

STATE OF MICHIGAN
SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

Supreme Court No. _____

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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**PLAINTIFF-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT**

Dated: March 10, 2015

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Jurisdictional Statement

Jurisdiction in the Michigan Supreme Court is appropriate because PL-AT is hereby filing a timely Application for Leave to Appeal to the Michigan Supreme Court on March 10, 2015, from the Court of Appeals' January 27, 2015 Order denying PL-AT's Motion for Reconsideration of the COA's 11-25-14 Order granting DF-AE Culpert's Motion to Affirm (11-25-14 Order, attached to PL-AT's Application as Exhibit A; 1-27-15 Order, attached to PL-AT's Application as Exhibit B). Culpert's 10-7-14 Motion to Affirm was based on the Doctrine of Collateral Estoppel, claiming that the *Filas v MEEMIC* ruling in COA Case No. 316822 prevented PL-AT from litigating the same issues against Culpert and Efficient Design Inc. The COA granted the Motion to Affirm in part, in regard to Items 1-3 and 6 of PL-AT's 12-20-13 Brief on Appeal to the COA. Issues 4 and 5 were to be heard on 3-3-15, but were rendered moot by the 11-25-14 Order granting DF-AE's Motion to Affirm for Item 3, which upheld the circuit court's dismissal of PL-AT's entire case.

Pursuant to MCR 7.302(B)(5), because PL-AT was denied a legitimate oral argument hearing denying her right of due process, and the COA's 11-25-14 granting of the DF-AE's Motion to Affirm based on the doctrine of collateral estoppel is clearly erroneous and will cause PL-AT material injustice if it is not reversed, PL-AT requests that the MSC grant her Application for Leave to Appeal. Due process is a right that is important to every citizen and important to maintaining the integrity of the legal system.

PL-AT also claims grounds to appeal pursuant to MCR 7.302(B)(3) because PL-AT's case also involves a substantial legal issue in regard to the circuit court's refusal to accept SCAO-mandated form MC 315 for Plaintiffs to provide their records to Defendants, which has

been upheld by the Court of Appeals in two of PL-AT's cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR 2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to become part of a records copying services' database for sale to other lawyers and insurance companies.

The Supreme Court hereby has the opportunity to enforce the allowance of the forms approved and/or mandated by the Supreme Court Administrative Office, in this case, Form MC 315. If the MSC truly stands behind the law, it will take this opportunity to correct the injustice being done to this PL-AT and future Plaintiffs who simply want to follow the court rules and protect their rights to privacy of their medical records. This PL-AT should not have to lose both her first- and third-party auto cases for the same reason of wanting to use, and using, respectively, Form MC 315 to provide her medical records to the DF-AEs in her cases.

Statement of Questions

- I. Did the COA err in failing to provide a legally valid hearing on oral arguments when it made its 11-25-14 Order to grant DF-AE's Motion to Affirm in part for items 1-3 and 6 of PL-AT's Brief on Appeal, which then rendered the 3-3-15 oral arguments hearing moot in regard to PL-AT's remaining items 4 and 5, when these two items that had the potential to reverse the dismissal of one or both parties to the case?

PL-AT answers: YES

COA answers: No Opinion formally issued by the COA, but COA panel of judges at the 3-3-15 hearing agreed with PL-AT that her oral arguments would be moot due to the 11-25-15 ruling, which upheld the circuit court's dismissal of PL-AT's entire case against both defendants, Culpert and EDI, due to its inclusion of Item 3 from PL-AT's 12-20-13 Brief on Appeal.

- II. Did the COA wrongly apply the Doctrine of Collateral Estoppel when it granted Culpert's Motion to Affirm for items 1-3 and 6 of PL-AT's Brief on Appeal, when the doctrine was inapplicable for five reasons: (1) the defendants were different; (2) the issues were not identical; (3) the issue was not actually litigated; (4) the judgment the motion was based upon was not a final judgment and was not decided on the merits; and (5) there existed no mutuality of estoppel? Add to argument II.

PL-AT answers: YES

COA answers: NO

- III. Did the COA err by upholding the circuit court's decision to order Plaintiff-Appellant to provide medical record authorization forms of Efficient Design's choice to Efficient Design without establishing that they were a liable party to the case, by applying the Doctrine of Collateral Estoppel, when it clearly was inapplicable to this third-party case, as there was no question of liability in the first-party *Filas v MEEMIC* case upon which the Doctrine was applied?

PL-AT answers: YES

COA answers: NO

Material Proceedings and Facts

This is a third-party auto case against two defendants, Kevin Culpert, and his employer, Efficient Design, Inc., EDI, whose name does not appear on the Court of Appeals' case caption. EDI is represented by two different attorneys, representing two different insurance companies. EDI has a \$1,000,000 policy with each company. Kevin Culpert has a \$20,000 policy with Progressive Insurance Co.

PL-AT fulfilled her obligation to provide medical records to both Defendants by executing and mailing SCAO-mandated Form MC 315 to over 20 health care providers. However, the circuit court dismissed PL-AT's case against both Culpert and EDI, for her refusal to re-do the extensive process using attorney, Mr. Wright's personal forms that contained language above and beyond the requirements of MC 315.

PL-AT also has a first-party case against MEEMIC Insurance Company pending in the MSC, Case No. 150510, in which PL-AT requested to use MC 315, but hadn't actually provided records to the defendant yet, as she had in this case. In an October 14, 2014 Opinion, the COA upheld the circuit court's dismissal of the MEEMIC case, using the novel argument that was never presented in any court filings, that due to a stipulated Protective Order entered in the MEEMIC case, PL-AT could not use MC 315 to provide her records to MEEMIC and had to instead use third-party record copying service forms provided by MEEMIC.

On November 25, 2014, the COA heard and issued an order on Culpert's 10-7-14 Motion to Affirm, with neither the Plaintiff-Appellant or the Defendant-Appellees present, thereby showing no regard for PL-AT's request for oral argument under MCR 7.214(A) in her 11-7-14 Answer. Culpert's 10-7-14 Motion to Affirm argued that the Doctrine of Collateral Estoppel barred the PL-AT from having the same claims against Culpert and EDI, since the COA had

ruled in the MEEMIC case that she could not use MC 315 to provide her medical records. Not only is there no Protective Order in the Culpert and EDI case, which is the basis of the COA's Opinion in the MEEMIC case, but Culpert and EDI are completely different defendants involving different insurance companies than MEEMIC. PL-AT had it clarified at the 6-21-13 hearing that the PO was no longer in effect, although the court stated that the protective order did not exist in that case (Exhibit W, 6-21-13 transcript pg. 17-18; Exhibit X, 6-21-13 Order Vacating PO).

The Doctrine of Collateral Estoppel cannot bar a plaintiff from making the same or similar claims against different defendants. Nonetheless, the COA granted the Motion to Affirm on 11-25-14 for items 1-3, and 6 that were presented in PL-AT's 12-20-13 Brief on Appeal.

The COA scheduled a hearing for oral arguments on March 3, 2015, in regard only to items 4 and 5 from PL-AT's 12-20-13 Brief on Appeal. However, by the COA already having granted Culpert's Motion to Affirm on 11-25-14 with respect to items 1-3, and 6, the COA affirmed that the circuit court did not err when it dismissed PL-AT's entire case because this was the pertinent question presented in item 3 of PL-AT's Brief on Appeal. Therefore, anything PL-AT would have argued at the 3-3-15 hearing in regard to items 4 and 5 would be moot, since there only needs to be one reason to dismiss a case. By its granting of the Motion to Affirm in regard to Item 3 of PL-AT's Brief on Appeal, the COA has already chosen to affirm the circuit court's dismissal of the entire case for PL-AT's refusal to complete personal forms provided by the Defendant. The case can't be dismissed twice. Even if the COA ruled in PL-AT's favor on Items 4 and 5, their new Opinion could not cancel out their 11-25-14 Order that already dismissed the case in its entirety due to its inclusion of Item 3. The COA panel of judges at the 3-3-15 hearing affirmed PL-AT's assertions that the case was already dismissed and oral

arguments would be moot. Now, the only way PL-AT can ever be heard on issues 4 and 5, which had the potential to change the outcome of dismissal for both Culpert (items 4 and 5) and EDI (item 4), would be for the MSC to reverse the 11-25-14 Order (since the Doctrine of Collateral Estoppel cannot possibly be applied to cases with different defendants), and to require that the COA hears oral arguments on all Items #1-6 from PL-AT's 12-20-13 Brief on Appeal, and issue an Opinion that encompasses all of the issues.

Arguments

- I. In violation of MCR 7.214, the COA erred in failing to provide a legally valid hearing on oral arguments on 3-3-15 since PL-AT's entire case had already been dismissed by the COA's 11-25-14 Order. It was not possible for the COA to hear any arguments against the dismissal of PL-AT's cases against either Culpert or EDI on 3-3-15 since the COA had already affirmed the Circuit Court's dismissal of the entire case against both defendants, Culpert and EDI.**

It can be assumed the Appellate Judges know the law. Therefore, it can be argued the Appellate Judges were aware that any oral arguments PL-AT made at the hearing on 3-3-15 would have no bearing on the 11-25-14 Order to grant DF-AE's Motion to Affirm with regard to items 1-3 and 6 presented in PL-AT's 12-20-13 Brief on Appeal, which, due to the inclusion of item 3, resulted in the dismissal of PL-AT's entire case.

From PL-AT's observations, it appeared the three Defense attorneys, Mr. Wright and Mr. O'Malley representing EDI, and Mr. Broaddus representing Kevin Culpert, were prepared to give oral arguments at the 3-3-15 hearing. It is reasonable to argue that these seasoned attorneys also knew that the 11-25-14 Order rendered any arguments presented in regard to items 4 and 5 of PL-AT's Brief on Appeal, moot, because the case had already been dismissed. Only one reason is needed to dismiss a case, and the COA already accepted the DF-AE's argument of the application of the Doctrine of Collateral Estoppel when it granted the DF-AE's Motion to Affirm

on 11-25-14, and included Item 3 from PL-AT's 12-20-13 Brief on Appeal, which stated the following:

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)?

Therefore, regardless of how the COA rules on issue 4 (which had the potential to reverse the dismissal of both the Culpert and EDI case) and issue 5 (which had the potential to reverse the Culpert case), those rulings would have no impact, because the case was already dismissed on 11-25-14 by issue 3. PL-AT did not receive a legitimate hearing on oral arguments since the COA could no longer consider them on 3-3-15. The COA would not be able to issue an opinion that would have any validity after the case had already been dismissed by the 11-25-14 Order.

A. A ruling in PL-AT's favor on Items 4 and 5 would have reversed the dismissal of PL-AT's cases against EDI and/or Culpert, if the COA could have made a legitimate Opinion following the 3-3-15 oral arguments hearing.

As explained above, the COA's granting of the DF-AE's Motion to Affirm, which included Item 3 of PL-AT's Brief on Appeal, resulted in the upholding of the circuit court's dismissal of PL-AT's case against both Culpert and EDI. A ruling by the COA in PL-AT's favor in regard to Item 4 and/or Item 5 cannot change the fact that the case was already dismissed at the time of the 3-3-15 oral arguments hearing. PL-AT's case could not be dismissed twice by a ruling against her, nor could the COA reverse the 11-25-15 Order that dismissed both cases and rule in favor of the PL-AT on items 4 and 5, based on any arguments heard at the 3-3-15 hearing. Therefore, PL-AT did not receive due process since all six of the items presented in PL-AT's Brief on Appeal should have been heard at the same time to prevent such a situation from

happening in which oral arguments would be rendered moot due to a prior Order of the COA.

1. A ruling in PL-AT's favor in regard to item 4 of PL-AT's Brief on Appeal would have reversed the dismissal of PL-AT's case against both EDI and Culpert.

Item 4 of PL-AT's Brief on Appeal posed the following question:

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?

As explained in Argument I above, it should be clear that PL-AT's case was not dismissed by the granting of a Motion to Dismiss filed by DF-AE, as PL-AT inadvertently stated in regard to Item 5 of her 12-20-13 Brief on Appeal. PL-AT's entire case was dismissed by the circuit court based on Mr. Wright's assertions at a 6-24-13 "special conference" that PL-AT did not comply with his Motion to Compel. PL-AT was not informed about being required to appear at the court on 6-24-13 for the "special conference" and was unaware that Mr. Wright was not satisfied with the copies of the filled out SCAO MC 315 forms Plaintiff had mailed to her health care providers along with copies of her postal receipts proving the medical release forms were mailed on June 21, 2013, that were hand-delivered to Mr. Wright's legal office at 11:24 a.m. on 6-24-13, until she was informed by telephone by the court later that afternoon that her case had been dismissed (Exhibit F, signed cover letter from Wright's office). The special conference did not appear on the 6-24-13 Register of Actions (Exhibit G, Register of Actions dated 6-24-13, Current Register of Actions dated 3-10-15).

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 provide or request that any specific authorization form be used to provide him with copies of Plaintiff-Appellant's medical records** (Exhibit D, 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 not mailed to PL-AT until 4-30-13). Mr. Wright did not have any filled-out forms for Plaintiff to sign when she appeared in court on June 21, 2013 for a hearing on EDI's Motion to Compel. Judge Borman ordered Mr. Wright to e-mail forms to Plaintiff June 21, 2013. PL-AT interpreted Judge Borman's order to mean the forms would be e-mailed by the end of the business day, which under court rule for e-mail was 4:30 pm. Plaintiff-Appellant checked her e-mail at 5:00 pm and no authorization forms had been sent by Mr. Wright. The reason Mr. Wright gave for not having filled out authorization forms available for PL-AT to sign with him during the motion to compel hearing on 6-21-13 which was that he did not know the providers at the time of the hearing. It is reasonable to argue the reason Mr. Wright did not have any authorization forms with him is because he did not ask for authorization forms in his motion to compel, he asked for medical records. It was Judge Borman that ordered PL-AT to provide medical authorization forms that Mr. Wright did not ask for in his motion to compel.

Worried about not being able to meet the June 24, 2013, 2:00 pm deadline to sign medical release authorizations as ordered by Judge Borman, after Mr. Wright's failure to timely comply with Judge Borman's order to e-mail the authorization forms, Plaintiff-Appellant mailed out numerous, individual, completely filled-out SCAO MC 315 medical release forms requesting any and all medical records relating to injuries received as a result of the subject accident.

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 ordered by Judge Borman to provide by 2:00 pm on June 24, 2013.

Copies of Mr. Wright's forms were delivered to PL-AT's home around 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 (Exhibit H, 6-24-14 FedEx time/date stamped envelope, stamped 3:00 PM).

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 copies of 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. PL-AT already had some medical records and easily could have obtained the other medical records from her doctors to give to Mr. Wright without using any specific authorization forms since the medical records would first have been sent directly to PL-AT and then given to Mr. Wright.

In addition to authorization forms for her medical providers, the FedEx packet mailed on June 21, 2013 to Plaintiff, 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 were not listed in the 4-30-13 requests for production of documents that was dated 2-7-13. 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, 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 I, 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. Thereby, Mr. Wright lied when he told Judge Borman during the special conference on June 24, 2013, that PL-AT had provided authorizations for only half of the records she was ordered provide. The records she was ordered to provide were only medical authorizations, in accordance with the 4-30-13 Motion to Compel. The fact Mr. Wright stated he had authorizations, clearly proves he had received the copies of the medical authorizations and receipts of mailing delivered to his office earlier on 6-24-13 PL-AT for what PL-AT believed were sent to all of her medical care providers. PL-AT was not in attendance to argue against Mr. Wright's statement at the special conference 6-24-13 because PL-AT believed she had no reason to attend, because she already met her obligation to provide medical release authorizations forms

by hand-delivering copies of the mailed MC-315 forms to Mr. Wright's office after 11:00 on June 24, 2013. This lie on the part of Mr. Wright is reprehensible and should not have been told to Judge Borman before Judge Borman dismissed the PL-AT's entire case against both EDI and Culpert. Culpert's attorney was not even in attendance at the special conference and had no complaints with PL-AT providing him with records using MC 315. It can reasonably be argued that upon hearing EDI's attorneys' statements on 6-24-13, it could have interpreted by Judge Borman that PL-AT had not followed Judge Borman's orders to provide medical authorizations to Mr. Wright and that PL-AT was not present at the special conference because she not did not provide medical authorizations, which was not true. Mr. Wright also made claims that PL-AT "altered" the authorizations, which was impossible, because she hadn't even received them in order to make any alterations. The only difference was that they were MC 315 forms instead of Mr. Wright's personal forms that were not sent to her by Mr. Wright by the end of the business day on 6-21-13, as he was ordered by the Court to do.

