STATE OF MICHIGAN

IN THE SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

vs.

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

Defendants-Appellees.

MSC No. 151198
Court of Appeals Case No. 317972
Lower Court Case No. 13-000652-NI
Honorable Susan D. Borman

/

Tamara Filas
In Pro Per
6477 Edgewood
Canton, MI 48187

MICHAEL C. O'MALLEY (P59108)
JENNIFER L. MCGRATH (P75734)
Vandeveer Garzia, PC
Attorneys for Efficient Design
1450 West Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2800; FAX (248) 267-1242
momalley@vgpclaw.com

JAMES C. WRIGHT (P67613)
Attorney for Efficient Design
Zausmer, Kaufman, August & Caldwell, PC
31700 Middlebelt Road, Suite 150Farmington Hills, MI 48334
(248) 851-4111; FAX 0100
jwright@zkact.com

DREW BROADDUS (P64658)
Attorney for Culpert
Secrest Wardle
2600 Troy Center Dr., PO Box 5025
Troy, MI 48007-5025
(616) 272-7966; FAX (248) 251-1829
dbroaddus@secrestwardle.com

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DEFENDANT-APPELLEE EFFICIENT DESIGN'S ANSWER TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

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COUNTER-STATEMENT OF THE BASIS OF JURISDICTION

Plaintiff-Appellant petitions this Court for a review of the Court of Appeals' November 25, 2014 Order granting the Defendant-Appellees' *Motion to Affirm* pursuant to MCR 7.211(C)(3) and the Court of Appeals' January 27, 2015 Order denying her *Motion for Reconsideration*. MCR 7.301(A)(2) provides this Court with discretion to exercise jurisdiction over Plaintiff-Appellant's *Application for Leave to Appeal* if Plaintiff-Appellant establishes that the *Application* presents a question that should be reviewed by the Court.

Plaintiff-Appellant alleges that this Court should accept jurisdiction over this appeal because she believes that the Court of Appeals' decision was clearly erroneous and will cause a material injustice if not corrected. MCR 7.302(B)(3). Defendant-Appellee Efficient Design disagrees with that assessment. Plaintiff-Appellant also alleges that this Court should accept jurisdiction over this appeal because it involves legal principles of major significance to the state's jurisprudence. MCR 7.302(B)(5). Defendant-Appellee Efficient Design disagrees with that assessment. For those reasons, which will be fully explained in this Answer to the *Application for Leave to Appeal*, this Court should deny the *Application* and decline to invoke jurisdiction over the appeal.

COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

I. Plaintiff-Appellant filed suit alleging she has suffered personal injury, thereby placing her physical and mental condition at issue. Defendants-Appellees sought the release of Plaintiff-Appellant's medical and employment records to prepare a defense to the allegations. Plaintiff-Appellant repeatedly refused to obey the Circuit Court orders to sign authorizations, claiming that, due to her privacy concerns, she did not have to produce any records until it was proven that Defendant-Appellee was liable. Even after being ordered to sign authorizations presented by Defendant-Appellee, Plaintiff-Appellant refused to sign claiming that she could create her own authorizations and limit the scope of discovery. Where Plaintiff-Appellant repeatedly refused to sign authorizations as directed by the Circuit Court, and where she obstinately refused to sign the authorizations at a final hearing on whether her case should therefore be dismissed, did the Court of Appeals properly affirm the Circuit Court's dismissal of the Plaintiff-Appellant's case for her ongoing refusal to participate in discovery?

Circuit Court said: Yes.

Court of Appeals said: Yes.

Defendant-Appellee Efficient Design, Inc. says: Yes.

Defendant-Appellee Thomas K. Culpert says: Yes.

Plaintiff-Appellant would say: No.

II. Did the Court of Appeals correctly dismiss Plaintiff-Appellant's Issues I, II, III, and VI based on defensive collateral estoppel where the Plaintiff-Appellant litigated those very same Issues in *Filas v. MEEMIC*?

Circuit Court did not have to address this issue.

Court of Appeals said: Yes.

Defendant-Appellee Efficient Design, Inc. says: Yes.

Defendant-Appellee Thomas K. Culpert says: Yes.

Plaintiff-Appellant would say: No.

III. Did the Court of Appeals violate the Plaintiff-Appellant's due process rights when it ruled on the *Motion to Affirm* without holding oral arguments?

Circuit Court said: No.

Court of Appeals said: No.

Defendant-Appellee Efficient Design, Inc. says: No.

Defendant-Appellee Thomas K. Culpert says: No.

Plaintiff-Appellant would say: Yes.

COUNTER-STATEMENT OF FACTS

Plaintiff-Appellant's *Application for Leave to Appeal*, and specifically the "Statement of Facts," fails to meet the requirements of MCR 7.302 and MCR 7.212(C)(6). Plaintiff-Appellant fails to provide a concise argument consistent with MCR 7.302(A)(1)(e). Plaintiff-Appellant fails to comply with MCR 7.302(A)(1)(d) in that she does not put forth all material facts, she fails to cite specific page references to the transcript, pleadings, or other documents, and she fails to present her "facts" without bias or argument. As such, Plaintiff-Appellant's "Statement of Facts" should be stricken and the following relevant facts apply to the decision of these issues.

A. Proceedings in the Wayne County Circuit Court

It is undisputed that the underlying suit is for personal injury allegedly suffered in an automobile accident that occurred on January 15, 2010. (See *Complaint*). It is undisputed that Plaintiff-Appellant filed a prior suit, which was dismissed without prejudice. It is undisputed among the parties that the present action was filed on Plaintiff-Appellant's behalf by attorney Daryle Salisbury on January 14, 2013. (See *Summons*). In the *Complaint*, Plaintiff-Appellant alleged she was injured as a result of the negligence of Co-Defendant-Appellee Kevin Thomas Culpert ("Culpert"). Plaintiff-Appellant alleges Culpert was in the course and scope of his employment with Efficient Design, Inc., ("Efficient") by talking on the telephone at 7:29 a.m. (See *Complaint* at ¶¶ 3-5, 10-13). Plaintiff-Appellant put her medical condition at issue in this case when she alleged injury to "her head, neck, back and other parts and portions of her body". (See Complaint at ¶ 14.a.).

1. Discharge of Plaintiff-Appellant's Attorney

After the inception of the case, and after initial discovery requests were served

upon attorney Salisbury, Plaintiff-Appellant discharged her attorney and filed an appearance on March 11, 2013. (See March 11, 2013, *Appearance* in Circuit Court). Attached to her appearance, Plaintiff-Appellant supplied "Exhibit A", a copy of correspondence to Daryle Salisbury discharging him from service. (See *Exhibit A* to *Plaintiff-Appellant's March 11, 2013, Appearance*). Relevant to the issues on appeal, Plaintiff-Appellant referenced a request for the return of "the two binders [Plaintiff-Appellant provided her counsel] (MEEMIC records and medical records)"; evidencing that Plaintiff-Appellant was in possession of a significant amount of medical records. (See March 11, 2013, *Appearance* in Circuit Court). Eventually, Mr. Salisbury was dismissed via Order (consistent with the Court Rules) on May 3, 2013; at which time, the discovery was stayed to allow Plaintiff-Appellant to retain new counsel. (See May 3, 2013, *Order of Circuit Court*). Plaintiff-Appellant did not, and has not, retained new counsel and continued to represent herself in this matter.

