IN THE SUPREME COURT OF FLORIDA

ANDREAS KECK,

Petitioner,

v.

ASHLEIGH K. EMINISOR,

Respondent.

Case No.: SC-10-2306
Lower Tribunal No.: 1D10-6

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT REGARDING JURISDICTION OF FIRST DISTRICT COURT OF APPEAL AND PROPER ROLE OF THIS COURT

Without adopting all of the reasoning of Keck and the *amici,* Eminisor agrees that the First District Court of Appeal had common law certiorari jurisdiction to review the order denying Keck's motion for summary judgment. Eminisor further requests that this Court, having jurisdiction based on the district court's certification of a question of great public importance, decide the case on the merits, as it has the discretion to do. *See, e. g., Tillman v. State,* 471 So.2d 32 (Fla. 1985).

STATEMENT OF THE CASE AND THE FACTS

Keck's Summary of the Case incompletely describes the trial court's reasons for denying his motion for summary judgment. Keck correctly states that the trial court found that Keck was not immune because JTM was acting primarily as an instrumentality or agency of an independent establishment of the state but fails to explain the basis for that conclusion. In its opinion, the trial court relied on the fact that, by its own plain terms, § 768.28(2), Fla. Stat. does not include, within the definition of "state agencies or subdivisions," corporations primarily acting as instrumentalities or agencies of independent establishments of the State. (A. 465-466).[1] Keck's Summary of the Case also fails to mention the trial court's finding that Keck's position is at odds with the very purpose for the creation of JTM,

[1] In this brief, "A. ___ refers to the petitioner's appendix.

which was to create a *private* entity that would employ the bus drivers and mechanics. The trial court found:

> 6. JTM was formed by the JTA for the express purpose of creating a private employer for the bus drivers and mechanics in Jacksonville's bus system so that they would not be prohibited from striking, as all public employees are.
>
> 7. It is inconsistent for JTM and Keck to use JTM's private status in labor relations matters while claiming that JTM is a state agency for sovereign immunity purposes.

(A. 466). Not only do the bus drivers and mechanics have the right to strike, but they belong to the Amalgamated Transit Union, which manages their pension program and health insurance. (A. 108-109, 329). The drivers and mechanics do not participate in the State of Florida retirement system. (Id.).

Keck's Summary of the Case also ignores the trial court's finding that the JTA lacked statutory authority to form JTM, as the power to form "public benefit corporations" was only conferred by a 2009 amendment to § 349.04, Fla. Stat. (A. 467).

SUMMARY OF THE ARGUMENT

The trial court did not depart from the essential requirements of law in denying Keck's motion for summary judgment. Among all of the different entities described as "state agencies" in § 768.28(2), Fla. Stat., the JTA is plainly an "independent establishment of the state." While corporations primarily acting as

instrumentalities of many types of "state agencies" under § 768.28(2) are defined by the statute to be state agencies for sovereign immunity purposes, corporations acting primarily as instrumentalities of independent establishments of the state are not. The trial court read the statute correctly when it found that JTM, a corporation acting primarily as an instrumentality of an independent establishment of the state (the JTA), is not an agency of the state for sovereign immunity purposes.

Both Keck and the dissenting opinion in the district court of appeal argue for an incorrect rule of statutory construction when they state that the trial court's "hyper-technical interpretation of § 768.02(2) is inconsistent with the principle that § 768.28(2) should be construed in favor of the state because sovereign immunity is the rule, rather than the exception." (Initial Brief, p. 34). That principle arises from the fact that the state was immune under common law and can now be sued only to the extent that it has waived that immunity.[2] As to individual *employees* like Keck, however, the rule is exactly the opposite. Until the 1980 amendment to § 768.28(9), a government employee could be sued for ordinary negligence just like any other citizen. Therefore, as applied to individual employees, § 768.28 is

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[2] The ancient doctrine of sovereign immunity is based on a theory unique to *governments*. As this Court observed in *Cauley v. City of Jacksonville,* 403 So.2d 379, 381 (Fla. 1981), "Sovereign immunity's roots extend to medieval England. The doctrine flows from the concept that one could not sue the king in his own courts; hence the phrase 'the king can do no wrong.'"

in derogation of the common law and should be strictly construed against immunity.

