SUPREME COURT OF FLORIDA

DANIEL EDWARD BROWARD,

Petitioner,

Vs.

JACKSONVILLE MEDICAL CENTER, INCORPORATED, and FIRST UNION NATIONAL BANK OF FLORIDA, a national banking association,

Respondents.

CASE NO. 88,251

District Court of Appeal
1st District - No. 95-3400

On Appeal From The District Court of Appeal
First District of Florida

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# BRIEF ON THE MERITS
# BY
# RESPONDENT JACKSONVILLE MEDICAL CENTER, INCORPORATED

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## NATURE OF RELIEF SOUGHT

Respondent Jacksonville Medical Center, Incorporated, requests this Court to answer the above certified question in the affirmative and to affirm the decisions below.

## STATEMENT OF THE FACTS AND OF THE CASE

Respondent Jacksonville Medical Center, Incorporated, accepts the Statement of the Facts and of the Case as presented by Petitioner.

## SUMMARY OF ARGUMENT

Florida Statutes Section 440.22 exempts workers' compensation prodeeds due or payable from the claims of creditors. Three lower Courts have sustained the position of Respondent that there is no ambiguity in the Statute, that "due and payable" does not equate with "paid and received" and that whatever the perceived legislative intent may have been, the plain language of the Statute is not susceptible to ambiguous construction.

The Certified Question should be answered in the affirmative and the decisions rendered below should be affirmed.

## ARGUMENT

DOES THE "DUE OR PAYABLE" LANGUAGE OF SECTION 440.22, FLORIDA STATUTES, MEAN THAT ONCE COMPENSATION BENEFITS HAVE BEEN PAID TO AN INJURED WORKER OR HIS OR HER BENEFICIARIES THAT SUCH BENEFITS ARE NO LONGER EXEMPT FROM ALL CLAIMS OF CREDITORS?

Respondent readily concedes that the only reported case in Florida addressing the issue arose in the Bankruptcy Court for the Middle District of Florida, Jacksonville Division. In re: Fraley, 148 B. R. 635 (Bkrtcy. M. D. Fla. 1992). In that case, Judge Proctor indicated that he would consider the plain language of the law and the legislative intent. He then created an ambiguity and resolved it in favor of an expanded definition of the plain language "due or payable," which totally ignores the presence of these three words in his interpretation.

Outside of Florida, similar exemption statutes have been construed in conflicting fashion. The Surace v. Danna case cited by Petitioner was criticized in Wartella v. Osick, 165 A. 660 (Pa. 1933). In that case, the

Court found that the statutes were manifestly different in that the New York Statute in Surace referred to compensation and not payment due. The purpose was protection until the money was received.

Additionally, similar holdings can be found in Merchants Bank v. Weaver, 213 NC 767, 197 SE 551 (N.C. 1938); Ohio Bell Telephone Co. v. Antonelli, 29 Ohio St 3d 9 (504 NE 2d 717) (1986). In Ohio Bell, the Court observed that exemption statutes, being in derogation of the common law rights of creditors, must be based upon a statutory provision for such exemption. The Legislature has the exclusive authority to declare what property shall be exempt from the purview of collection laws.

The Michigan Bankruptcy Court in Matter of Wickstrom, 113 BR 339 (U. S. Bankruptcy Court W Dist. (Mich. 1986) found the purpose of the exemption statute to be to prevent creditors from reaching exempt funds before payment to the recipient.

In Recor v. Commercial & Savings Bank of St. Clair, 106 NW 82 (Mich. 1905), the issue involved exempt insurance proceeds. The statute exempted monies to be paid (emphasis supplied). Before payment, the funds

could not be reached by the creditors of the deceased or his beneficiary. It is preserved intact until after payment, when it becomes the sole property of the beneficiary, to be owned and held as any other property, not exempt from legal process unless made so by the general laws of the State. The Court noted that

> "If the benefit was exempt in the form of money, the claim will logically follow that a change to other personal property or to real estate will be protected by law so long as it can be identified, and neither creditors nor the State may reach it for any purpose. We do not think the statute will bear such an interpretation or that the Legislature intended that it should. The language of the statute does not so indicate. If the intention of the Legislature had been to make so important and unlimited an exemption, it would have used language indicative of such intention. We do not construe the language used."

