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IN THE SUPREME COURT
OF FLORIDA

CASE NO. 66-497

ERNEST WILLIAM DAVIS,
Plaintiff-Appellant,

vs.

PYROFAX GAS CORPORATION, etc.,
and GOSS, INC., etc.,

Defendant-Appellees.

FILED

SID J. WHITE

APR 29 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

_____ /

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Table of Citations	ii
Argument	1
Certificate of Service	5

TABLE OF CITATIONS

	<u>Page</u>
<u>Aero Mechanical Electronic Craftsman v. Parent,</u> 366 So.2d 1268 (Fla. 4th DCA 1979)	2
<u>Ford Motor Co. v. Atwood Vacuum Machine Co.</u> 392 So.2d 1305 (Fla. 1981)	2
<u>General Tire and Rubber Co. v. Hickory Springs Mfg.Co.</u> 388 So.2d 264 (Fla. 5th DCA 1980)	2
<u>Hanson v. Denckla</u> 357 U.S. at 253 (78 S.Ct at 1239)	2
<u>Kravitz v. Gebrueder Pletscher Druckguss Waremfabrik</u> 442 So.2d 985 (Fla. 3d DCA 1983)	1, 2, 3, 4
<u>Life Laboratories, Inc. v. Valdes</u> 387 So.2d 1009 (Fla. 3d DCA 1980)	2

ARGUMENT

Any manufacturer or wholesaler who engages in the sale of products in the State of Florida should be subject to the jurisdiction of the Florida courts when a product identical to those sold in Florida by the manufacturer or wholesaler causes injury to persons in Florida.

Goss, Inc. and Pyrofax Gas Corporation would have this Court rule that unless a Plaintiff purchases the product that causes injury in Florida, the Florida courts will never have jurisdiction over the manufacturer or retailer no matter what their business connections might be with the State of Florida.

This Court should uphold the decision of the Third District in Kravitz v. Gebrueder Pletscher Druckgusswarenfabrik, 442 So.2d 985 (Fla. 3d DCA 1983) (hereinafter cited as Kravitz). The facts and circumstances of the Kravitz case and the case before this court are identical. The Kravitz court decided that the product did, in fact, enter the State in the ordinary course of commerce or trade for jurisdictional purposes. The Third District Court defined the phrase "in the ordinary course of commerce or trade" in Life Laboratories, Inc. v. Valdes, 387 So.2d 1009 (Fla. 3d DCA 1980):

"We interpret the phrase in the ordinary course of commerce to mean that the non-resident must at least have some reason to anticipate that his product will reach into another state in the ordinary course of interstate commerce. The manufacturer could then be said to have acted in a purposeful manner or with such knowledge as to make its deeds the equivalent of having purposefully availed itself of the privilege of conducting activities within our State,"

citing Aero Mechanical Electronic Craftsman v. Parent, 366 So.2d 1268 (Fla. 4th DCA 1979).

In Ford Motor Co. v. Atwood Vacuum Machine Co., 392 So.2d 1305 (Fla.1981) this court held that

"When a corporation purposefully avails itself of the privilege of conducting activities within the forum state Hanson v. Denckla, 357 U.S. at 253 (78 S.Ct at 1239), it has clear notice that it is subject to suit there".

Goss, Inc. and Pyrofax Gas Corporation, have both availed themselves of the privilege of conducting business in the State of Florida, but now want this Court to hold that they are not amenable to suit in Florida because Mr. Davis did not purchase their product in Florida. Their position is in direct conflict with Kravitz and Ford.

Appellees' rely upon the Fifth Districts decision in General Tire and Rubber Co. v. Hickory Springs Manufacturing Co., 388 So.2d 264 (Fla. 5th DCA 1980). General Tire involved a foreign corporation not authorized to do or conduct business in the State of Florida. Both Goss, Inc. and Pyrofax Gas Corporation were authorized to and were conducting business in Florida, and thus clearly distinguishes this case from the General Tire case. The Court in General Tire held that had

Hickory Springs been qualified to do business in Florida then the long arm Statute would apply and jurisdiction would be acquired.

Neither the Statute nor Florida case law support Appellees position that the product must be purchased in Florida for the courts of this State to acquire jurisdiction over the manufacturer or retailer. Appellees argue that the long arm Statute revision of 1984 supports their position. The 1984 revision, in fact, supports Davis' position. It is clear that the legislature modified the Statute to make very clear their original meaning and intent of the long arm Statute. The only inference from the legislatives action in 1984 is that the long arm Statute was meant to apply to those entities who avail themselves of the right to conduct business in Florida and deal with the people of this State, thus clarifying the portion of the Statute having various interpretations among the District Courts. The legislature followed the interpretations as set out in the Kravitz decision.

This Honorable Court should answer Yes to the certified question. By not answering this question affirmatively this court would be saying that a manufacture or retailer who engages in the sale of products in Florida would not be subject to suit in Florida if a person who had moved to Florida purchased an identical product in another state and was injured by that product in Florida. Such a decision would require the injured person to travel to the state of purchase to pursue his claim. That was obviously not the intent of the legislature and they

made that very clear in the 1984 revision of the long arm Statute.

The reasoning of the Third District Court in Kravitz should be supported by this Court in holding that when a manufacturer or wholesaler of a product engages in the business activity of selling that product in Florida, they will be subject to the jurisdiction of the Florida Courts when an identical product causes injury to a person in Florida even though that particular item was purchased in another state.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by United States mail, this 26th day of April, 1985, to JONATHAN C. HOLLINGSHEAD, of Pitts, Eubanks, Hannah, Hilyard & Marsee, P.A., Post Office Box 20154, Orlando, FL 32814; WILLIAM E. JOHNSON, ESQUIRE, Post Office Box 2867, Orlando, Florida 32802.

/s/ GLEN D. WELAND

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