There is an inherent contradiction between Keck's status as a private employee for labor relations purposes and his claim that he is a public employee for sovereign immunity purposes. If Keck has sovereign immunity as the employee of a state agency, then his status as the employee of a private employer would become a transparent legal fiction designed to circumvent Florida's constitutional and statutory prohibitions against strikes by public employees. If Keck has the right to strike, then he is not entitled to sovereign immunity.

The case law upon which Keck relies is not dispositive. None of the cited decisions deals with the actual language of § 768.28(2), and none of the cases involves a private employer that was created for the purpose of providing its employees rights they could only have in private employment.

Keck is not entitled to immunity under § 768.28(9), Fla. Stat. as an employee or agent of the JTA. Keck is indisputably an employee of JTM. If JTM is not a state agency for sovereign immunity purposes, Keck cannot circumvent his direct employment by a private corporation by arguing that he is in effect an employee or agent of the JTA.

ARGUMENT

I

KECK IS NOT ENTITLED TO SOVEREIGN IMMUNITY, BECAUSE HIS EMPLOYER, JTM, IS NOT DEFINED AS A "STATE AGENCY" UNDER § 768.28(2) (FLA. STAT.).

Keck's argument is essentially this: (1) the JTA is a "state agency" under § 768.28(2), Fla. Stat.; (2) the JTA has complete control over JTM; (3) because JTM acts primarily as an instrumentality of the JTA, it is also an "agency of the state;" and (4) because JTM is an "agency of the state," its employees are immune from suit under § 768.28(9), Fla. Stat. (Petition for Certiorari, p. 21). This argument is flawed, because it fails to recognize *what kind of agency of the state the JTA is.*

Section 768.28(2), Fla. Stat. reads as follows:

> (2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; *and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities,* including the Florida Space Authority. (Emphasis added.)

Thus, the statute uses the phrase "state agency" not to describe any particular entity but as an umbrella term that is applied to various specific types of entities. In other words, an entity is only a "state agency" for purposes of § 768.28 if it is one of the entities described in § 768.28(2). For this reason Keck's assertion that the JTA is a

"state agency" under § 768.28 merely because Chapter 349, Fla. Stat. calls it "an agency of the state" is incorrect. The status of the JTA, and JTM as well, as state agencies for sovereign immunity purposes is governed by § 768.28(2), not a label used in Chapter 349.

Having said that, we agree with Keck that the JTA is a state agency under § 768.28(2), because it is an independent establishment of the state. The more relevant question in this appeal, however, is whether JTM, Keck's employer, is a state agency. The answer to this question depends on what type of state agency the JTA is. Section 768.28(2) confers the status of a state agency or subdivision on two classes of entities. The first portion of the statute, ending with the word "municipalities," applies to entities that are actual creatures of the state: the three branches of state government; counties and municipalities; and entities described as "the independent establishments of the state." This last category perfectly describes independent authorities established by law, such as the JTA.

The second portion of the statute, beginning with the words "and corporations" confers state agency status on private corporations, *but only corporations that are "primarily acting as instrumentalities or agencies of the state, counties or municipalities...."* What the statute pointedly does *not* include are corporations primarily acting as agencies of the "independent establishments of the state," a phrase that is not found in the portion of the statute dealing with

corporations. Therefore, under the plain language of the statute JTM, a corporation, is not entitled to sovereign immunity regardless of whether it acts primarily as an agency or instrumentality of the JTA.

The legislature's omission of corporations acting primarily as agencies or instrumentalities of the independent establishments of the state is a recognition of the fact that those establishments are, in a real sense, independent of state and local government. The JTA is an appointed body having no elected members. Chapter 349, Fla. Stat. (2005) gives the JTA broad powers that it can exercise independently of any other agency or subdivision of the state. Those powers include the power to sue and be sued, to buy and sell real and personal property, to borrow money, and to make contracts "of every nature." (§ 349.04, Fla. Stat. (2005). Thus, a private corporation acting as an instrumentality of such an independent body is about as remotely connected with state government as any entity could be. It is perfectly reasonable that the legislature would not wish to extend the umbrella of its sovereign immunity to such an entity.