Plaintiff-Appellant should not have had her case dismissed at the "special conference," based on her failure 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 had been filed and granted. Even in that situation, a Motion to Dismiss would need to be filed if PL-AT did not comply with the new Motion to Compel. No Motion to Dismiss was ever filed to dismiss PL-AT's entire case. It was simply just ordered at the 6-24-14 special conference by the Court.

If the COA had been able to rule on item 4 of PL-AT's Brief on Appeal by providing a valid oral arguments hearing on 3-3-15, they could have overturned the Circuit Court's erroneous decision to dismiss PL-AT's case based on the 4-30-13 Motion to Compel that PL-AT clearly had

complied with by disclosing her medical records using MC 315, ruling that a new motion to compel would be required in order to sanction the PL-AT for not providing records that were not requested in the 4-30-13 Motion to Compel and were instead requested in a 6-21-13 Request for Production of Documents. Because the court also dismissed PL-AT's against Culpert at the same time, even though Culpert's attorney, Mr. Hassouna, had no objections to PL-AT's use of MC 315 to provide records to him, a ruling by the COA in favor of PL-AT on this issue would have resulted in the reversal of the dismissal of both cases. However, it was not possible for the COA to hear this issue after they upheld the dismissal of the entire case based on Item 3 of PL-AT's Brief on Appeal, in the Order issued 11-25-14.

2. A ruling in PL-AT's favor in regard to item 5 of PL-AT's Brief on Appeal would have reversed the dismissal of PL-AT's case against Culpert.

Item 5 of PL-AT's Brief on Appeal posed the following question:

Did the circuit court err 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?

PL-AT inadvertently misstated the facts when she said that EDI "motioned for the case to be dismissed" in Item 5 above. No Motion to Dismiss was ever filed by Mr. Wright. The case was dismissed by the court at a special conference based on EDI's attorneys' word that PL-AT only provided half of the authorizations, which was a lie. See argument I(A)(1) above for details.

This case involves three separate insurance companies and three separate insurance policies---one for Kevin Culpert, and two for Efficient Design. Michael C. O'Malley represents a different insurance company for Efficient Design, than Mr. Wright represents. PL-AT argued

in her 12-20-13 Brief on Appeal that 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 PL-AT provided and/or his unsubstantiated and unproven claims PL-AT did not provide the records ordered by Judge Borman on June 21, 2013, due to the fact Judge Borman did not order PL-AT to produce records, but only ordered Plaintiff-Appellant to provide authorization forms to release medical records, and/or his unsubstantiated and unproven claims PL-AT altered records.

PL-AT's case against Defendant, Kevin Culpert should not have been able to be dismissed since Plaintiff-Appellant complied with all requests from Kevin Culpert's attorney, Mr. Hassouna, and he did not object to PL-AT's method of using SCAO-approved Form MC 315, by which she provided medical records release authorization forms 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 (filed after the case was already dismissed on 6-24-13 at the "special conference"), Mr. Hassouna stated that he was in concurrence with Mr. Wright's Proposed Order of Dismissal, he states only that he concurs, and provides no additional reasons on his own behalf as justification for why Culpert's case should be dismissed (Exhibit O, 7-22-13 Culpert's Concurrence with Efficient Design's Response to Plaintiff's Objection to Proposed Order of Dismissal). In hindsight, and now with further knowledge of court procedure, PL-AT now understands that the only objections that could have been made to Mr. Wright's proposed order would have to be in regard to the accuracy and completeness of the events that occurred at the court on 6-24-14 at the special conference, which was the dismissal of the entire case. Mr. Hassouna, representing Culpert, should not have

filed a concurrence with the proposed order at all since he was not even present at the 6-24-14 special conference and therefore was not a party to what occurred that day. It appears these filings and proceedings were meant to further confuse PL-AT into believing she had a chance at reversing the dismissal by objecting to the proposed order, when she should have filed a Motion for Reconsideration instead of Objections to the 7-Day Order.

Further, on July 19, **2012**, just before the original no-fault and third-party case, which did not include Efficient Design as a Defendant¹, was dismissed on July 20, 2012, Mr. Hassouna was ready to settle the tort case against Kevin Culpert for Progressive's policy limit of \$20,000. On July 19, 2012, Mr. Hassouna had not required PL-AT to sign any authorizations to disclose medical records to him as a condition for the settlement. Therefore, it would be unjust to ask for Plaintiff-Appellant's case/claims against Kevin Culpert represented by Progressive's attorney Mr. Hassouna, 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 PL-AT at the Court, and her medical records were on their way to him (Exhibit P, 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 Q, Scheduling order for initial consolidated first- and third-party cases; Exhibit J, Accountings of Disclosure from PL-AT's three main health care providers.

¹ This case was originally filed 11-15-2011 as a combined first- and third-party case and was assigned Docket #11-014149-NF. The case included only MEEMIC and Kevin Culpert. It was dismissed without prejudice on 7-20-12 and re-filed as a separate first-party case against MEEMIC on 12-18-12, Docket #12-016693-NF, and a separate third-party case against Kevin Culpert and his employer, Efficient Design, Inc. on 1-14-13, Docket #13-000652-NI. Efficient Design was not a Defendant in the original combined case filed in 2011.

PL-AT provided in good faith, all of the medical authorization forms she believed were necessary to comply with Judge Borman's Order to provide authorizations instead of the medical records that Mr. Wright motioned PL-AT to provide. PL-AT's entire case against all three insurance companies representing both Kevin Culpert and Efficient Design should not have been dismissed when Mr. Wright was the only attorney presenting any issues to the court in regard to PL-AT's production of records using MC 315.

If the COA had been able to rule on item 5 of PL-AT's Brief on Appeal, they could have overturned the Circuit Court's erroneous decision to dismiss PL-AT's case against Culpert, and/or PL-AT's claims against EDI's other insurance policy, represented by Mr. O'Malley. However, it was not possible for the COA to hear this issue after they upheld the circuit court's dismissal of the entire case based on Item 3 of PL-AT's Brief on Appeal, in the Order issued 11-25-14.

B. Even if the COA took the position that PL-AT did not have a right to oral arguments on Culpert's 10-7-14 Motion to Affirm, the COA clearly believed PL-AT had the right to oral arguments on issues 4 and 5, or they would not have scheduled the 3-3-15 hearing for the parties to present their oral arguments on those issues.

1. PL-AT requested oral argument in accordance with MCR 7.214(A).

PL-AT's 11-7-13 Answer to Culpert's 10-7-14 Motion to Affirm stated on the title page in capital letters and boldface type "ORAL ARGUMENT REQUESTED," in accordance with MCR 7.214(A) (Exhibit T, cover page of PL-AT's 11-7-14 Answer to Culpert's Motion to Affirm). Therefore, PL-AT should have been provided with a legitimate oral arguments hearing for all of the issues presented to the COA in her 12-20-13 Brief on Appeal. PL-AT was not provided with any oral arguments for the Motion to Affirm, which was granted for items 1-3 and 6 of PL-AT's Brief on Appeal, which violated her due process rights. PL-AT also properly requested oral arguments on the first page of her 12-20-14 Brief on Appeal, so there is no valid

reason she should not have been granted a legitimate oral argument hearing (Exhibit U, cover page of PL-AT's 12-20-13 Brief on Appeal).

2. The COA violated MCR 7.214(E)(1) by making a decision without providing oral argument.

According to MCR 7.214(E)(1), there are only three reasons that the COA is permitted to make a decision without providing oral arguments. There must be a unanimous decision by the panel concluding that:

- (a) The dispositive issue or issues have been recently authoritatively decided;
- (b) the briefs and record adequately present the facts and legal arguments, and the court's deliberations would not be significantly aided by oral argument; or
- (c) the appeal is without merit.

There is no document in the court file that indicates that the panel that made the 11-25-14 order to grant Culpert's Motion to Affirm, unanimously concluded any of the three items listed above.

MCR 7.214(E)(1)(a) clearly would not apply because the issue of whether or not a plaintiff can use SCAO-mandated Form MC 315 has never been authoritatively decided by the COA. In the MEEMIC case, currently before the MSC, Case #150510, the COA avoided ruling on this issue by presenting the novel argument that it was a protective order entered in this case that prevented PL-AT from being able to use MC 315 to provide her medical records to the defendant.

MCR 7.214(E)(1)(b) clearly would not apply because if the COA wanted to claim that the briefs and record adequately presented the facts and legal arguments, and that the court's deliberations would not be significantly aided by oral argument, then the 11-25-14 order would not have separated out items 4 and 5 for oral argument to be heard on 3-3-15.

MCR 7.214(E)(1)(c) clearly would not apply because if the COA wanted to claim that PL-AT's was without merit, it could have done so in its 11-25-14 order, rather than leaving items 4 and 5 for oral argument to be heard on 3-3-15.

Therefore, since no oral arguments were held on the Motion to Affirm, against PL-AT's request under MCR 7.214(A), and the oral arguments session held 3-3-15 in regard to items 4 and 5 was meaningless due to the prior 11-25-14 Order, the COA violated MCR 7.214(E) by making a decision without providing a legitimate oral argument hearing. PL-AT requests that the MSC grant this Application for Leave to Appeal so that her case can be remanded to the COA for oral arguments on all 6 items presented in PL-AT's 12-20-13 Brief on Appeal so she can receive due process.

II. The COA's granting of the DF-AE's Motion to Affirm for items 1-3 and 6 of PL-AT's Brief on Appeal, which was based on the Doctrine of Collateral Estoppel, is clearly erroneous and will cause material injustice. The Doctrine was inapplicable for five reasons: (1) the defendants were different; (2) the issues were not identical; (3) the issue was not actually litigated; (4) the judgment the motion was based upon was not a final judgment and was not decided on the merits; and (5) there existed no mutuality of estoppel.

According to Section 2.16(C) of the Civil Proceedings Benchbook published by the Michigan Judicial Institute, in order for collateral estoppel to apply, there are three general requirements:

“(1) ‘[A] question of fact essential to the judgment must have been actually litigated and determined by valid and final judgment’;

“(2) ‘the same parties must have had a full [and fair] opportunity to litigate the issue’; and

“(3) ‘there must be mutuality of estoppel.’” *Monat v State Farm Ins Co*, 469 Mich 679, 682-684 (2004), quoting *Storey v Meijer, Inc*, 431 Mich 368 n 3 (1988).

As explained in detail below, none of the above requirements are fulfilled, and therefore,

the doctrine of collateral estoppel cannot legally be applied to this case. PL-AT argued these issues in her 11-7-14 Answer to Culpert's Motion to Affirm, 12-16-14 Motion for Reconsideration of the 11-25-14 Order, 12-31-14 Reply to Culpert's Answer to PL-AT's Motion for Reconsideration and 1-23-15 Reply to O'Malley's Answer to PL-AT's Motion for Reconsideration.

A. A Plaintiff can make the same claims against different Defendants. Therefore, the doctrine of collateral estoppel does not apply.

It is clearly evident from the case captions on the filings by the parties, that *Tamara Filas v MEEMIC Insurance Company*, COA case no. 316822, the case upon which the COA granted Culpert's 10-7-14 Motion in part, accepting Culpert's argument that the Doctrine of Collateral Estoppel applied, clearly did not include any of the same Defendants in the instant case, *Tamara Filas v. Kevin Culpert and Efficient Design*. These captions speak for themselves regarding the "same" defendant issue, and preserve that issue, clearly showing there are no defendants in common, the main criteria that must be met before the Doctrine of Collateral Estoppel can even be considered applicable or enforceable. In her 11-7-14 Answer to Culpert's Motion to Affirm, PL-AT included arguments as to why the rest of the less important criteria to meet the requirements to apply the Doctrine of Collateral Estoppel were also not met, but most importantly, the defendants were not the same.

Suppose for example, a person makes a contract with a specialty custom auto shop to do body work on their car. The technician inadvertently does damage to the person's car in the process of working on the car. The person files a court claim against the auto shop to attempt to recoup the cost to repair the damages to their car. The court rules that the person is entitled to partial damages, but still has to pay the shop for the work they did. Then a year later, the person contracts to have work done by a different shop, and that shop also damages their car in the same

way as the first shop. For a court to decide that due to the doctrine of collateral estoppel, the person cannot file a claim against the second shop because they already filed a similar case against a different defendant would be absolutely absurd! It is the same here---there are two different Defendants, so the Doctrine of Collateral Estoppel cannot be applied.

The lone fact that the Defendants were not the same is sufficient to rule out the applicability of the Doctrine of Collateral Estoppel, regardless of whether or not any other facts between the two cases were the same or different or if the MEEMIC ruling by the COA had been finalized or not. However, the facts that led to the rulings were not even the same, as explained below.

B. The issues in the instant appeal are not identical to those raised in *Filas v MEEMIC*, as can be observed through an analysis of the “questions presented” in both cases.

Culpert’s 10-7-14 Motion to Affirm stated that “*The issues raised by Ms. Filas in her appeal in Filas v MEEMIC are identical to the issues raised by Ms. Filas in the instant appeal*” and asked the reader to compare the Questions Presented in the two appeals. After analysis of these questions, as discussed below by PL-AT, the court should find that the Defendant-Appellee’s claim is completely erroneous when the reader compares the Questions, and thereby the granting of the Motion to Affirm by the COA is clearly erroneous.

Questions #2, 3, and 6 the instant case are similar, but not identical, to questions #2, 3 and 5 in the MEEMIC case, respectively. However, questions #1, 4 and 5 are completely different and relate only to the instant case, and are not questions that were reviewed by the Court of Appeals in the MEEMIC case. In the 11-25-14 Order to Grant Culpert’s Motion to Affirm in part, items 1-3 and 6 were included in the decision, with 4 and 5 left for oral arguments

on 3-3-15, which as already explained would have been meaningless to argue once the COA already affirmed dismissal of the entire case by inclusion of item 3.

Analysis of question 2

Below is question #2 from the instant case:

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?

Below is question #2 from the MEEMIC case:

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)?

These two questions are similar, but still not identical. The difference is the additional wording at the end of the question in the instant case of, “*she also had the choice under MCR 2.314(C)(1)(a) to simply provide the medical records.*”

Analysis of question 3

Below is question #3 from the instant case:

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)?

Below is question #3 from the MEEMIC case:

Did the circuit court err when it dismissed Plaintiff-Appellant’s case based on her refusal to complete authorization forms for a non-party to the case, 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)?

These two questions are similar, but not identical. The MEEMIC case refers to the Plaintiff-Appellant's refusal to complete authorization forms for a nonparty to the case [RDS], whereas the instant case refers to the Plaintiff-Appellant's refusal to complete specific authorization forms provided by the Defendant-Appellee's attorney, Mr. Wright, which has similar characteristics to the RDS form, such as, giving Mr. Wright permission to re-disclose the information to anyone he wants to re-disclose it to, to allow copies to be made of the form, and not having a specific expiration date on the form, which is over and beyond language and conditions that the mandated SCAO MC 315 requires a Plaintiff to agree to and/or sign off on in a request for medical records under MCR 2.310 and MCR 2.314(C)(1)(a) or (d) (Exhibit R, Mr. Wright's HIPAA Privacy Authorization form).

Analysis of question 6

Below is question #6 from the instant case:

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")?

Below is question #5 from the MEEMIC case:

Is the Plaintiff-Appellant in a no-fault auto case for PIP benefits, or in any case where medical records are requested as part of discovery, justified in refusing to agree to additional language that is not included in the SCAO-mandated Form MC 315 and/or missing information on a medical or employment authorization form (i.e. allowance of photocopies, use of expiration event instead of date, no listing of attorney or insurance company to whom records will be disclosed, inclusion of SS#, no listing of information requested, etc.)?

