STATE OF MICHIGAN

IN THE COURT OF APPEALS

TAMARA FILAS,

Plaintiff-Appellant,

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

-vs-

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

Defendants-Appellees.

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TAMARA FILAS Plaintiff-Appellant 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 [redacted]	MICHAEL C. O'MALLEY (P59108) Attorney for Defendant Efficient Design Vandeveer Garzia 1450 W. Long Lake Rd., Suite 100 Troy, MI 48098 (248) 312-2940 momalley@vgpclaw.com
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APPELLANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction in the Court of Appeals is appropriate because on 8-30-13, Appellant filed a timely claim of appeal from the Trial Court's 8-9-13 Order denying Plaintiff's 7-2-13 Objection to Defendant Efficient Design Inc.'s Proposed Order of Dismissal Without Prejudice. The 8-9-13 Order is the final order as it disposes of the claims and adjudicates the rights and liabilities of the parties. MCR 7.202(6)(a)(i); MCR 7.203(A)(1).

QUESTIONS PRESENTED

1. **Did the circuit court err by ordering Plaintiff-Appellant to provide her medical records to Efficient Design without establishing that they were a liable party to the case?**

2. **Did the circuit court err by not permitting Plaintiff-Appellant to use SCAO-mandated form MC 315 to satisfy her obligation to provide discovery materials under MCR 2.314(C)(1)(d), since she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records?**

3. **Did the circuit court err when it dismissed Plaintiff-Appellant's case based on her refusal to complete specific authorization forms provided by the Defendant-Appellee, when there were still other means available for the Defendant-Appellee to obtain the medical and employment records they sought (i.e. subpoena to health care provider's custodian of records or use the mandated SCAO form MC 315, obtaining the employment records directly from her employer since Plaintiff-Appellant is a public school teacher whose employment records are publicly available)?**

4. **Did the circuit court err when it ordered Plaintiff-Appellant to release records beyond those requested in the Defendant's Motion to Compel, without requiring the Defendant to file a new Motion to Compel to include the new records requests?**

5. **Did the circuit court err when it dismissed Plaintiff-Appellant's <u>entire</u> case against <u>both</u> Defendant-Appellees, Kevin Culpert <u>and</u> Efficient Design, Inc., when only Defendant-Appellee Efficient Design motioned for the case to be dismissed on the basis that Plaintiff-Appellant used SCAO-approved Form MC 315 to provide her medical records, instead of his personal authorization forms?**

6. **Is the Plaintiff-Appellant in a third-party tort, or in any case where medical records are requested as a part of discovery, justified in refusing to agree to additional language and/or missing information on a medical or employment authorization form that is not included in the SCAO-mandated Form MC 315 (i.e. allowance of photocopies, use of an expiration event instead of a date, allowance of records to be released "for copying purposes")?**

INTRODUCTION

This is a third-party tort case resulting from Plaintiff-Appellant's January 15, 2010 auto accident. There are two Defendants, Kevin Culpert, and his employer at the time of the accident, Efficient Design, Inc. It should be clear that there are three defense attorneys handling the third-party case: Mr. Hassouna represents Kevin Culpert; Mr. Wright and Mr. O'Malley represent two different insurance companies for Efficient Design Inc. The names of the insurance companies for Efficient Design were not named or evident in any of the filings.

On April 26, 2013, Plaintiff-Appellant's first-party case related to the 1-15-10 auto accident was dismissed without prejudice based on Plaintiff-Appellant's refusal to sign authorization forms to release her medical and employment records to a company called Records Deposition Service, Inc. (RDS), a non-party to the auto case, and her willingness to complete only the Supreme Court Administrative Office (SCAO) –approved form MC 315 to obtain her medical records for discovery pursuant to MCR 2.314(C)(1)(d). This case is currently pending in the Court of Appeals, Case # 316822, and is closely related to the matter contained in this Appeal.

Plaintiff-Appellant's entire third-party case was dismissed without prejudice on June 24, 2013, due to Defendant, Efficient Design, Inc.'s non-acceptance of Supreme Court Administrative Office (SCAO) Form MC 315, of which completed copies had already been mailed to Plaintiff-Appellant's health care providers so that Efficient Design Inc. could obtain Plaintiff-Appellant's medical records. It should be clear that Defendant, Kevin Culpert's attorney, Mr. Hassouna, did not object to Plaintiff-Appellant's use of form MC 315 to provide Mr. Hassouna with her medical records. Even though Defendant Kevin Culpert's Counsel had not motioned for dismissal of the case, and stated only that he was in concurrence with Mr.

Wright's Proposed Order to Dismiss, without providing any additional reasons on his own behalf for why Culpert's case should be dismissed as well, Plaintiff-Appellant's claims against both Defendants were dismissed.

STATEMENT OF FACTS

Defendant-Appellee, Efficient Design's Counsel filed its 4-30-13 Motion to Compel Discovery from Plaintiff, heard on June 21, 2013. Kevin Culpert's Motion to Compel Answers to Interrogatories & Production of Documents filed by Mr. Culpert's attorney, Mr. Hassouna, was also scheduled to be heard on June 21, 2013.

On April 30, 2013, Defendant Efficient Design, Inc. mailed Plaintiff-Appellant a Combined Request for Admissions and Requests for Production of Documents to Plaintiff, a set of First Interrogatories to Plaintiff, and Interrogatories and Request for Production of Documents regarding the Existence of the Medicare/Medicaid Lien. He sent these requests without any authorization forms enclosed. On the morning of June 21, 2013, before the hearing on the above mentioned motions, Plaintiff-Appellant provided answers to interrogatories to both Defendants, Kevin Culpert and Efficient Design, Inc., to their respective attorneys, Mr. Hassouna and Mr. Wright.

To meet Mr. Hassouna's request for production of medical records, Plaintiff-Appellant provided Mr. Hassouna, attorney for Defendant, Kevin Culpert, with signed SCAO MC 315 authorization forms for her healthcare providers, which she handed to him at the court and after looking them over, he indicated were acceptable to him.

With regard to the production of documents for Mr. Wright, Defendant Efficient Design asked only for "copies of any and all medical records relating to injuries received as a result of

the subject accident", "copies of any and all photographs with regard to this accident," and for Plaintiff-Appellant to sign an enclosed authorization form regarding Medicare/Medicaid benefits. (Exhibit A, relevant page from Efficient Design's Request for Production of Documents to Plaintiff and relevant page from Request for Production of Documents Regarding the Existence of a Medicare/Medicaid Lien dated 2-7-13, but mailed 4-30-13). Plaintiff-Appellant answered all of Efficient Design's interrogatories and provided a CD of her photographs with regard to the accident to Mr. Wright. Plaintiff-Appellant did not provide medical records to him as she had for Mr. Hassouna, because she was still in disagreement with providing records to a party that had not admitted any liability in the case.

Mr. Wright stated in item #16 of his 2-5-13 answer to the complaint against Efficient Design, "*Defendant Culpert was not an agent of Defendant Efficient Design, Inc. and was not in the course and scope of his employment when the alleged accident occurred*." (Exhibit B, relevant page of Mr. Wright's 2-5-13 Answer to Complaint against Efficient Design). However, at the June 21, 2013 hearing, Mr. Wright stated that Efficient Design was indeed Kevin Culpert's employer. Plaintiff-Appellant's 6-18-13 filing, "Plaintiff's Answer to Defendant Efficient Design's Motion to Compel Discovery from Plaintiff" requested not to release her medical information to Efficient Design, until it was determined that Plaintiff-Appellant had a legitimate claim against Efficient Design and if Efficient Design could be held liable to pay damages to her. In her 6-18-13 Answer, Plaintiff-Appellant also asked the Court to grant her 28 days to prepare interrogatories for Defendant Efficient Design. Plaintiff had intended to send interrogatories to Kevin Culpert and Efficient Design to ascertain if Kevin Culpert was in the scope of his employment prior to Judge Borman placing a 30-day stay on the third-party case on April 26, 2013. Plaintiff-Appellant's requests for time to send interrogatories and determine if Efficient

Design could be held liable, were denied by the Court at the June 21, 2013 hearing, and Plaintiff-Appellant was ordered to provide her medical records to Mr. Wright before it was discovered whether or not Kevin Culpert was in the course and scope of his employment when the accident occurred, and whether or not Efficient Design held any liability. The Court did, however, request that the Defendants depose Mr. Culpert to determine if he was in the scope of his employment when he hit Plaintiff-Appellant's vehicle.

No authorization forms for the Plaintiff-Appellant to sign were enclosed with Efficient Design's documents mailed to her on April 30, 2013, nor were any provided to her before or during the June 21, 2013 hearing on Efficient Design's Motion to Compel Records from Plaintiff before Judge Borman, indicating that Efficient Design's attorney, Mr. Wright, was not concerned that he did not include any authorization forms in his April 30, 2013 mailing and/or did not give any of the authorizations to her. Judge Borman ordered Mr. Wright to e-mail the authorization forms to Plaintiff-Appellant 6-21-13 and ordered Plaintiff-Appellant to sign them "as-is." Plaintiff is not certain if Judge Borman ever saw the forms provided by Mr. Wright, delivered to Plaintiff-Appellant's residence at 3:00 pm on 6-24-13, after the time Plaintiff-Appellant was ordered to have returned copies of the signed authorizations "as-is" to Mr. Wright, at 2pm 6-24-13. The forms provided by Mr. Wright were not for a third-party records copying service, but shared many similarities with the forms provided by records copying service companies. If Plaintiff-Appellant had been able to see the authorizations Mr. Wright at first claimed he had with him in the court room, Plaintiff-Appellant could have reviewed the authorization to determine if the information requested and/or the clauses were reasonable and acceptable to warrant her signature on them "as-is", before Judge Borman ordered Mr. Wright to e-mail his

authorization forms to Plaintiff-Appellant on 6-21-13 and ordered Plaintiff-Appellant to sign Mr. Wright's forms "as-is" and provide copies of them to Mr. Wright by 2:00 pm on 6-21-13.