2. Motion to Compel

Prior to a May 2, 2013, status conference hearing, co-counsel for Efficient filed a *Motion to Compel Discovery*. (April 30, 2013, *Motion to Compel Discovery from Plaintiff-Appellant, with exhibits*). Included as an exhibit to the *Motion* was a copy of Efficient's February 7, 2013, discovery requests. Included in the discovery was a request for Plaintiff-Appellant to sign medical authorizations. (See *Motion to Compel Discovery from Plaintiff-Appellant at* **Exhibit A,** *Interrogatory No. 49*). Not knowing the entirety of Plaintiff-Appellant's complaints, the discovery sought blanket medical releases.

3. May 2, 2013 Status Conference

At the May 2, 2013 status conference, the Court alluded to the fact that Plaintiff-

Appellant would refuse to sign authorizations for the release of her records:

> She's not going to sign the authorizations. You're going to end up having this case dismissed too because, ma'am, you have to sign the authorizations. You can't bring a lawsuit – claiming damages for injuries of whatever kind without giving them authorizations to your medical records. If you're going to continue doing that, or put restrictions on that that the law doesn't allow, your case will end up being dismissed just like your other case.

(Hearing transcript of May 2, 2013, at p. 6 ln 5-14). The Court reiterated its point that Plaintiff-Appellant would have to provide the authorizations or the case would be dismissed. (Hearing transcript of May 2, 2013, at p. 6 ln 17-22, p. 7 ln 3). The Court even explained that the general process in the Circuit Court is to use a record authorization through a legal copy service so that all parties know they receive the full set of records. (Hearing transcript of May 2, 2013, at p. 7 ln 14-18).

Plaintiff-Appellant filed an *Answer* to Efficient's *Motion to Compel* on June 18, 2013. (See *Plaintiff's Answer to Defendant Efficient Design's Motion to Compel Discovery from Plaintiff)*. In the first paragraph, Plaintiff-Appellant asks that the Circuit Court "require … [Efficient], show cause before requesting Plaintiff to produce her medical records." *Id*. Consistently, Plaintiff-Appellant argued in her Answer that "until it is established through discovery that Efficient Design is liable for harm caused by Kevin Culpert while in the course and scope of his employment, Plaintiff-Appellant should not be required to release her medical information to Defendant, Efficient Design, Inc." *Id*. at p. 2. She continued with the argument, stating "Plaintiff does not believe it is reasonable for the Court to require her to provide medical records to Efficient Design, Inc. a party that has not yet admitted any responsibility in the case." *Id*. at p. 3.

2. June 21, 2013 Hearing

While not part of the record in this case, Plaintiff-Appellant appears to have made similar arguments in her suit for no-fault benefits, as well. (Hearing transcript of June 21, 2013, at p. 6 ln 20-23, p. 7 ln 13-17). During oral argument on Efficient's Motion to Compel, Plaintiff-Appellant continued her argument that she was not obliged to provide medical records to Efficient unless or until Efficient Design admitted liability in this matter. (Hearing transcript of June 21, 2013, at pp. 6-7 ln 24-3, p. 7 ln 6-17, ln 22-23). Numerous times during the June 21, 2013, motion hearing, the Circuit Court ordered, Plaintiff-Appellant to sign Efficient's medical authorizations and warned her that the case would be dismissed if she failed to do so. (Hearing transcript of June 21, 2013, at pp. 6, 7, 8, 14, 17). Prior to the motion hearing, Plaintiff-Appellant provided some discovery responses, in which she identified approximately 27 treatment facilities. (Hearing transcript of June 21, 2013, at p. 6, ln 12-19). At the hearing, counsel for Efficient requested that the Circuit Court direct Plaintiff-Appellant to sign authorizations, provided by Efficient, for all of the medical providers identified in her discovery response. (Id). The Circuit Court stated: "We're going to give her the authorizations. She's going to sign them." (Hearing transcript of June 21, 2013, at p. 14, ln 9-12).

3. June 24, 2013 Hearing

Plaintiff-Appellant represents in her *Brief on Appeal* that she "was denied due process when Judge Borman granted [Efficient's] *Motion to Dismiss* on June 24, 2013 at a special conference without notification to Plaintiff-Appellant the special conference was being held on June 24, 2013." (*Plaintiff-Appellant's Brief on Appeal* at p. 5). This representation is not accurate. During the June 21, 2013 hearing, the Circuit Court stated "I will adjourn this until Monday." (Hearing transcript of June 21, 2013, at p. 8 ln

12-13). The Circuit Court reiterated: "[i]f he does not get those authorizations by Monday or you can come back Monday at 2 o'clock, and you can come back with the authorizations. No game playing, Ms. Filas." (Id at ln 15-18). After further discussion, the Circuit Court again stated, ". . . I'll see you Monday." (Hearing transcript of June 21, 2013, at p. 12, ln 6).

Relevant to Efficient Design's position, counsel for Efficient requested that the court order that "there can be no amendments to the authorizations." (Hearing transcript of June 21, 2013, at p. 14, ln 5-6). The Circuit Court granted the request and explained to the parties, "I said to Ms. Filas no game playing, no alterations, okay." (Id at ln 11-12). In a related motion, heard the same day, Plaintiff-Appellant agreed to accept return of prior discovery from a prior lawsuit via e-mail. (Hearing transcript of June 21, 2013, at p. 16, ln 16-21). It is undisputed that counsel for Efficient would be e-mailing the requested authorizations to Plaintiff-Appellant.

Plaintiff-Appellant did not appear for the June 24, 2013, hearing. Despite Plaintiff-Appellant submitting some authorizations, it is undisputed that Plaintiff-Appellant did not provide all authorizations that had been requested. (Hearing transcript of June 24, 2013, at p. 3, ln 16-24). The Circuit Court then dismissed Plaintiff-Appellant's case, but directed that the order be submitted electronically and that it shall not be effective until July 1, 2013, to allow Plaintiff-Appellant time to file objections. (Hearing transcript of June 24, 2013, at p. 6, ln 1-6; see also Order of Dismissal).