These two questions are similar, but not identical. Both refer to whether or not a plaintiff is justified and refusing to agree to additional language that is not included in the SCAO-mandated form MC 315, and/or missing information on medical or employment authorization forms. In the 10-14-14 ruling by the Court of Appeals in the *Filas v MEEMIC* case, this question

was not even addressed because the Court of Appeals relied on the argument that the protective order entered in the MEEMIC case was the sole reason the Plaintiff was required to have signed the RDS forms. It should also be noted that the Court of Appeals came up with this argument on its own, because it never appeared in any of MEEMIC's pleadings, which is unjust and contrary to proper court procedure in which judges may only rule on the arguments presented and cannot help out either party by presenting novel arguments to justify their ruling, as the Court of Appeals has done in the MEEMIC case Opinion.

The remaining questions in the instant case are presented below. It can be observed that these questions relate only to the instant case, and could not have been answered by an analysis of the Court of Appeals opinion in the MEEMIC case.

Question 1 from the instant case:

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?

There was no question that MEEMIC was the liable party in the PIP case as they were the Plaintiff's insurer, so this question in no way relates to the MEEMIC case. In the instant case, Plaintiff-Appellant was ordered to provide her medical records to Mr. Wright, the attorney representing an insurance policy held by the company, Efficient Design Inc., who had denied they were even Kevin Culpert's employer in prior pleadings. The question of whether the court could order the Plaintiff to provide medical records to a party that claimed they were not liable, and no liability was ever determined through a deposition of Kevin Culpert that Mr. Wright was ordered by the Judge to conduct but never conducted, still remains to be answered by the Court of Appeals, and cannot be disregarded.

Question 4 from the instant case:

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?

This question is also clearly specific to the instant case, and has nothing to do with the MEEMIC case, because it is in regard to the actions of Mr. Wright in representing this particular Defendant. Plaintiff-Appellant provided all of the records requested in the Defendant's Motion to Compel, yet the authorizations sent by Mr. Wright after his Motion to Compel was granted, requested more information than was requested in his original motion to compel. The question still needs to be answered by the Court of Appeals whether or not a new motion to compel needed to have been filed in order to request additional records.

Question 5 from the instant case:

Did the circuit court err 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?

This question is also clearly specific to the instant case and had nothing to do with the MEEMIC case. There are three different defendants involved in the instant case: Kevin Thomas Culpert, and two different insurance companies representing Efficient Design Inc. Let it be clear that because Culpert's attorney, Mr. Hassouna did not object to the executed copies of MC 315 she provided to him in person, and the fact he looked at them and verbally accepted them, Plaintiff has argued that her case against Culpert should not be dismissed, no matter what the Court of Appeals rules in regard to dismissal of the case against Efficient Design Inc. This question in and of itself is very important and should not be disregarded by the Court of Appeals.

The remaining questions presented in the MEEMIC case are as follows:

Question 1 from the MEEMIC case:

Did the circuit court err when it ordered Plaintiff-Appellant to provide her medical records to a records copying service that was not a party to the case?

This question is inapplicable to the instant case because it is in regard to providing records to a third-party records copying service, RDS, which is not what Plaintiff-Appellant was ordered to do in the instant case. Plaintiff was ordered to re-do the process of disclosing medical records using Mr. Wright's personal forms which contained terms and conditions that were beyond what PL-AT was obligated to agree to on the SCAO-mandated MC315 forms that she had already executed and mailed to her health care providers.

Question 4 from the MEEMIC case:

Did the circuit court err when it ordered Plaintiff-Appellant to sign the RDS authorization form, releasing any and all of her employment information to third party, RDS, when no good cause was shown by the Defendant-Appellee to obtain employment information beyond wage and salary information as permitted under MCL 500.3158, Insurance Code of 1956 (no-fault law)?

This question is also only applicable to the MEEMIC case because Plaintiff-Appellant argued that a PIP insurer is only entitled to wage and salary as permitted under MCL 500.3158, The Insurance Code of 1956 (no-fault law). A third-party tort case is not governed by MCL 500.3158, thereby this question is not relevant to the instant case.

C. The issue of a plaintiff's use of MC 315 was never actually litigated since the Protective Order entered in the MEEMIC case was used as justification by the COA in upholding the circuit court's decision to deny Plaintiff the right to use MC 315 to disclose her medical records to MEEMIC.

It is extremely important to note that the MEEMIC Court of Appeals opinion dated 10-14-14 did not actually answer any of the questions presented, so even if they had been relevant to the instant case, they would be of no assistance to the Defendants to use as justification for

dismissal of the instant case. The COA, in their unpublished opinion, avoided a response to the Plaintiff-Appellant's questions in the MEEMIC case by using the novel argument that Plaintiff-Appellant was required to sign the RDS forms solely because of wording in a Protective Order that was entered in the MEEMIC case by Plaintiff-Appellants attorney, in breach of the hiring agreement between Plaintiff-Appellant and the attorney.

As no Protective Order was entered in the instant case, the Defendant-Appellee is left with no argument as to why Plaintiff-Appellant's executed copies of SCAO-mandated Form MC 315 were not acceptable. Because the issue of a Plaintiff's use of MC 315 when no PO exists was never actually litigated, the doctrine of collateral estoppel cannot be applied.

D. The 10-14-14 Opinion of the COA in *Filas v MEEMIC* is not a final judgment because it has been appealed to the MSC and it was not decided on the merits.

To qualify as a "final order," the issue must have necessarily been decided on the merits. The 4 questions from PL-AT's Brief on Appeal that the COA applied to the upholding of the circuit court's dismissal (Items 1-3 and 6) were never addressed by the COA since the COA avoided similar issues in the MEEMIC case by using the PO as justification. Therefore, there has been no decision on the merits of whether or not a Plaintiff can disclose their medical records to Defendants using MC 315.

The COA's 10-14-14 Opinion in *Filas v MEEMIC* is also not a "final order" since PL-AT has applied for Leave to Appeal to the MSC and is awaiting a determination. Therefore, the Doctrine of Collateral Estoppel has been erroneously applied.

E. There existed no mutuality of estoppel, therefore the Doctrine of Collateral Estoppel could not be applied.

According to Section 2.16(C) of the Civil Proceedings Benchbook published by the Michigan Judicial Institute, in order for collateral estoppel to apply, "*there must be mutuality of*

estoppel.” The Benchbook continues, “*to satisfy mutuality of estoppel, the party attempting to estop the other party from relitigating an issue must have been a party or privy to a party in the previous action.*” According to the Benchbook, a party is defined as “*one who was directly interested in the subject matter, and had a right to defend or to control the proceedings and to appeal from the judgment.*” According to the Benchbook, a privy is defined as “*one who, after the judgment, has an interest in the matter affected by the judgment through one of the parties, as by inheritance, succession, purchase.*”

The Defendants in the instant case, Kevin Culpert and Efficient Design Inc., are defendants in a separately-filed third-party tort case deriving from circuit court case number 13-000652-NI. PL-AT’s case against MEEMIC Insurance Co., the case upon which a claim of estoppel has been granted by the COA in the 11-25-14 Order, is derived from circuit court case number 12-016693-NF, a no-fault auto case. Neither Kevin Culpert nor Efficient Design have ever been parties to the re-filed MEEMIC case no. 12-016693-NF.

Prior to PL-AT's re-filing the two separate cases, she had a combined first- and third-party case against MEEMIC Ins. Co. and Kevin Culpert which was dismissed without prejudice. This case was given circuit court no. 11-014149-NF. Efficient Design was never a party to case no. 11-014149.

Since neither Culpert or Efficient Design Inc. are parties or privy to MEEMIC Ins. Co., the Doctrine of Collateral Estoppel has been erroneously applied.

III. The COA erred by upholding the circuit court's decision to order Plaintiff-Appellant to provide medical record authorization forms of Efficient Design's choice to Efficient Design without establishing that they were a liable party to the case. The Doctrine of Collateral Estoppel clearly should not have been applied to this issue since it had nothing to do with the *Filas v MEEMIC* case. If the COA would have ruled in PL-AT's favor on this issue, her entire case would have to be re-instated because EDI would not have been able file a Motion to Compel if they were not even entitled to the records, and therefore the case could not have been dismissed based on the Motion to Compel that was filed 4-30-13.

The COA's 11-25-14 Order to grant Culpert's Motion to Affirm based on collateral estoppel in part included item 1 of PL-AT's Brief on Appeal with the items that were granted in part. Item 1 clearly cannot be considered the same or even similar to the MEEMIC case because there was no question of liability in the MEEMIC case. Therefore, the Doctrine of Collateral Estoppel is inapplicable to Item #1. I added this paragraph.

PL-AT is only required to provide her medical records to liable parties in the case. PL-AT's third-party case was re-filed just before the 3-year statute of limitations expired. PL-AT's previous lawyer failed to depose or send interrogatories to Kevin Culpert during discovery to determine if Kevin Culpert was in the scope of his employment. 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.

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 to her attorney, Terry Cochran, provided to her by MEEMIC for the release of medical information and employment information

dated November 4, 2011, 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 MSC case against MEEMIC Insurance Co., COA Case # 316822, MSC Case #150510).

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 opinion, 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). Liability should first have been established before PL-AT was ordered to provide her medical records (even though she did comply with the order of Judge Borman to supply copies of medical release forms to Mr. Wright, under the threat of case dismissal). Pg. 7 of the 6-21-13 transcript, the court states, "We don't wait for liability. No, no. That's not the way---" and PL-AT replied, "I shouldn't have to give my records to a party that may not even be party to this case though. They haven't---" and the Court continued

to stand by the opinion that she had to provide records to EDI or her case would be dismissed (Exhibit X, 6-24-13 transcript).

Second, as already explained, Plaintiff-Appellant submitted fully completed interrogatories to Culpert and EDI 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 at the special conference on 6-24-13 should not have been accepted by the court.

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 copies of fully executed MC-315 authorization forms to release 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 E, 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 6-18-13 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 K, 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 separately requested by both Mr. Hassouna, Mr. Culpert’s attorney, and 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 L, 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.

PL-AT asserts 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.

The COA avoided ruling on the issue of PL-AT being ordered to supply medical information to a party claiming no liability, when it granted Culpert's 10-7-14 Motion to Affirm based on the doctrine of collateral estoppel for items #1-3 and 6 of PL-AT's 12-20-13 Brief on Appeal. This item was #1 of PL-AT's 12-20-13 Brief on Appeal, and should not have been lumped together with the other issues the COA considered "resolved" by the 10-14-14 *Filas v MEEMIC* Opinion, because it clearly had absolutely nothing in similarity with any of the issues in the MEEMIC case, as MEEMIC's liability was never questioned.

A ruling must be made on Item #1 of PL-AT's 12-20-13 Brief on Appeal because this item alone could reverse the dismissal of the entire case. If EDI was not entitled to PL-AT's records, there is no way they could file a Motion to Compel the production of the records, and therefore no way PL-AT's case could have been dismissed for not providing the specific authorization forms ordered by Judge Borman during the 6-21-13 hearing on the 4-30-13 Motion to Compel. Again, the 4-30-13 Motion to Compel requested copies of medical records, not authorizations. Further, the authorizations PL-AT did not complete were the authorizations requested after the 4-30-13 Motion to Compel was granted on 6-21-13 in regard to executed medical authorizations only, and PL-AT had complied with the 6-21-13 Order. Since the Doctrine of Collateral Estoppel clearly could not be applied to Item 1 of PL-AT's 12-20-13 Brief on Appeal, the COA's 11-25-14 Order needs to be reversed so that oral arguments can be heard and an Opinion issued on whether or not a party must be determined to be a liable party in order to compel production of medical records from the PL-AT.

Conclusion and Relief Requested

The question becomes why did the COA separate the case into parts and leave out items 4 and 5 when they granted the Motion to Affirm in part, and why did the DF-AE's attorneys prepare to argue those issues, if they knew they would have no bearing on the dismissal of PL-AT's case? It is reasonable to argue that the COA did not want to have the SCAO MC 315 forms to be an issue in the case and did not want it known that Mr. Hassouna, an auto attorney, representing Kevin Culpert in the Circuit Court, accepted those forms to satisfy PL-AT's obligation to provide medical information in a third party tort case. By issuing an Order granting Culpert's Motion to Affirm, instead of issuing an Opinion, which would likely be published on the internet, the issue of the MC 315 forms remains hidden unless a person goes through the

trouble of ordering the case file so they could determine that the main focus of the case was about the circuit court's non-acceptance of MC 315 forms. The COA already avoided a discussion of MC 315 forms in the MEEMIC case, when they created the novel argument that was not argued in any pleadings, that a Protective Order entered in that case was the sole reason PL-AT could not use MC 315 forms to provide her medical records to the Defendant. Because the MEEMIC ruling does not address the use of MC 315 when there is no protective order in place, it is not helpful to any Plaintiff trying to use MC 315 to disclose their medical records in a personal injury case. Clearly, the COA is doing everything in its power to prevent Plaintiffs from using or even being aware of their right to use MC 315 forms instead of records copying service forms, or similar forms that allow attorneys to act as a copying service (such as Mr. Wright's forms).

By separating out the issues about forms contained in items 1-3 and 6 by the granting of Culpert's 10-7-14 Motion to Affirm and accepting Culpert's argument that these items could not be litigated by PL-AT due to collateral estoppel, and then providing a hearing date for meaningless oral arguments on 3-3-15 in regard to the other two items, 4 and 5, the COA was enabled to write an Opinion only in regard to issues 4 and 5, avoiding any discussion of the use of authorization forms such as MC 315.

By including item 1, the COA was able to avoid making an Opinion as to whether or not a Defendant could compel production of medical records from a Plaintiff if the Defendant has claimed not to be liable. Clearly, this issue should not have been included in the granting of the Motion to Affirm, as there was no question of liability in *Filas v MEEMIC* so there is no possible way the Doctrine of Collateral Estoppel was applicable to this item.

The State Court Administrative Office, the administrative agency of the Michigan Supreme Court, is clearly aware of the problem existing in which courts are refusing to accept SCAO-approved court forms, exemplified by the 6-23-11 memorandum from Chad C. Schmucker, State Court Administrator (Exhibit S). PL-AT's case, is a case in which the circuit court has refused to accept executed and mailed SCAO-mandated form MC 315 even though MCR 2.314(C)(1)(d) mandates the use of "the form approved by the state court administrator," which is MC 315 (Exhibit M, List of SCAO-mandated forms; Exhibit N, SCAO-mandated form MC 315).

It would cause PL-AT great harm to lose her entire third-party auto case and not receive damages related to physical injuries that significantly changed her life, simply for standing up for her right to use MC 315 as provided under MCR 2.314(C)(1)(d) and not allowing herself to be bullied by the attorneys and the courts into signing forms that will have a detrimental effect on her future. PL-AT has never refused to provide her records, as the DF-AE continues to erroneously claim and the Court has stated in the transcripts. PL-AT has rebutted this multiple times in her filings.

In his 6-23-11 memo, Mr. Schmucker, State Court Administrator "intended to clarify what is already the practice of the all courts across the state." Unfortunately, it is not just the circuit courts failing to follow proper procedure by refusing to accept PL-AT's use of MC 315. The COA did all it could to uphold the circuit court's decision to refuse to allow PL-AT to use MC 315 in either her first-party or third-party cases.

PL-AT has hope that Mr. Schmucker's memo was sincere, and that the Supreme Court will use its power ensure that the lower courts are following proper procedures in regard to using SCAO-mandated form MC 315 when a request under MCR 2.314(C)(1)(d) is made for a party's

medical records, by granting PL-AT's request for leave to appeal the 11-25-14 COA Order and any Opinion it may issue in regard to Items 4 and 5 of PL-AT's 12-20-13 Brief on Appeal resulting from the 3-3-15 hearing, so that PL-AT will be given due process by allowing her to have oral arguments on all 6 issues appealed to the COA.