Even though Plaintiff-Appellant did not use Mr. Wright's authorization forms to provide her medical records to him, and instead used SCAO-mandated form MC 315, let it be clear that she didn't even have to provide Mr. Wright with any authorization forms at all under MCR 2.314(C)(1)(d), because in addition to her choice to provide signed authorization forms under MCR 2.314(C)(1)(d), she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records, period.

Plaintiff-Appellant was denied due process when Judge Borman granted Mr. Wright's Motion to Dismiss on June 24, 2013 at a "special conference" without notification to Plaintiff-Appellant the "Special Conference" was being held on June 24, 2013. Without notification Plaintiff-Appellant's right to appear at the conference was denied. Thereby, Plaintiff-Appellant was unable to defend her case and argue against Mr. Wright's allegations that she altered Mr. Wright authorization forms by using SCAO forms or against Mr. Wright's Motion to Dismiss her case, given Mr. Wright did not e-mail his authorization forms to Plaintiff by the close of business day on June 21, 2013. A substitute transcriptionist attended, instead of Marge Bamonte.

Plaintiff-Appellant filed Case # 316822 on June 20, 2013 in the Appellate Court , the last date Plaintiff-Appellant could file under the statute of limitation to appeal Judge Borman's Order granting the dismissal of Plaintiff-Appellant's 1st Party no-fault auto case against MEEMIC Insurance Co. Judge Borman dismissed Plaintiff-Appellant's first party no-fault auto case because Plaintiff –Appellant refused to sign medical release authorization forms "as-is" provided by MEEMIC Insurance co. from a records copy service.

The scheduling of Mr. Wright's Motion to Compel Records for June 21, 2013 could have been deliberate on the part of the Court to allow Judge Borman to add the stipulation to Mr. Wright's Motion to compel Records for Plaintiff to sign Mr. Wright's authorization forms "as-is", or just because it was the next available Friday for motions to be heard after Judge Borman's stay on the case expired.

Judge Borman could not allow Plaintiff-Appellant to object to Mr. Wright's forms "as-is" without compromising her ruling to dismiss Plaintiff-Appellants first party auto case for the same reason.

Mr. Wright should simply have been able to call or go to his office to arrange to have his authorization forms e-mailed to Ms. Filas by 5:00 pm June 21, 2013 if his forms were prepared and ready to sign before he appeared in court June 21, 2013 as he first indicated they were. It took Plaintiff-Appellant hours to prepare no less than 20 SCAO forms for mailing, even with additional help, on June 21, 2013.

The first time Ms. Filas viewed the authorization forms with a delivery date stamped on the package of 3:00 pm June, 24, 2013, was after she received a call from the Court Clerk, Precious Smith, after 3:30 pm June 24, 2013, informing her that her case had been dismissed**.**

At the aforementioned June 21, 2013 hearing, Defendant Efficient Design admitted that no medical authorization forms were provided to Plaintiff-Appellant to sign due to the fact that they did not know her healthcare providers since they just received her answers to interrogatories that morning.

It would not have been necessary for Mr. Wright to have known the names of all of Plaintiff-Appellant's health care providers in advance, in order to provide a copy of the medical release form Mr. Wright wanted Plaintiff-Appellant to use to obtain medical records. Mr. Wright

could have enclosed a blank form from which duplicates could have made by and filled out by Plaintiff-Appellant to provide "any and all medical records relating to injuries received as a result of the subject accident" as requested April 30, 2013. If there was any special wording or boxes that had to be checked, Mr. Wright could have provided to Plaintiff-Appellant, a sample "filled out" form as well to insure she filled out the forms to his satisfaction. Mr. Wright could have then compared the forms filled out by Plaintiff-Appellant with the names and addresses of the health care providers she provided June 21, 2013.

Mr. Wright knew Plaintiff-Appellant had previously refused to sign third-party forms for Legal Copy Services, Inc. from Mr. Hassouna in a previous combined first- and third- party auto case that was dismissed and re-filed resulting in separate 1st and 3rd party auto cases. Mr. Wright was also aware Plaintiff-Appellant's refusal to sign third party authorization forms "as is" from Records Deposition Services, Inc. provided to her to sign from MEEMIC Insurance Co. attorney Simeon Orlowski, resulted in the dismissal of the re-filed first party no fault auto case on April 26, 2013 by Judge Borman. That dismissal is currently being appealed by Plaintiff-Appellant.

Judge Borman ordered June 21, 2013, that Defendant Efficient Design send the Plaintiff-Appellant health care authorization forms on June 21, 2013 to be signed and returned to Defendant Efficient Design by 2:00 PM Monday, June 24, 2013. Plaintiff-Appellant provided her e-mail address to Mr. Wright, attorney for Defendant Efficient Design, so he could e-mail the authorization forms to her later that day. Mr. Wright had been uncooperative in the past with Plaintiff-Appellant. He wouldn't even disclose to her what insurance company he was representing. By 5:00 PM June 21, 2013, the standard close of business time in the U.S., Plaintiff-Appellant had not received any health care authorization forms from Mr. Wright in her e-mail inbox and she became concerned about not being able to meet the June 24, 2013 2:00 PM

deadline to get copies of the signed health care authorization forms to Mr. Wright in time to avoid a court appearance at 2:00 PM on June 24, 2013. Given Mr. Wright's uncooperative attitude he has displayed in dealing with her to date, and his failure to provide the medical authorization forms to Plaintiff-Appellant by the close of business on June 21, 2013, as ordered by the court, she decided it would be foolish to count on Mr. Wright to provide the forms necessary for her to meet the deadline of getting them filled out, signed and returned to Mr. Wright before 2:00 PM June 24, 2013 as ordered by the Court. Thereby, Plaintiff-Appellant decided to fill out and provide the same SCAO-approved Form MC 315 medical authorization forms she provided to Mr. Hassouna, for Mr. Wright. Since these forms were accepted by Mr. Hassouna, Plaintiff-Appellant reasoned they would also be accepted by Mr. Wright.

Completing the authorization forms for all of Plaintiff-Appellant's healthcare providers was a long, tedious process. At another location on June 21st, Plaintiff-Appellant entered the data into no less than 20 forms and printed them out and recruited the help of others to address and stuff envelopes, fill out certificates of mailing, copy and organize cover letters and authorizations, etc. in order to get all of the authorizations mailed on June 21, 2013 before the post office closed at 8:00 PM. Plaintiff-Appellant then had to copy the certificates of mailing for Mr. Wright and attach them to all of the medical releases and cover letters that she had sent out, which she would not have been able to mail to Mr. Wright until Saturday, June 22, 2013.

Plaintiff-Appellant made the decision not to mail the copies of the completed SCAO-approved Form MC 315 to Mr. Wright on Saturday, June 22, 2013 because she did want to take the chance that they would not reach him by the June 24, 2013, 2 o'clock deadline imposed by the Court to provide the forms and risk the dismissal of her case. Instead, on Monday, June 24, 2013, at 11:24 AM, Plaintiff-Appellant personally delivered copies of the aforementioned cover

letters, signed authorizations, and copies of the certificates of mailing to Mr. Wright's office, meeting her obligation of providing signed authorizations disclosing her medical records to Mr. Wright by 2:00 PM June 24, 2013. (Exhibit C, signed cover letter verifying authorizations were received by Mr. Wright's law firm at 11:24 AM on 6-24-13)

At 3:28PM on June 24, 2013, Plaintiff-Appellant received a voicemail from court clerk, Ms. Smith stating, "you were to produce all records which did not happen. The judge has dismissed your case." Plaintiff-Appellant returned Ms. Smith's phone call and explained that she had dropped off signed authorizations to Mr. Wright's office that morning at around 11:30 AM and therefore **did** meet the 2:00 PM deadline. Ms. Smith verified that Mr. Wright made a court appearance on June 24, 2013. Ms. Smith claimed that the forms were "altered" and would not clarify any further. Ms. Smith told Plaintiff-Appellant that the Judge dismissed the case and that she would have to appeal and order the transcripts to find out what was placed on the record for June 24, 2013.

Ms. Smith said nothing about being able to file an objection within 7 days. Plaintiff-Appellant was exhausted after the June 21, 2013 hearing after preparing interrogatories for Mr. Hassouna who did not supply her copies the interrogatory questions until June 5, 2013. Plaintiff-Appellant had to finish Mr. Hassouna's extensive interrogatories before she began Mr. Wright's interrogatories, which were also due on June 21, 2013. Plaintiff-Appellant did not expect any further filings from the Court and did not find the notice of the 7-day order in her inbox until July 1, 2013. Had Ms. Smith informed Plaintiff that she could file an objection within 7 days instead of ordering transcripts and filing an appeal, Plaintiff would have filed her objection sooner, instead of waiting until the last date to file it.

At the June 21, 2013 hearing, Plaintiff-Appellant was told she had to deliver signed authorizations to Mr. Wright by 2:00 PM, not that she had to make a court appearance with the authorizations at 2:00 PM. Plaintiff-Appellant looked at the Register of Actions on the morning of June 24, 2013 and printed a Register of Actions on June 24, 2013 after the close of court at 4:30 PM and no hearing was shown as being scheduled for or being held June 24, 2013 (Exhibit D, Register of Actions dated 6-24-13). Plaintiff-Appellant did not check the Register of Actions again until July 1, 2013, which shows the addition of a "special conference" held on June 24, 2013 at 2:00 PM. Plaintiff-Appellant was not aware a "special conference" was going to be held on June 24, 2013 at 2:00 PM. Defendant's attorney, Mr. Wright never informed Plaintiff-Appellant that the signed and mailed medical authorizations she delivered to his office at 11:24 AM June 24, 2013 were deemed by Mr. Wright to be "altered," necessitating a court appearance at 2:00 PM June 24, 2013.