Plaintiff-Appellant filed objections on July 2, 2013. Relevant to the issues in this appeal, Plaintiff-Appellant argued that she "provided her e-mail address to Mr. Wright, attorney for Defendant Efficient Design, so he could e-mail the authorization forms to

her later that day." (*Plaintiff's Objection to Defendant Efficient Design Inc.'s Proposed Order of Dismissal Without Prejudice*, dated July 2, 2013, at p. 3, ¶ 8). It is indisputable that no specific time was directed by the Court or discussed on the record. Plaintiff-Appellant argued that she did not have to sign the authorizations provided by counsel because she had not received them in her e-mail inbox by 5:00 pm on June 21, 2013. (*Id*. at p. 4, ¶ 10). At that time, Plaintiff-Appellant "decided it would be foolish to count on [counsel] to provide the forms necessary" and decided to obtain and prepare her own authorizations. (*Id*. at ¶¶ 11, 12). Throughout her Objection filing, Plaintiff-Appellant conceded knowledge of the 2:00 pm, June 24, deadline. (*Id*., *passim*). Plaintiff-Appellant does not dispute that she did not check her e-mail, again, throughout the weekend of June 22-23, 2013 for the required authorizations. Plaintiff-Appellant argued that she did not need to sign the authorizations provided by counsel because of an alleged failure to "meet [the] obligations of getting the e-mailed forms to her before the close of the business day on Friday, June 21, 2013, as promised." (*Id*. at p. 7, ¶20).

In the Objection and the subsequently filed Reply to Plaintiff's Objection (filed on August 7, 2013), Plaintiff-Appellant admitted to having received the authorizations; but not having checked her e-mail after 5:00 pm on June 21, 2013. In her Reply, Plaintiff-Appellant admitted that she used her own authorizations and "tried to include every record that the Defendant was entitled to under the no-fault law." (*August 7, 2013, Reply to Plaintiff's Objections*, at p. 8, ¶17). Implicit in the statements made by Plaintiff-Appellant is the continuation of her prior arguments that Efficient is not entitled to every record requested due to a failure to establish liability. Counsel for Efficient explained during the June 21 hearing that authorizations were not available for all

providers because Plaintiff-Appellant had only identified her, approximately 27, providers earlier in the morning on June 21. (Hearing transcript of June 21, 2013, at p. 6, ln 12-19). Plaintiff-Appellant added objections to the production of "new" medical providers because they had not been specifically requested in the original discovery requests; although they were identified in Plaintiff-Appellant's discovery responses from June 21, 2013. (*Plaintiff's Reply to Objection*, at pp. 9-11, ¶¶ 20-25). Despite the Circuit Court's directive to the contrary, Plaintiff-Appellant, again, objected that she "contends she should not have to provide records beyond the medical records ordered to be provided at the 6-21-13 hearing, until it has been determined whether or not Kevin Culpert was in the scope of his employment, and that Efficient Design would therefore be liable for damages to the Plaintiff." (*Id*. at p. 10, ¶ 23).

Counsel for Efficient filed a Response to Plaintiff's Objection on July 16, 2013. Attached to the Response, as Exhibit B, was a copy of an e-mail from June 21, 2013, showing that the authorizations had been sent by 5:06 pm and that the authorizations had been received by 5:25 pm (although the receipt notification had not been sent). (See *Exhibit B* to *Efficient Design's Response to Plaintiff's Objection*, dated July 16, 2013). Plaintiff-Appellant does not deny that the requested authorizations were sent; only that she did not check her e-mail after 5:00 pm on June 21, 2013.

It is undisputed, and not mentioned by Plaintiff-Appellant, that she had more opportunities to provide the requested authorizations. Plaintiff-Appellant admits she was in possession of the requested authorizations by June 24, 2013. Plaintiff-Appellant appeared for the hearing on her Objections on August 9, 2013, where the Circuit Court gave Plaintiff-Appellant another opportunity to comply with her directive on discovery. The Circuit Court was very specific during the hearing, giving Plaintiff-

Appellant every opportunity to sign the authorizations and have her case reinstated. Despite multiple opportunities to comply with the Circuit Court, Plaintiff-Appellant refused to sign the authorizations and her case was dismissed. The exchange went as follows:

THE COURT:	Okay, ***Ms. Filas, if you want to proceed with your case, you'll have to sign these authorizations***. They have them with them today. ***If you want to proceed and you want the Court to reinstate the case, sit down and sign the authorizations***. I'm going to give you one last chance.
MS. FILAS:	I have a problem with some of the clauses.
THE COURT:	All right, I've already ruled on that. I'm not going to go back to that. You've changed them. You got it changed to different forms. ***They've got the authorizations today. Last chance. Sit down and sign the authorizations. I'll reinstate your case, otherwise I'm dismissing this case***.
MS. FILAS:	I have some problems with some of the clauses they're asking for in the forms.
THE COURT:	I'm sorry. We've already done this. ***I'm not reconsidering it, so sit down today and sign the authorizations***.
MS. FILAS:	Not for some of the things that they're asking.
THE COURT:	The dismissal stands. Call the next case.

(Hearing transcript of August 9, 2013, at pp. 3-4). Based upon Plaintiff-Appellant's refusal to comply with the Circuit Court's orders, the court refused to rescind the dismissal and this appeal followed.

B. Proceedings in the Michigan Court of Appeals

1. Filas v. MEEMIC: COA No. 316822; MSC No. 150510

Around the same time that the Circuit Court dismissed Plaintiff-Appellant's lawsuit relating to this appeal, the Circuit Court dismissed Plaintiff-Appellant's lawsuit in *Filas v. MEEMIC* on substantially similar grounds. Plaintiff-Appellant appealed that dismissal on June 10, 2013. (See COA No. 316822; MSC No. 150510). A panel of

the Court of Appeals issued a decision in that case on October 14, 2014. (See *Filas v. MEEMIC,* unpublished opinion per curiam of the Court of Appeals, issued Oct. 14, 2014 (Docket No. 316822). The Court of Appeals affirmed the Circuit Court's dismissal of the matter as a sanction for failure to comply with discovery. Plaintiff-Appellant also refused to sign medical authorizations in that case.

2. *Court of Appeals Grants the Defendant-Appellees' Motion to Affirm in this Appeal and Denies Plaintiff-Appellate Relief Regarding Issues I, II, III, and VI*

On December 13, 2014, Defendant-Appellee Culpert filed a *Motion to Affirm* pursuant to MCR 7.211(C)(3), arguing that the Court of Appeal should affirm the Circuit Court's decision and dismiss the appeal. Plaintiff-Appellant failed to cite to any law in support of her appeal, and she failed to preserve arguments that she attempted to raise on appeal. On January 20, 2014, Defendant-Appellee Efficient filed a *Brief in Support of the Answer to Co-Defendant's Motion to Affirm and Request for Consistent Relief*. The Court of Appeals initially denied the motion on February 11, 2014.

On October 14, 2014, Defendant-Appellees renewed the *Motion to Affirm* following the Court of Appeals' decision in *Filas v. MEEMIC*. Defendant-Appellees argued that Plaintiff-Appellant was precluded from arguing the same issues decided in *Filas v. MEEMIC* in this appeal. The Court of Appeals granted the *Motion to Affirm,* without a hearing, on November 25, 2014. The Court of Appeals determined that four of the six issues—Issues I, II, III, and VI—raised in this appeal were precluded by the decision in *Filas v. MEEMIC*. In short, the Court of Appeals, by dismissing those Issues, determined that Plaintiff-Appellant was precluded from arguing that the Circuit Court erred by ordering her to sign the record authorizations provided by Defendant-Appellee Efficient. Plaintiff-Appellant was also precluded from arguing that the Circuit

Court erred when it dismissed the lawsuit after Plaintiff-Appellant refused to comply with the Circuit Court's order to sign the authorizations. The Court of Appeals ruled on these issues in *Filas v. MEEMIC*, and the Circuit Court's ruling in that matter was affirmed.