3-10-15
Date

Signature redacted

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

Exhibit A

Court of Appeals, State of Michigan

ORDER

Tamara Filas v Kevin Thomas Culpert

Docket No. 317972

LC No. 13-000652-NI

Michael J. Riordan
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood
Judges

The motion to affirm pursuant to MCR 7.211(C)(3) is GRANTED, limited to those issues that were resolved by this Court's opinion in *Filas v MEEMIC Insurance Company*, unpublished per curiam opinion of the Court of Appeals (Docket No. 316822, issued October 14, 2014). The instant appeal may proceed only with respect to Issue IV, regarding the motion to compel, and Issue V, regarding the dismissal of the case against both defendants Culpert and Efficient Design.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 25 2014

Date


Chief Clerk

Exhibit B

Court of Appeals, State of Michigan

ORDER

Tamara Filas v Kevin Thomas Culpert

Docket No. 317972

LC No. 13-000652-NI

Michael J. Riordan
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood
Judges

The Court orders that the motion for plaintiff-appellant to file replies to the answers to the motion for reconsideration is granted. The reply to the answer filed by defendant-appellee Kevin Thomas Culpert and the reply to the answer filed by defendant-appellee Efficient Design, Inc. are accepted.

It is further ordered that the motion for reconsideration is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 27 2015

Date


Chief Clerk

Exhibit C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Tamara Filas
Plaintiff (s)

Case No. 13-000652-NI

-vs-

Kevin Thomas Culpent and
Efficient Design, Inc. A michigan corporation
Defendant (s)

13-000652-NI

FILED IN MY OFFICE
WAYNE COUNTY CLERK
8/9/2013 2:25:58 PM
CATHY M. GARRETT

At a session of said Court, held in the Coleman A. Young Municipal Center,
Detroit, Wayne County, Michigan on 8/9/2013

Present: HONORABLE SUSAN D. BORMAN
CIRCUIT COURT JUDGE

Precious Smith

IT IS HEREBY ORDERED:

That Plaintiff Tamara Filas' case is
dismissed in its entirety without
prejudice.

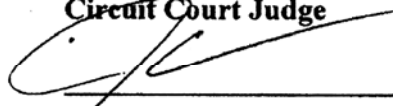
It is further ordered that this order
will be entered on July 1, 2013, if no
objection is filed on or before July 1, 2013.

8/9/2013

SDB

/s/ Susan D. Borman

Honorable Susan D. Borman
Circuit Court Judge



Plaintiff Attorney #

James Wright (967613)
Defendant Attorney #

Justi Clerk

Michael O'Reilly
(959108)

Exhibit D

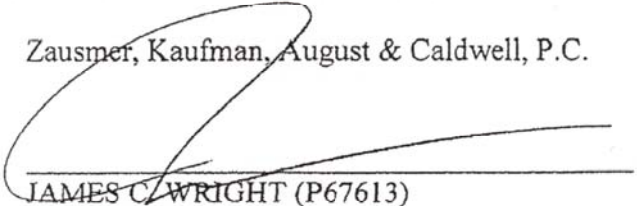
is receiving Medicare/Medicaid benefits. If so, please sign the enclosed authorization form, and submit with your Answers to these Interrogatories pursuant to MCR 2.310.

ANSWER:

5. Will you agree to supplement these answers throughout the course of discovery if any answer becomes incorrect?

ANSWER:

Zausmer, Kaufman, August & Caldwell, P.C.



JAMES C. WRIGHT (P67613)

Attorneys for Defendant Efficient Design
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Dated: February 7, 2013

31700 Middlebelt Road, Suite 150, Farmington Hills, MI 48334-2374 • 721 N. Capitol, Suite 2, Lansing, MI 48906-5163
Zausmer, Kaufman, August & Caldwell, P.C.

2. Admit that Plaintiff is not currently under any doctor's disabilities related to this accident. If your answer is anything less than a complete admission, please provide any and all documentation in support of your answer.

RESPONSE:

3. Admit that Plaintiff is currently working. If your answer is anything less than a complete admission, please provide and all documentation in support of your answer.

RESPONSE:

4. Admit that Plaintiff is able to work. If your answer is anything less than a complete admission, please provide any and all documentation in support of your answer.

RESPONSE:

Request for Production of Documents to Plaintiff

1. Copies of any and all medical records relating to injuries received as a result of the subject accident.

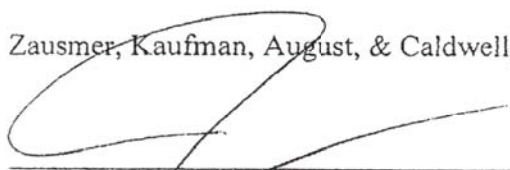
RESPONSE

2. Please produce copies of any and all photographs with regard to this accident.

RESPONSE

Defendants will pay reasonable photocopying costs for the documents produced.

Zausmer, Kaufman, August, & Caldwell, P.C.



JAMES C. WRIGHT (P67613)
Attorney for Defendant Efficient Design
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Dated: February 7, 2013

Exhibit E

8. Plaintiff's Complaint is barred in whole or in part by the Doctrine of Release.
9. Plaintiff's Complaint is barred in whole or in part by the Last Clear Chance Doctrine.
10. Defendant maintains that it is entitled to reimbursement of costs and attorney fees pursuant to MCR 2.625(2) because the claims brought are frivolous within the meaning of that court rule.
11. Under the terms, conditions and provisions of the so-called No-Fault Act, MCLA 500.3101, et seq., Plaintiff may not recover against the Defendant for items of economic expense including, but not limited to, medical, hospital, drug bills, lost earnings and lost earning capacity.
12. Another person or entity is at fault, whether a party or non-party, and pursuant to MCL 600.2957 and MCR 2.112(K), fault must be allocated to them.
13. Venue is improper.
14. Sudden emergency.
15. Defendants are not an owner of the vehicle involved in the accident.
16. 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.
17. Further, Defendant reserves the right to file further Affirmative Defenses which may be revealed by discovery.

Zausmer, Kaufman, August & Caldwell, P.C.

/s/ James C. Wright

JAMES C. WRIGHT (P67613)
Attorneys for Defendant Efficient Design
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Dated: February 5, 2013

Exhibit F

6477 Edgewood
Canton, MI 48187
June 24, 2013

Mr. James Wright
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

Dear Mr. Wright,

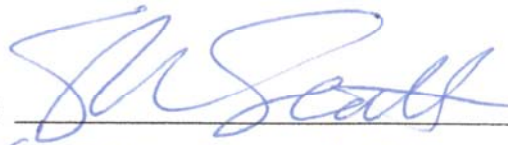
Attached please find copies of fully executed authorizations to health care providers. Copies of certificates of mailing are attached to verify mailing on June 21, 2013.

Yours truly,

Signature redacted

Tamara Filas

Received by:



Date/time:

6-24-13 11:24Am

Exhibit G

REGISTER OF ACTIONS
CASE NO. 13-000652-NI

RELATED CASE INFORMATION

Related Cases

11-014149-NF (Prior Action)

PARTY INFORMATION

Defendant	CULPERT, KEVIN THOMAS	Lead Attorneys Ahmed M. Hassouna <i>Retained</i> (248) 764-1127(W)
Defendant	EFFICIENT DESIGN, INC.	James C. Wright <i>Retained</i> (248) 851-4111(W)
Plaintiff	Filas, Tamara	Pro Se
Plaintiff	FILAS, TAMARA	Daryle G. Sallsbury <i>Retained</i> (248) 348-6820(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
01/14/2013	Service Review Scheduled <i>(Due Date: 04/15/2013) (Clerk: Tyler,F)</i>
01/14/2013	Status Conference Scheduled <i>(Clerk: Tyler,F)</i>
01/14/2013	Case Filing Fee - Paid <i>\$150.00 Fee Paid (Clerk: Tyler,F)</i>
01/14/2013	Complaint, Filed <i>(Clerk: Bynum,D)</i>
02/06/2013	Answer to Complaint-with Jury Demand, Filed <i>Proof of Service, Filed; Affirmative Defenses, Filed (Clerk: Tyler,F)</i>
02/06/2013	Proof of Service, Filed <i>(Clerk: Tyler,F)</i>
02/07/2013	Request for Admissions, Filed <i>(Clerk: Tyler,F)</i>
02/12/2013	Appearance of Attorney, Filed <i>(Clerk: Tyler,F)</i>
02/19/2013	Service of Complaint, filed <i>(Clerk: Tyler,F)</i>
02/19/2013	Answer to Affirmative Defenses, Filed <i>(Clerk: Tyler,F)</i>
02/20/2013	Answer to Complaint-with Jury Demand, Filed <i>Proof of Service, Filed; Affirmative Defenses, Filed (Clerk: Tyler,F)</i>
02/20/2013	Witness List, Filed <i>Proof of Service, Filed (Clerk: Tyler,F)</i>
02/25/2013	Affirmative Defenses, Filed <i>(Clerk: Tyler,F)</i>
03/11/2013	Appearance of Attorney, Filed <i>(Clerk: Tyler,F)</i>
03/26/2013	Motion to Extend Time, Filed <i>Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)</i>
04/03/2013	Notice of Hearing, Filed <i>(Clerk: Tyler,F)</i>
04/04/2013	Præcipe, Filed (Judicial Officer: Borman, Susan D.)
04/19/2013	Notice of Hearing, Filed <i>(Clerk: Tyler,F)</i>
04/19/2013	Motion to Compel Answers to Interrogatories, Filed <i>Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)</i>
04/22/2013	Motion to Consolidate, Filed <i>Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)</i>
04/24/2013	Præcipe, Filed (Judicial Officer: Borman, Susan D.)
04/24/2013	Notice of Hearing, Filed <i>(Clerk: Tyler,F)</i>
04/26/2013	CANCELLED Motion Hearing (9:00 AM) (Judicial Officer Borman, Susan D.)

CANCELED Motion Hearing (9:00 AM) (Judicial Officer Borman, Susan D.)
 Scheduling Error
 Scheduling Error
 04/12/2013 Reset by Court to 04/26/2013
 04/29/2013 **Miscellaneous Motion, Filed**
 Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)
 04/30/2013 **Motion to Compel Action, Filed**
 Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)
 05/01/2013 **Praecipe, Filed** (Judicial Officer: Borman, Susan D.)
 05/02/2013 **Status Conference (9:30 AM)** (Judicial Officer Borman, Susan D.)
 04/15/2013 Reset by Court to 04/19/2013
 04/19/2013 Reset by Court to 04/23/2013
 04/23/2013 Reset by Court to 05/02/2013
 Result: Held
 05/02/2013 **Motion Hearing (9:30 AM)** (Judicial Officer Borman, Susan D.)
 Plaintiff - Plaintiff's Motion for Continuance
 04/12/2013 Reset by Court to 04/26/2013
 04/26/2013 Reset by Court to 05/03/2013
 05/03/2013 Reset by Court to 05/02/2013
 Result: Held
 05/02/2013 **Motion Hearing (9:30 AM)** (Judicial Officer Borman, Susan D.)
 Defendant Efficient Design - Motion to Compel Discovery From Plaintiff
 05/10/2013 Reset by Court to 05/02/2013
 Result: Held
 05/02/2013 **Status Conference Scheduling Order, Signed and Filed** (Judicial Officer: Borman, Susan D.)
 s/c 12-10, w/ 7-11, disc 10-13, ce 10-28, 2nd s/c 12-16 (Clerk: Smith,P)
 05/02/2013 **Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.)
 denied continuance (Clerk: Smith,P)
 05/02/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
 (Clerk: Smith,P)
 05/02/2013 **Motion to Withdraw as Attorney Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
 (Clerk: Smith,P)
 05/02/2013 **Status Conference Scheduling Order, Signed and Filed**
 (Clerk: Tyler,F)
 05/02/2013 **Status Conference Scheduling Order, Signed and Filed** (Judicial Officer: Borman, Susan D.)
 05/03/2013 **CANCELED Motion Hearing (9:00 AM)** (Judicial Officer Borman, Susan D.)
 Dismiss Hearing or Injunction
 Dismiss Hearing or Injunction
 05/03/2013 **Appearance of Attorney, Filed**
 (Clerk: Tyler,F)
 05/03/2013 **Order for Miscellaneous Action, Signed and Filed**
 (Clerk: Tyler,F)
 05/06/2013 **Settlement Conference Scheduled**
 (Clerk: Fowler,R)
 05/06/2013 **Notice of Hearing, Filed**
 (Clerk: Tyler,F)
 05/10/2013 **Notice of Hearing, Filed**
 (Clerk: Tyler,F)
 06/06/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)
 06/10/2013 **Notice of Hearing, Filed**
 (Clerk: Tyler,F)
 06/14/2013 **Motion to Vacate Order, Filed**
 Fee: \$20.00 PAID (Clerk: Tyler,F)
 06/14/2013 **Motion to Compel Action, Filed**
 Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)
 06/17/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)
 06/17/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)
 06/18/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)
 06/19/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)
 06/19/2013 **Praecipe, Filed** (Judicial Officer: Borman, Susan D.)
 06/19/2013 **Praecipe, Filed** (Judicial Officer: Borman, Susan D.)
 06/19/2013 **Praecipe, Filed** (Judicial Officer: Borman, Susan D.)
 06/19/2013 **Answer to Motion, Filed**
 (Clerk: Tyler,F)

- 06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
df Efficent design mtn to compel
Result: Held
- 06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Defendant - Defendant's Motion to Compel Answers to Interrogatories and Production of Documents
Result: Held
- 06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Plaintiff - MOTION TO COMPEL DEFENDANT TO RETURN INADVERTENTLY PRODUCED DISCOVERY MATERIALS
06/28/2013 Reset by Court to 06/21/2013
Result: Held
- 06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Plaintiff - MOTION TO VACATE PROTECTIVE ORDER
06/28/2013 Reset by Court to 06/21/2013
Result: Held
- 06/21/2013 **Order for Miscellaneous Action, Signed and Filed**
(Clerk: Tyler,F)
- 06/21/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
(Clerk: Smith,P)
- 06/21/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
(Clerk: Smith,P)
- 06/21/2013 **Motion for Discovery Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
return discovery paper work (Clerk: Smith,P)
- 06/21/2013 **Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.)
denied mtn to vacate (Clerk: Smith,P)
- 06/21/2013 **Witness List, Filed**
Proof of Service, Filed (Clerk: Tyler,F)
- 10/23/2013 **Case Evaluation - General Civil**
(Clerk: Fowler,R)
- 12/10/2013 **Settlement Conference** (9:30 AM) (Judicial Officer Borman, Susan D.)

} No "special Conference" listed

REGISTER OF ACTIONS

CASE No. 13-000652-NI

RELATED CASE INFORMATION

Related Cases

11-014149-NF (Prior Action)

PARTY INFORMATION

Defendant CULPERT, KEVIN THOMAS

Lead Attorneys
Ahmed M. Hassouna
Retained
(248) 764-1210(W)

Defendant EFFICIENT DESIGN, INC.