Plaintiff-Appellant argues that if the forms she provided were claimed unacceptable by Mr. Wright, then she should have been notified by Mr. Wright or his office staff that they were unacceptable. She also contends she should have been notified by Mr. Wright or his office or the Court that a "special conference" was going to be held. Thereby, Plaintiff-Appellant could also have had the opportunity to address the Court before a decision was made to Dismiss her case. On June 20, 2013, Plaintiff-Appellant had filed an appeal in the Court of Appeals, of the dismissal of her first-party auto case against MEEMIC Insurance Co., which had been dismissed on April 26, 2013, because Plaintiff-Appellant refused to sign authorization forms "as is," provided by MEEMIC Insurance Co., to release her medical records to a third party records copy service. On June 21, 2013, Efficient Design was ordered by the Court to e-mail authorization forms to Plaintiff-Appellant to be used to obtain Plaintiff's medical records. Plaintiff contends it

is reasonable to argue that both Mr. Wright and Judge Borman may have been aware at the time the Motion to Compel hearing was scheduled for June 21, 2013, that June 20, 2013 was the last date the Plaintiff-Appellant could appeal the decision of Judge Borman dismissing Plaintiff-Appellant's first party case to the Appellant Court. It is also reasonable to argue that since Judge Borman dismissed Plaintiff-Appellant's first-party no-fault auto case due to the Plaintiff-Appellant's refusal to sign the RDS medical release authorization forms "as-is" as provided by MEEMIC Insurance Co attorney, Simeon Orlowski, which required Plaintiff-Appellant to release her records to a third party and also a non-party to her case, that Judge Borman could not allow Plaintiff-Appellant to use authorization forms that were not provided by the Defendant-Appellee "as-is" in the third party case, without compromising her ruling to dismiss Plaintiff-Appellant's first-party case for the reason that Plaintiff-Appellant refused to sign the forms from RDS provided by Mr. Orlowski "as-is".

The fact that Mr. Wright did not inform Plaintiff-Appellant that he was dissatisfied with the fully executed copies of authorizations releasing her medical Records that she had signed and mailed June 21, 2013 to her providers, for which she had hand-delivered copies of the signed authorizations and proof of mailing certificates to her providers to his office at 11:26 AM June 24, 2013, and he appeared before the Court on June 24, 2013 to have the case dismissed without Plaintiff-Appellant's knowledge, denied her due process of law. She was led to believe she had met her obligation to provide the signed authorizations to Mr. Wright in a timely manner by his inaction to inform her of his dissatisfaction with the forms she executed.

Plaintiff-Appellant even waited until 5:00 pm June 21, 2013, to check her e-mail one last time for e-mailed forms from Mr. Wright, before she left her house to complete the task of getting the authorizations signed, copied, and envelopes and certificates of mailing addressed for

mailing on June 21, 2013. She mailed signed authorizations to her providers using the same forms that were acceptable to Mr. Hassouna. Mr. Wright did not meet his obligation of getting the e-mailed forms to her before the close of the business day on Friday, June 21, 2013 as promised by Mr. Wright and ordered by Judge Borman. Plaintiff-Appellant tried to include every record that the Defendant was entitled to under the no-fault law. Plaintiff-Appellant was very concerned about complying with the Judge's order in a timely manner to avoid having her case dismissed if she did not provide copies of signed authorization forms that released her medical records to Mr. Wright before 2:00 pm, June 24, 2013.

It was not until after Plaintiff-Appellant spoke to Ms. Smith around 3:30 PM on the afternoon of June 24, 2013, about the dismissal of her case, that she discovered a FedEx package in her door mailed from Mr. Wright's office on June 21, 2013, stamped with a delivery time of 3:00 PM June 24, 2013, which was after the 2:00 PM deadline on June 24, 2013 to have the authorizations signed for Mr. Wright (Exhibit E, 6-24-13 FedEx time/date stamped envelope, stamped 3:00 PM). It contained a packet of numerous authorizations for Plaintiff-Appellant to sign. It wasn't until after June 24, 2013 that Plaintiff-Appellant discovered she had an e-mail from Mr. Wright's office in her inbox dated June 21, 2013, which was sent after 5 PM, containing electronic copies of the authorizations, again, <u>after</u> she had already completed and sent out the SCAO authorizations. Plaintiff-Appellant was already at another location, where the authorizations were prepared for mailing on June 21, 2013. Plaintiff had neither hard copies nor electronic copies of authorization forms from Mr. Wright from which to make alterations. Plaintiff-Appellant simply used the Supreme Court mandated medical authorization forms to satisfy the requirement in the written interrogatories from Efficient Design to supply medical records to Mr. Wright. Plaintiff-Appellant did not make alterations to Mr. Wright's

authorizations because she hadn't received any authorization forms from Mr. Wright prior to mailing out the other authorizations the evening of June 21, 2013.

Let it be clear that Plaintiff-Appellant had no malicious intent when she completed the same forms for Mr. Wright that she completed for Mr. Hassouna. Mr. Wright's authorization forms were not delivered to her home until 3:00 PM, which was after the 2:00 PM deadline to have them submitted to his office. Plaintiff-Appellant simply wanted to make sure she fulfilled her obligation to provide medical records to prevent her case from being dismissed. Plaintiff-Appellant contends it was reasonable for her to assume that Judge Borman might dismiss her case if she did not provide signed medical authorization forms to Mr. Wright by the time and date ordered by the Court, since the Judge had previously dismissed her first-party auto case because she did not sign Records Deposition Services Inc. authorization forms provided by MEEMIC Insurance Co., even though that Plaintiff-Appellant argued she should not have to provide her medical information to a non-party to the case (RDS). When Plaintiff filled out, signed and mailed out the SCAO MC 315 forms, she was not aware of the nature and content of Mr. Wright's authorization forms delivered by FedEx at 3:00 pm, June 24, 2013, after the 2:00 pm "special conference" to dismiss her case was held. Plaintiff-Appellant did provide signed authorizations for Efficient Design to receive "copies of any and all medical records relating to injuries received as a result of the subject accident," as requested by Efficient Design in their Request for Production of documents, and therefore met her obligation under the law to provide the medical records requested, as Efficient Design did not request any specific forms to be used when making the request, and did not cite any law or other legal reason giving Mr. Wright the right to mandate Plaintiff-Appellant to use his authorization form. The only authorization form Plaintiff-Appellant is aware of that has been mandated by law is the SCAO Form MC 315.

Thereby, Plaintiff-Appellant contends her case should not have been dismissed because she used SCAO authorization forms to release her medical information to Mr. Wright.

When the court clerk notified Plaintiff -Appellant by phone after 3:30 pm on June 24, 2013, that her third party case had been dismissed, she stated Plaintiff-Appellant did not produce all records and they were altered. Judge Borman did not order Plaintiff-Appellant to produce any records, medical or otherwise. Judge Borman only ordered Plaintiff-Appellant to produce copies of signed medical authorization forms to Mr. Wright by 2:00, June 24, 2013 which Plaintiff provided. Thereby, it is reasonable for Plaintiff-Appellant to argue that dismissing Plaintiff-Appellant's case on the grounds she did not produce "all" records, is without legal merit when she was never ordered to provide any records by June 24, 2013, and only ordered to produce authorization forms to release the medical records. Other than the two providers Plaintiff-Appellant innocently overlooked when filing out, signing and mailing the SCAO medical release authorizations, which she immediately remedied when she realized her oversight by sending out medical release authorizations to those providers and sending copies of the authorizations and certificates of mailing to Mr. Wright and Mr. Hassouna, Plaintiff-Appellant produced all authorizations she was ordered to produce by Judge Borman on June 21, 2013 to Mr. Wright by 2:00 pm, June 24, 2013. Plaintiff-Appellant hand-delivered to Mr. Wright's office on June 24, 2013 at 11:24 am, copies of the completed, signed SCAO MC 315 authorization forms releasing her medical records to Defendant Efficient Design's attorney, Mr. Wright, and copies of the certificates of mailing proving the authorizations had been mailed to her health care providers (Exhibit C, signed cover letter verifying authorizations were received by Mr. Wright's law firm at 11:24 AM on 6-24-13).

Plaintiff-Appellant denies "altering" Mr. Wright's authorization forms because she had not even received his forms yet when she mailed out copies of MC 315 to her health care providers on June 21, 2013. Plaintiff-Appellant contends that using the SCAO authorization forms to provide medical records to Mr. Wright does not constitute altering the authorization forms.

In addition to authorization forms for her medical providers, the FedEx packet mailed by Mr. Wrights law firm on June 21, 2013 and delivered to Plaintiff-Appellant's address at 3:00 pm June 24, 2013, after the deadline of Judge Borman's order for Plaintiff-Appellant to produce the medical authorization forms to Mr. Wright at 2:00 pm on June 24, 2013, included additional requests for Plaintiff-Appellant to produce documents and additional authorization forms for Plaintiff-Appellant to fill out to release the documents, which included her academic records, employment records, tax returns, Blue Cross Blue Shield and MEEMIC insurance records, psychotherapy notes, and records from Don Massey Cadillac. The packet from Mr. Wright delivered by FedEx June 24, 2013 at 3:00 pm was delivered after Plaintiff had personally delivered the SCAO medical authorization forms to Mr. Wright's office on June 24, 2013 at 11:24 am, and after the June 24, 2013, 2:00 pm deadline that Judge Borman ordered Plaintiff-Appellant to produce authorization forms provided by Mr. Wright, to Mr. Wright. None of the requests for the production of documents for which the additional authorization were sent, were previously requested by Efficient Design in the original Interrogatories or Requests for Production of Documents mailed to Plaintiff-Appellant April 30, 2013, that Plaintiff-Appellant complied with delivering to Mr. Wright on June 21, 2013 at the Court. Plaintiff-Appellant was not previously aware Efficient Design desired for her to produce the additional documents. Plaintiff-Appellant did not "alter" by selectively choosing specific records to be received by

Efficient Design. The request for these additional records was never made until after she mailed the SCAO medical authorizations to release her medical records to Mr. Wright on June 21, 2013.