Keck attempts to gloss over the difficulty posed to his position by the plain language of § 768.28(2) by arguing that JTM is an instrumentality of the JTA, "a state agency." That argument would make sense if § 768.28(2) provided that any corporation acting primarily as an instrumentality of any entity defined as a "state agency" was also a "state agency." That is not, however, what the statute says.

Corporations are afforded sovereign immunity only if they act primarily as instrumentalities of "the state, counties or municipalities."

Keck argues that the trial court's reading of § 768.28(2) is "clearly erroneous" because the third clause of the statute, in addition to omitting the words "independent establishments of the state," also omits reference to the executive department, the Legislature, and the judicial branch. (Initial Brief, p. 33). The obvious flaw in this reasoning is that the executive, legislative, and judicial branches of the state are integral parts of the state government. In essence, they *are* the state, while independent agencies, such as the JTA, are not. When the third clause includes corporations acting primarily as instrumentalities or agencies of the *state*, "the state" obviously includes the executive, legislative and judicial branches of government.

II

WHERE, AS HERE, THE QUESTION IS WHETHER AN *EMPLOYEE* IS IMMUNE FROM SUIT, § 768.28 IS IN DEROGATION OF THE COMMON LAW AND MUST BE CONSTRUED STRICTLY AGAINST IMMUNITY.

By characterizing the trial court's reading of § 768.28(2) as "hyper-technical," the dissenting opinion below implicitly recognizes that the language of § 768.28(2) does not include corporations acting as instrumentalities of independent authorities like the JTA within the definition of "state agencies or

subdivisions."[3] Nonetheless, the dissent argues, the trial court's construction of the statute was wrong because the applicable rule of statutory construction calls for a *broad interpretation in favor of immunity*. The dissent reasons as follows:

> The hyper-technical interpretation of section 768.28(2) adopted by the trial court is inconsistent with the principal that section 768.28 should be construed in favor of the state because sovereign immunity is the rule, rather than the exception. *See generally Am. Home Assurance Co. v. Nat'l R.R. Passenger Corp.,* 908 So.2d 459, 471-72 (Fla.2005); *Pan-Am Tobacco Corp. v. Dep't of Corr.,* 471 So.2d 4, 5 (Fla.1984); *Windham v. Fla. Dep't of Transp.,* 476 So.2d 735, 739 (Fla. 1st DCA 1985).

(*Keck v. Eminisor,* 46 So.3d 1065, 1075 (Fla. 1st DCA 2010) (Wetherell J., dissenting)).

We agree that the pivotal issue in this case is the proper construction of § 768.28(2). We agree that the rules of statutory construction apply. However, we respectfully submit that the dissent applies the wrong rule of statutory construction, because it overlooks the fact that this case involves an *employee* who is being sued for *ordinary negligence*.[4] Such employees, even where directly employed by governmental bodies, were not immune from suit at common law. The statutory

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[3] Otherwise the dissent would have described the trial court's conclusion using words such as "erroneous," "incorrect" or "mistaken." "Hyper-technical" simply means the trial court was reading the statute literally.

[4] The result was different in cases involving governmental officials carrying out the executive duties of their offices. Under the common law those employees were immune from personal liability. *See, e. g., McNayr v. Kelly,* 184 So.2d 428 (Fla. 1966).

grant of immunity to state employees, whether created by the 1980 amendment to § 768.28(9) or in the original 1973 version, is, therefore, in derogation of common law and must be strictly construed *against* the immunity of the employee.

As the dissent points out, there was a difference of opinion between this Court and the Legislature as to whether § 768.28(9), as originally enacted, conferred immunity on state employees. In *District School Bd. of Lake Co. v. Talmadge,* 381 So.2d 698 (1980) this Court held that the enactment of § 768.28(9) did not immunize employees. The Legislature then overruled *Talmadge* by amending § 768.28(9), and the legislative history of that amendment indicates that it was intended to correct *Talmadge's* "erroneous interpretation of the statute." (dissenting opinion below, 46 So.3d at 1069).[5] Regardless of which view was correct, there is no doubt that, as this Court stated in *Talmadge,*

> Prior to the enactment of the waiver statute, of course, Florida's public employees had been liable for their tortious acts. See, e. g., *Davis v. Watson*, 318 So.2d 169 (Fla. 4th DCA 1975), cert. denied, 330 So.2d 16 (Fla.1976).

