in *McDonald v. Roland,* 65 So. 2d 12, 14 (Fla. 1953):

> Where the Legislature's intention is clearly discernible, the Court's duty is to declare it as it finds it, and it may not modify it or shade it, out of any consideration of policy or regard for untoward consequences.

The Fifth DCA violated this duty and erred in applying § 95.11(1) rather than § 95.11(2)(a).

C. LCL'S JUDGMENTS WERE TIME-BARRED FIVE YEARS AFTER THEIR RENDITION, TEN YEARS PRIOR TO ENACTMENT OF THE UFMJRA, AND SUBSEQUENT ENFORCEMENT OF THOSE JUDGMENTS IN FLORIDA IS AN UNCONSTITUTIONAL DEPRIVATION OF NADD'S PROPERTY RIGHT IN THE EXTINGUISHMENT OF LCL'S CLAIMS

The district court's ruling must be reversed for the

additional and independent reason that enforcement of LCL's judgments against Nadd would violate Nadd's due process rights under the Florida constitution. LCL's rights to bring actions to enforce these judgments unequivocally were extinguished ten and eleven years prior to the 1994 enactment of UFMJRA. That enactment was not intended to revive those rights. Moreover, any such attempt would be constitutionally prohibited.

Prior to 1994, the year the Florida Legislature enacted the UFMJRA, the only means of enforcing a foreign country's judgment in Florida was through the filing of a complaint seeking recognition at common law. The two French judgments were filed of record in France on May 9, 1978 and October 1, 1979, respectively. The statute of limitations began to run on any action to enforce these judgments in Florida on those dates. *Turner Murphy Co. v. Specialty Construct., supra* (action to enforce South Carolina judgment in Florida was timely under section 95.11(2)(a) because it was commenced in Florida within five years of its entry in South Carolina).

Thus, LCL's right to commence actions or proceedings to enforce the two French judgments became time-barred, respectively, on May 9, 1983 and October 1, 1984, five years after they were entered in France. This was conclusively established on the instant record as a matter of both fact and law.

The plain language of the UFMJRA and the statute of limitations permits no conclusion except that the Legislature intended section 95.11(2)(a) to fully apply to actions under the Uniform Act. However, if the Legislature had intended, through the UFMJRA, to revive those extinguished claims, its enactment would violate Nadd's due process rights under the Florida constitution. Once a right to assert a claim for relief is extinguished by operation of the applicable statute of limitations, the legislature is constitutionally prohibited from reviving that right. *Wiley v. Roof, supra.*

In *Wiley*, this Court considered the constitutionality of an act that purported to increase the limitations period applicable to claims based on child molestation from four to twenty years. The plaintiff's claim had already become time-barred, but the subsequent amendment purported to revive the claim. This Court held that, under the Florida Constitution's due process clause, the action, once time-barred, could not be revived:

> Florida's statute of limitations, section 95.11, **bars all actions** unless commenced within the designated times. Once barred, the legislature cannot subsequently declare that "we change our mind on this type of claim" and then resurrect it. **Once an action is barred, a property right to be free from a claim has accrued.**

641 So. 2d at 68 (emphasis added). Notably, this Court did not limit the scope of its holding to any particular class or category of claim. It said section 95.11 "bars all actions"

unless brought within the prescribed periods. The Legislature could not change its mind on "this type of claim," a generic reference to any type of claim falling within section 95.11's ambit. This broad language protects an individual's constitutional right to be forever free from a claim that has once become time-barred, and defines the Legislature's constitutional incapacity to impair that right.

It follows that the right to domesticate LCL's judgments against Nadd expired in 1983 and 1984, eleven and twelve years before these proceedings were commenced. The Legislature does not have the constitutional power to reinstate that right. Any effort to do so would be a violation of due process.

Further, because the UFMJRA does not expressly provide for retroactive application, this Court would have to find that intent to be implicit in the act's provisions. However, that implication is constitutionally prohibited. A court must construe enactments to make them conform to the constitution without violating the plain intent of the legislature. *State v. Mitro,* 700 So. 2d 643 (Fla. 1997), *reh. den.* (October 21, 1997). Accordingly, this Court must resolve any doubts about a statute's meaning in favor of a construction that will render it constitutional. *State v. Global Communications Corp.,* 648 So. 2d 110 (Fla. 1994*).*

These controlling authorities mandate the conclusion that

the Fifth DCA erred in construing UFMJRA to require application of the twenty-year statute of limitations, and in applying this limitations period retroactively to revive extinguished rights to enforce the Judgments in Florida. A statutory construction that effectively revives time barred actions is a deprivation of due process, and is unconstitutional under *Wiley.*

Although this due process issue was briefed below, the appellate court chose not to address it. It is respectfully submitted that there can be no principled distinction between *Wiley v. Roof* and the facts of this case, and that the Fifth DCA's decision must be reversed on this ground alone. In view of *Wiley*, this Court must hold either that section 95.11(2)(a) sets forth the limitations period applicable to UFMJRA proceedings, or that the statute cannot be applied retroactively to revive the extinguished rights to enforce the instant Judgments in Florida.