The Court of Appeals found that Plaintiff-Appellant could proceed on appeal with respect to Issue IV—whether the Circuit Court erred by ordering Plaintiff-Appellant to sign authorizations beyond the scope of the *Motion to Compel*—and Issue V—whether the Circuit Court erred by dismissing the lawsuit as to both Defendant-Appellees when only one Defendant-Appellee's written *Motion to Compel* had been filed. Plaintiff-Appellant filed a *Motion for Reconsideration* of the Court of Appeals' Order, but this was denied on January 27, 2015.

3. Court of Appeals Holds Oral Argument Concerning Plaintiff-Appellant's Issues IV and V.

Following the outcome of the *Motion to Dismiss*, on March 3, 2015, the Court of Appeals held oral argument regarding Issue IV and Issue V. Plaintiff-Appellant was given the opportunity to present her argument on these two Issues, but Plaintiff-Appellant chose to chastise the Panel instead of presenting her arguments. Plaintiff-Appellant stated that her arguments regarding Issues IV and V were moot, and exclaimed that "she didn't know why the parties were there to argue." The Defendant-Appellees simply relied on their *Briefs on Appeal*. On March 10, 2015, the Court of Appeals issued its *Opinion* regarding Issues IV and V. (See See *Filas v. Culpert et al.,* unpublished opinion per curiam of the Court of Appeals, issued March 10, 2015 (Docket No. 317972). The Court of Appeals affirmed the Circuit Court's decision. Plaintiff-Appellant filed her *Application for Leave to Appeal* to this Court on March 10, 2015.

STANDARDS OF REVIEW

Plaintiff-Appellant failed to provide any applicable standards of review for this Court. There are several standards of review that are at play in this appeal. Most importantly, this Court must determine whether Plaintiff-Appellant has satisfied her burden of establishing that the *Application for Leave to Appeal* presents a question that should be reviewed by this Court. Plaintiff-Appellant requests leave of this Court pursuant to MCR 7.302(B)(3) and (B)(5). That Court rule, in pertinent part, provides:

> (3) the issue involves legal principles of major significance to the state's jurisprudence;
>
> * * * *
>
> (5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

Plaintiff-Appellant must convince the Court that the Court of Appeals' decision to grant the *Motion to Affirm* was clearly erroneous and will result in a material injustice. *Bean v. Directions Unlimited*, 462 Mich. 24, 34 (2000).

Moreover, the *Application for Leave to Appeal* invokes a review of the Court of Appeals' decision regarding the Circuit Court's dismissal of the lawsuit as a sanction for intentional and repeated discovery violations. The Circuit Court's findings of fact in a discovery dispute are reviewed for clear error. *Traxler v. Ford Motor Co.*, 227 Mich. App. 276, 282 (1998). The Court of Appeals is to review the Circuit Court's decision to assess discovery sanctions for an abuse of discretion. *Id.* at 286. An abuse of discretion occurs when the decision of the trial court results in an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v. Ford Motor Company*, 476 Mich. 372, 388 (2006). More importantly, the question before this Court

is whether the Court of Appeals erred in concluding that the Circuit Court did not abuse its discretion. *Bean v. Directions Unlimited*, 462 Mich. 24, 34 (2000).

LAW AND ARGUMENT

This Court should deny Plaintiff-Appellant's *Application for Leave to Appeal* because the *Application* fails to present questions that should be reviewed by this Court. Plaintiff-Appellant's *Application* fails to show that there is either an issue involving legal principles of major significance to the State's jurisprudence or an issue showing that the Court of Appeals' decision was clearly erroneous and causes a material injustice. See MCR 7.302(B).

The *Application for Leave to Appeal*, instead, provides this Court with Plaintiff-Appellant's ostentatious opinions that she should be permitted to dictate the course of litigation, she may ignore established discovery procedures, and she can defy the Circuit Court's numerous orders without repercussion. Strikingly, Plaintiff-Appellant provides no legal basis in support of her claims, and she has left it up to the Circuit Court, the Court of Appeals, and this Court to find support for her allegations. The Circuit Court and the Court of Appeals properly denied Plaintiff-Appellant's demands. This Court should stand by the lower Courts and deny the *Application for Leave to Appeal*.

I. The Circuit Court Did Not Abuse Its Discretion when Dismissing Plaintiff-Appellant's Lawsuit as a Sanction for Intentional and Repeated Failure to Comply with the Court's Orders to Sign the Defendant-Appellees Record Authorizations

Plaintiff-Appellant attempts to make this an issue of form over substance. In her *Application for Leave to Appeal*, the argument is that this is a "battle of the forms" (whereas she chose a SCAO form over signing authorizations provided by counsel for the Defendant-Appellee), attempting to misdirect this Court from looking at the substance of her discovery abuses. This is, instead, a case of Plaintiff-Appellant

blatantly disregarding the authority of the Circuit Court regarding its decisions on discovery issues. Plaintiff-Appellant continually attempted to obstruct the discovery process throughout the case. From the outset, Plaintiff-Appellant refused to provide open access to her medical, employment, and insurance records based upon her perception that she is entitled to "privacy." As the record reveals, Plaintiff-Appellant continually disregarded the Circuit Court's directive based upon her misguided attempts to control the course of discovery. To the last, Plaintiff-Appellant refused the Circuit Court's offer to reinstate her case if she were to simply sign the provided releases. Instead, Plaintiff-Appellant, for the final time refused to sign the proffered medical authorizations due to complaints about the clauses in the release. Plaintiff-Appellant's case was not dismissed due to the choice of forms. Her *Complaint* was dismissed for her willful refusal to follow the orders of the Circuit Court and engage in the discovery process.

Plaintiff-Appellant's *Complaint* in this third-party case was dismissed *after* Plaintiff-Appellant's *Complaint* in her first-party case was dismissed for the very same conduct in the same Circuit Court. The Court of Appeals in the first-party case found that the Circuit Court properly exercised its discretion when dismissing the *Complaint*. The Court of Appeal in this case found that the Circuit Court properly exercised its discretion when it dismissed the *Complaint*. Neither Court of Appeals Panel erred in finding that the Circuit Court properly utilized its discretion. Plaintiff-Appellant's *Application for Leave to Appeal* does not present any major legal principle significant to the State's jurisprudence. The *Application* merely presents Plaintiff-Appellant's argument that she should not be required to abide by the Circuit Court's orders; orders that were based on authority vested in Circuit Court by this Court through the Michigan

Court Rules. The Court should deny the *Application for Leave to Appeal* because it fails to state a question that should be reviewed by this Court.