Further, in Martin v. Lamb, Circuit Judge, 200 NW 160 (Mich. 1924), the Court held that the exemption of worker's compensation payments only covers the right to receive the funds; the exemption did not extend to the funds upon receipt nor to property subsequently purchased with those funds.

In the case of Matthews v. Lewis, cited in the brief of Petitioner at

Page 7, the Kentucky Statute upon which the case was brought is manifestly different in that there was no "due or payable" language in the exemption statute. The statute simply provided that all compensation and claims therefor shall be exempt from all claims of creditors.

In the case of McCabe v. Fee, 568 P2 661 (Ore. 1977), the Court reviewed the history of the workers' compensation exemption statute. the original statute read, "All monies paid or payable hereunder and the right to receive the same shall be exempt." In 1933, that sentence was amended to read, "All such monies and the right to receive the same shall be exempt prior to their receipt," The Legislature deliberately removed an exemption which applied to "all monies paid." The Court held that it may not recreate that exemption.

The Court in McCabe observed as well that the statute as it was construed did not provide maximum protection to the injured workmen but it did serve a reasonable purpose. It protected employers, insurers, and the State accident insurance fund from the necessity of dealing with numerous garnishments by creditors of injured workmen and, at the same time,

provided those workmen a measure of protection by assuring that compensation benefits would reach them intact so that they could control the immediate disposition of the money. Giving the statute the interpretation urged by plaintiff in that case and by Petitioner in the case at Bar would place a burden on banks or other depositories who would have no knowledge of the funds origin.

Finally, the Oregon Court acknowledged that the opinions in cases expanding the exemption statutes make appealing policy arguments in support of the broader exemption. This appeal, however, should be made to the Legislature.

The United States Congress, in insulating Social Security benefits from the claims of creditors, provided at 42 U. S. C. Section 407(a) that

> "None of the monies paid or payable (emphasis supplied) under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process."

The Supreme Court of the United States in Carrier v. Bryant, 306 US 545, 59 SCt 707, 83 L. Ed 976 (1939) found that investments purchased with exempt veterans benefit proceeds lost their exempt status. The

exemption statute, here again, provided for the exemption either before or after (emphasis supplied) receipt by the beneficiary.

The intention of Congress was thus expressed that the benefits of the Social Security or Veterans' Benefit Laws would retain exempt status even after received by the recipient. No such intention appears in the Florida Workers' Compensation exemption statute.

In order to fully give effect and meaning to the exemption statute, the words "due or payable" must be considered to be the operative expression.

A precise parallel can be drawn without leaving the territorial borders of Florida.

Prior to 1985, Florida Statutes, Section 222.11, provided as follows:

> "No writ of attachment or garnishment of other process shall issue from any of the courts of this State to attach or delay the payment of any money or other thing due (emphasis supplied) to any person who is the head of a family residing in this State, when the money or other thing is due (emphasis supplied) for the personal labor or services of such person."

In Hertz v. Fisher, 339 So. 2d 1148 (Fla. 1st DCA 1976), the defendant in a garnishment proceeding filed an affidavit stating that he was

the head of a household as defined by the Florida Constitution, and that the money in the bank account garnisheed was received by him for personal services rendered. The court disagreed with his contention. Although from his affidavit it appeared that he was the head of a family residing in the State of Florida and that money in his bank account was paid to him for personal services, such money was no longer due to him for personal services because it had been paid by those for whom he performed the personal services. It was not now due for personal services but was payable to him by the bank by virtue of it being held by the bank to his credit in his bank account.

Thus, the Court found that the exempted funds lost their identity as such when deposited into a bank.

In Ellis Sarasota Bank & Trust Company v. Nevins, 409 So. 2d 178 (Fla. 2d DCA 1982), the Second District Court Appeal reached a similar conclusion. In reversing the lower court, the Appellate Court observed that:

> "The trial judge here seemed to lay great emphasis on what he perceived to be the intent of the Legislature to protect money that is the result of wages earned by the head of a household. In following that perceived legislative intent, he concluded that Section 222.11 continues to provide an exemption

> when the wages leave the protected hands of the employer and go directly to another resting place not normally subject to garnishment. Nevertheless, Section 222.11 does not afford such protection. It does little more than protect an employer from the harassment of garnishment actions for employees' debts."