D. THE DISTRICT COURT'S HOLDING IS PREMISED UPON THE ERRONEOUS ASSUMPTION THAT THERE IS NO PRECEDENT GOVERNING APPLICABILITY OF THE STATUTE OF LIMITATIONS TO UFMJRA CASES

Saying that it had found no cases discussing applicability of the forum state's statute of limitations to the recording of a foreign judgment under the UFMJRA, the Fifth DCA looked for guidance to decisions under the analogous Uniform Enforcement of Foreign Judgments Act (UEFJA). 741 So.2d at 1167. However, the

court overlooked the one reported decision under the version of UFMJRA adopted in Florida, addressing the statute of limitations issue. *Vrozos v. Sarantopoulos, supra*. In *Vrozos,* the Illinois appeals court considered whether that state's general five-year statute of limitations applied to an "action to commence registration" of a Canadian judgment that was "civil in nature," where no specific statute of limitations was given in the UFMJRA. The court found that it did apply.

The Fifth DCA should clearly have followed *Vrozos* to effectuate a uniform interpretation and construction of the uniform act in all states. This Court has held that a Florida appellate court should follow decisions of other states that have addressed the issue arising under a uniform act. *Valentine v. Hayes*, 102 Fla. 157, 135 So. 538, 540 (Fla. 1931); *Accord, Teague v. Hoskins,* 709 So. 2d 1373 (Fla. 1998) (supporting resort to prior holdings interpreting Uniform Negotiable Instruments Law).

Ironically, the Fifth DCA acknowledged that uniform laws are to be "uniformly interpreted." However, its opinion fails to address *Vrozos*, except to include it as part of a string cite in a footnote directed to UEFJA cases. 741 So.2d at 1168. The explanatory parenthetical acknowledges that the case arises "under UFMJRA", but it addresses only that portion of the

opinion that deals with the effect of a judgment's renewal in the originating jurisdiction.

Importantly, the trial court had obeyed this Court's ruling in *Valentine,* and followed *Vrozos:*

> Registration proceedings under the Act are "actions" within the meaning of section 95.11(2)(a), Florida Statutes. *See Vrozos v. Sarantopoulos*, 552 NE 2d 1093, 1098 (App. Ct. Ill. 1990) (general five year statute of limitations applied to an action to commence registration of a foreign judgment where no specific statute of limitations was given in the Uniform Foreign Money Judgments Recognition Act). Thus, section 95.11(2)(a) governs actions to register judgments of a court of a foreign country and is applicable to this case. [R.573-75]

The Fifth DCA should also have followed *Vrozos*, and held that LCL's 1978 and 1979 judgments became time-barred in 1983 and 1984 under section 95.11(2)(a).

It should be noted that the Illinois legislature subsequently repealed the UFMJRA and adopted a different uniform act applicable to domestic enforcement of foreign country judgments. That act, the Uniform Enforcement of Foreign Judgments Act, 735 Ill.C.S. 5/12-650 through 12-657, (West 1992), does not contain the UFMJRA procedure; that is, "recognition," following notice, objections, a hearing and an order, is no longer required in Illinois. Subsequent Illinois decisions have confirmed that this new statute changed the result reached by *Vrozos* under the UFMJRA, because the new statute did not provide a procedure that is "civil in nature."

E.g., La Societe Anonyme Goro v. Conveyor Accesories, Ind., 286 Ill.App.3d 867, 677 N.E.2d 30 (Ill. App. 2 Dist. 1997) (prior to 1991 under Illinois UFMJRA, five-year general statute of limitations applied because act was silent and action was civil in nature); *In re Marriage of Kramer*, 253 Ill.App.3d 923, 625 N.E.2d 808, 811-12 (Ill. App. 1993) (legislature's 1991 adoption of new uniform law changed practice as set forth in *Vrozos*). Accordingly, the five-year Illinois general statute of limitations does not govern proceedings under the new Illinois statute.

The Fifth DCA cited *Johnson v. Johnson*, 267 Ill.App.3d 253, 642 N.E.2d 190 (Ill.App. 2 Dist. 1994), a UEFJA case that reasons by analogy to the new uniform law discussed in *La Societe Anonyme Goro* and *Kramer*. 741 So.2d at 1171. However, the Fifth DCA apparently missed the fact that *Johnson*, in analogizing to this act, was analyzing a statute that was different in form and substance than Florida's UFMJRA, the act analyzed in *Vrozos*.

The Illinois legislature decided to change the law as correctly construed in *Vrozos*. It replaced the UFMJRA with a different uniform law, and subsequent cases reached a different result as to the statute of limitations. The Fifth DCA has tried to make the same change, but only the Florida legislature

is empowered to do so. *Vrozos* correctly applies the statute of limitations applicable to actions on foreign judgments to UFMJRA proceedings. If this is to change in Florida, the legislature must change the statutes.

E. IMPORTANT DIFFERENCES BETWEEN THE UFMJRA AND UEFJA EXPLAIN THE FIFTH DCA'S CONFUSION AND REVEAL THE ERROR IN ITS HOLDING

As discussed above under the UFMJRA, a foreign country's judgment is not enforceable in Florida upon its "filing, registration or recording." Instead, enforcement must await a court order granting "recognition" upon proceedings to resolve specified defenses raised by objection after notice.

The UEFJA is different. It must be because it is designed to give effect to the United States Constitution's mandate that sister state judgments receive "full faith and credit." Accordingly, under the UEFJA, a sister state judgment is treated as a Florida judgment immediately upon its "recordation" in Florida. Section 55.503, *Florida Statutes,* provides:

> A copy of the foreign judgment certified in accordance with the laws of the United States or of this state may be recorded in the office of the clerk of the circuit court of any county. The clerk shall file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state. A judgment so recorded shall have the same effect and shall be subject to the same rules of procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state.