A. Plaintiff-Appellant Failed to Provide Any Citation to the Record or Applicable Law in Support of Her Appeal. This Court Should Deny the *Application for Leave to Appeal* Because It Fails to Present Questions that Should Be Reviewed by this Court.

Part of the reason Plaintiff-Appellant's case was dismissed by the Circuit Court is her refusal to follow the Court Rules; a pattern she continues in her appellate filings. Plaintiff-Appellant's "Statement of Facts" is wanting for reference or citation to the record, as required by MCR 7.212(C)(6). ["A statement of facts … must contain, with specific page references to the transcript, the pleadings, or other document or paper filed with the trial court".] Her "facts" are nothing more than her recollection and perception of events. Many of her alleged "facts" are patently false or misleading. Similarly, Plaintiff-Appellant's *Application for Leave to Appeal* is devoid of cogent analysis, with almost no citation to supporting authority, and no applicable standard of review.

An issue is abandoned where plaintiff fails to properly argue the merits of the issues. See generally *Yee v. Shiawassee Co. Bd. of Comm'rs*, 251 Mich. App. 379, 406 (2002). An appellant may not merely assert an error and leave it to the appellate court to search for authority to sustain or reject this position. *Wilson v. Taylor*, 457 Mich. 232, 243 (1998). Similarly, a party may not give issues cursory treatment with little or no citation to supporting authority. *Silver Creek Twp. v Corso*, 246 Mich. App. 94, 99 (2001).

In the present matter, Plaintiff-Appellant makes bold allegations that the Circuit Court erred by requiring her "to provide her medical records to Efficient Design without

establishing that they were a liable party to the case." (*App. for Leave* at p. 26). Plaintiff-Appellant cites no court rule, statute or case law supporting this proposition.[1] Instead, she relies exclusively on rhetoric. Plaintiff-Appellant's argument continues that she is not required to provide discovery until she receives her own discovery responses and is satisfied that she has a valid claim against Efficient. (*App. for Leave*, *passim*). Meanwhile, the Court Rules provide that Efficient is fully within its rights to seek Plaintiff-Appellant's medical records (MCR 2.314(A)(1)). Moreover, Plaintiff-Appellant could not stall Defendants-Appellees' discovery while she attempted to engage in her own. MCR 2.302(D). [The fact a party is conducting discovery does not operate to delay another party's discovery].

While Plaintiff-Appellant does, in fact, cite a Court Rule relating to the use of SCAO forms for the release of medical information, she provides no authority to allow her to refuse to sign authorizations or limit the information sought. (See *App. for Leave*, *passim*). The crux of Plaintiff-Appellant's argument is that she supplied authorizations and, therefore, her case cannot be dismissed. What Plaintiff-Appellant does not address, however, is the fact that she did not provide all of the authorizations requested, she served the authorizations upon her medical providers directly, and she limited the information to that which she deemed to be relevant. (See *Exhibit B* to *Efficient Design's Response to Plaintiff's Objection*, dated July 16, 2013).

Even on appeal, Plaintiff-Appellant maintains her argument, without citation or support, that a party "is justified in refusing to agree to additional language and/or missing information on a medical or employment authorization form … (i.e. allowance

[1] Unfortunately, Defendant-Appellee is unable to provide citations beyond the Court Rules, mostly because Plaintiff's position is, simply, unsupported by law. It is nearly impossible to find case law on baseless positions. Liability is one issue that is addressed during discovery, along with issues of damages.

of photocopies, use of an expiration event instead of a date, allowance of records to be released "for copying purposes")." (*Plaintiff-Appellant's Brief on Appeal* at p. 32, Heading 6). Plaintiff-Appellant's position is clear from the filings in this Court, the Court of Appeals, and in the Circuit Court: she had no intention of allowing a full and complete release of her records for purposes of discovery.

Plaintiff-Appellant has failed to cite any statute or other authority for her position. Based upon the failure to cite applicable authority the Court of Appeals was not required to make a case on appeal for Plaintiff-Appellant. This Court certainly should not take up that cause. Thus, the Court should deny Plaintiff-Appellant's *Application for Leave to Appeal*.

B. The Circuit Court Properly Dismissed Plaintiff-Appellant's *Complaint* for Her Willful Refusal to Comply with Discovery and the Orders of the Court.

Plaintiff-Appellant filed this auto negligence suit claiming that she has suffered personal injury out of the alleged negligence of Defendant-Appellee Culpert ("Culpert"). In her *Complaint*, Plaintiff-Appellant alleged that Defendant-Appellee Efficient was Defendant-Appellee Culpert's employer. Plaintiff-Appellant alleged that Culpert was on a work-related call at the time of the rear-end collision. As a result, Plaintiff-Appellant allegedly suffered "injuries to her head, neck, back and other parts and portions of her body," resulting in pain, suffering, work loss, and loss of earning capacity; some of which is permanent in nature. (See *Complaint* at ¶ 14). As such, Plaintiff-Appellant put her physical and mental condition at issue.

The applicable law is simple: Michigan has "an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Reed Dairy Farm v. Consumers Power*

Co, 227 Mich. App. 614, 616 (1998). The "discovery rules are to be construed … to further the ends of justice." *Domako v. Rowe*, 438 Mich. 347, 359 (1990), *citing Prentis v. Yale Mfg. Co.*, 421 Mich 670 (1984). The adoption of the Michigan Court Rules in 1985 eliminated any "good cause" requirement for the production of documents. *Domako,* 438 Mich. at 360, n10. Contrary to Plaintiff-Appellant's hyper-technical argument on appeal that she is not obliged to sign additional authorizations because Defendant-Appellee Efficient originally asked for fewer providers, the Supreme Court has stated:

> Restricting parties to formal methods of discovery would not aid in the search for truth, and it would only serve to complicate trial preparation. MCR 1.105 expressly states that the court rules are "to be construed to secure the just, speedy, and economical determination of every action."

Domako, 438 Mich. at 360.

It became clear as the case progressed, evidenced by Plaintiff-Appellant's filings and statements during oral arguments, that Plaintiff-Appellant intended to make every effort to preclude discovery of medical and employment information. At the outset of the case, counsel for both Defendants-Appellees served various discovery requests. Shortly thereafter, Plaintiff-Appellant discharged her attorney and Plaintiff-Appellant undertook the prosecution of her own case. At that time, Plaintiff-Appellant began to assert her continuing objections to the production of medical records. Again, the issue in this case is not the format of the medical authorizations, but the fact that Plaintiff-Appellant continually refused to produce open access to her medical records, as required by the Court Rules.