Defendants have not provided any evidence that Plaintiff-Appellant has altered any authorization relevant to the third Party case, nor could she be accused of not producing all records when requests for these records were not previously made, and authorizations for them were never included in the packet mailed to her on April 30, 2013, and the authorization forms Mr. Wright sent were not delivered until 3:00 p.m. on June 24, 2013, after the 2:00 p.m. deadline for Plaintiff-Appellant to submit the forms to him. Thereby, Plaintiff-Appellant contends her case should not have been dismissed for "altering" authorization forms and for not providing all records.

Furthermore, the June 21, 2013 Defendant's Request for Production of Documents to Plaintiff, which included additional records requests as stated above, states that it "*hereby requests production of documents from Plaintiff pursuant to MCR 2.310, to be delivered to our office within twenty-eight (28) days after service of this request*." The document then lists the requested documents, including the additional authorizations over and above the original request for medical records in the original Interrogatories and Request for Production of Documents mailed April 30, 2013. Since the Defendant stated that they were allowing 28 days for Plaintiff-Appellant to return the signed authorizations, which were mailed on June 21, 2013, it would have been unfair to then file an Order of Dismissal on June 25, 2013, on the grounds that not all records had been received when requests for additional records were not delivered to Plaintiff-Appellant until 3:00 pm on June 24, 2013 (Exhibit F, first page of Efficient Design's Request for Production dated 6-21-13). In order to compel production of the additional records requests, the Defendant would have had to file a new Motion to Compel in regard to the additional requests---

they cannot be included in the Motion to Compel heard on 6-21-13, since that Motion was only in regard to a request for production of medical records.

ADDITIONAL HISTORY AND FACTS

Plaintiff-Appellant hired an attorney on November 3, 2011 to file her PIP lawsuit against MEEMIC Insurance Co. and third-party lawsuit against Kevin Culpert, the driver of the vehicle that caused the accident. A joint lawsuit was filed by Plaintiff-Appellant's attorney in the 3rd Circuit Court, Case No. 11-014149-NF, on November 15, 2011, naming MEEMIC Insurance Co. and Kevin Culpert as Defendants. The case was dismissed without prejudice on July 20, 2012, with the stipulation that if her first party case was re-filed by December 22, 2012, benefits would date back one year from the original filing date of November 15, 2011. The third-party case had to be re-filed by its statutory deadline of January 15, 2013, three years after the date of the accident.

Before Plaintiff-Appellant hired her new attorney to refile the cases, it was agreed she could provide discovery materials herself, without the use of a records copy service, which had been an unresolved issue with her previous attorney when the case was dismissed without prejudice. However, her new attorney breached this agreement by sending her third-party, Legal Copy Services authorization forms to sign from the third-party Defendant, Kevin Culpert, and refused to stand up for her right not to use the Legal Copy Services (LCS) forms to meet her obligation to provide discovery material to release her records to the Defendants. Plaintiff-Appellant received the LCS forms from her attorney, but they appeared to be on behalf of Culpert's attorney, Mr. Hassouna, since the cover letter stated that Mr. Hassouna was using the

services of LCS. However, Mr. Hassouna did not object to Plaintiff-Appellant providing her medical records to him using SCAO form MC 315, rather than using the LCS forms that she received.

It is important to note that on November 3, 2011, the date she hired her first attorney, Plaintiff-Appellant ignorantly signed blank authorization forms from Records Deposition Services presented to her by this attorney in his office, which she later expressed her disapproval of, and sent a written request to him to rescind. The attorney told her that any records that were obtained with the forms she signed would be in her case file with the authorization form on top of the records. Upon thorough examination of the case file, provided on CD, there were no records beyond those Plaintiff-Appellant personally provided the attorney, indicating that he had not used the authorization forms. Plaintiff-Appellant received written confirmation from three of her main health care providers that no records were sent out to anyone but herself (Exhibit G, Accountings of Disclosure from Plaintiff-Appellant's three main health care providers). Plaintiff-Appellant has no way to verify for certain if her first attorney never executed the blank authorization forms she signed for a record copy service to obtain her records, or if the information she has received from her health care providers is accurate. Plaintiff-Appellant does know that one of the major health care providers that provided the confirmations that no one other than herself received her medical records, later revealed to Plaintiff-Appellant that her medical records were sent to MEEMIC Insurance Co. for billing purposes. Another provider failed to disclose they had disclosed information to another provider without Plaintiff-Appellant's authorization when Plaintiff-Appellant requested a written account of disclosers of her health care information after the first dismissal of her 1st and 3rd party case in July of 2012. This provider did not provide an accurate response, because Plaintiff-Appellant had already had

received oral confirmation from an employee that the transfer of records to the other provider was on the Health Care Provider's database prior to Plaintiff-Appellant making and receiving a response to her written discloser request.

Plaintiff-Appellant has been placed under a great deal of pressure to release her medical records to a non-party records copy service and/or to use a authorization form provided by the Defendant Appellee's that does not conform with the SCAO MC-315 authorization form for the production of records for discovery..

Plaintiff-Appellant is perplexed by the refusal of the Court as well as the new attorney she hired to re-file her auto cases, to accept the SCAO-mandated form MC 315 as acceptable discovery material to obtain her medical records.

ARGUMENTS

1. The circuit court erred by ordering Plaintiff-Appellant to provide her medical records to Efficient Design without establishing that they were a liable party to the case.

Standard of Review. Plaintiff-Appellant is only required to provide such privileged records to the parties in the case. Plaintiff- Appellants third party case was re-filed just days before the 3-year statute of limitations expired. Both of her previous lawyers failed to depose or send interrogatories to Kevin Culpert in their discovery. In order to preserve her right to hold Efficient Design liable if Kevin Culpert was in the scope of his employment when the auto accident occurred, she had to list Efficient Design as a defendant in the case, until it was determined if Kevin Culpert was in the scope of his employment when the accident occurred. Both of Plaintiff-Appellant's previous attorneys failed to depose Kevin Culpert or send him any

interrogatories to answer.

On pg. 4 of the 6-24-13 transcript, the Court states, "…I really don't understand [Plaintiff's] reluctance to allow any---and this happened in the PIP case, too---to allow counsel to see the medical records. So I have given her lots of adjournments." Let it be clear that in the PIP case, Plaintiff-Appellant did not refuse to provide the medical and employment discovery information to the Defendant. She provided signed forms provided to her by MEEMIC for the release of medical information and employment information to her attorney November 4, 2011, the date she hired him, that her attorney agreed to forward to MEEMIC. In her PIP case, Plaintiff-Appellant objected only to providing records to a third-party, non-party records-copying service, and contended that she should only have to provide records directly to the attorney representing her PIP insurance company (See current Court of Appeals case against MEEMIC Insurance Co., Case # 316822).

In this third-party tort, Plaintiff-Appellant objected to providing her records to the party, Efficient Design, Inc., whose liability had not yet been established, and who therefore may not end up being a party to the case.

Defendant Efficient Design, Inc.'s Response to Plaintiff's Objection to Defendant Efficient Design, Inc.'s Proposed Order of Dismissal Without Prejudice, filed 7-16-13, cites the case of *Christopher v Liberty Mutual Ins Co.* (unpublished onion, no 30856), and states that Plaintiff-Appellant case is analogous in that it involves a dismissal for failure to permit discovery. Mr. Wright states on page 4, "*That case's facts are identical to the facts in this case. It was a no-fault case where Plaintiff failed to answer interrogatories or sign medical authorizations."* First, this is a third-party tort case that differs from a first-party PIP case in which there is no doubt the PIP insurer is entitled to the Plaintiff-Appellant's medical records

under the Insurance Code of 1956 (no-fault law). Plaintiff-Appellant contends that liability should first have been established before she was ordered to provide her medical records (even though she did comply with the order under the threat of case dismissal). Second, as already explained, Plaintiff-Appellant submitted fully completed interrogatories at the court on June 21, 2013, before the hearing began, and she did sign multiple copies of medical authorization form MC 315, which were provided to Mr. Wright's office on June 24, 2013, at 11:24a.m. Therefore, his arguments for case dismissal do not apply to Plaintiff-Appellant's case.

In this third-party auto case, there are two named defendants---Kevin Culpert, and his employer, Efficient Design. On 6-21-13, prior to the 6-21-13 hearing at the court, Plaintiff-Appellant provided her medical records to Kevin Culpert's attorney, Mr. Hassouna. Plaintiff-Appellant was only reluctant to provide records to Efficient Design due to the fact that Efficient Design had not admitted any liability and they denied that Kevin Culpert was in the scope of his employment or that he was even an agent of Efficient Design. According to Defendant, Efficient Design Inc.'s 2-5-13 Answer to Plaintiff's Complaint, Item #16, "Defendant Culpert was **not an agent of Efficient Design Inc.** and was **not in the course and scope of his employment** when the alleged accident occurred" (Exhibit B, Relevant page of Mr. Wright's 2-5-13 Answer to Complaint against Efficient Design).