Similarly, section 55.505 of the UEFJA provides for notice to the judgment debtor, but it does not authorize the filing of a notice of objection and, most importantly, it does not defer enforcement until there is an order granting recognition. Instead, the judgment becomes enforceable immediately upon the expiration of thirty days after the mailing of notice. *Fla. Stat*. §55.503(1), (2) & (3). The legal and equitable defenses that may be raised are raised as though the judgment had been entered in Florida in the first place. These defenses are principally set forth in Florida Rule of Civil Procedure 1.540.

This procedure is the one the Fifth DCA presumed to be applicable under the UFMJRA, and it would be logical, given this procedure, for a court to apply the twenty-year domestic judgment limitations period to a sister state judgment that had been "recorded" under the UEFJA. This would follow from the judgment's status as a "Florida" judgment upon the expiration of thirty days. But the Florida legislature anticipated this, and made clear its intent that a foreign judgment shall remain a foreign judgment for limitations purposes:

> Nothing contained in this act shall be construed to alter, modify, or extend the limitation period applicable for the enforcement of foreign judgments.

Fla. Stat. §55.502(4). Importantly, this is a non-uniform

provision, adopted to make it crystal clear that section 95.11(2)(a)'s five-year limitations period applies fully to a proceeding under the UEFJA.

However, the Fifth DCA, relying on UEFJA decisions in other states, reached a decision prohibited by section 55.502(4). It justified this by noting that Florida's version of the UFMJRA was silent on the statute of limitations question. This silence, however, does not logically permit the inference that the existing statute of limitations applicable to actions on foreign judgments would no longer apply. Where a more recent statute relates to matters covered in whole or in part by a prior statute, the two should be harmonized so that each statute will be given its intended effect. *Ellis v. City of Winter Haven, supra.*

In fact, it would have been redundant for the legislature to provide a limitations period within the UFMJRA, as it had clearly expressed its intent on this subject in section 95.11(2)(a). Thus, reliance on decisions in other states under the UEFJA must be undertaken with extreme caution, given the Florida legislature's inclusion of a non-uniform provision mandating continued application of section 95.11(2)(a)'s limitations period.

The same caution is mandated by the important differences between the two acts. The UFMJRA, in contrast with the UEFJA,

requires a court order granting "recognition" as a precondition to enforcement. Moreover, a court has discretion to deny recognition under the UFMJRA that it does not have under the UEFJA. That is because "comity," the object of the UFMJRA, permits an evaluation of the considerations enumerated in section 55.605. These include due process, service of process, the procurement of a judgment by fraud, and others. In contrast, the full faith and credit clause, which does not apply to foreign country judgments, prohibits consideration of these issues, if that would give the sister state judgment less dignity than is accorded a Florida judgment.

Because of these differences, there was no reason for the legislature to specify, as it did in the UEFJA, that section 95.11(2)(a) would apply to UFMJRA proceedings. A foreign country judgment is not treated as a Florida judgment simply upon its filing and expiration of a notice period. UFMJRA proceedings include a notice of objection and their resolution. If an intent were to be inferred from the act's structure and silence, that intent, clearly, is that section 95.11(2)(a) applies to UFMJRA proceedings.

A survey of the reported decisions under the UEFJA reveals that the majority of jurisdictions reached the same result that the Florida Legislature mandated by including the non-uniform section 55.502(4) in Florida's UEFJA.

F. THE DISTRICT COURT'S OPINION IS CONTRARY TO THE POSITION OF THE MAJORITY OF UEFJA STATES

1. The Majority and Better Reasoned View is Fully in Accord With *Vrozos*

A majority of UEFJA states have held that the foreign judgment must be "recorded" within the same period applicable to the commencement of common law actions on foreign judgments. The Fifth DCA's decision, therefore, would place Florida within the minority view if Florida's version of the UEFJA did not contain section 55.502(4), expressly prohibiting that very result.

In fact, at least thirteen states have squarely held that proceedings aimed at recording and enforcing a sister state judgment under the UEFJA are time-barred if not commenced within those states' statutes of limitation applicable to actions on foreign judgments, measured from the date the judgment is filed of record in the originating jurisdiction. In each of those states, for limitations purposes, proceedings under the UEFJA are treated the same as common law actions. *G & R Petroleum, Inc. v. Clements,* 127 Idaho 119, 898 P. 2d 50, 52-53 (Idaho 1955) (UEFJA action time-barred if not commenced within Idaho's six-year limitations period applicable to common law actions to enforce foreign judgments); *Lawrence Systems, Inc. v. Superior Feeders, Inc., et al, supra* (Texas' ten-year statute of limitations applies equally to proceedings under UEFJA and common