(381 So. 2d 698, 700). Keck is, therefore, wrong when he asserts that § 768.28(9) provided that individual employees "remain immune" from suit. (Initial Brief, p. 11). Those employees did not *remain* immune but were granted an immunity that

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[5] This Court did not agree that *Talmadge* had been wrongly decided. In *State D. O. T. v. Knowles,* 402 So.2d 1155 (Fla. 1981) it held that the 1980 amendment did indeed change the law and, therefore, could not be retroactively applied.

they never had under common law. Mr. Keck, as a bus driver, was clearly subject to suit under the common law.

It follows that, as applied to Keck, § 768.28 is in derogation of the common law and must be strictly construed against immunity. *Campbell v. Goldman,* 959 So.2d 223, 226 (Fla. 2007); *Ady v. American Honda Finance Corp.,* 675 So.2d 577, 581 (Fla. 1996). Application of that principle dictates that Keck's employer not be deemed to be a state agency unless § 768.28(2) unambiguously so provides.[6] It does not. The trial court's interpretation of the statute was correct.

III

KECK IS NOT ENTITLED TO SOVEREIGN IMMUNITY ON THE GROUND THAT JTM IS AN AGENCY OR INSTRUMENTALITY OF THE STATE, BECAUSE JTM WAS CREATED FOR THE SPECIFIC PURPOSE OF BEING A NON-GOVERNMENTAL BODY.

In its order denying Keck's motion for summary judgment, the trial court found: "It is inconsistent for JTM and Keck to use JTM's private status in labor relations matters while claiming that JTM is a state agency for sovereign immunity

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[6] Nor would JTM or even the JTA have been immune under common law from suits arising out of the purely proprietary function of operating a bus system for paying customers. In *Suwannee Co. Hosp. Corp. v. Golden,* 56 So.2d 911 (Fla. 1952), this Court held that, as to paying patients, a corporation formed by a county hospital district was not immune from suit in tort. Thus, § 768.28 was also in derogation of common law with respect to JTM's provision of proprietary services (once performed by the purely private Jacksonville Coach Company), and the trial court's strict construction of the statute was correct as to JTM as well.

purposes." In his brief, Keck admits that JTM's very reason for being was to have a non-public employer for the drivers and mechanics so that they have a legal right to strike. He explains, "While these drivers and mechanics wanted to continue their employment for the transit system, they also wanted to retain their right to strike and to maintain their private pension plan, *which would not have been possible had they become state employees."* (Emphasis added.) (Initial Brief, p. 5). In other words, for labor relations and pension purposes, Keck takes the position that JTM is not a public employer. Now, Keck asks this Court to make the opposite finding—that JTM is an instrumentality of the state—purely because it suits his interest in this case. This sort of attempt to be both fish and fowl, depending on the exigencies of the situation, has been disapproved by this Court in a case that is analogous to the case at bar.

In *Gulfstream Land & Development Corp. v. Wilkerson,* 420 So.2d 587 (Fla. 1982), this Court considered the question of whether a parent corporation could enjoy the benefits of operating through a subsidiary corporation but then claim that the two corporations were both the employer of the subsidiary's employees for worker's compensation immunity purposes. In that case an employee of the subsidiary corporation brought a personal injury action against the parent. The parent and the subsidiary were covered by the same worker's compensation insurance policy, under which the injured worker had received benefits. The trial

court granted the parent's motion for summary judgment, relying on existing appellate case law that held the parent immune under these circumstances.

The court of appeal reversed the summary judgment, and this Court agreed. It noted that there can be benefits to dividing a business into separate corporate entities, but that an owner that divides his business cannot enjoy the benefits of separateness without accepting the burdens:

> We agree that, when the benefits of dividing a business accrue to an owner, reciprocity requires courts to recognize the separate enterprises when sued by an injured employee. Unless the court can find an absolute integration of the two entities, the parent corporation is not the "employer" for purposes of workmen's compensation coverage and is not immune from suit by an injured employee of its subsidiary which results from its own acts of negligence.

(420 So.2d at 589).