James C. Wright
Retained
(248) 851-4111(W)

Plaintiff Filas, Tamara

Pro Se

Plaintiff FILAS, TAMARA

Daryle G. Salisbury
Retained
(248) 348-6820(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

- 01/14/2013 **Service Review Scheduled**
- 01/14/2013 **Status Conference Scheduled**
- 01/14/2013 [Case Filing Fee - Paid](#)
- 01/14/2013 **Complaint, Filed**
- 02/06/2013 [Answer to Complaint-with Jury Demand, Filed](#)
- 02/06/2013 [Proof of Service, Filed](#)
- 02/07/2013 [Request for Admissions, Filed](#)
- 02/12/2013 [Appearance of Attorney, Filed](#)
- 02/19/2013 [Service of Complaint, filed](#)
- 02/19/2013 [Answer to Affirmative Defenses, Filed](#)
- 02/20/2013 [Answer to Complaint-with Jury Demand, Filed](#)
- 02/20/2013 [Witness List, Filed](#)
- 02/25/2013 [Affirmative Defenses, Filed](#)
- 03/11/2013 [Appearance of Attorney, Filed](#)
- 03/26/2013 [Motion to Extend Time, Filed](#)
- 04/03/2013 [Notice of Hearing, Filed](#)
- 04/04/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
- 04/19/2013 [Notice of Hearing, Filed](#)
- 04/19/2013 [Motion to Compel Answers to Interrogatories, Filed](#)
- 04/22/2013 [Motion to Consolidate, Filed](#)
- 04/24/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
- 04/24/2013 [Notice of Hearing, Filed](#)
- 04/26/2013 **CANCELED Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Scheduling Error
04/12/2013 *Reset by Court to 04/26/2013*
- 04/29/2013 [Miscellaneous Motion, Filed](#)
- 04/30/2013 [Motion to Compel Action, Filed](#)
- 05/01/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
- 05/02/2013 **Status Conference** (9:30 AM) (Judicial Officer Borman, Susan D.)
04/15/2013 *Reset by Court to 04/19/2013*
04/19/2013 *Reset by Court to 04/23/2013*
04/23/2013 *Reset by Court to 05/02/2013*
Result: Held
- 05/02/2013 **Motion Hearing** (9:30 AM) (Judicial Officer Borman, Susan D.)
04/12/2013 *Reset by Court to 04/26/2013*
04/26/2013 *Reset by Court to 05/03/2013*

05/03/2013 *Reset by Court to 05/02/2013*
Result: Held
- 05/02/2013 **Motion Hearing** (9:30 AM) (Judicial Officer Borman, Susan D.)
05/10/2013 *Reset by Court to 05/02/2013*
Result: Held

05/02/2013 **Status Conference Scheduling Order, Signed and Filed** (Judicial Officer: Borman, Susan D.)
05/02/2013 **Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.)
05/02/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
05/02/2013 **Motion to Withdraw as Attorney Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
05/02/2013 [Status Conference Scheduling Order, Signed and Filed](#)
05/02/2013 [Status Conference Scheduling Order, Signed and Filed](#) (Judicial Officer: Borman, Susan D.)
05/03/2013 **CANCELED Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Dismiss Hearing or Injunction
05/03/2013 [Appearance of Attorney, Filed](#)
05/03/2013 [Order for Miscellaneous Action, Signed and Filed](#)
05/06/2013 **Settlement Conference Scheduled**
05/06/2013 [Notice of Hearing, Filed](#)
05/10/2013 [Notice of Hearing, Filed](#)
06/06/2013 [Answer to Motion, Filed](#)
06/10/2013 [Notice of Hearing, Filed](#)
06/14/2013 [Motion to Vacate Order, Filed](#)
06/14/2013 [Motion to Compel Action, Filed](#)
06/17/2013 [Answer to Motion, Filed](#)
06/17/2013 [Answer to Motion, Filed](#)
06/18/2013 [Answer to Motion, Filed](#)
06/19/2013 [Answer to Motion, Filed](#)
06/19/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
06/19/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
06/19/2013 [Praecipe, Filed](#) (Judicial Officer: Borman, Susan D.)
06/19/2013 [Answer to Motion, Filed](#)
06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Result: Held
06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Result: Held
06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
06/28/2013 Reset by Court to 06/21/2013
Result: Held
06/21/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
06/28/2013 Reset by Court to 06/21/2013
Result: Held
06/21/2013 [Order for Miscellaneous Action, Signed and Filed](#)
06/21/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
06/21/2013 **Motion to Compel Action Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
06/21/2013 **Motion for Discovery Granted, Order to Follow** (Judicial Officer: Borman, Susan D.)
06/21/2013 **Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.)
06/21/2013 [Witness List, Filed](#)
06/24/2013 **Case Evaluation - General Civil**
06/24/2013 **Special Conference** (2:00 PM) (Judicial Officer Borman, Susan D.)
Result: Held
06/24/2013 **Closed - Case Dismissed, Order to Follow** (Judicial Officer: Borman, Susan D.)
06/25/2013 [Notice of Presentment](#)
06/28/2013 **Motion Transcript Ordered**
07/02/2013 [Objection to 7-Day Order, Filed](#)
07/05/2013 [Notice of Hearing, Filed](#)
07/09/2013 [Notice of Hearing, Filed](#)
07/09/2013 **Transcript, Filed**
07/11/2013 [Witness List, Filed](#)
07/16/2013 [Answer to Objection, Filed](#)
07/19/2013 [Notice of Hearing, Filed](#)
07/22/2013 [Concurrence, Filed](#)
08/07/2013 [Proof of Service, Filed](#)
08/07/2013 [Reply to Answer, Filed](#)
08/07/2013 [Concurrence, Filed](#)
08/09/2013 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
07/24/2013 Reset by Court to 08/09/2013
Result: Held
08/09/2013 **Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.)
08/09/2013 [Final - Order of Dismissal, Signed and Filed](#)
08/30/2013 **Transcript, Filed**
12/10/2013 **CANCELED Settlement Conference** (9:30 AM) (Judicial Officer Borman, Susan D.)
Case Disposed/Order Previously Entered
01/17/2014 **Letter, Filed**
01/24/2014 [Claim of Appeal, Filed](#)
01/30/2014 **File Sent**
01/30/2014 **Motion Transcript Ordered**
02/26/2014 **Transcript, Filed**
11/25/2014 **Higher Court Order/Decision Received by Circuit Court**
01/27/2015 **Higher Court Order/Decision Received by Circuit Court**

← Special
Conference
Listed

Exhibit H

F2

From: (248) 851-4111
James C. Wright
ZKACT, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48334

Origin ID: DEOA

FedEx
Express



1131113001200295

Ship Date: 21 JUN 13
ActWgt: 1.0 LB
CAD: 103129091/INET3370

Delivery Address Bar Code



Ref # 9470-00121
Invoice #
PO #
Dept #

SHIP TO: (734) 751-0103
Tamara Filas

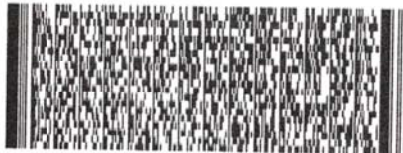
BILL SENDER

6477 Edgewood

CANTON, MI 48187

MON - 24 JUN 3:00P
STANDARD OVERNIGHT

TRK# 7960 6816 0170
6201



66 NFBA

48187
MI-US
DTW



519010/776248

Align bottom of Peel and Stick Arribill or Patch here.

Align top of FedEx Express Shipping Label here

Exhibit I

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,

Plaintiff,

Case No. 13-000652-NI

Honorable Susan D. Borman

v.

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

Defendants.

TAMARA FILAS
In Pro Per
6477 Edgewood Road
Canton, MI 48187

JAMES C. WRIGHT (P67613)
Zausmer, Kaufman, August & Caldwell, P.C.
Attorneys for Defendant Efficient Design
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111//fax (248) 851-0100
jwright@zkac.com

AHMED M. HASSOUNA (P67995)
Law Offices of Mark E. Williams
Attorney for Defendant Culpert
340 E. Big Beaver, Suite 250
Troy, MI 48083
(248) 764-1127
Ahmed_M_Hassouna@Progressive.com

MICHAEL CHARLES O'MALLEY (P59108)
Vandever Garzia
Co-Counsel for Defendant Efficient Design
1450 W Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2940//fax (248) 267-1242
momalley@vgpclaw.com

**DEFENDANT EFFICIENT DESIGN, INC.'S REQUEST FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF**

NOW COMES the Defendant, Efficient Design, Inc., by and through its attorneys, Zausmer, Kaufman, August & Caldwell, P.C., 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 following documents are requested:

Exhibit J

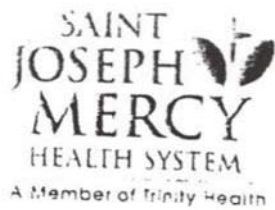


Accounting of Disclosures through 7/10/2012
 {Patient ID: REDACTED } as of 7/10/2012 12:37:21 PM

Name	ROI#	Patient ID	Recipient	PHI	Reason	Date/By	Status
<u>Filas, Tamara</u> DOB REDACTED	573-350441		Tamara Filas	UMHS Form: Outpatient Package, 2/17/11 to 4/1/11	Patient Requests Record	4/1/2011 Martin, Donna	Printed 04/01/2011 Pgs: 15
<u>Filas, Tamara</u> DOB REDACTED	573-340146		Tamara Filas	Emergency Room Information, Labs, UMHS Form: Outpatient Package, 01/15/2010- 02/16/2011	Continuation of Care - STAT	2/16/2011 Suma, Cobinaba	Printed 02/16/2011 Pgs: 129
<u>Filas, Tamara</u> DOB REDACTED	573-358183		Tamara Filas	Office Visit Notes, 03/28/2011 - 05/04/2011	Patient Requests Record	5/4/2011 Whitman, Chantal	Printed 05/04/2011 Pgs: 8

3 found





ST. JOSEPH MERCY ANN ARBOR
1001 East Huron River Drive
P.O. Box 995
Ann Arbor, MI 48106-0995
Phone: 734-712-3466
mercyhealth.org

July 11, 2012

Tamara Filas
6477 Edgewood
Canton, MI 48187

Dear Ms. Filas:

In response to your request for an Accounting of Disclosures, the only disclosures that were made, were to yourself and to your physician, Dr. Wardner. These disclosures were made on June 25 and consisted of the report of your evaluation that took place on June 20th. Attached are the related documents you signed in regards to this evaluation.

If you have any further questions, please feel free to contact me at 734-712-3533.

Sincerely,

Signature redacted

✓ Jodie Swan, RHIT
Manager, Health Information Management
Saint Joseph Mercy Health System

6477 Edgewood
Canton, MI 48187
June 29, 2012

REC'D JUL 03 2012

Henry Ford West Bloomfield Hospital
Attn: Medical Records
6777 West Maple Road
West Bloomfield, MI 48322

RE: Accounting of Disclosures for Tamara Filas, **DOB REDACTED**

Dear Health Information Services Representative,

I am requesting a copy of the Accounting of Disclosures to determine to whom my medical records have been released to date. ✓ *to ~~the~~ patient - herself*

I am also requesting a copy of the relevant authorization forms that I signed to release the records to the persons or entities listed in the Accounting of Disclosures. *attached*

The information can be faxed to 734-981-0449. Please leave a message at 734-751-0103 when it has been faxed. If there is a charge, please call me at 734-751-0103 so I can make a payment.

Yours truly,

Signature
redacted

Tamara Filas

*Jan 1, 2011 -
22 documents were
requested and released
to you -
This has been the ~~the~~ only
release of your records -
7-3-12 Rachel Prosser, RHIT*

Exhibit K



Deposition of Kevin Culpert

T Filas <e-mail redacted>

Fri, Aug 2, 2013 at 11:56 AM

To: jwright@zkact.com, momalley@vgpclaw.com, Ahmed_M_Hassouna@progressive.com

Dear Mr. Wright, Mr. Hassouna, and Mr. O'Malley,

On June 21, 2013, Judge Borman indicated that she wanted Kevin Culpert deposed to determine whether or not he was in the scope of his employment when the accident occurred. Have you deposed Mr. Culpert? If yes, did the deposition reveal that Mr. Culpert was in the scope of his employment at the time of the accident?

Thank you for your prompt reply.

Yours truly,

Tamara Filas



Deposition of Kevin Culpert

Ahmed M Hassouna <Ahmed M Hassouna@progressive.com>

Fri, Aug 2, 2013 at 12:02 PM

To: T Filas e-mail redacted "jwright@zkact.com" <jwright@zkact.com>, "momalley@vgpclaw.com" <momalley@vgpclaw.com>

Ms. Filas:

The Court dismissed your case. My client will not be deposed.

Ahmed M. Hassouna, Esq.

The Law Offices of Williams & Baranski

Salaried Employees of Progressive Casualty Insurance Company

340 East Big Beaver Road, Suite 250

Troy, MI 48083

Direct: (248) 764-1140

Cell: (586) 291-4260

Fax: (248) 457-0385

ahmed_m_hassouna@progressive.com

PLEASE NOTE OUR NEW ADDRESS AND PHONE NUMBERS ABOVE EFFECTIVE 8/20/12

CONFIDENTIALITY NOTICE:

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. Section 2510-2521 and is legally privileged. The information contained in this email is confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

From: T Filas [mailto:e-mail redacted]

Sent: Friday, August 02, 2013 11:57 AM

To: jwright@zkact.com; momalley@vgpclaw.com; Ahmed M Hassouna

Exhibit L

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,

Plaintiff,

CASE NO. 13-000652-NI
HON. SUSAN D. BORMAN

PROOF OF SERVICE

-VS-

KEVIN THOMAS CULPERT, AND
EFFICIENT DESIGN, INC., A MICHIGAN
CORPORATION,

Defendant.

THE UNDERSIGNED CERTIFIES THAT A COPY OF THE
FOREGOING INSTRUMENT 13-000652-NI
ATTORNEYS OF RECORD OF ALL PARTIES TO THE ABOVE
CAUSE BY E-MAILING ON 4/19/2013 3:35:21 PM

FILED IN MY OFFICE
WAYNE COUNTY CLERK

/s/ Shannon Campbell

CATHY M. GARRETT

Shannon Campbell

DARYLE SALISBURY (P19852)
Attorney for Plaintiff
42400 Grand River Avenue, Suite 106
Novi, MI 48375
248-348-6820
darylesalisbury@att.net

MICHAEL C. O'MALLEY (P59108)
Attorney for Defendant Efficient Design
1450 W. Long Lake Rd., Ste. 100
Troy, MI 48098
248-312-2940
momalley@vgpclaw.com

AHMED M. HASSOUNA (P67995)
Attorney for Defendant Culpert
340 E. Big Beaver, Suite 250
Troy, MI 48083
248-764-1127
Ahmed_M_Hassouna@Progressive.com

JAMES C. WRIGHT (P67613)
Attorney for Defendant Efficient Design
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334
(248) 851-4111 / 0100 (Fax)
jwright@zkact.com

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48083
(248) 764-1127

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Motion to Compel Answers to Interrogatories & Production of Documents will be brought on for hearing on May 3, 2013, at 9:00 a.m. before the Honorable Susan D. Borman, City of Detroit, State of Michigan or as soon thereafter as counsel may be heard.

Respectfully submitted,

LAW OFFICE OF WILLIAMS & BARANSKI

/s/ Ahmed M. Hassouna

By: _____
AHMED M. HASSOUNA (P67995)
Attorney for Defendant Culpert

DATE: April 19, 2013

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48063
(248) 764-1127

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,
Plaintiff,

CASE NO. 13-000652-NI
HON. SUSAN D. BORMAN

PROOF OF SERVICE

-VS-

KEVIN THOMAS CULPERT, AND
EFFICIENT DESIGN, INC., A MICHIGAN
CORPORATION,
Defendant.

THE UNDERSIGNED CERTIFIES THAT A COPY OF THE
FOREGOING INSTRUMENT WAS SERVED ON THE
ATTORNEYS OF RECORD OF ALL PARTIES TO THE ABOVE
CAUSE BY E-MAILING ON 4-19-13 _____.

THE STATEMENT ABOVE IS TRUE TO THE BEST OF MY
KNOWLEDGE, INFORMATION AND BELIEF.

/s/ Shannon Campbell

Shannon Campbell

DARYLE SALISBURY (P19852)
Attorney for Plaintiff
42400 Grand River Avenue, Suite 106
Novi, MI 48375
248-348-6820
darylesalisbury@att.net

MICHAEL C. O'MALLEY (P59108)
Attorney for Defendant Efficient Design
1450 W. Long Lake Rd., Ste. 100
Troy, MI 48098
248-312-2940
momalley@vgpclaw.com

AHMED M. HASSOUNA (P67995)
Attorney for Defendant
340 E. Big Beaver, Suite 250
Troy, MI 48083
248-764-1127
Ahmed_M_Hassouna@Progressive.com

JAMES C. WRIGHT (P67613)
Attorney for Defendant Efficient Design
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334
(248) 851-4111 / 0100 (Fax)
jwright@zkact.com

**DEFENDANTS' MOTION TO COMPEL ANSWERS
TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

NOW COMES the Defendant, by and through his attorney, Ahmed M. Hassouna,
and moves this Honorable Court to enter an Order compelling Plaintiff to make discovery and
to respond to Interrogatories and Request for Production of Documents previously submitted
in accordance with the Michigan Court Rules and which have not been answered to date.
Defendant further states as follows:

1. On March 22, 2013, Defendant submitted Interrogatories, Request for
Authorizations and Request for Production of Documents to Plaintiff by enclosing same in a
properly addressed and stamped envelope to the attorney for the Plaintiff.