law actions to enforce foreign judgment); *CitiBank (South Dakota), N.A. v. Phifer,* 181 Ariz. 5, 887 P. 2d 5 (Ct. App. Ariz. 1994) (Arizona statute of limitations applicable to foreign, not domestic, judgments applies to UEFJA actions); *Alexander Construction Co. v. Weaver*, 3 Kan. App. 2d 298, 594 P. 2d 248 (Kan. 1979) (Kansas five-year statute of limitations for enforcing foreign judgments bars enforcement); *In re Marriage of Ulm*, 693 P. 2d 181 (Wash. App. 1984) (UEFJA proceeding to enforce California judgment for child support was time-barred under ten-year statute of limitations applicable to foreign judgments); *Ritterbusch v. New London Oil Company, Inc.,* 927 S.W. 2d 873 (Ct. App. Mo. 1996), *reh. and/or transfer den.* (1996) (registration of Pennsylvania judgment under UEFJA not time-barred because registration proceeding commenced within ten-year statute of limitations applicable to foreign judgments); *Yusten v. Monson*, 325 N.W. 2d 285 (N.D. 1982) (registerability of foreign judgment under UEFJA governed by North Dakota's ten-year statute applicable to judgments of sister states); *Ames v. Ames,* 652 P. 2d 1280, 1284 (Ct. App. Or. 1982) (UEFJA action time-barred under Oregon's ten-year limitations period applicable to foreign judgments); *Davis v. Davis,* 558 So. 2d 814 (Miss. 1990) (foreign judgments registered pursuant to the UEFJA are subject to Mississippi's seven-year statute of limitations, applicable to

actions founded on foreign judgments, measured from time of rendition in originating jurisdiction); *First National Bank of Okaloosa County v. Bay,* 1994 WL 85966 (Ct.App. Tenn. 1994) (Florida judgment time barred under UEFJA because registration proceeding was not commenced within Tennessee's ten-year limitations period applicable to foreign judgments); *Fairbanks v. Large,* 957 S.W. 2d 307 (Ky.App. 1997) (UEFJA proceeding on Florida judgment time barred because registration proceeding was not commenced within Kentucky's 15-year limitations period for domesticating foreign judgments); *Abba Equipment, Inc. v. Thomason,* 335 S.C. 477, 517 S.E. 2d 235 (S.C. App. May 3, 1999), *rehearing denied* (July 24, 1999), *cert. dismissed* (October 27, 1999) (UEFJA enforcement subject to South Carolina statute of limitations applicable to actions on foreign judgments*); Rion v. Mom and Dad's Equipment Sales and Rentals, Inc*., 116 Ohio App. 3d 161, 687 NE2d 311 (Ct. App. Ohio 1996)(UEFJA action governed by fifteen year statute of limitations applicable to foreign judgments).[5]

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[5] Two decisions that had adopted the majority view have since been questioned in *dicta. See*, *National Union Fire Insurance of Pittsburgh, Pennsylvania v. Nicholas,* 438 Pa. Super. 98, 651 A. 2d 1111 (Pa. 1994) (UEFJA proceeding barred by Pennsylvania limitations statute applicable to foreign judgments); *Hamilton v. Seattle Marine & Fishing Supply Co.,* 562 P. 2d 333 (Ala. 1977) (statute of limitations applicable to sister state judgments applies to UEFJA action). But both later decisions, *Morrissey v. Morrissey*, 713 A.2d 614 (Pa. 1997) and *State ex*

Notably, these majority-state decisions under the UEFJA are in accord with *Vrozos,* the only case to reach the limitations question under the UFMJRA. And all thirteen decisions reach the same conclusion mandated by section 95.11(2)(a)'s plain language. Accordingly, it is beyond fair dispute that the Fifth DCA's decision in this action is contrary to the great weight of authority, a point that the decision did not concede.

The Majority State View As Discussed in *Citibank v. Phifer*

One majority state decision under the UEFJA, *Citibank v. Phifer*, *supra*, directly considers and rejects the "solution" adopted by the Fifth DCA; that is, the adoption of domestic limitations period for domestication of foreign judgments. Because the *Citibank v. Phifer* discussion is both illuminating and compelling, it is presented at some length here:

> Although filing a judgment under the Uniform Act domesticates it for purposes of enforcement, **it still remains a foreign judgment subject to the time limitations imposed** by A.R.S. § 12-544(3). The purpose of the Uniform Act is to provide the enacting state with a speedy and economical method of enforcing foreign judgments so as to prevent the cost and harassment that would result if further litigation were required. *Eschenhagen*. The Uniform Act does not create substantive rights. It is an act creating

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rel. Inman v. Dean, 902 P.2d 1321 (Alaska 1995), turn on the distinction between an "action" and a "proceeding", a distinction that cannot be drawn in Florida, given section 95.011's definition of "action" as a "civil action or proceeding." See discussion, *infra*.

> **procedures** for **enforcing** rights conferred by the Full Faith and Credit Clause of the United States Constitution. *Ones v. Roach,* 118 Ariz. 146, 575 P. 2d 345 (app. 1977). The holder of a foreign [sister state] judgment can either bring an action to enforce his judgment or file under the Uniform Act. We can find no logical reason for giving the holder of a foreign judgment more time to enforce the judgment in Arizona by choosing to file under the Uniform Act. In either case, the holder is still enforcing a judgment in Arizona that is barred after four years, A.R.S. § 12-544(3), **and nothing in the language of** A.R.S. § 12-1702, **which provides for treatment of the foreign judgment by the clerk of the superior court in the same manner as a domestic judgment, extends the statute of limitations governing foreign judgments.**
>
> Although a foreign judgment filed under the Act is subject to defenses and proceedings for opening, vacating or staying as a judgment of the superior court in Arizona, *id.,* **the filing does not turn the foreign judgment into a domestic judgment for the purpose of avoiding the statute of limitations governing the enforcement of foreign judgments.**
>
> In summary, A.R.S. § 12-544(3) dictates the time within which a foreign judgment can be enforced in Arizona. When a foreign judgment is timely filed, the Uniform Act gives the clerk the authority to treat that judgment in the same manner as a domestic judgment. **Filing a judgment after expiration of the statute of limitations period for the enforcement of foreign judgments does not entitle the holder to the extended time limits enjoyed for the enforcement of domestic judgments.**