The analogy of *Gulfstream* to this case is clear. If the JTA structures its business to achieve a purpose that can only be served if bus drivers are employed by a private entity, that entity must be considered private for all purposes. JTM cannot be private for labor relations purposes and public for sovereign immunity purposes. Similarly, Keck cannot claim the right to strike, constitutionally

forbidden to all public employees, while enjoying the immunity granted to employees of "the State or any of its subdivisions" under § 768.28(9).[7]

IV

THE APPELLATE DECISIONS UPON WHICH KECK RELIES ARE NOT DISPOSITIVE OF THIS CASE, BECAUSE NONE OF THEM DEALS WITH THE ACTUAL LANGUAGE OF § 768.28(2), NONE INVOLVES A PRIVATE CORPORATION FORMED TO GIVE ITS EMPLOYEES RIGHTS THEY COULD ONLY ENJOY IN PRIVATE EMPLOYMENT, AND ALL ENTITIES IN QUESTION WERE FORMED PURSUANT TO SPECIFIC STATUTORY AUTHORIZATION, TO SERVE A PUBLIC PURPOSE.

A. *Prison Rehabilitative Industries v. Betterson*:

Keck puts great reliance on *Prison Rehabilitative Industries v. Betterson,* 648 So.2d 778 (Fla. 1st DCA 1995), but that reliance is misplaced. In that case the corporation in question, known as "PRIDE," was formed by the Department of Corrections of the State of Florida pursuant to specific statutory authorization to provide prisoner rehabilitative programs deemed by the legislature to be "essential to the state." (§ 946.501(1), Fla. Stat.). Since the Department of Corrections is merely one part of state government, not an independent establishment of the state, PRIDE was obviously a state agency as a corporation "acting primarily as an instrumentality of the *state.*" (§ 768.28(2), Fla. Stat.) In this case, however, JTM

[7] The prohibition against strikes by public employees is found in Article I, Section 6 of the Florida Constitution.

was not acting as an instrumentality of a department of the state but as an instrumentality of an independent establishment of the state, namely the JTA. Therefore, the statutory language supports a different result in this case than that reached in the PRIDE case.

Moreover, PRIDE was established to carry out an essential state function, the rehabilitation of prisoners. JTM, by contrast, as Keck explains in his statement of the facts, was formed precisely to *continue* the private employment status enjoyed by the Jacksonville bus drivers before the JTA assumed control of the bus system, which had been privately owned up to that point. (Initial Brief, p. 5). Far from carrying out an essential state function, JTM serves the private purposes of the bus drivers and mechanics by continuing their private employment status and thus granting them rights denied to public employees.

A final distinction between this case and the PRIDE case lies in the authority under which PRIDE, on the one hand, and JTM, on the other, were created. In the case of PRIDE, the legislature specifically authorized its creation and described the public purpose for which it was created. The JTA's authority for creating JTM, by contrast, is at best questionable. Despite Keck's claim to the contrary, the JTA was not explicitly given the power to form corporations to carry out its functions until the 2009 amendment to § 349.04, Fla. Stat. gave it the power to form "public benefit corporations." That this was a power that the JTA did not previously have

is suggested by the Staff Analysis of the bill, which states that it *changes* the JTA's powers, and *authorizes* the JTA to form corporations. (Staff Analysis of Bill # CS/HB 1213, p. 1; A. 59). The Staff Analysis does not say, as it does in other instances, that the bill *clarifies* the JTA's power to form corporations. Thus, the pertinent legislative history contradicts Keck's position that the 2009 bill simply made explicit the JTA's power to form corporations

B. *Shands Teaching Hospital and Clinics, Inc., v. Lee*:

Keck discusses *Shands Teaching Hospital and Clinics v. Lee,* 478 So.2d 77 (Fla. 1st DCA 1985), in which the court held that Shands Hospital is not a corporation acting primarily as an agent of the state, by emphasizing that the case turned on the degree of state control over *Shands'* day-to-day activities. *Shands* is essentially irrelevant to this case, because it turned on the issue of control. In this case Eminisor has never denied that the JTA controls JTM; this issue is rather whether a private corporation, formed by an independent establishment of the State, is a state agency for sovereign immunity purposes.

