

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

CMI INC OF KENTUCKY,	:	
	:	
Appellant,	:	
	:	
Vs.	:	CASE NO.
	:	
JOHN C. FABIAN, ET. AL.,	:	2007 AP 010721 NC
CATHERINE MARSH,	:	2007 AP 10932 NC
MORLEY PARENT,	:	2007 AP 10934 NC
SARA PENNEY, and	:	2007 AP 10933 NC
KENNETH BAKER, ET. AL.	:	2007 AP 12538 NC
Appellees.	:	
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**MOTION TO STRIKE ARGUMENT RAISED FOR THE FIRST  
TIME IN REPLY BRIEF**

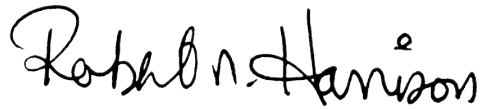
COMES NOW, the above named Appellees, by and through their undersigned attorney, and files this Motion to Strike Argument Raised for the First Time in Reply Brief, and would show:

1. In its initial brief, the Appellant’s argument in Section III was titled: “CMI’S “lack” of response to subpoenas duces tecum was not a willful violation.” Initial Brief of Appellant, pages 27 – 29.
2. In its Reply brief, Appellant asserted for the first time that “Appellant did in fact properly object to the subpoenas duces tecum”. Reply Brief of Appellant, pages 3 – 7.
3. These issues, which were neither raised at the trial court nor in the

initial brief, were not properly raised in the Reply Brief.

4. Issues raised on appeal for the first time in a reply brief are not properly before the court and cannot be considered. *Plichta v. Plichta*, 899 So.2d 1283 (Fla. 2d DCA 2005); *Medrano v. State*, 795 So.2d 1009 (Fla. 4<sup>th</sup> DCA 2001); *Snyder v. Volkswagen of Am., Inc.*, 574 So.2d 1161 (Fla. 4<sup>th</sup> DCA 1991).

WHEREFORE the Appellees request that this Court strike the issues raised for the first time in the Reply Brief.

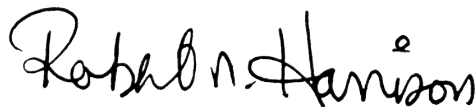


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Cliff Ramey, State Attorney's Office, 4000 S. Tamiami Trail, Venice FL 34293 and Michael Taaffe, P.O. Box 49948, Sarasota, FL 34230 this 22<sup>nd</sup> day of January, 2008.



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Robert N. Harrison