887 P. 2d at 6 (emphasis supplied).

Phifer's analysis is, quite simply, an example of a court giving effect to the legislature's intent as taken from its plain language. A "foreign judgment" is just that. It does not become a Florida judgment simply because it is treated like one for purposes of enforcement. Florida's legislature went so

far as to expressly negate the inference that this treatment would render the foreign judgment limitations period inapplicable. *Fla. Stat*. §55.502(4). The Fifth DCA's analysis does violence to all of this, and it must be rejected.

3. Florida Is Bound To Follow The Majority View

The Fifth DCA acknowledged that section 55.502(4) is a non-uniform provision. Inescapably, through this provision, the legislature has forbidden any UEFJA construction that extends the limitations period beyond section 95.11(2)(a)'s five-years. This view comports with the UEFJA majority view, requiring application of the limitations period applicable to actions on foreign judgments. Thus, if Florida's UFMJRA is construed by analogy to UEFJA, that analogy must recognize the legislature's intent in enacting section 55.502(4). It follows, inevitably, that Florida courts are bound to follow the majority of UEFJA jurisdictions, which reach the same result without the benefit of the non-uniform section 55.502(4).

The Fifth DCA, while professing confusion as to section 55.502(4)'s meaning, essentially concedes that the legislature intended the five-year statute to apply. 741 So.2d at 1168-69. It suggests two possible interpretations. First, it considers that the drafters may have wished to make clear that the five-year statute remains a bar to common law actions on judgments.

This argument assumes a distinction in Florida between common law actions and UEFJA proceedings, which is untrue, given section 95.011's definition. The Fifth DCA later recognized this, finding a "semantical solution" to be unavailable, thus obliterating this argument's underpinnings. 741 So.2d at 1171.

The court alternatively suggests that the language in section 55.502(4) may be read to mean that a foreign judgment recorded under the uniform act remains "subject to the five-year statute of limitations bar rather than the twenty-year bar applicable to domestic judgments despite the later provisions which require that it be treated in all ways like a Florida judgment." This, of course, comports with Petitioner's position and the majority view as reflected in *Phifer*.

The court never squarely selected either alternative, proceeding instead to a survey of UEFJA decisions in jurisdictions that apparently lacked this non-uniform provision. The effect was to pay lip service to section 55.502(4) without following its mandate.

4. Pre-UEFJA Cases Also Require Reversal

Although there are no reported Florida cases construing application of the Florida statute of limitations to sister state or federal judgments recorded under the UEFJA in Florida, there are pre-UEFJA cases in Florida that merit consideration. These are *Quaintance v. Fogg*, 392 So. 2d 360 (Fla. 2d DCA 1981),

Winland v. Winland, 416 So. 2d 520 (Fla. 2d DCA 1982); *Kiesel v. Graham*, 388 So. 2d 594 (Fla. 1st DCA 1980), *rev. denied by* 397 So.2d 778 (Fla. 1981), and *Turner Murphy Co. v. Specialty Constructors*, 659 So. 2d 1242 (Fla. 1st DCA 1995). All applied Florida's five-year statute of limitations, §95.11(2)(a), to pre-UEFJA actions seeking enforcement of foreign judgments rendered by a sister state or federal court. In doing so, they adhere to the "plain meaning" of section 95.11(2)(a) that judgments of courts in other states or other countries, be governed by that section.

These cases are instructive, however, in showing that pre-UEFJA, the limitations period applicable to "actions" was §95.11(2)(a). Since Florida defines "actions" to embrace "proceedings" as well, and since Florida's version of the UEFJA contains no statute of limitations and indeed expressly admonishes against altering preexisting limitations provisions, §55.502(4), these pre-UEFJA Florida cases have precedential value that should not have been disregarded.

G. THE FIFTH DCA'S OPINION ADOPTS A MINORITY VIEW AS TO THE STATUTE OF LIMITATIONS APPLICABLE TO UEFJA PROCEEDINGS

The Fifth DCA cited four minority view cases to support its position that the section 95.11(1) twenty-year limitations period for actions on Florida judgments should apply to UFMJRA proceedings on foreign country judgments. These are *Hunter*

Technology, Inc. v. Scott, 701 P.2d 645 (Colo. App. 1985); *Williams v. American Credit Services, Inc.*, 229 Ga. App. 801, 495 S.E.2d 121 (Ga. App. 1997); *Wright v. Trust Company Bank*, 466 S.E.2d 74 (Ga. App. 1995); and *Johnson v. Johnson, supra*. The court's opinion characterizes these cases as representing the "more moderate approach" it adopted:

> If the foreign judgment is enforceable in the originating jurisdiction, it can be registered in the forum state. But its enforcement and effect in the forum state turns on compliance with the forum state's statute of limitations, which is applicable to domestic judgments gauged from the date the judgment was rendered; not the registration date.