In 1985, the Legislature, apparently reacting to the restrictive language of the Statute, provided expanded language for the exemption with the inclusion of the last sentence of the Statute:

> "This exemption shall apply to any wages deposited in any bank account maintained by the debtor when said funds can be traced and properly identified as wages."

In 1993, reacting again, perhaps, to cases holding that credit union accounts were not "bank accounts" within the scope of the exemption statute, the Legislature further expanded the exemption statute with the use of the term "financial institution" in lieu of "bank accounts" and further providing that co-mingling of earnings with other funds does not by itself defeat the ability of the head of a family to trace earnings.

The Legislature apparently has found no necessity to insert into the jurisprudence of the State of Florida such a tracing provision in the Workers' Compensation Exemption Statute.

The case of Bryant v. Bryant, 621 So. 2d 574 (Fla. 2d DCA 1993) does not create the statutory ambiguity noted as non-existent by the District Court in this case. Bryant dealt only with the question of whether workers' compensation funds are exempt from claims of child support arrears. It had no application to the question of whether the exemption continued after receipt of the funds by the worker; indeed, a careful reading of Bryant reflects that Mr. Bryant (the worker) did not receive the funds in question. The Trial Court in that case originally sequestered the settlement funds and ordered that they be placed in the Registry of the Court. Hence, the factual background differs substantially from the case at Bar.

In order to accept as persuasive the argument of Petitioner, the words "due or payable" are written out of the statute completely. The fact that the three words are present in the statute must require that they be given some meaning. There is no ambiguity susceptible to statutory construction based upon public policy or any other consideration.

The exemption statute is written as follows:

> "No assignment, release or commutation of compensation or benefits due or payable under this chapter

> except as provided by this chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of the debt which exemption may not be waived."

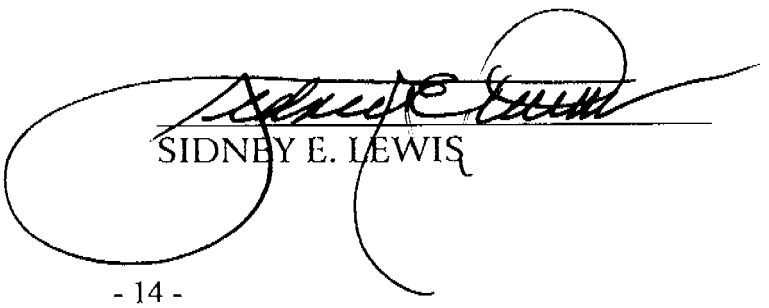
Petitioner seeks judicial legislation to amend the statute as follows:

> "No assignment, release or commutation of compensation or benefits *** under this chapter except as provided by this chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of the debt which exemption may not be waived."

A clear exemption statute is not beyond the reach of competent draftsmen. Respondent does not doubt Justice Cardozo's wisdom in Surace but cannot believe that the exemption statute extends that wisdom to Florida workers at the expense of Florida creditors.

The appeal of Petitioner should be directed to the Florida Legislature, rather than the Florida Courts.

Respectfully submitted,



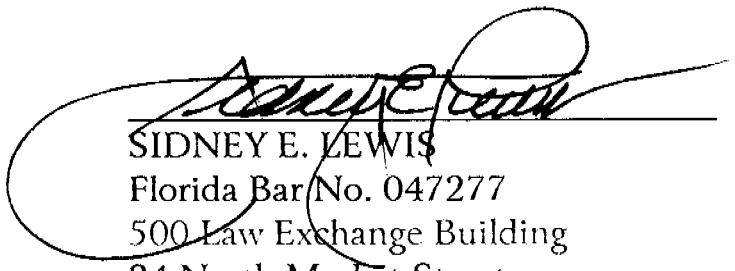
SIDNEY E. LEWIS

## CONCLUSION

The lower court declined to remove the statutory language provided by the Legislature, and read the plain meaning of the statute, giving an effect to each of the words therein. The judgment of the lower court should be affirmed.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by mail this the 24th day of July, 1996, to William W. Massey, III, Esquire, Attorney for Petitioner, Suite E-4, 4741 Atlantic Boulevard, Jacksonville, Florida 32207, and to John B. Kent, Esquire, Attorney for Garnishee / Respondent, Suite 900, 225 Water Street, Jacksonville, Florida 32202.



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