However, at the hearing on June 21, 2013, Defense, for the first time, confirmed that Kevin Culpert was employed with Efficient Design. At the same hearing, it was discussed that it had not been determined if Mr. Culpert was in the scope of his employment at the time of the accident. Judge Borman indicated that she wanted Kevin Culpert deposed by Mr. Wright to determine this. In PLAINTIFF'S ANSWER TO DEFENDANT EFFICIENT DESIGN'S MOTION TO COMPEL DISCOVERY FROM PLAINTIFF, pg. 3-4, Plaintiff-Appellant also

asked the Court to "*grant Plaintiff's request for 28 days to prepare interrogatories for Efficient Design so that it can be determined whether or not Efficient Design Inc. is even liable for any damages to Plaintiff, before Plaintiff provides medical records to Defendant, Efficient Design,"* but Plaintiff-Appellant's request was denied.

On August 2, 2013, Plaintiff-Appellant inquired of the three Defense attorneys whether or not Kevin Culpert had been deposed and if so, if the deposition revealed whether or not he was in the scope of his employment. Plaintiff-Appellant received a response from Mr. Hassouna, Kevin Culpert's attorney, stating, "The Court dismissed your case. My client will not be deposed" (Exhibit H, 8-2-13 e-mail from Ms. Filas to Mr. Hassouna, Mr. Wright and Mr. O'Malley; and Mr. Hassouna's response). However, the Order to Dismiss had not yet been entered and the Defense attorneys still could have deposed Mr. Culpert. Mr. O'Malley and Mr. Wright did not respond to Plaintiff-Appellant's e-mail.

On pg. 4 of the 6-24-13 transcript, Mr. O'Malley, co-attorney for Efficient Design, and representing a different insurance company than Mr. Wright, for which Efficient Design was also insured, states, "These are actually only Efficient Design's authorizations. I know that Mr. Culpert's attorney was going to rely on them also but these are our [Mr. O'Malley's and Mr. Wright's] authorizations; we both represent Efficient Design." The 6-24-13 transcript makes it appear as if Kevin Culpert's attorney was also relying on the medical information requested by Efficient Design, but this is not true. It should be clear that medical records were <u>separately</u> requested by <u>both</u> Mr. Hassouna, Mr. Culpert's attorney, <u>and</u> Mr. Wright, Efficient Design's attorney. The facts were misrepresented when Mr. O'Malley stated that Mr. Culpert's attorney, Mr. Hassouna, was going to rely on those authorizations. Mr. Hassouna provided the Plaintiff-Appellant with his own interrogatories and request for production of documents. Mr. Hassouna's

4-19-13 Motion to Compel asks for an "Order compelling the Plaintiff to provide signed, notarized, and full and complete answers to interrogatories and fully executed medical authorizations for all providers listed in plaintiff's answers to interrogatories" (Exhibit I, 4-19-13 Defendant's Motion to Compel Answers to Interrogatories & Production of Documents). On June 21, 2013, to meet Mr. Hassouna's request for production of fully executed medical Authorizations, Plaintiff-Appellant provided Mr. Hassouna, with signed SCAO MC 315 authorization forms for her healthcare providers, and copies of certificates of mailing verifying they had been mailed to her health care providers on June 19, 2013. Mr. Hassouna indicated these authorizations were acceptable.

Plaintiff-Appellant was handling her case pro per. She was unable to find an attorney to take over her case after the she dismissed her second lawyer and her first party case was dismissed by Judge Borman April 26, 2013. She continues to handling her case pro per. Plaintiff-Appellant contends it was reasonable for her not to disclose her records to Efficient Design until it was verified they were a liable party in the case. Plaintiff-Appellant still contends she should not have had to release personal or medical information to Efficient Design until they have admitted liability, but to avoid having her case dismissed, she followed the Judge's order to provide medical record authorization release forms to Mr. Wright, as previously explained.

Preservation of error. Plaintiff-Appellant preserved this issue in her 8-6-13 PLAINTIFF'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT EFFICIENT DESIGN INC.'S PROPOSED ORDER OF DISMISSAL WITHOUT PREJUDICE, pgs. 2, 4, 10, 11, items #4, 8, 24 and 25; and in her 6-18-13 PLAINTIFF'S ANSWER TO DEFENDANT EFFICIENT DESIGN'S MOTION TO COMPEL DISCOVERY FROM PLAINTIFF, pgs. 2-3.

2. The circuit court erred by not permitting Plaintiff-Appellant to use SCAO-mandated form MC 315 to satisfy her obligation to provide discovery materials under MCR 2.314(C)(1)(d), since she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records.

Standard of Review. MCR 2.314(C)(1)(d) does not allow for the use of authorization forms such as Mr. Wright's as a discovery material to obtain medical records for discovery. The Supreme Court Administrative Office (SCAO) mandates the use of form MC 315 as the discovery material to obtain medical records for discovery pursuant to MCR 2.314(C)(1)(d). (Exhibit J, List of SCAO-mandated forms).

MCR 2.314(C)(1) provides that *"[a] party who is served with a request for production of medical information under MCR 2.310 must either:*" Item (d) states, "*furnish the requesting party with signed authorizations* ***in the form approved by the State Court Administrator*** *sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.*" Under MCR 2.314(C)(1)(d), it is mandated that the authorization form to be used is MC 315. The PDF of the list of court-mandated forms, located at http://courts.mi.gov/Administration/SCAO/Forms/Documents/Mandatory%20Use%20List/mandatory_use_lists.pdf, indicates that MC forms are for circuit court use. MC 315 would therefore be used in the circuit court. (See Exhibit J, List of SCAO-mandated forms; and Exhibit K, SCAO-mandated form MC 315).

While MCR 2.314(C)(1)(**d**) provides for the choice of using of an authorization form to provide medical information to the requesting party, it should also be noted that MCR 2.314(C)(1)(**a**) provides the Plaintiff-Appellant the choice to "*make the information available for*

copying and inspection as requested," which Plaintiff-Appellant did. Plaintiff-Appellant provided Defendant-Appellee on June 24, 2013 at 11:24 a.m. completed, signed, and mailed copies of SCAO MC 315 forms she mailed on June 21, 2013. These forms were already were being received and processed by her health care providers on June 24, 2013, the date her case was dismissed by Judge Borman for failure to provide signed copies of Mr. Wright's authorization forms.

Even though Plaintiff-Appellant did not use Mr. Wright's authorization forms to provide her medical records to him, and instead used SCAO-mandated form MC 315, let it be clear that she didn't even have to provide Mr. Wright with any authorization forms at all under MCR 2.314(C)(1)(d), because in addition to her choice to provide signed authorization forms under MCR 2.314(C)(1)(d), she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records, period.

Plaintiff -Appellant contends the filled out, signed SCAO-approved MC 315 medical release authorization forms she mailed out June 21, 2013 after she did not timely receive the e-mailed forms Mr. Wright was ordered by Judge Borman to supply Plaintiff-Appellant on June 21, 2013, should be considered sufficient to satisfy her legal obligation to provide her medical information to Mr. Wright. Plaintiff-Appellant contends the Defendant should have been required to accept the Plaintiff-Appellant's use of form MC 315 to provide records to the Defendant since that form is mandated by the SCAO.

Plaintiff-Appellant contends she should not have been faulted for her failure to provide signed authorizations not authorized or mandated by the SCAO, as a basis to dismiss her case. She contends her case should not have been dismissed for her failure to execute the authorization forms provided by Mr. Wright, and that her case should be re-instated.

Preservation of error. Plaintiff-Appellant preserved this issue in her 8-6-13 PLAINTIFF'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT EFFICIENT DESIGN INC.'S PROPOSED ORDER OF DISMISSAL WITHOUT PREJUDICE, pg. 3, item #7.

3. The circuit court erred when it dismissed Plaintiff-Appellant's case based on her refusal to complete specific authorization forms provided by the Defendant-Appellee, when there were still other means available for the Defendant-Appellee to obtain the medical and employment records they sought (i.e. subpoena to health care provider's custodian of records or use the mandated SCAO form MC 315, obtaining the employment records directly from her employer since Plaintiff-Appellant is a public school teacher whose employment records are publicly available).

Standard of Review. MCR 2.506(B)(1) states, "*A subpoena signed by an attorney of record in the action or by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court*." Therefore, Defendant-Appellee's attorney can subpoena the custodian of any medical records he is entitled to under the no-fault law necessary to defend his case, without using a non-party record-copying service.

Plaintiff-Appellant's employment records are public record and do not require any signed authorization from Plaintiff-Appellant for Defendant-Appellee's attorney to view them.

Preservation of Error. Plaintiff-Appellant preserved this issue in her 5-17-13 Motion for Reconsideration, pg. 5, 7-8, in her first-party PIP case before the same judge as the third-party case. However, Plaintiff-Appellant did not discuss this issue in her third-party Objections to the 7-day Order of Dismissal since she had already provided medical records to

Defendant-Appellee using form MC 315. It was not necessary to argue other ways Defendant-Appellee could have obtained the records, since he was provided with them, but it is still a valid argument against the dismissal of Plaintiff-Appellant's case.

4. The circuit court erred when it ordered Plaintiff-Appellant to release records beyond those requested in the Defendant's Motion to Compel, without requiring the Defendant to file a new Motion to Compel to include the new records requests.

Standard of Review. With regard to the production of documents for Mr. Wright, Defendant Efficient Design asked only for "copies of any and all medical records relating to injuries received as a result of the subject accident", "copies of any and all photographs with regard to this accident," and for Plaintiff-Appellant to sign an enclosed authorization form regarding Medicare/Medicaid benefits. He did not request that any specific authorization form be used to provide him with copies of Plaintiff-Appellant's medical records (Exhibit A, relevant page from Efficient Design's Request for Production of Documents to Plaintiff and relevant page from Request for Production of Documents Regarding the Existence of a Medicare/Medicaid Lien dated 2-7-13, but mailed 4-30-13).