In fact, none of these cases supports application of this holding to the UFMJRA. As is discussed above, *Johnson v. Johnson* is a UEFJA decision that applies Illinois law after the UFMJRA was replaced by a different uniform act lacking the essential "recognition" requirement. That same line of cases recognizes that *Vrozos* mandates a different result under the UFMJRA.

Wright also rejects application of the limitations statute applicable to foreign judgments in UEFJA cases, citing the "same treatment" language rejected in *Citibank v. Phifer*. More importantly, its decision rests on the view that the UEFJA proceeding "is not a new action but merely picks up where it was left off in the state where rendered." 466 S.E. 2d at 75. This is the "action" versus "proceeding" analysis that is irrelevant

in Florida. Further, *Wright* does not expressly state that a foreign judgment is subject to the statute of limitations applicable to domestic judgments. Similarly, *Williams* is a judgment of the same Georgia appellate court and follows *Wright.* Neither decision selects any limitations period, including the domestic judgment limitations period that the Fifth DCA seized on here.

Hunter also does not stand for the proposition for which it is cited. It held that the Colorado six-year limitations statute applicable to foreign judgments does not apply to a UEFJA "summary proceeding." This holding turned exclusively upon its finding that Colorado's filing procedure is not an "action" within the meaning of Colorado's limitations statute, citing *Producer's Grain Corp. v. Carroll,* 546 P.2d 285 (Okla. App. 1976) as authority. The opinion does not mention the domestic judgments limitations statute at all and, in fact, states that the UEFJA "has no time deadlines for filing." Thus, as *Hunter* does not apply any limitations statute, it does not support the Fifth DCA's position.

1. Other Cases Cited by the District Court are Wholly Distinguishable, are Irrelevant, and Do Not Support the District Court's Holding

The Fifth DCA cited several other minority court decisions, without expressly relying upon them. These and others are

discussed below for the purpose of providing the court with a complete overview of the minority view cases.

Importantly, not all of these cases even support the minority view at all. However, they are cited either in the Fifth DCA opinion or in other cases to support that view, and they are included for that reason.

a) *Stanford v. Utley*

The Eighth Circuit's decision in *Stanford v. Utley*, 341 F. 2d 265 (8th Cir. 1965) does not address the same limitations issues presented in the instant case. *Stanford* arose under 28 U.S.C. § 1963, which provides the procedure for registering a judgment of a United States District Court in a district located in a different state. Once registered, the judgment becomes enforceable under the laws of the registration state. To this extent, the statute is analogous to recognition proceedings under both the UFMJRA and the UEFJA.

The federal judgment in *Stanford* was rendered by a District Court in Mississippi and registered in the District Court in Missouri **the next day.** The only issue was which state's statute controlled the length of the judgment's "enforceable life" in Missouri. The court held that the judgment was valid in Missouri for as long as a Missouri judgment would be valid in that state, and that this would be measured from the date the judgment was registered in the Missouri district court:

> The issue is whether a federal judgment creditor is entitled to enforcement in a sister state when his judgment is registered in the sister state within the judgment state's limitation period but enforcement is sought later at a time within the registration state's own limitation period but after the expiration of the period of limitations of the judgment state.

Id. at 266.

Without question, the "limitations" periods referred to in this passage are those establishing the **enforceable life** of a judgment. The Florida equivalent is *Fla. Stat.* § 95.11(1) which provides for a twenty-year limitations period for actions on a new Florida judgment.[6] This "limitations" period applies equally to judgments rendered by Florida courts and foreign courts **after** they are recognized in Florida under section 55.604(6). If applied here, *Stanford's* rationale would hold only what the UFMJRA expressly provides; that is, **after** the foreign judgment is recognized, it is enforceable in Florida for twenty years.

The Fifth DCA's citation of *Stanford* is inapposite as the statute of limitations on **commencement** of actions was not an issue. The court's holding dealt only with whether registration could have the effect of giving the new Missouri judgment a longer enforceable life than the original possessed in Mississippi. Even here, the court qualified its holding:

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[6] Similarly, section 55.081, *Florida Statutes*, limits the lien of a Florida judgment to the same twenty-year period for commencement of actions on domestic judgments.

> [w]e do not now go so far as to say that registration effects a new judgment in the registration court for every conceivable purpose.

Id. at 271.

Other courts' discussion of *Stanford* makes it abundantly clear that it does not involve the issue before this Court, namely the limitations statute applicable to the initial registerability and recognition of a foreign judgment, and certainly does not support rejection of § 95.11(2) in favor of 95.11(1). *See, e.g., Matanuska Valley Lines, Inc. v. Molitor,* 365 F. 2d 358 (9th Cir. 1966), *cert. den.* 386 U.S. 914 (1967) (in *Stanford* registrability of judgment was not disputed; issue was effect of registration upon subsequent enforcement proceedings).

b) *Pan Energy v. Martin*

Pan Energy v. Martin, 813 P. 2d 1142 (Utah 1991), cited by the Fifth DCA as adopting the view expressed in *Stanford*, also does not address the issues before this Court. In *Pan Energy*, a judgment creditor brought a sister state judgment to Utah less than eight years after it had been filed of record in the originating jurisdiction. The court, following *Stanford,* held that the judgment had become a new Utah judgment and, like all Utah judgments, it could be enforced for a period of eight years from its Utah recordation. 813 P.2d at 1144. To this extent, *Pan Energy*, like *Stanford,* merely deals with the enforceable

life of a judgment.