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48063
(248) 764-1127

2. The Interrogatories and Requests were submitted pursuant to MCR 2.309 and the rules of this court.

3. Plaintiff(s) filed no timely objections or motion to extend time to answer. More than twenty-eight (28) days have elapsed since Interrogatories were served on Plaintiff attorney.

4. Michigan Court Rule 2.313(A) states that when a party refuses to answer Interrogatories, application for a Court order that requires the party answer may be filed and the Court shall require the party to answer.

5. The court rule further provides if the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees unless there was reasonable justification for the opposition to the motion.

6. MCR 2.313(B)(2)(C) states that if an Order to answer is not complied with, the Court may render a Judgment of Dismissal against the disobedient party.

WHEREFORE, the Defendant prays that this Honorable Court enter 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 within (7) days from the date of hearing of this motion. Defendant(s) further request costs of \$500 against plaintiff attorney for failing to provide said answers timely.

Respectfully submitted,

LAW OFFICE OF WILLIAMS & BARANSKI

/s/ Ahmed M. Hassouna

By: _____
AHMED M. HASSOUNA (P67995)
Attorney for Defendant Culpert

DATE: April 19, 2013

**BRIEF IN SUPPORT OF MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

NOW COMES the Defendant by and through its attorney, who submits that it relies on MCR 2.309 and 2.313 in support of its Motion to Compel Answers to Interrogatories and Production of Documents.

WHEREFORE, the Defendant prays that this Honorable Court enter 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 within (7) days from the date of hearing of this motion. Defendant(s) further request costs of \$500 against plaintiff attorney for failing to provide said answers timely.

Respectfully submitted,

LAW OFFICE OF WILLIAMS & BARANSKI

/s/ Ahmed M. Hassouna

By: _____
AHMED M. HASSOUNA (P67995)
Attorney for Defendant Culpert

DATE: April 19, 2013

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48063
(248) 764-1127

Exhibit M

Mandatory Creation of or Use of SCAO-Approved Forms

The following lists identify court forms that are required by court rule or statute to be: 1) approved by the SCAO; 2) used as approved by the SCAO; or 3) used in a form substantially in the form approved by the SCAO.

FORMS SCAO HAS BEEN MANDATED TO CREATE AND APPROVE - USE NOT MANDATORY

Although these forms are SCAO-Approved, their use is not specifically mandated by court rule or statute. Forms are denoted with an asterisk (*) when court rule or statute requires the use of a form substantially in the form of the SCAO-Approved form. In this particular chart, MC forms are for use in circuit, district, and probate courts; DC forms are for use in district courts, FOC forms are for use in friend of the court offices and circuit courts, and PC forms are for use in family divisions of circuit court.

MC 12*, Request and Writ for Garnishment (Periodic), MCR 3.101(C)

MC 13*, Request and Writ for Garnishment (Nonperiodic), MCR 3.101(C)

MC 14*, Garnishee Disclosure, MCR 3.101(C)

MC 15, Motion for Installment Payments, MCR 3.101(C)

MC 15a, Order Regarding Installment Payments, MCR 3.101(C)

MC 16, Motion to Set Aside Order for Installment Payments, MCR 3.101(C)

MC 16a, Order on Motion to Set Aside Order for Installment Payments, MCR 3.101(C)

MC 48, Final Statement on Garnishment of Periodic Payments, MCR 3.101(C)

MC 49, Objections to Garnishment and Notice of Hearing, MCR 3.101(C)

MC 50, Garnishment Release, MCR 3.101(C)

MC 51, Order on Objections to Garnishment, MCR 3.101(C)

MC 52*, Request and Writ for Garnishment (Income Tax Refund/Credit), MCR 3.101(C)

MC 203*, Writ of Habeas Corpus, MCR 3.303(H) and MCR 3.304(D)

MC 258*, Report of Nonpayment of Restitution, MCL 712A.30(18), MCL 780.766(18), MCL 780.794(18), and MCL 780.826(15)

MC 288*, Order to Remit Prisoner Funds for Fines, Costs, and Assessments, MCL 769.11

MC 292*, Disclosure of Employment or Contract in Michigan Public System, MCL 380.1230d(2)

DC 84*, Affidavit and Claim, Small Claims, MCR 4.302(A), MCL 600.8401a, and MCL 600.8402

FOC 50, Motion Regarding Support, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 51, Response to Motion Regarding Support, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 65, Motion Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 66, Response to Motion Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 67, Order Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 87, Motion Regarding Custody, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 88, Response to Motion Regarding Custody, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 89, Order Regarding Custody and Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

**FORMS SCAO HAS BEEN MANDATED TO CREATE AND APPROVE - USE NOT MANDATORY
(continued)**

PC 117*, Notice to Minor of Rights Regarding Waiver of Parental Consent for an Abortion, MCR 3.615(C), (D)

PC 118*, Request and Order for Court Appointed Attorney /Guardian Ad Litem for Waiver of Parental Consent,
MCR 3.615(C), (D)

PC 119*, Petition for Waiver of Parental Consent for an Abortion, MCR 3.615(C), (D)

PC 121*, Appeal of Order Denying Petition for Waiver of Parental Consent, MCR 3.165(K)

PC 122*, Confidential Information for Proceedings Concerning Waiver of Parental Consent, MCR 3.615(C), (D)

FORMS SCAO HAS CREATED AND APPROVED - USE MANDATORY

The use of these SCAO-Approved forms, without modification, is mandated by court rule or statute. In this particular chart, MC and UC forms are for use in circuit, district, and probate courts; DC forms are for use in district courts, CC forms are for use in circuit courts, and FOC forms are for use in friend of the court offices and circuit courts.

All estate, trust, guardianship, conservatorship, and mental commitment forms, MCL 600.855 and MCL 700.3983

DCI-84, Collecting Money from a Small Claims Judgment, MCL 600.8409(2)

UC 01a and UC 01b, Uniform Law Citation, MCL 257.727c, MCL 600.8705, MCL 600.8805, and MCL 764.9f

MC 11, Subpoena (Order to Appear), MCR 2.506(D)(1)

MC 240, Order for Custody, MCR 6.106(B)(4)

* MC 315, Authorization for Release of Medical Information, MCR 2.314(C)(1)(d) and MCR 2.314(D)(2)(b)

CC 375, Petition for Personal Protection Order (Domestic Relationship), MCL 600.2950b(1)

CC 375M, Petition for Personal Protection Order Against Minor (Domestic Relationship), MCL 600.2950b(1)

CC 376, Personal Protection Order (Domestic Relationship), MCL 600.2950b(2)

CC 376M, Personal Protection Order Against Minor (Domestic Relationship), MCL 600.2950b(2)

CC 377, Petition for Personal Protection Order Against Stalking, MCL 600.2950b(1)

CC 377M, Petition for Personal Protection Order Against Stalking by a Minor, MCL 600.2950b(1)

CC 379, Motion to Modify, Extend, or Terminate Personal Protection Order, MCL 600.2950b(3)

CC 380, Personal Protection Order Against Stalking, MCL 600.2950b(2)

CC 380M, Personal Protection Order Against Stalking by a Minor, MCL 600.2950b(2)

CC 381, Notice of Hearing on Petition for Personal Protection Order, MCL 600.2950b(1)

CC 391, Advice of Rights (Circuit Court Plea), MCR 6.302(B)

FOC 10/52, Uniform Child Support Order, MCR 3.211(D)

FOC 10a/52a, Uniform Child Support Order (No Friend of Court Services), MCR 3.211(D)

FOC 10b, Uniform Spousal Support Order, MCR 3.211(D)

FOC 10c, Uniform Spousal Support Order (No Friend of Court Services), MCR 3.211(D)

FOC 101, Advice of Rights Regarding Use of Friend of the Court Services, MCL 552.505a(8)

Exhibit N

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO.
---	--	-----------------

Court address _____ Court telephone no. _____

Plaintiff	v	Defendant
-----------	---	-----------

Probate In the matter of _____

1. _____ Date of birth _____
 Patient's name

2. I authorize _____
 Name and address of doctor, hospital, or other custodian of medical information

to release _____
 Description of medical information to be released (include dates where appropriate)

to _____
 Name and address of party to whom the information is to be given

3. I understand that unless I expressly direct otherwise:

- a) the custodian will make the medical information reasonably available for inspection and copying, or
- b) the custodian will deliver to the requesting party the original information or a true and exact copy of the original information accompanied by the certificate on the reverse side of this authorization.

I understand that medical information may include records, if any, on alcohol and drug abuse, psychology, social work, and information about HIV, AIDS, ARC, and any other communicable disease.

4. This authorization is valid for 60 days and is signed to make medical information regarding me available to the other party(ies) to the lawsuit listed above for their use in any stage of the lawsuit. The medical information covered by this release is relevant because my mental or physical condition is in controversy in the lawsuit.

5. I understand that by signing this authorization there is potential for protected health information to be redisclosed by the recipient.

6. I understand that I may revoke this authorization, except to the extent action has already been taken in reliance upon this authorization, at any time by sending a written revocation to the doctor, hospital, or other custodian of medical information.

 Date

 Signature

 Address

 Name (type or print) (If signing as Personal Representative, please state under what authority you are acting)

 City, state, zip

 Telephone no.

CERTIFICATE

- 1. I am the custodian of medical information for _____
Organization
- 2. I received the attached authorization for release of medical information on _____
Date
- 3. I have examined the original medical information regarding this patient and have attached a true and complete copy of the information that was described in the authorization.
- 4. This certificate is made in accordance with Michigan Court Rule.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Signature

Name (type or print)

Address

City, state, zip

Telephone no.

Exhibit O

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,

Plaintiff,

CASE NO. 13-000652-NI
HON. SUSAN D. BORMAN

-vs-

KEVIN THOMAS CULPERT, AND
EFFICIENT DESIGN, INC., A MICHIGAN
CORPORATION,

Defendant.

13-000652-NI
FILED IN MY OFFICE
WAYNE COUNTY CLERK
7/22/2013 11:03:08 AM
CATHY M. GARRETT

TAMARA FILAS
In Pro Per
6477 Edgewood Road
Canton, MI 48187

MICHAEL C. O'MALLEY (P59108)
Co-Counsel for Defendant Efficient Design
1450 W. Long Lake Rd., Ste. 100
Troy, MI 48098
248-312-2940

AHMED M. HASSOUNA (P67995)
Attorney for Defendant Culpert
340 E. Big Beaver, Suite 250
Troy, MI 48083
248-764-1127

JAMES C. WRIGHT (P67613)
Attorney for Defendant Efficient Design
31700 Middlebelt Road, Ste. 150
Farmington Hills, MI 48334
(248) 851-4111 / 0100 (Fax)

Ahmed.M.Hassouna@Progressive.com

jwright@zkac.com

**CONCURRENCE IN DEFENDANT EFFICIENT DESIGN, INC.'S RESPONSE TO
PLAINTIFF'S OBJECTION TO DEFENDANT EFFICIENT DESIGN, INC.'S PROPOSED
ORDER OF DISMISSAL WITHOUT PREJUDICE**

NOW COMES the Defendant, KEVIN THOMAS CULPERT, by and through his attorneys, LAW OFFICES OF WILLIAMS & BARANSKI, by AHMED M. HASSOUNA, who concurs with Defendant EFFICIENT DESIGN, INC.'S RESPONSE to Plaintiff's Objection to

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48083
(248) 764-1127

its Proposed Order of Dismissal Without Prejudice filed with this Honorable Court in this matter.

Respectfully submitted,

LAW OFFICES OF WILLIAMS & BARANSKI

/s/ Ahmed M. Hassouna

BY: _____

AHMED M. HASSOUNA (P67995)

Attorney for Defendant

Dated: July 22, 2013

Law Offices of Williams & Baranski
340 E. Big Beaver Road, Ste. 250
Troy, MI 48063
(248) 764-1127

Exhibit P



FW: Filas: 3RD PARTY RELEASE.7-19-2012

Terry Cochran <TCochran@cochranfoley.com>

Thu, Jul 19, 2012 at 9:30 AM

To: E-mail redacted

Dear Ms Filas,

Please find attached Def Culpert's release consistent with his offer to settle. After I received the release, I called Attorney Hassouna and asked if he had spoken to his CIt about the other two conditions outlined in my prior e-mail. Attorney Hassouna indicated that he had draft answers to our interrogatories and that Mr. Culpert was on his way to work but was not in the scope and course of his employment at the time of the accident. In addition, he is checking to make sure that Mr. Culpert is the sole owner of the vehicle.

Thank you,

Terry L. Cochran
Cochran, Foley & Associates, P.C.
15510 Farmington Road
Livonia, Michigan 48154
(734) 425-2400
tcochran@cochranfoley.com

From: Ahmed M Hassouna [mailto:Ahmed_M_Hassouna@Progressive.com]
Sent: Thursday, July 19, 2012 9:18 AM
To: Terry Cochran
Subject: Filas: 3RD PARTY RELEASE.7-19-2012

Terry:

Please see attached. Please advise as to whether your client will execute the attached Release in order to fully resolve this matter. Thanks.

Best,

-A

Ahmed M. Hassouna, Esq.
Law Offices of Mark E. Williams
Salaried Employees of Progressive Casualty Insurance Company

RELEASE

For the Sole Consideration of TWENTY THOUSAND AND 00100 (\$20,000.00) DOLLARS, the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges KEVIN THOMAS CULPERT, his heirs, executors, administrators, agents and assigns claimed liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about February 19, 2010 in the City of Romulus, County of Wayne, State of Michigan.

Nothing in this release shall be construed as having any effect on any claims that undersigned releasor may have for first-party no fault benefits under the Michigan No Fault Act, MCL § 500.3101, *et seq.*

THE UNDERSIGNED HEREBY DECLARES AND REPRESENTS that the injuries sustained are or may be permanent or progressive; and that recovery is or may be uncertain or indefinite. In making this Release it is understood and agreed that the undersigned relies wholly upon his own judgment, belief and knowledge of the nature, extent, effects and duration of said injuries and liability. This release is made without reliance upon any statement or representation of the party or parties hereby released, their representatives or by any physician/surgeon that examined undersigned on their behalf.

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all

claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

I have hereunto set my hand and seal this _____ day of _____, 201_.

X _____
TAMARA FILAS, Plaintiff

Subscribed and sworn to before me
this ____ day of _____, 201_.

NOTARY PUBLIC
_____ County, Michigan
My Commission Expires _____

IN THE PRESENCE OF TERRY L. COCHRAN, Attorney for the signing party to this Release, who has fully explained the terms of this agreement and acknowledges understanding by the signing party as to the finality of the settlement and the terms thereof against KEVIN THOMAS CULPERT.