At the June 24, 2013 "special conference," the transcript indicates that Mr. Wright misrepresented the facts regarding the authorization forms he received from Ms. Filas, stating that he only received about half of what he asked for. Plaintiff Appellant did provide all of the authorization forms to release her medical records to Mr. Wright, which were the only authorization forms she was required to provide by 2:00 pm on June 24, 2013 by Judge Borman. Copies of Mr. Wright's forms were not delivered to her until 3:00 pm on June 24, 2013, after the

2:00 deadline June 24, 2013 ordered by Judge Borman for her to sign and provide Mr. Wright's authorization forms "as-is" to Mr. Wright .

Plaintiff-Appellant provided only medical release authorizations for Efficient Design to obtain her medical records, because that is what Judge Borman ordered her to provide. Judge Borman did not order Plaintiff-appellant to provide medical records as requested by Mr. Wright in his order to compel. Thereby, Judge Borman ordered Plaintiff –Appellant to provide medical authorization forms that were not requested by Mr. Wright in his Motion to Compel filed 4-30-13 and heard June 21, 2013.

In addition to authorization forms for her medical providers, the FedEx packet mailed on June 21, 2013, also included additional authorizations for Plaintiff-Appellant to fill out for her academic records, employment records, tax returns, Blue Cross Blue Shield and MEEMIC insurance records, psychotherapy notes, and records from Don Massey Cadillac. None of these additional records were requested by Efficient Design in the original Interrogatories or Requests for Production of Documents, and were not part of Mr. Wright's 4-30-13 Motion to Compel. Plaintiff-Appellant contends new documents cannot be added to Mr. Wright's original 4-30-13 motion to compel, that are not listed in the 4-30-13 requests for production of documents. The Plaintiff-Appellant must be provided with the new requests, permitted time to respond (28 days), and then a new motion to compel would be filed if she did not provide the documents. Plaintiff-Appellant could then object to the production of said documents, if necessary.

The aforementioned, new Defendant's Request for Production of Documents to Plaintiff, dated June 21, 2013, which included additional records requests as stated in item #21, states that it "hereby requests production of documents from Plaintiff pursuant to MCR 2.310, to be delivered to our office **within twenty-eight (28) days after service of this request**." The

document then lists the requested documents, including the additional authorizations over and above the original request for medical records in the original 4-30-13 Interrogatories and Request for Production of Documents. Therefore, this would be considered a new request for production of documents (Exhibit F, First page of Efficient Design's Request for Production dated 6-21-13). These new requests would not have been covered under the 4-30-13 Motion to Compel, that was heard on June 21, 2013.

Plaintiff-Appellant contends she should not have to provide additional records beyond the records requested in the 4-30-13 Motion to Compel heard on 6-21-13, unless a new Motion to Compel regarding the new 6-21-13 requests is filed and granted, supposing this case is remanded back to the circuit court for further proceedings.

Preservation of error. Plaintiff-Appellant preserved this issue in her 8-6-13 PLAINTIFF'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT EFFICIENT DESIGN INC.'S PROPOSED ORDER OF DISMISSAL WITHOUT PREJUDICE, pg. 5, 9-10, items #11, 20-23.

5. The circuit court erred when it dismissed Plaintiff-Appellant's entire case against both Defendant-Appellees, Kevin Culpert and Efficient Design, Inc., when only Defendant-Appellee Efficient Design motioned for the case to be dismissed on the basis that Plaintiff-Appellant used SCAO-approved Form MC 315 to provide her medical records, instead of his personal authorization forms.

Standard of Review. This case involves three separate insurance companies and three separate insurance policies---one for Kevin Culpert, and two for Efficient Design. Plaintiff-Appellant does not believe that one of the two attorneys for Efficient Design should have the ability to dismiss Plaintiff-Appellant's entire case, when the second defense attorney

representing Efficient Design, Mr. O'Malley, never submitted any filings requesting that Plaintiff-Appellant's case be dismissed. Michael C. O'Malley represents a different insurance company for Efficient Design, than Mr. Wright represents. Plaintiff contends her case against the insurance company that Mr. O'Malley represents should not have been dismissed, based upon issues Mr. Wright (representing a different insurance company than Mr. O'Malley) had with the SCAO-approved form MC 315 authorization forms Plaintiff-Appellant provided and/or his unsubstantiated and unproven claims Plaintiff did not provide the records ordered by Judge Borman on June 21, 2013, due to the fact Judge Borman did not order Plaintiff-Appellant to produce records, but only ordered Plaintiff-Appellant to provide authorization forms to release medical records, and/or his unsubstantiated and unproven claims Plaintiff-Appellant altered records.

Plaintiff-Appellant also does not believe her case against Defendant, Kevin Culpert should have been able to be dismissed since Plaintiff-Appellant has complied with all requests from Kevin Culpert's attorney, Mr. Hassouna, and he has not objected to the method of using SCAO-approved Form MC 315, by which Plaintiff-Appellant provided medical records to him. Although in his 7-22-13 Concurrence in Defendant Efficient Design, Inc.'s Response to Plaintiff's Objection to Defendant Efficient Design, Inc.'s Proposed Order of Dismissal Without Prejudice, Mr. Hassouna states that he is in concurrence with Mr. Wright's Order to Dismiss, he states only that he concurs, and provides no additional reasons on his own behalf (Exhibit L, 7-22-13 Culpert's Concurrence with Efficient Design's Response to Plaintiff's Objection to Proposed Order of Dismissal). Further, on July 19, **2012**, just before the case was dismissed on July 20, 2012, he was ready to settle the case for the policy limit of $20,000. On July 19, 2012, Mr. Hassouna was not requiring Plaintiff-Appellant to sign any authorizations to disclose

medical records to him as a condition for the settlement, and he had not submitted any requests for production of medical records to her or her attorney after the case was re-filed in January of 2013. Therefore, it would be unjust to ask for Plaintiff-Appellant's case to be dismissed for lack of providing specific authorization forms to Mr. Wright, since Mr. Hassouna didn't need any additional medical information on July 19, 2012 to settle the case, and he accepted the copies of MC 315 provided to him on June 21, 2013 by the Plaintiff-Appellant at the Court, and her medical records were on their way to him (Exhibit M, 7-19-12 e-mail from Terry Cochran and attached settlement offer from Mr. Hassouna). It should also be clear that in Plaintiff-Appellant's original combined first- and third-party case, none of the attorneys had requested medical information of the Plaintiff before the close of discovery on June 17, 2012 (Exhibit N, Scheduling order for initial consolidated first- and third-party cases; Exhibit G, Accountings of Disclosure from Plaintiff-Appellant's three main health care providers).

Plaintiff-Appellant has provided Mr. Wright with all of the information from her medical providers that he requested in his April 30, 2013 Request for Production of Documents upon which his 4-30-13 Motion to Compel Discovery from Plaintiff, was based, as explained in Argument #4, above. Plaintiff-Appellant does not believe her entire case against all three insurance companies representing both Kevin Culpert and Efficient Design should have been be dismissed, for the reasons discussed above, when Mr. Wright was the only attorney presenting any issues with the Plaintiff-Appellant's production of records to the court, as explained above.

Plaintiff-Appellant contends that her case against Kevin Culpert should not have been dismissed, nor should her case against the insurance company Mr. O'Malley represents, regardless of the Judge's decision pertaining to Efficient Design's Motion by attorney Mr.

Wright, representing a different insurance company than Mr. Culpert or Mr. O'Malley, to Dismiss Plaintiff-Appellant's case against them.

Preservation of error. Plaintiff-Appellant preserved this issue in her 8-6-13 PLAINTIFF'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT EFFICIENT DESIGN INC.'S PROPOSED ORDER OF DISMISSAL WITHOUT PREJUDICE , pg. 11-12, #26-27 and on pg. 11; and in item #31 of her 7-2-13 OBJECTION TO DEFENDANT EFFICIENT DESIGN INC.'S PROPOSED ORDER OF DISMISSAL WITHOUT PREJUDICE.

6. The Plaintiff-Appellant in a third-party tort, or in any case where medical records are requested as a part of discovery, is justified in refusing to agree to additional language and/or missing information on a medical or employment authorization form that is not included in the SCAO-mandated Form MC 315 (i.e. allowance of photocopies, use of an expiration event instead of a date, allowance of records to be released "for copying purposes").

Standard of Review. Plaintiff-Appellant was ordered by the Court, to sign Mr. Wright's forms "as is" to prevent her case from being dismissed. Plaintiff-Appellant does not believe she is required by law to agree to the language on Mr. Wright's forms "as is." This language requires her to agree to clauses and to disclose information above and beyond SCAO-mandated form MC 315, as explained below in items A-D.

In her circuit court filings for this case, Plaintiff-Appellant did not argue issues with Mr. Wright's forms because her case was dismissed before she received copies of his authorization forms. She was not yet aware of the similarities between his forms and those of Records Deposition Service, the copying service MEEMIC Insurance Co. wanted to use to obtain Plaintiff-Appellant's records in her first-party case, for which her refusal to sign the RDS forms resulted in dismissal of her case. On August 6, 2013, a hearing was held on her Objection to the

7-Day Order of Dismissal. Plaintiff-Appellant attempted to present oral arguments regarding specific clauses on Mr. Wright's forms, but Judge Borman stated that she had already ruled on that topic, and did not permit her to present her arguments. It should be clear that arguments A-C Plaintiff-Appellant is presenting below regarding Mr. Wright's forms, are the same arguments regarding RDS forms that were already presented to Judge Borman in the first-party case before she dismissed it. Therefore, it is doubtful she would have made a different decision in the third-party case even if Plaintiff-Appellant had been permitted to present her arguments, and would have likely still required Plaintiff-Appellant to sign the forms "as-is," as she previously ordered.

The "as is" portions of Mr. Wright's forms that Plaintiff-Appellant objected to, included, but were not limited to, language that Plaintiff-Appellant was not in agreement with such as: the use of an expiration event rather than a date, the use of photocopies deemed valid as the original form, no address is stated to whom the records will be sent, and Mr. Wright is granted permission to act as a "copy service" similarly to companies such as Records Deposition Service. SCAO-mandated form MC 315 allows for a specific 60-day expiration date, does not allow photocopies to be deemed valid as the original, specifically states to whom the records will be disclosed, and does not allow specific permission for the receiver of the records to further copy and disclose the records. (Exhibit K, SCAO-mandated form MC 315).