In fact, however, *Pan Energy* supports Petitioner's position that "proceedings" under the UEFJA are "actions" that, like any other, must be commenced within the limitations period of the domesticating state, as the court found that Utah's limitations period for actions on sister state judgments "also applies to the filing of a judgment under the Foreign Judgment Act (the UEFJA) **which is the equivalent of an action**." 813 P. 2d at 1145 (emphasis supplied).

(c) *Drllevich Constr., Inc. v. Stock*

Drllevich Construction, Inc. v. Stock, 958 P. 2d 1277 (Ok. 1998) does not even involve limitations on actions, but rather the application of Oklahoma's dormancy statute as it applies to foreign judgments registered under the UEFJA. That statute provides that any judgment becomes unenforceable if it becomes "dormant"; that is, if no action has been taken to enforce it within the preceding five years. The question before the *Drllevich* court was whether that five-year period of inactivity is measured from the date of the judgment's rendition in the foreign state or, instead, from the time it is registered in Oklahoma. The court's answer was that the foreign judgment, **once recognized**, is treated the same as if it were an Oklahoma judgment in the first place. This, in turn, assumes that the recognition proceedings themselves were timely commenced. As the *Drllevich* court also extensively analyzed and relied on *Pan Energy, supra,* there is no reasoned basis upon which *Drllevich* may be said to support the Fifth DCA's position.

(d) *Producer's Grain*

In *Producer's Grain Corp. v. Carroll*, 546 P.2d at 285 (Okla. App. 1976), the Oklahoma appellate court held that the statute of limitations applicable to suits on foreign judgments did not govern foreign judgment enforcement proceedings under

Oklahoma's UEFJA. It noted that no court had yet decided whether the 1964 version of the UEFJA, which omitted any reference to a limitations period, was subject to the statute of limitations for actions on foreign judgments. The act's earlier version had expressly incorporated that limitations period. The court resolved the issue by reasoning that UEFJA had created a new category of "proceeding" that was not an "action" within the meaning of Oklahoma's statute of limitations applicable to "actions" on foreign judgments.

As Fifth DCA put it, the court in *Producer's Grain* "seized upon" the dropping of the express provision and the semantic distinction to conclude that the shorter limitations period for enforcement of foreign judgments should not apply to "registration and enforcement" of foreign judgments. Indeed, no statute of limitations would apply, since there was no "action."

Of course, the *Producer's Grain* rationale is irrelevant in Florida. *Fla. Stat. § 95.011.* Moreover, it clearly erred in seizing upon the later UEFJA version's omission of a limitations provision. *See Eschenhagen v. Zika*, 144 Ariz. 213, 696 P.2d 1362 (Ct.App.Ariz. 1985); *Fairbanks v. Large*, 957 S.W.2d 307,310 (Ky. Ct. App. 1997) (rejecting *Producer's Grain* holding as legislature is presumed to be aware of pre-existing statutes and

silence in new statute does not warrant implication of repeal).

(e) *Morrissey v. Morrissey*

In *Morrissey v. Morrissey,* 552 Pa. 81, 713 A. 2d 614 (Pa. 1997), the Supreme Court of Pennsylvania held that the four-year statute of limitations applicable to actions on judgments of any state did not bar registration and enforcement of a foreign support order under the Revised Uniform Reciprocal Enforcement of Support Act because the enforcement proceeding was not an "action" as that term is defined in the Pennsylvania limitations statute. The court, *in dicta*, criticized an earlier lower court decision, *Union Fire Ins. of Pittsburgh, Pa. v. Nicholas,* 438 Pa. Super. 98, 651 A. 2d 1111 (1994), wherein the Superior Court had held that the four-year statute applied to registration and enforcement proceedings under UEFJA, saying that it should be inapplicable since it does not involve an "action" on a judgment.

But the court noted that some jurisdictions define the term "action" more broadly than Pennsylvania to include other "proceedings:"

> In reviewing the relevant decisions, however, care must be taken to discern whether the statute of limitations at issue was directed to actions on judgments or to some other form of proceeding.

713 A. 2d 614, *citing, e.g., Lawrence Systems, Inc. v. Superior Feeders, Inc.,* 880 S.W. 2d 203, 214-215 (Tex. App. 1994), *reh.*

overruled (1994), *writ denied* (1995). *Morrissey's* holding, therefore, has no application in Florida in view of section 95.011's definition of "proceeding."

(f) Miscellaneous

Other cases cited are similarly distinguishable or non-supportive of the Fifth DCA's holding. *Durham v. Arkansas Dept. of Human Services/Child Support Enforcement Unit,* 322 Ark. 789, 912 S.W. 2d 412 (Ark. 1995) did not consider whether the UEFJA proceeding was subject to limitations on actions on judgments. The only question was the effect of the judgment's renewal in the originating jurisdiction. *Walnut Grove Prod. v. Schnell,* 659 S.W. 2d 6 (Mo. App. W.D. 1983), like *Pan Energy*, only dealt with the enforceable life of a judgment registered under UEFJA.