A review of the hearing transcripts shows that Plaintiff-Appellant never objected to the form of the releases produced by Defendant-Appellee Efficient's attorneys (at least not until her case had been dismissed). Her objections were that she was not

required to produce her medical records to a defendant where "they haven't admitted any liability." (Hearing transcript of June 21, 2013, at p. 7, ln 11-12). Plaintiff-Appellant's protestations are indicative of her efforts to subvert the discovery process. A reading of the record shows Plaintiff-Appellant continually objected to the production of *any* records to Defendant-Appellee Efficient. It became clear to all involved that Plaintiff-Appellant's motivation was to manipulate the process; and to potentially "cherry-pick" the records. The clear attempts by Plaintiff-Appellant to avoid the production of records is why Efficient's attorneys asked that the Circuit Court order her to sign *their* authorizations with "no amendments". (Hearing transcript of June 21, 2013, at p. 14, ln 4-6).

Plaintiff-Appellant does not address the fact that she was ordered to sign all of the authorizations presented to her. The Circuit Court was very clear in the process:

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

(Hearing transcript of June 21, 2013, at p. 14, ln 9-12).

Despite the Circuit Court's clear directive, Plaintiff-Appellant refused to sign the authorizations and, instead, provided her own and sent them directly to her healthcare providers. (See *Exhibit B* to *Efficient Design's Response to Plaintiff's Objection*, dated July 16, 2013). The content of Plaintiff-Appellant's amended (and incomplete) authorizations indicates that she clearly intended to 1) hide certain records as she did not request authorizations for all treatment providers, and 2) the authorizations imply that providers should include only certain dates of treatment and could mislead providers into producing the records to Plaintiff-Appellant and not Defendants-Appellees. The Circuit Court understood what Plaintiff-Appellant was doing and

reacted accordingly.

In response to the dismissal, and continuing on appeal, Plaintiff-Appellant argues that she did not receive the authorizations from Defendant-Appellee Efficient's attorneys and was 'forced' to handle things on her own. This argument is simply not true. In fact, Plaintiff-Appellant admits that she received the authorizations; only after the June 24 hearing. Moreover, Plaintiff-Appellant overlooks the fact that Defendant-Appellee Efficient's attorney did, in fact, e-mail all of the requested authorizations to Plaintiff-Appellant on June 21. She cites no rule that she is not obliged to check her e-mail beyond 5:00 pm. She cites no valid reason why she could not check her e-mail over the weekend or even on Monday, June 24, after the start of business hours. She provides no excuse as to why she could not have called counsel later in the afternoon to check on the status of the releases; if she truly was worried about complying with the Circuit Court. Similarly, Plaintiff-Appellant gives no valid reason why she did not sign the proffered authorizations between the receipt on June 24, 2013, and the hearing on her motion to reinstate the case on August 9, 2013.

At its core, Plaintiff-Appellant's argument is, 'I provided discovery in the manner that I decided I want and you cannot throw my case out'. However, from the inception, Plaintiff-Appellant has refused to allow open discovery and, instead, attempted to manipulate the process. Plaintiff-Appellant's filings and her actions show that she has intended to avoid producing medical records until she was satisfied that they were relevant. There is no basis in the law for this position. The Circuit Court was aware of this and, after giving the Plaintiff-Appellant multiple opportunities to comply with her directives, eventually dismissed her case.

The imposition of discovery sanctions is reviewed for an abuse of discretion.

Bass v. Combs, 238 Mich. App. 16, 26 (1999), *overruled on other grounds, Dimmitt & Owens Fin, Inc v. Deloitte & Touche, LLC*, 481 Mich. 618 (2008). A Circuit Court may impose the sanction of dismissal for discovery abuse. *Id*. The Circuit Court is to be given regard for the special opportunity it has to judge the credibility of witnesses who appear before it. MCR 2.613(C). An abuse of discretion occurs when the decision of the Circuit Court results in an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v. Ford Motor Company*, 476 Mich. 372, 388 (2006). Further, the Circuit Court has inherent authority to dismiss a lawsuit as a sanction for litigant misconduct. *Bloemendaal v. Town & Country Sprts. Ctr., Inc.*, 255 Mich. App. 207, 211 (2003).

MCR 2.313(B)(2)(c) allows Circuit Courts to enter "an order . . . dismissing the action or proceeding." Dismissal is the harshest sanction available. *Schell v. Baker Furniture Co*, 232 Mich. App. 470, 475 (1998). However, the imposition of the sanction is warranted where "there has been a flagrant and wanton refusal to facilitate discovery, and where the failure has been conscious or intentional, rather than accidental or involuntary." *Frankenmuth Mut. Ins. Co. v. ACO, Inc.*, 193 Mich. App. 389, 396-397 (1992). Included in the factors that apply to dismissal are: 1) whether the violation was willful or accidental; 2) whether there exists a history of engaging in deliberate delay; 3) the degree of compliance by the party with other provisions of the court's order; 4) an attempt to timely cure the defect; and 5) whether a lesser sanction would better serve the interests of justice. *Bass* at 26-27.

In the instant case, the record is clear that Plaintiff-Appellant refused to obey the orders of the Circuit Court. At every turn, the Circuit Court gave the Plaintiff-Appellant the opportunity to sign the authorizations. To the last, Plaintiff-Appellant

argued that she did not have to sign the authorizations provided by Defendant-Appellee Efficient's attorneys, despite the fact that her related PIP action was already dismissed for the same failure. There can be no question that Plaintiff-Appellant's abject refusal to sign the required authorizations was deliberate. The record is clear that Plaintiff-Appellant had been deliberately delaying discovery from the outset. At each occasion, Plaintiff-Appellant objected to producing *any* documents until Defendant-Appellee Efficient admitted liability.

At the hearing on June 21, 2014, the Circuit Court required Plaintiff-Appellant to sign the authorizations provided by Efficient. The Circuit Court specifically said, "no games." Almost immediately, Plaintiff-Appellant began 'playing games' with "I didn't check my e-mail" or "I don't have to sign those releases, I'll sign my own." Although the releases were provided to Plaintiff-Appellant for signature, and the despite the Circuit Court's direction to sign the releases and appear at the June 24 conference, Plaintiff-Appellant voluntarily chose not to appear at that conference. Contrary to her arguments that she provided releases, Plaintiff-Appellant did not provide all of the requested releases. In fact, she, again, attempted to change the release language to meet her own agenda and limit the scope of discovery. The Circuit Court was very explicit: "We will provide releases . . . she will sign them." She did not sign them (and now hides behind a façade that she was unable to check her e-mail).

Even after the dismissal, Plaintiff-Appellant had over 4 weeks to sign the provided authorizations and have her case reinstated. With ample time, Plaintiff-Appellant still refused any attempt to cure the defect. At the Eleventh Hour, after the dismissal, Plaintiff-Appellant defiantly rejected the Circuit Court's one last opportunity

THE COURT: . . . sit down today and sign the authorizations.
MS. FILAS: Not for some of the things that they're asking.

THE COURT: The dismissal stands. Call the next case.

(Hearing transcript of August 9, 2013, at p. 3, ln 2-7).