A. Item 5 on Mr. Wright's HIPAA Privacy Authorization form states:

> *"I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by the Federal Privacy Rules."*
>
> Item 7 on Mr. Wright's HIPAA Privacy Authorization form states:
>
> *"I understand that I have the right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and send it to the hospital, doctor, or other custodian of medical information. I understand that the*

revocation will not apply to information that has already been released in response to this authorization."

Plaintiff-Appellant understands that her medical information is no longer protected once it is disclosed unless there is a protective order and agreement signed by the recipient that the information will not be re-disclosed by all parties to whom it is given, but the phrase "may be disclosed by the recipient" in the first paragraph above is open to interpretation and could be interpreted as Plaintiff-Appellant giving Defendant Appellee permission to re-disclose information. Plaintiff-Appellant clearly does not want Efficient Design or their insurance company to have her permission to re-disclose her medical records. The clauses quoted above indicate that once Plaintiff-Appellant's information in her records is released to Mr. Wright and/or copied by Mr. Wright, he can still re-disclose that information indefinitely.

B. Item 6 of Mr. Wright's HIPAA Privacy Authorization form states:

"This authorization shall be in force and in effect until the conclusion of the pending litigation or claim unless otherwise specified."

The title of the form is, "HIPPA Privacy Authorization For Disclosure of Protected Health Information Relevant to Litigation, Pending Claims or Intent to Sue." There is no indication on the form, specifically what litigation, pending claim, or intent to sue is being referred to. Therefore, the healthcare provider receiving this form would have no way of knowing whether or not the litigation or claim was still pending. The healthcare provider would most likely assume that it was still pending or they wouldn't be receiving the form, and would likely disclose the information requested.

Item 9 of Mr. Wright's HIPAA Privacy Authorization form states:

"A copy of this authorization is as valid as the original."

Items 6 and 9 from Mr. Wright's form, quoted above, indicate that although each authorization is only used once, Mr. Wright can, without expressed revocation, continue to make copies of the authorization and use it over and over again, gathering more and more information up until the expiration event, and possibly beyond, since the "event" is not described in any way that it can be determined what litigation or claim is being referenced, and as stated, most health care providers would probably not check into whether the litigation was still pending before releasing records---they would assume it must be since they are receiving a request. SCAO-mandated form MC 315 clearly lists the case information, including the parties involved and the case number. Form MC 315, item 4, specifically states an expiration date of 60 days from the date of signature, so there can be no question of whether or not the authorization is still in effect when a health care provider receives it.

The allowance of photocopies would also enable Mr. Wright to attach different subpoenas and letters to the authorization without Plaintiff-Appellant's knowledge, which is unacceptable. It is clear that an additional document of some sort must be attached to his form, since no address is provided for which to send the records. (Exhibit O, Mr. Wright's HIPAA Privacy Authorization form). SCAO-mandated form MC 315 does not allow photocopies to be considered valid and clearly provides in item 2 for the name and address of the party to whom the information is to be given. (Exhibit K, SCAO-mandated form MC 315)

C. Item 1 of Mr. Wright's HIPAA Privacy Authorization form states:

"I make this authorization for the purpose of copying records in connection with a lawsuit or claim to which I am a party."

Item 4 of Mr. Wright's HIPAA Privacy Authorization form states:

"this information is to be released for copying purposes to James C. Wright of ZAUSMER, KAUFMAN AUGUST AND CALDWELL, P.C."

This language allows Mr. Wright to act as a copy service, similar to Records Deposition Service. The authorization should be in regard to the disclosure of records, not the copying of records, unless the statement it is in reference to the records custodian copying records for the recipient, and in this case it is not.

Plaintiff-Appellant stated on pg. 4 of pending Court of Appeals Case # 316822 against MEEMIC Insurance Co., "In addition to the clauses in the RDS form Plaintiff-Appellant objects to, Plaintiff-Appellant also objects to the release of her Records to any first or third party whose authorization form allows for the re-copying of the authorization form, re-copying her records or re-disclosing her records, including but not limited to, the authorization form of any attorney, law firm, entity or third party records copying service such as RDS, regardless of whether or not they are a commercial enterprise such as RDS that profits from copying, selling and re-disclosing her medical and employment information." Mr. Wright's forms would meet the criteria above, to which Plaintiff-Appellant objects.

By signing Mr. Wright's form and agreeing to items #1 and 2, in addition to items 5, 6, and 7 on the form, one is agreeing that Mr. Wright can copy and re-

disclose any information that has already been released to him prior to the revocation of the authorization form, indefinitely. Further, Plaintiff-Appellant argues that even if she did contact the hospital and revoke the form before the end of the pending litigation or claim, due to the allowance of photocopies to be valid as the original, in item #9, Mr. Wright could simply attach a new cover letter to the old authorization and use it again. Plaintiff-Appellant highly doubts that a signature analysis would be performed by the hospital to verify the new identical form was the same as the one the Plaintiff-Appellant revoked. Note that all of the personal, identifying information for the Plaintiff, i.e. name, address, DOB, last 4 digits of SS#, was typed on Mr. Wright's form. Only her signature and the notary's signature were needed (Exhibit O, Mr. Wright's HIPAA Privacy Authorization form).

Plaintiff-Appellant understands that once she has allowed HIPPA-protected records or other protected medical information to be released by her health care providers with her permission to release those records, that they are no longer protected by the Health Care Provider, and the health care provider will no longer be held legally accountable if someone re-discloses them.

The clause on Mr. Wright's form differs from a simple disclaimer included in medical release forms from health care providers which state that information released *might* be re-disclosed by the recipient, thereby acknowledging it is beyond the control of the health care providers to police any illegal actions of re-disclosure by the parties that receive the medical information. It does not imply that the health care providers condone or promote re-disclosures. A patient would be signing the hospital's form that would allow disclosure of records to the attorney, in the preceding

example. Here, the patient, (Plaintiff-Appellant) is being asked to sign Mr. Wright's personal authorization form. Therefore, the clause in item #5, regarding re-disclosure of records, pertains specifically to Mr. Wright since it is not stated for the purpose of covering a health care provider's liability, and the use of the word "*may*" as in "*may be disclosed by the recipient and may no longer be protected*" can be interpreted as giving Mr. Wright the permission to re-disclose one's records. Plaintiff-Appellant does not expect anyone who receives her medical information to release her medical information to others, i.e. just as she would not expect an attorney to whom she has given her private medical information, to release it to another attorney, person or entity without her permission, regardless of whether or not the attorney, person or entity is a party to the case.

Plaintiff-Appellant contends she should have been permitted to use SCAO-approved form MC 315 to provide her records to Mr. Wright, and should not have had to agree to clauses that would allow the recipient to act as a copy service to re-disclose the records.

Preservation of error. Plaintiff-Appellants case against Efficient Design, Inc. was dismissed before she received Mr. Wright's forms. She was not permitted to argue her issues with specific clauses on Mr. Wright's forms at the 8-6-13 hearing on her Objection to the 7-Day Order of Dismissal. However, as explained above, issues A-C above were preserved in her first-party case against MEEMIC Insurance Company before the same judge, now being appealed to the Court of Appeals, Case #316822, as documented below.

Plaintiff-Appellant preserved issue A in her 5-17-13 Motion for Reconsideration, pg. 11 and in her 3-11-13 Emergency Motion to Substitute Forms, pgs. 7, 14.

Plaintiff-Appellant preserved issue B in her 5-17-13 Motion for Reconsideration, pgs. 7, 8, 11 and in her 3-11-13 Emergency Motion to Substitute Forms, pgs. 14, 16.

Plaintiff-Appellant preserved issue C in her 5-17-13 Motion for Reconsideration, pgs. 7, 11-12.

CONCLUSION

The Circuit Court erred by dismissing Plaintiff-Appellant's case based upon the fact that she did not sign particular authorization forms provided by Mr. Wright. Plaintiff-Appellant should have been able to submit SCAO-mandated Form MC 315 to satisfy her obligation to provide discovery materials under MCR 2.314(C)(1)(d). The only form mandated to be used for the discovery of medical information is the Michigan SCAO MC 315 authorization form. Further, in addition to her choice to provide signed authorization forms under MCR 2.314(C)(1)(d), she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records, period.

Plaintiff-Appellant contends an order by the lower court dismissing Plaintiff-Appellant's entire third party tort case because of Plaintiff-Appellant's failure to comply with the lower court's stipulation that was over and above the request for Plaintiff-Appellant to simply provide her medical records contained in Defendant-Appellee's Motion to Compel Records filed 4-30-13, was unjustified should be reversed and remanded back to the Circuit Court.

Mr. Wright simply requested the court to compel Plaintiff-Appellant to produce her medical records, and that is all the Plaintiff-Appellant is required to do under 2.314(C)(1)(a).

Plaintiff-Appellant contends placing an additional stipulation on Plaintiff-Appellant in the production of her records to provide Mr. Wright that required Plaintiff-appellant to sign unspecified medical release authorization forms "as-is" that did not conform with SCAO form MC 315, was not a valid requirement supported by law for the Court to place upon Plaintiff-Appellant that warranted the harsh penalty of the dismissal of her case, ordered by the Court on June 24, 2013.

It is reasonable to assume Mr. Wright was hired by the insurance company that issued the liability policy held by Defendant Efficient Design to represent the interests of the insurance company and clearly he would not object to any action on the part of the lower court that would dismiss Plaintiff-Appellants case against his client, save his insurance company money and probably result in a bonus for him.