C. *Pagan v. Sarasota County Public Hospital Board*:

Pagan v. Sarasota County Public Hospital Board, 884 So.2d 257 (Fla. 2d DCA 2004), *review denied*, 894 So.2d 971 (Fla. 2005) is the only case cited by Keck in which a corporation created by an independent agency has been held to be entitled to sovereign immunity. However, *Pagan* is of little relevance to this case

because of the limited nature of that decision and the important distinctions between this case and *Pagan.*

The *Pagan* opinion stresses the fact that there was legislation that specifically enabled the Hospital Board to "establish, operate, or support subsidiaries and affiliates . . . to assist the hospital board in fulfilling *its declared public purpose* of provision for the health care needs of the people of the hospital district . . . ." (884 So.2d at 258-259, *quoting from* Ch. 26468, Laws of Florida (1949), as amended by ch. 86-373, § 1, Laws of Fla.). The existence of this enabling legislation, declaring the public purpose of the entity in question, means that *Pagan* is different from this case in two important ways. First, as Keck acknowledges, when JTM was formed there was no express statutory authority for the JTA to form corporations, only a general provision giving the JTA authority to "do all things necessary" to perform its functions. (Petition for Certiorari, p. 32).[8] Second, unlike First Physicians Group, JTM was not formed for a *public* purpose

[8] A specific enabling statute, describing the *public purpose* of the entity being created, was also present in the matter covered by the Attorney General's opinion cited by Keck, regarding the Community Transportation Coordinators. (Fla. AGO 99-05). That opinion recites the fact that § 427.011(Fla. Stat.) specifically authorized the formation of CTC's to provide transportation services to disadvantaged persons in designated service areas. Both the enabling statute and the public purpose are absent here, where JTM was formed without any specific statutory authority, solely to serve the private interests of the bus drivers and mechanics.

but to advance the financial interests of the bus drivers and mechanics, who wanted to enjoy the benefits of private employment.

Moreover, the question before the Second District Court of Appeal in *Pagan* was whether First Physicians Group, Inc., a nonprofit corporation established by the Sarasota County Public Hospital Board, and its physician employees, were entitled to sovereign immunity in a particular medical malpractice suit. Apparently both sides of the litigation believed that control was the only issue, and on that point the court of appeal sustained the trial court's summary judgment for First Physicians Group. There is no suggestion in the opinion that the malpractice plaintiff made any argument based on the language of § 768.28(2) concerning independent establishments of the State and private corporations acting as their instrumentalities, so the decision does not address the statutory construction basis for the trial court's order in this case.

V

KECK IS NOT ENTITLED TO IMMUNITY AS AN AGENT OF THE JTA.

Keck argues that even if he is not entitled to sovereign immunity as an employee of JTM, he is entitled to immunity under § 768.28(9) as an agent of the JTA. This claim, which ignores the JTA's own action in creating an employer *other than itself* for the bus drivers and mechanics, is even more inconsistent with Keck's status as the employee of a private entity than the argument that he is

entitled to immunity because JTM is a state agency. As Keck himself states, citing *McGhee v. Volusia County,* 679 So.2d 729, 733 (Fla. 1996), the intent of § 768.28(9) was "to extend the veil of sovereign immunity to governmental employees acting in the scope of their employment." (Petition for Certiorari, p. 41). Here, Keck, his employer, JTM, and the JTA all agree that he is *not* a governmental employee. Section 768.28(9) was not intended to immunize, as government employees, workers who have the right strike.

Keck's argument under § 768.28(9) is also based on the same faulty rule of statutory construction discussed above. He argues for a *broad* reading of § 768.28(9) in favor of the immunity of individual employees. As we have noted, this is not the applicable rule of construction, because individual employees were not immune under common law. When § 768.28(9) is properly and narrowly construed as a grant of immunity in derogation of common law, it cannot be extended to allow an employee to ignore the identity of his actual employer and obtain immunity because some other entity actually controlled his work.

CONCLUSION

This Court should decide this case on the merits and affirm the trial court's denial of Keck's motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished via U.S. Mail to Sean M. Granat and Howard M. Maltz, Office of the General Counsel 117 W. Duval Street, Suite 480, Jacksonville, Florida 32202, this 15th day of April, 2011.

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Attorney

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby respectfully certifies that the foregoing Respondent's Answer Brief complies with the font requirements of Fla.R.App.P. 9.210, and has been typed in Times New Roman, 14 point.

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Attorney