IN THE COURT OF CLAIMS OF OHIO

ORIGINAL

EUGENE WRINN, JR.,		
Plaintiff,	:	Case No. 2006-05934
-vs-	:	Judge J. Craig Wright
OHIO STATE HIGHWAY PATROL,	:	
Defendant.	:	

FILED
COURT OF CLAIMS
OF OHIO
2010 DEC 10 PM 4:05

MOTION FOR CONTINUANCE

Now comes Defendant, Ohio State Highway Patrol, by and through counsel, and hereby moves this Court for a continuance of the O2(F) hearing scheduled for December 15, 2010. The basis for Defendant's motion is more full explained in the accompanying memorandum in support.

Respectfully submitted,

RICHARD CORDRAY
Attorney General of Ohio

JAMES P. DINSMORE (0051798)
ERIC A. WALKER (0040801)
Assistant Attorneys General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215
(614) 466-7447/Fax: 644-9185
jdinsmore@ohioattorneygeneral.gov
ewalker@ohioattorneygeneral.gov
COUNSEL FOR DEFENDANT

ON COMPUTER

IN THE COURT OF CLAIMS OF OHIO

EUGENE WRINN, JR.,	:	
Plaintiff,	:	Case No. 2006-05934
-vs-	:	Judge J. Craig Wright
OHIO STATE HIGHWAY PATROL,	:	
Defendant.	:	

MEMORANDUM IN SUPPORT

Plaintiff, Eugene Wrinn, Jr., initiated this cause of action on September 13, 2006. Pursuant to Court of Claims local rule 15(C) Plaintiff advised the Court that a connected action existed in the United States District Court, Northern District of Ohio, against the individual members of the Ohio State Highway Patrol, several members of the Lima Police Department and several members of the Allen County Sheriff's Office.

This Court conducted a connected action and immunity status conference on November 20, 2006. As a result of the conference this action was stayed pending the final disposition of the connected action. This Court also stated in its entry of December 5, 2006 that any immunity issues shall be determined in conjunction with the trial on the merits. The Court further indicated that discovery shall continue while this action is stayed.

The individual members of the Ohio State Highway Patrol moved to dismiss the federal court cause of action against them based upon the waiver contained within the Ohio Court of Claims statute. The federal district court properly granted the dismissal on behalf of the Ohio State Highway Patrol defendants. The Plaintiff then appealed that decision to the Sixth Circuit Court of Appeals. The Sixth Circuit certified the case to the Ohio Supreme Court for its determination of Ohio law. The Ohio Supreme Court dismissed Plaintiff's case based upon an untimely filing of their brief. The Plaintiff was ultimately unsuccessful in attempting to appeal the federal case to the United States Supreme Court. The remaining causes of action against the City of Lima police officers and Allen County sheriff's deputies remains pending in the United States District Court.

The parties continued to engage in discovery in both the federal case and the Court of Claims case, including written interrogatories, requests for production of documents and multiple depositions of the law enforcement personnel. As evidenced by this Court's docket, several status conferences have been held to determine the status of the connected action which is still pending. On April 16, 2010, Plaintiff filed a motion requesting an immunity hearing relating to the Ohio State Highway Patrol defendants in the Court of Claims. This Court denied Plaintiff's motion stating that "personal immunity for state officers and employees under R.C. 9.86 is expressly limited to civil actions arising under the laws of Ohio, so the exclusive, original subject matter

jurisdiction afforded the Court of Claims by R.C. 2743.02(F) does not apply to federal claims. Further, courts have uniformly held that violations of Section 1983, Title 42, U.S. Code by state officers and employees can not be immunized by state law and that a court of common pleas has jurisdiction to hear such claims. * * * Therefore, since personal immunity is inapplicable to these claims, any hearing would be a vain act." *Rose v. Ohio Department to Rehabilitation and Correction, Franklin, App. No. 07AP-472, 2007-Ohio-6184.*

On June 30, 2010, Plaintiff filed a motion for reconsideration of this Court's entry denying their request for an O2(F) hearing. Defendant filed a responsive motion on July 8, 2010, asking this Court to deny Plaintiff's motion for reconsideration. This Court ultimately granted Plaintiff's motion for reconsideration and scheduled an immunity conference for October 6, 2010. Plaintiff filed a motion for continuance of the immunity hearing which was ultimately granted and rescheduled the immunity conference for December 15, 2010.

On December 8, 2010 at 5:50 p.m. Plaintiff for the first time provided Defendant with an expert opinion via email. Counsel for Defendant contacted Plaintiff's counsel the following day expressing their concern over the "eleventh hour" disclosure of Plaintiff's expert. In the spirit of cooperation and as a compromise, defense counsel proposed that the parties agree to continue the immunity hearing scheduled for December 15, 2010 in order for Defendant to adequately review Plaintiff's expert report and also afford Defendant an

opportunity to depose Plaintiff's expert. Plaintiff's counsel refused to agree to the continuance.

The scheduled 02(F) hearing has serious repercussion as it relates to the three individual members of the Ohio State Highway Patrol. The Plaintiffs are requesting this Court to strip the individuals of their immunity as afforded by R.C. 9.06. Therefore, this hearing potentially exposes them to personal liability, risk of economic loss and the ruination of their careers.

At no time prior to December 8, 2010, had Plaintiffs ever identified an expert witness. To allow such hearing to continue as scheduled would constitute a trial by ambush. Given the amount of time this case has been pending, the extensive discovery taken and the lengthy procedural history of the federal court action, and the voluminous amount of documents Plaintiff's expert reviewed in order to write an expert report it is extremely doubtful that Plaintiff did not consider using their expert until one week before the scheduled hearing. Such conduct should not be abided by this Court. Thus, Defendant's motion for continuance should be granted in order to allow Plaintiff's expert to be deposed and Defendant afforded the opportunity to retain its own expert. Consistent with the practices of this Court, if this case had been set for trial, the parties would have been given expert report deadlines and the opportunity to conduct depositions of the experts well before the trial.

CONCLUSION

Based upon the foregoing reasons, Defendant respectfully requests this Court to grant a continuance of the December 15, 2010 O2(F) hearing.

Respectfully submitted,

RICHARD CORDRAY
Attorney General of Ohio

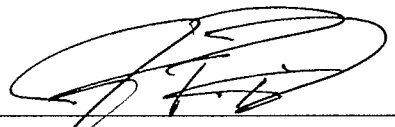
JAMES P. DINSMORE (0051798)
ERIC A. WALKER (0040801)
Assistant Attorneys General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215
(614) 466-7447/Fax: 644-9185
jdinsmore@ohioattorneygeneral.gov
ewalker@ohioattorneygeneral.gov
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion to Continue was served upon the following counsel of record by ordinary U.S. mail, postage prepaid, this 17th day of December, 2010.

Cary Rodman Cooper
Christopher Walker
Cooper & Walinski, LPA
900 Adams Street
Toledo, Ohio 43624
Counsel for Plaintiff

C. Michael Piacentino
Piacentino & Piacentino
198 East Center Street
Marion, Ohio 43302
Counsel for Plaintiff



JAMES P. DINSMORE
Assistant Attorney General