The record is clear: Plaintiff-Appellant has flagrantly and defiantly ignored the directive of the Circuit Court to provide medical authorizations. Discovery is open. Plaintiff-Appellant has refused to provide discovery; instead, demanding that she get her discovery on liability before she disclosed her records. Plaintiff-Appellant made every effort to forestall discovery. She invented excuses and reasons why she should not have to comply with the rules. She ignored the directives of the Circuit Court, which gave her ample opportunity to conform to the Court Rules and put her case back on track. Despite every effort of the Circuit Court in this case, and in her PIP case, Plaintiff-Appellant willfully ignored the directives of the court, she made no effort to cure the defects, and she defiantly refused to provide the discovery. No lesser sanction would be sufficient in this case. The dismissal was appropriate. On March 10, 2015, the Court of Appeals agreed with the Circuit Court and affirmed its ruling.

II. The Court of Appeals Correctly Dismissed Issues I, II, III, and VI of Plaintiff-Appellant's *Brief on Appeal* Because Those Issues Were Precluded By this Court's Decision in *Filas v. MEEMIC*

On December 13, 2015, Defendant-Appellee Culpert filed a *Motion to Affirm* in the Court of Appeals; Defendant-Appellee Efficient concurred in the *Motion* and requested the same relief. Although the *Motion* was initially denied on February 11, 2014, the Court of Appeals granted the renewed *Motion* on November 25, 2014. The *Motion* was brought pursuant to MCR 7.211(C)(3), which provides:

> After the appellants's brief has been filed, an appellee may file a motion to affirm the order or judgment appealed from on the ground that
>
> (a) it is manifest that the questions sought to be reviewed are so unsubstantiated as to need no argument or formal submission; or

(b) the questions sought to be reviewed were no timely or properly raised.

The Court of Appeals granted the *Motion* and dismissed those issues in this appeal that had been decided in *Filas v. MEEMIC*. The Court determined that "the 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."

In her *Application for Leave to Appeal*, Plaintiff-Appellant claims that the Court of Appeals erred by utilizing the collateral estoppel doctrine to grant the *Motion to Affirm*, which dismissed Issues I, II, III, and VI form the Plaintiff-Appellant's Brief on Appeal. (*App. for Leave* at 16). Plaintiff-Appellant argues that the collateral estoppel doctrine does not apply to this matter for two reasons. First, Plaintiff-Appellant argues that the Court of Appeals should not have relied on the Opinion from *Filas v. MEEMIC* to strike issues in this appeal because the two cases involved different Defendant-Appellees. Second, Plaintiff-Appellant argues that the issues between the two cases were different.

In *Monat v. State Farm Insurance Co,* 469 Mich. 679, 680–681, 691–92(2004), this Court provided:

> Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have actually been litigated and determined by a 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. Mutuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action. In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him.

(citations omitted). The Court of Appeal, in *Keywell & Rosenfeld v. Bithell*, 254 Mich. App. 300 (2002), summarized the legal principles pertaining to collateral estoppel:

> The doctrine of collateral estoppel prevents "relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." This doctrine is strictly applied in that "the issues [in both cases] must be identical, and not merely similar . . . ." The previous litigation must have presented a "full and fair" opportunity to litigate the issue presented in the subsequent case. Furthermore, collateral estoppel includes an element of mutuality, requiring the previous litigation of the issue to have had a preclusive effect on the party asserting collateral estoppel as a defense.

Id. at 340-341.

"Lack of mutuality does not always preclude the application of collateral estoppel." *Lichon v. American Universal Ins. Co.*, 435 Mich. 408, 428 n. 16 (1990). The decision to apply collateral estoppel where mutuality is lacking depends on the consideration of two factors: (1) whether "the party seeking to assert [collateral estoppel] is doing so offensively or defensively"; and (2) whether "the one against whom collateral estoppel is asserted had an opportunity to litigate the issue in the previous suit." See *Braxton v Litchalk*, 55 Mich. App. 708 (1974).

This Court has drawn a distinction between offensive estoppel and defensive estoppel. When a defendant asserts estoppel to bar relitigation of an issue, mutuality is not required:

> We hold that, where collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required.
>
> *****
>
> [W]e believe that the lack of mutuality of estoppel should not preclude the use of collateral estoppel when it is asserted

> defensively to prevent a party from relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit. *Monat*, *supra* at 691-692.

Monat, 469 Mich. at 680–681, 691–92.

In light of the Court's statement of the law concerning the requirement of mutuality in *Monat*, it is quite ironic that Plaintiff-Appellant cites to the *Monat* opinion—one of the only citations provided in her entire *Application*—for the exact opposite proposition. Plaintiff-Appellant argues that, because *Monat* requires mutuality of estoppel in order for collateral estoppel to apply, the Defendant-Appellees cannot defensively assert this doctrine because they were not parties to the *Filas v. MEEMIC* action. If Plaintiff-Appellant had actually read *Monat*, she would have realized the error in her argument.

In this case, the Court of Appeals correctly relied on defensive collateral estoppel to preclude Plaintiff-Appellant from relitigating the same issues in this appeal as she did in the *Filas v. MEEMIC* appeal. Defendant-Appellees were not required to be parties to that appeal in order to be afforded the protection of the collateral estoppel doctrine. Rather, the important consideration is whether Plaintiff-Appellant had an opportunity to litigate the issue in the previous lawsuit. Plaintiff-Appellant had this opportunity in *Filas v. MEEMIC* while the matter was in the Circuit Court and when the matter reached the Court of Appeals.

Plaintiff-Appellant argues that the Court of Appeals also erred by employing defensive collateral estopped because the issues articulated by Plaintiff-Appellant in each appeal were not identical. Plaintiff-Appellant attempts to compare and contrast the issues by focusing on the language employed by her in each *Brief on Appeal*. However, this Court should look beyond the literal words employed by Plaintiff-Appellant to identify the actual issue presented in both appeals.

This Court need merely compare the facts and issues of these proceedings with those in *Filas v. MEEMIC* to recognize that the two proceedings are identical in both form and substance. In both proceedings, Plaintiff-Appellant's lawsuit was dismissed because she failed to comply with discovery and the Circuit Court's discovery orders. In both proceedings, Plaintiff-Appellant steadfastly refused to sign authorizations for the Defendant-Appellees to procure medical records, employment records, and education records. And in both proceedings, the Court ordered Plaintiff-Appellant to sign the authorizations and dismissed the lawsuit as a discovery sanction for failure to comply with the orders.

This Court should not get caught up in Plaintiff-Appellant's incoherent *Application for Leave to Appeal* so as to be distracted from the real issue that is the focus of this appeal, as well as the appeal in *Filas v. MEEMIC*. Plaintiff-Appellant believes the Michigan Court Rules do not apply to her, she refused to comply with well-established discovery procedures, and she disobeyed the Circuit Court's Orders on numerous occasions. For that reason, the Circuit Court dismissed her lawsuit and the Court of Appeals correctly struck previously litigated issues and affirmed the remaining issues. This Court should realize that this is not an issue for this Court to address, and it should deny the *Application for Leave to Appeal*.