TERRY L. COCHRAN (P35890)
Attorney for Plaintiff

Exhibit Q

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Tamara Filas v Meemic Ins
Case type: 1st & 3rd

No. 11-014149-NF

Filing Date: 11/15/2011

SCHEDULING ORDER

At a session of the Court held in the CAYMC, Detroit, MI on February 14, 2012

Present: HONORABLE SUSAN D. BORMAN
CIRCUIT COURT JUDGE

IT IS HEREBY ORDERED:

- A. **WITNESS LISTS** shall be exchanged and filed with this Court by: 4/17/12
See MCR 2.401(1)(2). ANY WITNESS NOT LISTED IN ACCORDANCE WITH THIS RULE WILL BE PROHIBITED FROM TESTIFYING AT TRIAL EXCEPT WHERE GOOD CAUSE IS SHOWN.
- B. **DISCOVERY CUT-OFF.** Discovery shall be completed by: 6/17/12
DISCOVERY MOTIONS (hearings at 10:30). Must be heard two weeks before the end of discovery. THE JUDGE WILL NOT ENTERTAIN DISCOVERY MOTIONS AFTER THE CLOSE OF DISCOVERY. Attorneys for all parties must be present in Court to modify this scheduling order which must be done by motion (**hearings at 11:00**).
- C. **SECOND STATUS CONFERENCE:**
- D. **CASE EVALUATION: week of 7/9/12** **SPECIAL PANEL:**
NO-FAULT CASE EVALUATION AWARDS INCLUDE ALL BENEFITS INCURRED, INCLUDING ATTORNEY FEES AND INTEREST, TO THE DATE OF THE CASE EVALUATION UNLESS STIPULATED BY THE PARTIES IN WRITING.
- E. **SETTLEMENT CONFERENCES. ALL LEAD TRIAL COUNSEL (COUNSEL WITH THE LOWEST P NUMBER) AND PARTIES MUST BE PRESENT.** All persons necessary and with authority to settle this matter up to the Plaintiff's good faith demand or case evaluation amount, whichever is higher, including lien holders, must be present. **PLEASE BE PREPARED TO BE PRESENT ALL DAY IF NECESSARY.**
1st Settlement Conference Date: 8/14/12 at 9:30 a.m.
2nd Settlement Conference Date: 8/20/12 at 2 pm. NOTE: Medicare lien? (If yes, Plaintiff must IMMEDIATELY begin the process to determine the amount of lien.) Jury Trial? ____.
Trial will follow on the Monday after the 2nd Settlement conference unless otherwise determined by the Court. Trial adjournment will be by motion only and for good cause shown. This serves as your Notice of Trial pursuant to MCR 2.501(C).
- F. **DISPOSITIVE MOTIONS MUST BE HEARD BY THE FRIDAY BEFORE THE FIRST SETTLEMENT CONFERENCE DATE.**
- G. **BRIEFS:** A maximum of 15 pages. **REPLY BRIEFS:** Maximum of 5 pages. 12 Point font double spaced. **Non-conforming briefs will be rejected.** Include complete case citations with page numbers. Please provide copies of all State and Federal cases cited, as well as statutes, which support the merits. All exhibits must be tabbed.
- H. **FINAL PRETRIAL ORDER** is due at the 2nd Settlement Conference.
- I. **EXTENSION OF DATES** will be granted by Motion only (NOT BY STIPULATION). ATTORNEYS for all parties MUST BE PRESENT in Court to modify this scheduling order. **Counsel hereby acknowledge receipt of these rules and schedule controlling the proceedings:**

Susan D. Borman: _____

Attorney(s) for Plaintiff

Attorney(s) for Defendant

Signature: _____

Terry Cochran

Chris Lawicki for Simeon Orlovski/Ahmed Hassouna

Exhibit R

HIPAA Privacy Authorization
For Disclosure of Protected Health Information
Relevant to Litigation, Pending Claims or Intent to Sue

Patient's Name: **Tamara Filas**
Address: **6477 Edgewood, Canton, MI 48187**
Date of Birth: **redacted**
Social Security No.: **XXX-XX-redacted**

1. I make this authorization for the purpose of copying records in connection with a lawsuit or claim to which I am a party.
2. This authorization is directed to and applies to protected health information maintained by:

Dr. Jon Wardner/Associates in Physical Medicine and Rehabilitation

(Hospital, Physician, Medical provider, etc.)

3. I hereby authorize the above, its director, administrative and clinical staff or assignees, medical information services and billing department to release any and all medical records and information from my date of birth to the present unless specified otherwise, relating to my care and treatment, including x-rays, photographs, electronic and digital files and any other records, unless I expressly direct or specify otherwise. I understand that medical information may include records, if any, relating to treatment for alcohol and drug abuse protected under the regulations in 42 C.F.R. Part 2: psychiatric/psychological services and social work records and any information regarding communicable diseases and infections, defined by Michigan Department of Public Health rule, which can include tuberculosis, venereal diseases, sexually transmitted diseases, acquire immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) or ARC.
4. This information is to be released for copying purposes to James C. Wright of ZAUSMER, KAUFMAN, AUGUST & CALDWELL, P.C.
5. 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.
6. This authorization shall be in force and in effect until the conclusion of the pending litigation or claim unless otherwise specified.
7. 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.
8. I understand that authorizing the release of this health information is voluntary and that I need not sign this form in order to ensure health care treatment, eligibility for benefits, payment or health plan enrollment.
9. A copy of this authorization is as valid as the original.

All Pertinent Sections Of This Form Must Be Completed Before Signing

Subscribed and sworn to before me
this ____ day of _____, 2013

Notary Public

County, Michigan
My Commission Expires: _____

X _____
Signature of Patient or Legal Representative

Print Name of Patient or Legal Representative

Description of Legal Representative's Authority
or Relationship

Exhibit S



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909
Phone (517) 373-0128

Chad C. Schmucker
State Court Administrator

MEMORANDUM

DATE: June 23, 2011

TO: Chief Judges
cc: Court Administrators/Clerks
Probate Registers
County Clerks
SCAO Regional Administrators

FROM: Chad C. Schmucker

RE: SCAO Administrative Memorandum 2011-02
Acceptance of SCAO-Approved Court Forms

We have received some reports of courts refusing to accept SCAO-approved court forms. It has been difficult to determine specifically where this is occurring and whether it is a court policy, a practice of an individual judge, or simple misunderstanding by a court clerk. This memo is intended to clarify what is already the practice of almost all of the courts across the state.

The procedural rules regarding forms are contained in the Case File Management Standards and in MCR 1.109. Case File Management Standards Component 32 states: "Unless specifically required by statute or court rule, the court may not mandate the use of a specific form, whether SCAO-approved or locally developed." MCR 1.109 provides that the court clerk must reject nonconforming papers unless the judge directs otherwise. That same rule states that SCAO-approved forms are conforming papers. Courts may not impose additional procedures beyond those contained in the court rules.¹ Therefore, all courts must accept court forms approved by the Supreme Court or the state court administrator. To mandate the use of a particular local court form, a court must adopt a local court rule for that purpose. The Supreme Court must approve all local court rules.

If you have questions, contact Amy Garoushi at elgaroushia@courts.mi.gov or 517-373-4864, or Traci Gentilozzi at gentilozzi@courts.mi.gov or 517-373-2217.

¹ Credit Acceptance Corporation v 46th District Court, 481 Mich 883 (2008) affirming In Re: Credit Acceptance Corporation, 273 Mich App 594 (2007). MCR 8.112 requires that a court adopt a local court rule approved by the Supreme Court to authorize any practice that is not specifically authorized by the rules.

Exhibit T

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.

TAMARA FILAS Plaintiff-Appellant 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 E-mail redacted	MICHAEL C. O'MALLEY (P59108) Attorney for Defendant Efficient Design Vandever Garzia 1450 W. Long Lake Rd., Suite 100 Troy, MI 48098 (248) 312-2940 momalley@vgpclaw.com
DREW W. BROADDUS (P64658) Attorney for Defendant Culpert Secrest Wardle 2600 Troy Center Drive, P.O. Box 5025 Troy, MI 48007-5025 (616) 272-7966 dbroaddus@secrestwardle.com	JAMES C. WRIGHT (P67613) Attorney for Defendant Efficient Design Zausmer, Kaufman, August & Caldwell, P.C. 31700 Middlebelt Rd., Suite 150 Farmington Hills, MI 48334 (248) 851-4111 jwright@zkact.com

PLAINTIFF-APPELLANT'S ANSWER TO DEFENDANT-APPELLEE [KEVIN THOMAS] CULPERT'S MOTION TO AFFIRM*

ORAL ARGUMENT REQUESTED

Note: *DEFENDANT -APPELLEE'S 10-17-14 MOTION TO AFFIRM was titled as follows: DEFENDANT -APPELLEE THOMAS K. CULPERT'S MOTION TO AFFIRM. Thomas K. Culpert, is not and has never been a party to this case. Kevin Thomas Culpert is the correct name of the Defendant-Appellee represented by attorney, Drew W. Broaddus, for Culpert.

RECEIVED
2014 NOV -7 PM 2:13
COURT OF APPEALS
DETROIT OFFICE

Exhibit U

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.

TAMARA FILAS Plaintiff-Appellant 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 E-mail redacted	MICHAEL C. O'MALLEY (P59108) Attorney for Defendant Efficient Design Vandever Garzia 1450 W. Long Lake Rd., Suite 100 Troy, MI 48098 (248) 312-2940 momalley@vgpclaw.com
DREW W. BROADDUS (P64658) Attorney for Defendant Culpert Secret Wardle 2600 Troy Center Drive, P.O. Box 5025 Troy, MI 48007-5025 (616) 272-7966 dbroaddus@secretwardle.com	JAMES C. WRIGHT (P67613) Attorney for Defendant Efficient Design Zausmer, Kaufman, August & Caldwell, P.C. 31700 Middlebelt Rd., Suite 150 Farmington Hills, MI 48334 (248) 851-4111 jwright@zkact.com

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

Exhibit V

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Plaintiff (s) *Tamara Filas*

Case No. *13-000652-NI*

-vs- *Kevin Thomas Culpert
and Efficient Design, Inc.*
Defendant (s)

13-000652-NI

FILED IN MY OFFICE

At a session of said Court, held in the Coleman A. Young Municipal Center,
Detroit, Wayne County, Michigan on

WAYNE COUNTY CLERK

6/21/2013 11:44:54 AM

CATHY M. GARRETT

Present: HONORABLE SUSAN D. BORMAN
CIRCUIT COURT JUDGE

Precious Smith

IT IS HEREBY ORDERED:

*The protective order previously entered in
case # 11-014149-NF, dated 7-20-12, is
no longer in effect in case # 13-000652-NI*

Signature redacted

Honorable Susan D. Borman
Circuit Court Judge

Approved

Plaintiff Attorney #

Defendant Attorney #

As to Form only:

[Signature]
P67617
Attorney for Plaintiff

[Signature]
P78734
Def. Efficient Design

[Signature]
Be Report my P67995

Exhibit W

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3 CIVIL DIVISION

4 TAMARA FILAS,

5 Plaintiff,

Case No. 13-000652 NI

6 vs.

7 KEVIN CULPERT and EFFICIENT DESIGN,

8 Defendants.

9 _____ /
10 MOTION

11 BEFORE THE HONORABLE SUSAN D. BORMAN, Circuit Judge,
12 Detroit, Michigan on Friday, June 21, 2013.

13 APPEARANCES:

14 Pro Per Plaintiff:

TAMARA FILAS
6477 Edgewood
Canton, MI 48187
(734) 751-0103

17 For the Defendant:
(Efficient Design)

JAMES WRIGHT, P67613
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

20 For the Defendant:
(Kevin Culpert)

AHMED HASSOUNA, P67995
Vandever Garzia
1450 W. Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2940

13 JUL - 30 4:17
OFFICE OF
COURT READING
CIVIL DIVISION
THIRD JUDICIAL
CIRCUIT COURT

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WITNESS:

None

EXHIBITS:

None

IDENTIFIED

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Detroit, Michigan
Friday, June 21, 2013
Morning session - 9:54 a.m.

- - -

THE CLERK: Filas.

THE COURT: Okay, is everybody here on
this? Okay, good morning.

MS. FILAS: Good morning.

THE COURT: Okay, whose motion is this?

MR. WRIGHT: It is mine, Your Honor.

THE COURT: Go ahead.

COURT REPORTER: And you are who?

MR. WRIGHT: I am James Wright. I
represent Efficient Design.

THE COURT: Yeah, please, everybody
identify yourself for the record.

MR. WRIGHT: I'm James Wright and I
represent Efficient Design.

MS. McGRATH: Jennifer McGrath, co-counsel
for Efficient Design.

MS. McGRATH: Good morning.

THE COURT: You're co-counsel?

MS. McGRATH: Yes, Your Honor.

THE COURT: Why are you up here too?

MS. McGRATH: There's two insurance

1 policies.

2 MR. WRIGHT: There's a general automobile
3 liability policy and there's a CGL policy, so there's
4 two different --

5 THE COURT: What is CGEL for?

6 MR. WRIGHT: CGL.

7 THE COURT: What is it?

8 MR. WRIGHT: It's the commercial liability
9 portion of their policy. They have an auto and
10 commercial.

11 THE COURT: What does CGL stand for?

12 MR. WRIGHT: Commercial General Liability.

13 THE COURT: I don't like abbreviations.

14 MR. WRIGHT: Sorry, Your Honor.

15 THE COURT: I don't know what they are.

16 MS. McGRATH: I'm Ahmed Hassouna for Mr.
17 Culpert, Your Honor. Thank you.

18 THE COURT: You're what?

19 MS. McGRATH: For Mr. Culpert.

20 THE COURT: Yeah, but you said I'm a -- I
21 can't understand what you're saying.

22 MR. HASSOUNA: Ahmed Hassouna, Ahmed, last
23 name Hassouna.

24 THE COURT: Oh, that's your name.

25 MR. HASSOUNA: H-a-s-s-o-u-n-a, yes, Your

1 Honor.

2 THE COURT: You're representing whom?

3 MR. HASSOUNA: Mr. Culpert, Your Honor.

4 THE COURT: Okay, and he's the individual
5 defendant?

6 MR. HASSOUNA: That's correct.

7 Third party defendant?

8 MR. HASSOUNA: Yes, Your Honor.

9 THE COURT: And Efficient Design is his
10 employer, I'm guessing?

11 MR. HASSOUNA: Yes, Your Honor.

12 THE COURT: Okay, all right, so this is
13 your motion, go ahead.

14 MR. WRIGHT: This is just a general basic
15 motion to compel, Your Honor. I sent request for
16 admission, interrogatories and request for production
17 of documents.

18 THE COURT: Okay.

19 MR. WRIGHT: The request and admissions are
20 long overdue. They were sent back in February, so I
21 think they're due in the middle -- but the real
22 problem we have, I got interrogatory answers this
23 morning.

24 THE COURT: Yeah, how many interrogatories
25 are there?

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MR. WRIGHT: Probably --

THE COURT: A hundred?

MR. WRIGHT: No, there's not a 100. There are --

THE COURT: I think we should have a Federal system.

MR. WRIGHT: I would agree with you, Your Honor.

THE COURT: Well, then you can do that. It is in within your power to do that.

MR. WRIGHT: They're 57.

THE COURT: Okay, so you got them this morning and you've looked at them?

MR. WRIGHT: I've looked at them and the problem is that I think what we've been having going on with this case since when I was involved back to 2010 is that Ms. Filas is refusing to provide signed medical authorizations. She has revealed 27 treating in this milage log.

THE COURT: Right, and you know you have to do that, Ms. Filas. So you know you're going to leave the Court no alternative but to dismiss this case too.

MS. FILAS: Well, in my motion though I asked that I could have time to investigate whether

1 or not they're even liable because right now they're
2 not even admitting that Mr. Culpert -- that they are
3 the employer of Mr. Culpert.

4 THE COURT: We don't wait for liability.
5 No, no. That's not the way --

6 MS. FILAS: I shouldn't have to give my
7 records to a party that may not even be party to this
8 case though. They haven't --

9 THE COURT: No, they are party to this
10 case.

11 MS. FILAS: But they haven't admitted any
12 liability.

13 THE COURT: They don't -- that's not how it
14 works. You have a choice, you either do it or no
15 case. Now, we've been through this before with your
16 first party case. Nobody cares about your medical
17 records.

18 MS. FILAS: Well, I understand that they
19 have to go to the first party and have them all
20 filled out for Mr. Hassouna as well.

