

# Michigan Court of Appeals

## DOCKETING STATEMENT

Case No:  
Circuit: 13-000652-NI

Court of Appeals:

317972

### Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an **appellant** in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

#### 1. Case Name:

<input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Appellee	v	<input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Appellee
<u>Tamara Filas</u> Name of first Plaintiff		<u>Kevin Culpert and Efficient Design, Inc.</u> Name of first Defendant
Address: 6477 Edgewood Canton, MI 48187		Address:
Telephone No: (734) 751-0103		Telephone No:
Attorney Name: _____ Bar No: _____		Attorney Name: _____ Bar No: _____
Address:		SEE ATTACHED SHEET.
Telephone No:		Address:
		Telephone No:

2.  A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

3.  There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

4.  I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.

Tamara Filas vs. MEEMIC Insurance Co., Circuit Court Case #12-016693-NF, Court of Appeals #316822.

5. Identify **all** the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.)	Date(s) Occurred	Court Reporter
Motions	5-2-13	Marqe Bamonte
Motions	6-21-13	Marqe Bamonte
Special Conference	6-24-13	Mary Skinner
Objection to 7-day Order	8-9-13	Marqe Bamonte

6. **Nature of case:**

a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): \_\_\_\_\_.

b. Identify the procedural nature of the case being appealed.

- arbitration                       bench trial                       post-judgment action                       declaratory judgment  
 interlocutory matter                       jury trial                       summary disposition  
 administrative proceeding (specify agency) \_\_\_\_\_  
 other (i.e. default judgment) \_\_\_\_\_

7. Briefly describe the nature of the action and the result in the trial court. Conclusory statements such as "the judgment of the trial court is not supported by law" are unacceptable. Attach additional pages as needed.

Please see attachments.

8. Briefly state the issues to be raised in this appeal. Attach additional pages as needed.

Please see attachments.

9. The amount and terms of the judgment appealed are:

None. Order of dismissal granted.

10. Settlement negotiations. (Check all boxes that apply.)

- Settlement negotiations have been conducted or are scheduled.  
 Settlement is unlikely.  
 Other \_\_\_\_\_

9/27/13

Date

Signature

Signature  
redacted

**Provide the Proof of Service on a separate form.**

**Attorneys for Appellee**

**Circuit Court #13-000652-NI (Not yet assigned Court of Appeals number)**

**Attorney for Kevin Culpert:**

Mr. Ahmed Hassouna  
Law Offices of Mark E. Williams  
340 E. Big Beaver, Suite 250  
Troy, MI 48083  
(248) 764-1127

**Attorneys for Efficient Design, Inc.:**

Mr. James Wright  
Zausmer, Kaufman, August & Caldwell, P.C.  
31700 Middlebelt Rd., Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

Mr. Michael O'Malley  
Vandever Garzia  
1450 W. Long Lake Rd., Ste. 100  
Troy, MI 48098  
(248) 312-2940

**Docketing Statement Attachments, Circuit Court #13-000652-NI**

(Not yet assigned Court of Appeals number)

**#7 Briefly Describe the nature of the action and the result in the trial court.**

The nature of the action is a third-party tort claim for damages from an auto accident.

- **5-2-13 Plaintiff's Motion for Continuance & Defendant's Motion to Compel Answers to Interrogatories and Production of Documents**

Result: Plaintiff's Motion for Continuance was denied. Defendant's Motion to Compel was not granted at this time---Discovery was stayed for 30 days or until Plaintiff retained new counsel. Plaintiff's former attorney, Daryle Salisbury was discharged as counsel for Plaintiff.

- **6-21-13 Defendant Kevin Culpert's Motion to Compel Answers to Interrogatories and Production of Documents, Defendant Efficient Design's Motion to Compel Discovery From Plaintiff, Plaintiff's Motion to Vacate Protective Order, and Plaintiff's Motion to Compel Defendant to Return Inadvertently Produced Discovery Materials**

Result: The Register of Actions lists the Motions to Compel as having been granted. However, it should be clear that the Plaintiff provided all discovery materials requested by the two Defense attorneys with the exception of medical records to Defendant, Efficient Design. In the court room, shortly before the hearing took place, Plaintiff provided both Defendants' attorneys, Mr. Hassouna and Mr. Wright, with fully completed and notarized interrogatories containing attachments satisfying their requests for production of documents. With regard to production of medical records, Plaintiff provided Mr. Hassouna, attorney for Kevin Culpert, with copies of

completed and mailed SCAO Form MC315 for each of her health care providers and he accepted them as sufficiently meeting his request for production of medical records. The reason Plaintiff did not provide medical records to Mr. Wright, attorney for Efficient Design, Inc. is because it had not yet been determined whether Kevin Culpert was in the scope of his employment, and therefore, whether Efficient Design was even liable for damages to the Plaintiff. Plaintiff did not want to prematurely disclose her medical information until it was determined if Efficient Design held any liability. However, Judge Borman ordered Plaintiff to provide medical records to Mr. Wright by 2 pm June 24, 2013. Mr. Wright did not have any authorization forms with him at the hearing. He was ordered to e-mail them to the Plaintiff that day.