III. The Court of Appeals Did Not Violate Plaintiff-Appellant's Due Process Rights when It Ruled on the *Motion to Affirm* Without Holding Oral Arguments

In her *Application for Leave to Appeal*, Plaintiff-Appellant argues that she was denied due process because she was denied an oral argument for the issues on appeal. Plaintiff-Appellant's sense of entitlement to receiving oral argument is gravely mistaken. She has failed to provide this Court with any source of law, whatsoever,

regarding this argument. Plaintiff-Appellant fails to identify what her due process right was, what the supposed right was based on, or how the right applied to this appeal. Plaintiff-Appellate leaves it to the Court to figure out both the due process right that was allegedly violated and the law that supports that right. For that reason, the Court should not entertain this alleged issue. Moreover, Plaintiff-Appellant's position starkly contrasts with the discretion and authority vested in the Court of Appeals through the Michigan Court Rules.

There are two specific Rules that contradict Plaintiff-Appellant's argument. First, MCR 7.211(D), which governs motions filed in the Court of Appeals, provides that there is "no oral argument on motions, unless ordered by the court." Second, MCR 7.213 provides:

> **(E) Decision Without Oral Argument**. Cases may be assigned to panels of judges for appropriate review and disposition without oral argument as provided in this subrule.
>
> (1) If, as a result of review under this rule, the panel unanimously concludes 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 deliberation would not be significantly aided by oral argument; or
>
> (c) the appeal is without merit;
>
> the panel may enter without oral argument an appropriate order or opinion dismissing the appeal, affirming, reversing, or vacating the judgment or order appealed from, or remanding the case for additional proceedings.

Pursuant to MCR 7.211(D) and MCR 7.213(E), the Court of Appeals had the authority to dispense with all issues in Plaintiff-Appellant's appeal without an oral argument. The Court of Appeals used MCR 7.211(C)(3) to eliminate Plaintiff-Appellant's Issues I, II, III, and VI from the appeal because they were collaterally estopped. The Rule

provides that the decision to grant the *Motion to Affirm* must have been unanimous to have been granted. If the decision was not unanimous, the issues would not have been dismissed.

Furthermore, Plaintiff did not have the right to oral argument on her two remaining issues. With that being said, the Court of Appeals gave Plaintiff-Appellant the opportunity to argue her case. Plaintiff-Appellant, however, declined that opportunity by chastising the Panel instead of arguing her issues. Of course, Plaintiff-Appellant concludes that she had the right to oral argument because the Court of Appeals gave her the hearing in the first place. She claims that the Court of Appeals *must have* determined she had the right to oral argument because it did not cite to MCR 7.213(E) and decline oral argument. Nothing in the plain language of that Rule requires the Court to announce that it has unanimously concluded no oral argument is required, and no such requirement can be inferred from the language that is used in the Rule. In fact, the Michigan Court of Appeals Internal Operating Procedures at IOP 714(E) expressly state that unanimity is not required to decide a case without oral argument. Moreover, there is nothing written in the rule preventing a Panel of the Court of Appeals from deciding a matter can be decided without oral argument but giving the appellant and appellee the opportunity to argue anyway. Perhaps what is most telling about the Court of Appeals' apparent intent in this matter is this: the Panel issued one Opinion from that hearing on March 10, 2015—there were no concurring opinions or dissents.

Plaintiff-Appellant has argued that "it can be assumed that the Appellate Judges know the law." With that in mind, Plaintiff-Appellant can assume that this Court is aware of one's actual due process rights, and the Court would not have crafted the

Michigan Court Rules so as to violate any of those rights. This Court gave the Court of Appeals discretion with entertaining oral arguments. The Court of Appeals adhered to that discretion and properly ruled on the issues below. There was no error. Moreover, Plaintiff-Appellant's due process rights were not violated and therefore there is no substantial legal issue for this Court.

CONCLUSION / RELIEF REQUESTED

Simply put, this Court should deny Plaintiff-Appellant's *Application for Leave to Appeal* because she has not provided this Court with a question that warrants this Court's review. Plaintiff-Appellant claims that the Court of Appeals violated her due process rights by denying her oral argument on all the issues she presented in her Brief on Appeal. Yet, Plaintiff-Appellant fails to identify any legal support for her claim. Her position also presumes that she had a right to oral argument in the first place. Because Plaintiff-Appellant's presumption is not in accord with the Michigan Court Rules, Plaintiff-Appellant's claim of error as no merit.

Plaintiff Appellant also claims that the Court of Appeals erred by relying on defensive collateral estoppel to dismiss four of the Issues from her *Brief on Appeal*. Plaintiff asserts that collateral estoppel does not apply because the Defendants-Appellees in this appeal are different from those in *Filas v. MEEMIC*. However, Plaintiff-Appellant's argument is undermined by the very case she cited in support of her argument: *Monat*. Plaintiff also argued that the issues were different in the appeals. That issues were identical in both appeals, and the issues arose out of the same factual scenario in the Circuit Court. Plaintiff-Appellant's lawsuits were dismissed as a sanction for repeated, intentional violation of the Circuit Court's Orders to sign authorizations for records provided by the Defendant-Appellees. The Court of

Appeals correctly applied the doctrine to preclude Plaintiff-Appellant from relitigating the same issues that were previously decided by the Court of Appeals.

The *Application for Leave to Appeal* presents nothing more than Plaintiff-Appellant's final effort to continue her fruitless litigation. Even if this Court were to remand all issues to the Court of Appeals, the Court of Appeals has already made it clear that the Circuit Court did not abuse its discretion when it dismissed the lawsuit. If the Court of Appeals were to remand the matter to the Circuit Court, it is clear from Plaintiff-Appellant's conduct that she will never sign the authorizations provided by the Defendant-Appellees

It is clear from her obstreperous behavior throughout the proceedings that Plaintiff-Appellant had no intention of participating in the judicial process; at least not according to the rules. Plaintiff-Appellant put her medical condition at issue in this matter. Despite the clear edict of the Circuit Court that the Defendants were to have free access to her medical records, Plaintiff-Appellant insisted that she must be in control and that she would be the ultimate arbiter of what would be divulged and when. While she would attempt to divert the Court's attention to the "form" of the releases provided, the "substance" of this dispute (which was well known to the Circuit Court) was that the Plaintiff-Appellant would not divulge the discoverable information freely. She took every opportunity to obstruct the process. Eventually, the Circuit Court gave her a last chance: sign the releases that are presented to you or I dismiss your case. Despite the ultimatum, Plaintiff-Appellant took one last stab at maintaining control, herself. She has now paid the price for her willful violation of the discovery rules and the orders of the Circuit Court. This Court should deny the *Application for Leave* to Appeal and provide an end to this litigation.

VANDEVEER GARZIA, P.C.

/s/ Michael C. O'Malley
MICHAEL C. O'MALLEY (P59108)
JENNIFER L. MCGRATH (P75734)
Attorneys for Def Efficient Design
1450 W. Long Lake Road, Suite 100
Troy, MI 48098-6330
(248) 312-2800

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record of all parties to the above cause by the court's efiling and by regular mail system on March 30, 2015. I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/Kimberly Coomer