Instead of simply ordering Plaintiff-Appellant to produce her medical records as requested by Mr. Wright, the lower court added a stipulation without the request of Mr. Wright and ordered the Plaintiff-Appellant to sign "as-is" authorization forms to be provided via e-mail by Mr. Wright on June 21, 2013 and delivered to Mr. Wright by 2:00 pm on June 24, 2013 to be used for the production of her records.

Plaintiff-Appellant did not timely receive the e-mailed forms from Mr. Wright on 6-21-13. After not receiving the e-mailed forms from Mr. Wright on 6-21-13, Plaintiff-Appellant decided to fill out, sign and mail at least 20 SCAO MC-315 forms to meet her obligation to provide discovery material to Mr. Wright.

Plaintiff-Appellant delivered copies of the signed and mailed SCAO-mandated form MC 315 to Mr. Wright's office at 11:24 am, on 6-24-13, 2 ½ hours before the deadline set by Judge

Borman at 2:00 pm, 6-24-13, for Plaintiff-Appellant to provide signed authoriztion forms to Mr. Wright.

Plaintiff-Appellant received a call from Judge Borman's Court clerk shortly after 3:30 pm on June 24, 2013. The clerk told Plaintiff-Appellant her case had been dismissed by Judge Borman due to Plaintiff-Appellant's failure to produce records and altering the authorization forms. Plaintiff-Appellant contends that providing the SCAO MC-315 instead of signing "as-is " authorization forms to be provided by Mr. Wright, she had not even seen yet, did not constitute the "altering" of a record or authorization form. It would be impossible to alter a form, one does not have in one's possession.

It was not until after speaking to the Court clerk, Plaintiff-Appellant discovered a packet from Mr. Wright had been delivered by FedEx to her address at 3:00 pm, June 24, 2013 that contained the medical release authorization forms and other authorization forms for her to sign that Mr. Wright has never previously requested her to sign.

Plaintiff-Appellant also contends she had no legal obligation to produce discovery records to Mr. Wright using non-specific "as-is" medical authorization forms selected and provided by Mr. Wright, that neither she or the Judge were given a copy of on June 21, 2013 when Judge Borman ordered her to sign Mr. Wright's forms "as is". Furthermore, Plaintiff-Appellant contends that her sole obligation was to provide her medical records. MCR 2.314(C)(1)(**a**) provides the Plaintiff-Appellant the choice to "*make the information available for copying and inspection as requested,"* without the necessity of providing any type of authorization forms to the Defendant at all. The only form Plaintiff-Appellant contends that Judge Borman could have ordered her to sign "as-is" would have been the mandated SCAO-approved MC 315 form, provided for under MCR 2.314(C)(1)(d).

If Plaintiff-Appellant would not have provided any forms to Mr. Wright on June 24, 2013, her case would surely have been dismissed by Judge Borman. Plaintiff- Appellant has shown her good faith to provide her medical records to Mr. Wright as evidenced by her action to provide medical records to Mr. Wright, and by not rescinding any of the authorizations, some of which had already been fulfilled by June 24, 2013, even though Mr. Wright has still not met Judge Borman's order to depose Mr. Culpert to determine if he was in the scope of his employment when the accident occurred on January 15, 2010.

Plaintiff-Appellant contends the lower court went beyond their of right to compel Plaintiff- Appellant to produce medical records as requested in Mr. Wright's motion, and wrongly placed an additional stipulation on her by mandating that the Plaintiff-Appellant must use an unseen and unspecified authorization form "as-is" that Mr. Wright was to provide to Plaintiff-Appellant to produce her private medical records, without regard as to whether or not the form he would be providing would be conforming when compared to the SCAO-approved Form MC 315 form mandated by the SCAO to be used to produce discovery materials regarding medical records, or whether or not the clauses were legal or acceptable to Plaintiff-Appellant.

Plaintiff-Appellant fully understands that it is legal for parties to agree sign authorization forms that have objectionable clauses, as long as the parties are in agreement with the objectionable, questionable or ambiguous clauses. However, Plaintiff-Appellant was not in agreement with signing forms "as-is" provided by the Defendant-Appellee that she contends could cause her harm**.**

The exclusionary practices of private copying services that provide private information to attorneys, insurance companies and other businesses who pay for their services, but not to the private citizen who signs the form to authorize the copying of their records by the copy service

who is willing to pay for their services, undermines the ability of private citizens ability to ascertain the accuracy or completeness of the information copied and disseminated to anyone allowed to pay for and receive the information used to determine the final ruling or outcome in a third party case or for any other reason. This copied information, which can be copied and re-disclosed in perpetuity can be placed in databases, and can adversely affect the Plaintiff-Appellant's life forever. The re-disclosed information can be used in making a decision to qualify or disqualify an individual for government or private disability benefits, or the eligibility to obtain any type of insurance policy and the premiums charged for the policy, or to determine plaintiff's credit score or credit worthiness, and/or used by employers to screen job applicants prior to hiring them, or to terminate current employees**.**

Plaintiff-Appellant knows of no provision in the Michigan No Fault Insurance Act, or any other law, that would trump the use of mandated SCAO form MC 315 for the production of discovery documents containing Plaintiff-Appellant's private medical records or, would allow the lower court to order and mandate the Plaintiff-Appellant to produce the medical her records using an authorization form, "as-is," sight unseen, to be provided to Plaintiff-Appellant by the Defendant-Appellee without allowing Plaintiff-Appellant to object to and/or refuse to sign the "as-is" documents for the reasons provided in this filing.

Plaintiff also contends she is not required to provide medical records not on the SCAO form that were required on Mr. Wright's forms, without a "just cause" hearing before she could be required to provide them.

Plaintiff-Appellant further contends she was not obligated to produce records beyond the medical records requested in Mr. Wright's 4-30-13 Motion to Compel, which was addressed at the 6-21-13 hearing, and that a new Motion to Compel must be filed by Mr. Wright to obtain an

order for her to produce additional records that were not requested in the 4-30-13 Motion to Compel, and this was not a valid reason to dismiss her case.

The checks and balances one would expect in a democratic system of governance would be absent if Defendants are given preferential treatment over the Plaintiff by the Court, to use these companies and their authorization forms as the discovery materials over the SCAO-mandated discovery material form MC 315, to obtain and review information about the Plaintiff that is not identified on the copy services authorization form, and that Plaintiff cannot obtain access to and review to determine the accuracy and currency of the information released to Mr. Wright using his forms, as she can by obtaining simultaneous copies of records delivered to both her and Mr. Wright, through the use of form MC 315.

Plaintiff-Appellant is not an attorney, and cannot avail herself to the use of the record copy services. Thus, there is no way for the Plaintiff-Appellant to review the information copied and disclosed by record copy services or to monitor to whom her records are re-disclosed to by a records copy service or Mr. Wright to determine if the information received by the record copy service is complete, accurate or timely to obtain a fair evaluation of her 3rd party case, or for the Plaintiff-Appellant to know if the Defendant's attorneys ever requested or received any or all of the Plaintiff-Appellant's information in the copying service's database. There is no one that has the greater first-hand knowledge than the Plaintiff herself, to verify the accuracy and completeness of the records related to her case that will be used to settle it. There are many entities or persons who can benefit from Ms. Filas's information being in the database of a record copying service that would otherwise not be available to these person or entities, who could use the information to her detriment. Mr. Wright's authorization would give him permission to copy and redistribute her records to a records copy service to be maintained in their database.

A published decision by the Appellant Court to uphold the use of the mandated SCAO form MC 315 authorization for the production of medical information under MCR 2.310 and MCR 2.314(C)(1)(d), thereby allowing the Plaintiff in a case requiring their medical records, if they choose not to provide the records themselves under MCR 2.314(C)(1)(a) and prefer to use an authorization form as provided under MCR 2.314(C)(1)(d), to refuse to sign any authorization forms provided by any attorney, drafted by that attorney or from a records copying service that does not conform with Form MC 315, and to allow the Plaintiff to sign the SCAO form MC 315 instead, to effectuate the production of their records, without being at risk of having their case dismissed by the Court or their attorney withdrawing for failure to sign authorizations that don't conform with the mandated SCAO form MC 315. Such an order would also reduce the political pressure on the lower court when making future decisions regarding authorization forms on the occasion when a Plaintiff objects to signing non-SCAO conforming authorizations.

REQUEST FOR RELIEF

If this case is dismissed, Plaintiff will not be able to re-file because the 3-year statute of limitations to file this third-party no-fault auto tort ran out on January 15, 2013. Thereby, Plaintiff will suffer a substantial monetary loss due to unrecoverable benefits for injuries she suffered as the result of the auto accident.

Plaintiff-Appellant respectfully requests that this Court reverse the decision of the Circuit Court to dismiss her third-party tort claim, and Order this case to be remanded back to the Circuit Court for further proceedings fully intact and in the same condition it was in prior to the dismissal on June 24, 2013, and to Order Defendant-Appellee to: 1) exclusively accept MC 315

forms provided and mandated by the SCAO "as is," filled out and mailed by Plaintiff-Appellant to her health care providers on June 21, 2013, as sufficient to meet Plaintiff-Appellant's obligation to provide discovery materials regarding medical information to Defendant-Appellee; 2) show just cause for any medical information requested not on the SCAO forms 3) show just cause for any request of additional discovery information beyond medical records; 4) to pay for any copying, notary and/or certified mailing/regular mailing costs billed by the custodian of records to process the SCAO MC 315 authorization forms and release Plaintiff-Appellants records to the Defendant-Appellee and, 5) to pay Plaintiff-Appellants court costs and fees and any attorney's fees incurred, if Plaintiff prevails in having the order of dismissing her 3rd party case reversed and remanded back to the lower court; 6) To publish the Appellant Court's decision if the Plaintiff-Appellant prevails.

12-20-13
Date

Signature redacted

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