It should be noted that although the Register of Actions states that on 6-21-13, a "Motion to Vacate" was "denied," this is incorrect. Judge Borman granted Plaintiff's motion. A signed order granting Plaintiff's Motion to Vacate Protective Order was also entered on 6-21-13 and appears on the Register of Actions as "Order for Miscellaneous Action, Signed and Filed."

Plaintiff's Motion to Compel Defendant to Return Inadvertently Produced Discovery Materials was granted.

- **6-24-13 Special Conference**

Result: It should be clear that Plaintiff was unaware of the scheduling of this conference and therefore was not in attendance. This conference did not appear on the register of actions until after it occurred. At approximately 11:30 a.m., Plaintiff

complied with Defendant Efficient Design's request for production of medical records, when she delivered to Mr. Wright's office, copies of completed and mailed SCAO Form MC315 for each of her health care providers, just as she had done for Mr. Hassouna. Plaintiff was unable to use Mr. Wright's forms because they were not received by the end of the business day 6-21-13 and Plaintiff wanted to make sure she met the 2pm deadline on 6-24-13 (details explained in court filings). Plaintiff received a phone call from the court clerk at approximately 3:30 p.m. informing her that her entire case had been dismissed.

- **8-9-13 Hearing on Plaintiff's Objection to 7-Day Order of Dismissal**

Result: Plaintiff's Objection to 7-Day Order of Dismissal was denied because she refused to fill out new authorization forms provided by Mr. Wright, which contained clauses she was not in agreement with. Mr. Wright was also requesting employment and educational records which he did not request in his motion to compel and was therefore not yet entitled to. The Order of Dismissal without prejudice was entered.

**#8 Briefly state the issues to be raised in this appeal.**

On August 9, 2013, Plaintiff's entire case was dismissed without prejudice based on Plaintiff's refusal to sign authorization forms provided by the Defendant, Efficient Design, which contained clauses allowing the attorney to act as a "copying service" to re-disclose Plaintiff's medical records, similarly to third-party records copying services, to which Plaintiff does not have a legal obligation to disclose her records. Photocopies of said authorizations were also deemed to be valid, which is not a requirement on the

SCAO Form MC 315.

Defense Counsel for Efficient Design filed a motion to compel Plaintiff to provide "copies of any and all medical records relating to injuries received as a result of the subject accident" and for Plaintiff to sign an enclosed authorization form regarding Medicare/Medicaid benefits. No forms were enclosed with the interrogatories or motion.

The Supreme Court Administrative Office (SCAO) mandates the use of form MC 315 to obtain medical records for discovery pursuant to MCL 2.314(C)(1)(d). Plaintiff already provided copies of completed and mailed SCAO Form MC315 for each of her health care providers to Mr. Hassouna, attorney for Kevin Culpert, and received no objection from him, nor did he motion for the case to be dismissed. Therefore, she does not believe the portion of her case against Kevin Culpert should have been dismissed.

Plaintiff provided the same completed and mailed forms to Mr. Wright as she had for Mr. Hassouna, and should have been considered to have met her obligation for production of medical records. If Mr. Wright wanted employment/educational records, he would have needed to file a new request for production of documents and a new motion to compel, if necessary.

Plaintiff contends her case should not have been dismissed for the reasons stated above.

9-27-13  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tamara Filas  
6477 Edgewood  
Canton, MI 48187  
(734) 751-0103, e-mail redacted

Signature  
redacted

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,

Plaintiff,

-vs-

KEVIN THOMAS CULPERT, AND  
EFFICIENT DESIGN, INC., A Michigan  
Corporation.

Defendants.

Case No.: 13-000652-NI

Hon. Susan D. Borman

Court of Appeals No:  
currently unassigned

TAMARA FILAS Plaintiff 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 e-mail redacted	MICHAEL C. O'MALLEY (P59108) Vandever Garcia Attorney for Defendant Efficient Design 1450 W. Long Lake Rd., Ste. 100 Troy, MI 48098 (248) 312-2940 <a href="mailto:momalley@vgpclaw.com">momalley@vgpclaw.com</a>
AHMED M. HASSOUNA (P67995) Attorney for Defendant Culpert 340 E. Big Beaver, Suite 250 Troy, MI 48083 (248) 764-1127 <a href="mailto:Ahmed_M_Hassouna@progressive.com">Ahmed_M_Hassouna@progressive.com</a>	JAMES C. WRIGHT (P67613) Attorney for Defendant Efficient Design 31700 Middlebelt Rd., Suite 150 Farmington Hills, MI 48334 (248) 851-4111/0100 (Fax) <a href="mailto:jwright@zkact.com">jwright@zkact.com</a>

CERTIFICATE OF SERVICE



On September 27, 2013, I mailed a copy of the Docketing Statement by Certified U.S. Mail to:

Mr. Ahmed Hassouna  
Law Offices of Mark E. Williams  
340 E. Big Beaver, Suite 250  
Troy, MI 48083  
(248) 764-1127

Mr. James Wright  
Zausmer, Kaufman, August & Caldwell, P.C.  
31700 Middlebelt Rd., Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

Mr. Michael O'Malley  
Vandever Garzia  
1450 W. Long Lake Rd., Ste. 100  
Troy, MI 48098  
(248) 312-2940

9-27-13

Date

Tamara Filas  
6477 Edgewood  
Canton, MI 48187  
(734) 751-0103

e-mail redacted

Signature  
redacted