IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, DEPARTMENT OF PUBLIC HEALTH, DIVISION OF RISK MANAGEMENT, Petitioners, vs. MURIEL WILCOX, Respondent.	:	CASE NO. : 70,498

REPLY BRIEF OF PETITIONERS ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION

The parties shall be referred to as:

MURIEL WILCOX as: Wilcox, employee, claimant and respondent.

THE STATE OF FLORIDA, DEPARTMENT OF PUBLIC HEALTH, DIVISION OF RISK MANAGEMENT as: State, employer/servicing agent, and petitioners.

The following symbols will be used:

(AP-) for appendix of petitioners and page number.

(R-) for answer brief of respondent and page number.

(AX-) for appendix of respondent and page number.

(AR-) for reply appendix of petitioners and page number.

All emphasis has been added by the petitioners unless noted otherwise.

The petitioners object to the diatribe set out in the respondent's introduction on the grounds that it does not cite any record document or pleading and, to put it politely, is misleading. The document included in the respondent's appendix and cited are not contained in the record for this case. (AX-1) Fla. R. Ap. P. 9.220 states that the appendix may contain portions of the record and other authorities. This writer does

not believe that the rule gives carte blanc to proffer any pleading, document, letter, etc., that the respondent feels prone to harangue this court and any other captive audience about.

The petitioners felt that if this course of action on the part of the respondent is to condoned, then it behooves the petitioners to file an additional appendix to point out some erroneous invectives spewed out by the respondent.

The respondent alleges that Mrs. Wilcox was injured on August 3, 1987, but did not get "the first dollar of workers' compensation benefits until March 1986. (R-1) The order of the deputy commissioner states:

> "...the Employer paid temporary total benefits from August 11, 1978 to January 14, 1979 at the rate of $126.00 per week." (AP-4)
> "...during the time she worked from January, 1979 to until the December 6, 1979 non-compensable accident..." (AP-8)

The e/c paid until the second non-compensable accident after which Mrs. Wilcox never worked again. The allegation that e/c never anything until March 1986 is therefore untrue.

STATEMENT OF THE CASE AND OF THE FACTS

The petitioners have cited the prior Wilcox cases for the convenience of the court. Of course, one only has to look at any

index of cases to find the prior cases. The rather asinine remark of the attorney for the respondent as to the motivation of the petitioner in so doing this at least displays a lack of courtesy. (R-4)

To refute the spurious allegations of the respondent that the petitioners failed to advise this court that they have had all the social security offset information in their hands and possession exclusively, for a number of years now," the petitioners would point out the inconsistencies of this from the record: (R-5 & 6)

1. On December 27, 1985, while the order from the First District was not yet final, the petitioners sent Mr. Bieley a letter and request for social security disability benefit information as they had every right to do under Section 440.15(9)(c), Florida Statutes. (AP-44 & 45) By law they had the duty not to pay benefits as long as the employee refuses to sign the request for social security disability benefits information.

2. Mr. Bieley, showing his cooperation, not only refused to have his client sign the release, but threatened to institute a Rule Nisi, although the mandate from the decision of the First District had not issued. (AP-41 & 46)

3. Another request was made to Mr. Bieley on February 25, 1986 for this release but it went unheeded. (AP-47 & 48)

4. The deposition of Mrs. Wilcox was set for March 3, 1986 and a subpoena served on her for the Social Security information. (AP-49 & 50)

5. At the instructions of Mr. Bieley, Mrs. Wilcox did not appear for her deposition even though she was under a valid subpoena and was a party to the action. (AP-62 to 66)

6. A motion to compel was filed. (AP-54 to 56)

7. The records custodian of the social security was subpoenaed for deposition. (AP-59 to 61)

8. Finally, the social security administration sent the information to deputy commissioner Alan Kuker from whence the petitioners obtained the information. (AP-51 to 53) The social security administration will not appear for deposition. (AP-38)

This should conclusively show that the insinuations of the respondent are false. All of this shows a scoff law attitude on the part of the respondent, and the petitioners regret the necessity of dredging up this unpleasant experience before this court.

SUMMARY OF ARGUMENT

POINT I

The conflict is clear in the decisions. To enable the workers' compensation system to function as a self-executing act, the opinions of the First District must be approved as this is the intent of the act in regard to the social security offset.

POINT II

Since cities by statute are not subject to levy and execution, the state of Florida cannot be. A private citizen cannot be allowed to disrupt government and in this case, the executive branch, to gain a private end.

ARGUMENT

POINT I

WHETHER THE DECISION SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH DECISIONS RENDERED BY THE FIRST DISTRICT DISTRICT COURT OF APPEAL

The statements made by the respondent under this point contain many allegations that have no foundation in the record. For the first time, the respondent, having thwarted every attempt by the petitioners to get the correct social security information, announces in the answer brief that the "Federal Government started and stopped her disability benefits." (R-11) Would it not have been nicer and easier for the respondent to have signed the releases and have appeared for her deposition?

The language of the First District cases should be taken at face value. The social security offset can be taken unilaterally and needs no order of modification. If every order awarding total disability benefits must be modified in order to take the social security offset, the system will suffer due to the increased burden of modification hearings. Appeals will increase, since every employer/carrier will insist on a cause in the final order giving them the right to take the offset when the claimant starts receiving social security benefits. One can

foresee, numerous appeals on this issue even when it is obvious that the claimant will never receive social security disability benefits. The mere possibility is enough to trigger the litigation.

POINT II

WHETHER THE DECISION SOUGHT TO BE REVIEWED EXPRESSLY DECLARES VALID A STATE STATUTE AND AFFECTS A CLASS OF CONSTITUTIONAL AND STATE OFFICERS

The petitioners would note that Section 55.11, Florida Statutes expressly prohibits liens, levies and executions against municipal corporations. This statute is still on the books. Is a part greater than the whole? We all know that cities were not considered to partake of sovereign immunity at one time, therefore the necessity of the statute. Does this mean that if this case was against a city, then a Rule Nisi would be prohibited, but not against the State of Florida?

The petitioners note with interest the protestation of the respondent that of course no execution against the actual property of the Department of Public Health would be instituted. (R-13) In the prior Rule Nisi case, Mr. Bieley attempted to levy upon and sell the desks, typewriters, office equipment, and all other property of the Department of Public Health. (AR-8 & 9)

Does this not show a callous indifference to the vital functions of the Department of Public Health? When the Sheriff of Dade County refused to carry this out upon the advice of the county attorney, the respondent tried to sue the county! (AR-4 to 6) And all this over less than $3,000.00. (AR-2 & 3) And the Rule Nisi was reversed. State, Dept. of Public Health v. Wilcox, 478 So.2d 850 (Fla. 3rd DCA 1985)

CONCLUSION

As requested in the initial brief, this honorable court should approve the decisions of the First District and declare that the setoff for social Security benefits is self executing and that no petition for modification is required to take this offset. Above all the decision of the Third District must be reversed as to the allowance of levy and execution on state property by judgment creditors with a ruling that the State of Florida is not amenable to Sec. 440.24 proceedings.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Petitioners on the Merits was mailed this 23rd day of October, 1987 to:

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