21 THE COURT: Either do it or no case, okay.

22 MS. FILAS: Okay, it's just that Efficient
23 Design hasn't said they were liable, so.

24 THE COURT: Do it or no case.

25 MS. FILAS: Okay.

1 THE COURT: Now are you going to sign the
2 authorizations or not?

3 MS. FILAS: I will fill out authorizations
4 for them.

5 THE COURT: Now, today. Sit down and do
6 it. We'll recall this case if necessary.

7 MR. WRIGHT: I have authorizations.

8 MS. FILAS: It takes a lot more time than
9 that.

10 MR. WRIGHT: I can have my office fax them
11 over. But I just found out who the --

12 THE COURT: Okay, I will adjourn this until
13 Monday.

14 MR. WRIGHT: Okay.

15 THE COURT: If he does not get those
16 authorizations by Monday or you can come back Monday
17 at 2 o'clock, and you can come back with the
18 authorizations. No game playing, Ms. Filas.

19 MS. FILAS: I'm not trying to --

20 THE COURT: Either do it or I'm going to
21 dismiss the case on Monday. It's simple.

22 MR. WRIGHT: Okay, I need a number or fax
23 number or e-mail to send the authorizations too, Your
24 Honor, for her to sign.

25 THE COURT: Okay, would you please give him

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that.

MS. FILAS: Sure. It's F-I-L-A --

THE COURT: Okay, you can do that off the record. Are we done?

MR. HASSOUNA: Your Honor, I would simply ask for the same relief before you do Efficient Design for Mr. Culpert.

MS. FILAS: I have his though.

THE COURT: Excuse me, what same relief?

MR. HASSOUNA: I would like authorizations as well and I would like the answers to interrogatories.

THE COURT: Okay, who are you representing?

MR. WRIGHT: I represent Efficient Design.

MR. HASSOUNA: I represent Mr. Culpert.

THE COURT: Well, you're the same party.

MR. WRIGHT: No, Your Honor.

THE COURT: He's the employee; he's the employer.

MR. WRIGHT: Well, we're not --

THE COURT: It's vicarious liability.

MR. WRIGHT: Well, we're not -- but, yeah, you're right, Your Honor.

MS. FILAS: So they have two separate motions. But I have everything for Mr. Hassouna.

1 THE COURT: Ma'am, just a second.

2 MS. FILAS: Okay.

3 THE COURT: I cannot listen to more than
4 one person at a time and I'm asking them questions.
5 Okay, so was he driving, this Mr. --

6 MR. HASSOUNA: Mr. Culpert.

7 THE COURT: Culpert. Was he on the job?

8 MR. WRIGHT: No, not according to us. He
9 was driving his own private vehicle on the way to
10 work. There's an allegation that he was on his cell
11 phone talking to his employer which hasn't been
12 verified which is the theory.

13 THE COURT: Well, that should be very easy
14 to verify. In all this time why hasn't it been
15 verified yet?

16 MR. WRIGHT: Well, because this case just
17 got off stay, Your Honor, and we haven't been able to
18 take any depositions.

19 THE COURT: Stay?

20 MR. WRIGHT: It was stayed, yes.

21 THE COURT: No, I didn't stay it. It
22 wasn't stayed.

23 MS. McGRATH: He stayed the discovery.

24 THE COURT: What?

25 MR. WRIGHT: Yes, Your Honor, it was

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stayed.

THE COURT: No, it might have been stayed for a month or something, but this case has been pending since when?

MR. WRIGHT: I came into the case in January.

THE COURT: Are you saying that I stayed it?

MR. WRIGHT: Yes.

THE COURT: What?

MR. WRIGHT: Yes, Your Honor.

THE COURT: No, there's an '11 case. I see that, but this isn't an '11 case. This is a '13 case. So it was stayed?

MR. WRIGHT: The last time we were here, Your Honor, it was my motion to compel and you stayed it to allow Ms. Filas to obtain successor counsel which she has yet to do.

THE COURT: Okay. But that was when, when was the last time you were here? It wasn't that long ago, and there was a time before that. In any event, that's not something that she's involved in. All you have to do is check the cell phone records to see if he was at the time talking on the phone to his employer.

1 MR. WRIGHT: We have this, Your Honor.
2 We've been working. We need to take his deposition.
3 That's really it. We were waiting for the stay to
4 get lifted and getting authorizations. We're trying
5 to move forward on this. That's why we're here.

6 THE COURT: Okay, I'll see you Monday.

7 MR. WRIGHT: Okay.

8 MS. FILAS: I also had motions too to be
9 heard.

10 THE COURT: For what?

11 MS. FILAS: One to vacate the Protection
12 Order that was in place from last year. I couldn't
13 get clarification from the other attorneys.

14 THE COURT: What Protection Order?

15 MS. FILAS: The one that was filed in the
16 case the first time it was originally filed back
17 in --

18 THE COURT: Well, may I see that. Do you
19 know what she's talking about?

20 THE CLERK: That's up next Friday.

21 THE COURT: Oh, yeah, your motions are up
22 next Friday.

23 MS. FILAS: Why are they next Friday when I
24 got the praecipe approved. It's supposed to be
25 today. It says on the Register of Actions they're

1 both being heard today.

2 THE COURT: Does it?

3 THE CLERK: One was just received yesterday
4 or the day before.

5 THE COURT: When did you file it?

6 MS. FILAS: Last week. I noticed the
7 hearing for today.

8 THE COURT: Well, I can hear it today. I
9 can --

10 MS. FILAS: And they're already answered.

11 THE COURT: Don't keep me talking over me.

12 MS. FILAS: Sorry.

13 THE COURT: I can hear it today.

14 MS. FILAS: Okay.

15 THE COURT: Have you guys seen these
16 motions?

17 MR. WRIGHT: Yes, Your Honor.

18 MR. HASSOUNA: Yes, Your Honor.

19 THE COURT: Let's deal with all of them,
20 okay.

21 LAW CLERK: We had them for next Friday.

22 THE COURT: I know. We're going to do them
23 today.

24 LAW CLERK: Okay.

25 THE COURT: Okay, we'll recall this case

1 when I get a chance I'll look at them. I don't think
2 they were -- I think I've already looked at them
3 actually, and I don't think they're very difficult.

4 MS. McGRATH: If I may just to make this
5 easy on us on Monday, can we agree today that there
6 can be no amendments to the authorizations?

7 THE COURT: What do you mean amendments?

8 MS. McGRATH: During the --

9 THE COURT: We're going to give her the
10 authorizations. She's going to sign them. Either
11 she signs them or she doesn't sign them. I said to
12 Ms. Filas no game playing, no alterations, okay.

13 MS. McGRATH: Thank you, Your Honor.

14 MR. WRIGHT: Thank you, Your Honor.

15 MR. HASSOUNA: Thank you, Your Honor.

16 (Off the record - 10:10 a.m.)

17 (On the record - 11:10 a.m.)

18 THE COURT: Filas versus Culpert.

19 Okay, we're going to entertain the motions,
20 Plaintiff's motions today. Okay, one of them -- and
21 I'm going to place you under oath, Ms. Filas since
22 you're not an attorney. You do solemnly swear that
23 any testimony that you give or any statements that
24 you make are true?

25 MS. FILAS: I do.

1 THE COURT: Okay, one of her motions is to
2 vacate this Protective Order that wasn't even in this
3 case. Anybody have an objection to that?

4 MR. WRIGHT: No.

5 MR. HASSOUNA: No.

6 THE COURT: Gone. No Protective Order.
7 Okay, the other motion was to return discovery that
8 plaintiff claims that her now fired counsel sent to
9 defendants which was unsigned by her and which was in
10 draft form, correct?

11 MS. FILAS: Yes.

12 THE COURT: And by the way, counsel, I
13 didn't appreciate that sentence in your Reply.

14 MR. WRIGHT: About?

15 THE COURT: Scolding the Court.

16 MR. WRIGHT: Well, Your Honor --

17 THE COURT: For allowing plaintiff a little
18 time. I didn't appreciate it.

19 MR. WRIGHT: It's not a little time, Your
20 Honor. This has gone on and on and on.

21 THE COURT: Counsel?

22 MR. WRIGHT: Yes, Your Honor?

23 THE COURT: I didn't appreciate it.

24 MR. WRIGHT: I apologize, Your Honor.

25 THE COURT: Okay.

1 MR. WRIGHT: But at the same time --

2 THE COURT: Up until I read that sentence,
3 I thought your Response was very good.

4 MR. WRIGHT: Thank you, Your Honor.

5 THE COURT: These are useless. You didn't
6 sign them and they're drafts, so they don't even have
7 anything.

8 MS. FILAS: They're still out there and I
9 think they should be returned to me because I've
10 never seen them.

11 THE COURT: Can you return them to her?
12 Just give them back. Do you have them?

13 MR. WRIGHT: In electronic format, yeah,
14 I'll send them back.

15 THE COURT: Just send them back to her.

16 MR. WRIGHT: Via e-mail?

17 THE COURT: Do you have e-mail?

18 MS. FILAS: Yes, that's fine. He has my
19 e-mail.

20 THE COURT: Okay, send them back by e-mail.
21 They don't have any validity, Ms. Filas.

22 MS. FILAS: I understand. I just want to
23 know what they said.

24 THE COURT: This is useless.

25 MS. FILAS: I've never seen them. My

1 attorney gave them out without my permission.

2 THE COURT: All right, okay. I think that
3 takes care of everything. I'll see you Monday,
4 hopefully not. How come you didn't just bring
5 authorizations with you today knowing that --

6 MR. WRIGHT: Your Honor, I didn't know who
7 her treaters were until I got the interrogatories
8 this morning.

9 THE COURT: Okay.

10 MR. WRIGHT: So that's why I didn't.

11 THE COURT: All right. So you're going to
12 have -- and how many treaters are there?

13 MR. WRIGHT: About 27.

14 THE COURT: Okay, you're going to sign all
15 those authorizations, otherwise no case.

16 MS. FILAS: Can I fill out something that
17 says that the Protection Order's been vacated or that
18 it doesn't exist?

19 THE COURT: Fill out a blank order. It
20 doesn't exist. It wasn't even in this case.

21 MS. FILAS: I could never get a clear
22 answer from the other attorneys though whether it was
23 still in effect or not. I don't know, it would make
24 me feel better if I had it writing that it didn't
25 exist anymore just so there wasn't any further

1 argument and we don't have to go back looking at the
2 transcript.

3 THE COURT: Okay.

4 MS. McGRATH: Your Honor, for the record I
5 will add I have attached e-mails to our Responses and
6 all attorneys did reply back saying that we believe
7 there was no Protective Order in effect because that
8 was a different case. And we have filed the Response
9 asking for sanctions to attempt to stop frivolous
10 motions from being filed wasting judicial resources.

11 THE COURT: Well, however, I took care of
12 this motion today along with your motion.

13 MS. McGRATH: Yes, and we appreciate that.

14 THE COURT: So I'm not going to be awarding
15 any costs for frivolous motions at this point.

16 Okay, so fill out a blank order declaring
17 that this Protective Order is not in effect in this
18 case.

19 MS. McGRATH: Thank you, Your Honor.

20 THE COURT: Okay. And I will initial it
21 and somebody will E-File it, okay.

22 MR. WRIGHT: Thank you.

23 (Proceeding concluded - 11:20 a.m.)

24
25

Exhibit X

STATE OF MICHIGAN
IN THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

MS. TAMARA FILAS,

Case No. 13-000 652-NI

Plaintiff,

vs.

**KEVIN CULPERT AND EFFICIENT
DESIGN, INC.,**

Defendant.

MOTION HEARING

Before the **HONORABLE SUSAN D. BORMAN**, Circuit Court
Judge - Detroit, Michigan - Monday, June 24th, 2013.

APPEARANCES:

MS. TAMARA FILAS, In Pro Per

MR. JAMES WRIGHT, ESQ.,
Attorney at Law

MR. MICHAEL O'MALLEY, ESQ.,
Attorney at Law

Appearing on behalf of the Defendants.

REPORTED BY: **MARY E. SKINNER CSR 0031**
Official Court Reporter

13 JUL 26 PM 1:33
FHHJ

13 JUL 23 AM 9:13
FHHJ

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WITNESSES:

None

EXHIBITS:

None

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Detroit, Michigan

Monday, June 24th, 2013.

(Proceedings commenced on or about 2:30 p.m.)

THE COURT CLERK: Calling case number 13-000
652 NI. Tamara Filas versus Kevin Culpert and Efficient
Design, Inc..

THE COURT: Okay. You were here on Friday.
Ms. Filas, the plaintiff was here and she was representing
herself. She just refuses to sign the medical authorization,
although she did indicate on Friday she would sign them, and
deliver them to you and we would adjourn this to today to make
sure that happened; otherwise I was going to dismiss the case.

MR. WRIGHT: That's correct, Your Honor.

THE COURT: So, and what happened? Tell me
what happened?

MR. WRIGHT: She did stop by my office and
she provided some authorizations; they are altered. And what
you also said on Friday is that she was to provide unaltered
authorizations. She provided about half of what I asked for.

She failed to provide some of the medical
records; she failed to provide authorizations for her PIP file,
which is very important in this case. Educational records, her
insurance, Blue Cross, Blue Shield. And her employment
records; she is making a wage loss claim in this case.

Educational records are important because

1 she is making a closed head injury in this case, Your Honor.

2 THE COURT: All right. I really don't
3 understand her reluctance to allow any -- and this happened in
4 the PIP case, too -- to allow counsel to see the medical
5 records. So, I have given her lots of adjournments.

6 Isn't someone missing here today?

7 MR. O'MALLEY: Yes, Your Honor.

8 THE COURT: The other counsel was
9 complaining that I was giving her --

10 MR. O'MALLEY: (Interposing) Yes, Your
11 Honor. These are actually only Efficient Designs'
12 authorizations. I know that Mr. Culpert's attorney was going
13 to rely on them also but these are our authorizations; we both
14 represent Efficient Design.

15 THE COURT: I know. I am going to dismiss
16 the case without prejudice. So fill out a blank order.

17 THE REPORTER: Would you please place your
18 names on the record.

19 MR. WRIGHT: My name is Jim Wright. I
20 represent Efficient Design, Inc.

21 MR. O'MALLEY: Your Honor, I am Michael
22 O'Malley and I also represent Efficient Design, Inc.

23 THE COURT: All right.

24 And the record should also reflect that we
25 did try to get Ms. Filas on the phone. She knew about today;

1 she knew that I had adjourned it to today. So she knew she was
2 to be here. We also tried to call her and there is no
3 answering machine and nobody answered the phone.

4 MR. WRIGHT: And she did show up at my
5 office today and dropped off the partial authorizations.

6 THE COURT: Okay.

7 MR. O'MALLEY: Thank you, Your Honor.

8 MR. WRIGHT: Thank you very much, Your
9 Honor.

10 THE COURT: You are welcome.

11 * * *

12 (A short recess)

13 THE COURT: Okay. Let's go back on the
14 record with this.

15 Someone apparently called back and said
16 they were her mother. The person identified themselves as her
17 mother. My clerk, who talked to her said it sounded like Ms.
18 Filas herself.

19 However, this person claiming to be her
20 mother gave us a telephone number. And we called that number
21 as well and no answer.

22 We left a message.

23 MR. WRIGHT: Your Honor, I don't believe we
24 were on the record when we discussed the Order.

25 THE COURT: I thought we were. Okay.

1 MR. WRIGHT: The Order will say that it is
2 hereby ordered that Plaintiff, Ms. Tamara Filas' case is
3 dismissed in its entirety without prejudice. I

4 t is further ordered that this Order will
5 be entered on July 1st, 2013, if no objection is filed on or
6 before July 1st, 2013.

7 THE COURT: Right. But you are going to
8 treat it as a 7-day Order so that she is going to receive it
9 before the Order is entered.

10 MR. WRIGHT: Right. That's why it is put in
11 there about the objections. So she has seven days to object
12 to it.

13 THE COURT: All right. Maybe you should
14 mail it to her as well as file it because --

15 MR. WRIGHT: (Interposing: You want us to
16 submit this Order with you today, Your Honor?

17 THE COURT: Yes. Let me just initial it so
18 I will know and then you will submit it as a 7-Day Order.

19 MR. WRIGHT: Okay. Thank you.

20 MR. O'MALLEY: Thank you very much, Your
21 Honor.

22 THE COURT: You are welcome.

23 (The Proceedings are concluded.)

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