Finally, *Johnson Bros. Wholesale Liquor Co. v. Clemmons,* 233 Kan. 405, 661 P.2d 1242 *cert. den.* 464 U.S. 936 (1983), is actually a majority decision. It holds that if a foreign judgment is revived in the originating state, thereby becoming a new judgment, it can be recorded and enforced under the UEFJA as long as it is recorded within the five-year limitations period applicable to actions on foreign judgments.

The Fifth DCA has also cited the Nevada Supreme Court's decision in *Trubenbach v. Amstadter*, 109 Nev. 297, 849 P. 2d 288

(Nev. 1993). Although *Trubenbach* cites *Producer's Grain* and *Hunter,* it sides with the majority in holding that the statute of limitations for commencement of actions on foreign judgments does apply to a UEFJA proceeding. But it holds that the limitations period does not begin to run until the foreign judgment is filed in the registration state. Curiously, under *Trubenbach*, the commencement of the UEFJA recognition action starts the running of the statutory period in which the action must be commenced; that is, the same act that starts the limitations period also ends it. This construction must be rejected as it would turn the Florida statute of limitations into gibberish.

H. MANY OF THE MINORITY STATE CASES DEPEND UPON A DISTINCTION BETWEEN "PROCEEDINGS" AND "ACTIONS" THAT IS NOT AVAILABLE IN FLORIDA

The minority view decisions such as *Wright, Hunter, Producer's Grain* and *Morrissey,* that distinguish between "proceedings" and "actions" and refuse to apply the statute of limitations on this ground, of course, have no significance in Florida.[7]

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[7] Other cases making this distinction, but not cited in the Fifth DCA's opinion are *State ex rel. Inman v. Dean*, 902 P.2d 1321 (Alaska 1995) (*dicta*); *Hill v. Value Recovery Group, L.P.*, 964 P.2d 1256 (Wyo. 1998) (no "civil action" involved under UEFJA); *Deuth v. Ratigan*, 256 Neb. 419, 590 N.W. 2d 366 (Neb. 1999).

Moreover, the rationale of *Producer's Grain, Hunter* and *Wright* has been expressly considered and rejected by a number of states adopting the majority view, most notably, by the court in *Lawrence Systems, Inc. v. Superior Feeders, Inc., supra,* which held that an "action" is

> an ordinary **proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right . . .. It includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in such court, including an adjudication upon the right and its enforcement or denial by the court.**

880 S.W. 2d at 207-208, quoting Black's Law Dictionary 26 (5th Ed. 1979) (emphasis in original). The court concluded that the statute of limitations

> applies equally to proceedings to enforce a foreign judgment under section 35.003 of the Uniform Act as it does to common law actions for the enforcement of foreign judgments. **For limitations purposes there is no logical difference between the two enforcement proceedings.**

Id. at 208 (emphasis added). This analysis, of course, squares perfectly with the Florida Legislature's definition of "action" as "a civil action or proceeding." *Fla. Stat.* § 95.011 (1997). The court in *Morrissey* acknowledged that its holding would be foreclosed in states such as Texas that do not distinguish between "actions" and "proceedings," and distinguished *Lawrence* on this ground.

A Kentucky appellate court in *Fairbanks v. Large, supra,*

reached the same conclusion:

> [W]e are persuaded by the cases from jurisdictions which apply their own statute of limitations for actions for the enforcement of foreign judgments to proceedings brought under the UEFJA to domesticate a foreign judgment. It is obvious, as these cases explain, that the purpose of the UEFJA is to provide a simpler, more expedient procedure to enforce judgments of our sister states, and not to vest foreign creditors with substantive rights not otherwise available in the forum state. ***
>
> As these cases note, there is nothing in the UEFJA to suggest that it is designed to circumvent the forum state's statute of limitations for enforcing judgments. While the procedure may be easier and less costly to pursue, it is nevertheless an enforcement procedure, the goal of which is identical to a suit to enforce a judgment.

Id., 957 S.W. 2d at 309 (citations omitted). *Accord, Abba Equipment, Inc. v. Thomason*, 517 S.E.2d 235, 238 (S.C. App. 1999).

V. CONCLUSION

In the end, the appropriate analysis is both obvious and compelling. Section 95.11(2)(a) time bars these proceedings by its terms. If the UFMJRA was intended to revive the long-expired rights to enforce these French judgments in Florida, the UFMJRA would, to that extent, constitute an unconstitutional deprivation of due process under *Wiley v. Roof, supra*.

Accordingly, the two certified questions must be answered as follows:

1. Question one must be answered in the affirmative.

Section 95.11 applies to bar recognition proceedings (that is, "registration" in Florida) pursuant to the UFMJRA, section 55.601, *et seq.,* Florida Statutes.

2. In answer to question two, the applicable limitations period is the five-year period for the commencement of actions and proceedings on foreign judgments set forth at section 95.11(2)(a), Florida Statutes.

This Court should reverse the decision of the Fifth DCA, vacate its order and mandate, and reinstate the final judgments for Nadd entered by the circuit court in these consolidated actions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of the foregoing Amended Petitioner's Amended Brief On The Merits were served via U. S. mail upon Robert Trien, Esq., Harvis & Trien, LLP, 750 Lexington Avenue, New York, New York 10022, and Myles H. Malman,

Esq., 12955 Biscayne Boulevard, Suite 202, Miami, Florida 33131, this 28th day of December, 1999.

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