STATE OF MICHIGAN

SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

-vs-

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

Defendants-Appellees.

_____/

Supreme Court No. 151198

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

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PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-APPELLEE EFFICIENT DESIGN INC.'S ANSWER TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

Dated: May 11, 2015

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REPLY TO DF-AE'S COUNTER-STATEMENT OF THE BASIS OF JURISDICTION

Contrary to DF-AE's assertions, MCR 7.302(B)(5) *is* applicable because PL-AT was denied a legitimate oral argument hearing, denying her right of due process, a right that is important to every citizen and important to maintaining the integrity of the legal system, for which every plaintiff who requests oral argument upon filing an appeal with the COA is entitled, since two issues from PL-AT's Brief on Appeal, IV, and V, to be heard by the Court of Appeals at an oral arguments session held on 3-3-15, were rendered moot by the previous 11-25-14 Order granting DF-AE's Motion to Affirm for Item III, which upheld the circuit court's dismissal of PL-AT's entire case without oral argument. MCR 7.302(B)(5) also applies because 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 the COA's 11-25-14 Order to uphold the dismissal is not overturned by the MSC.

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, a decision which has been upheld by the Court of Appeals in both PL-AT's first- and third-party auto 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 where sales and access are restricted primarily to lawyers and insurance companies. Plaintiff's records that are copied by a record copy service ("RCS"), or with a Defendant's attorney's own personal authorization forms, which contained language "*This information is to be released for copying*

purposes to James C. Wright…" could still end up being given or sold to a RCS or placed in another database by the Defendant's attorney, for which Plaintiff has no access, no way of knowing what records were obtained, and no way to object to errors which could harm Plaintiff. The quoted statement from Mr. Wright's forms can be interpreted as giving the ability to Mr. Wright to re-copy and re-disclose records he obtained from PL-AT with her permission, that otherwise he would not have had a legal right to re-disclose. There would be no reason to get permission to *copy* PL-AT's information unless he planned to re-disclose it. SCAO-mandated MC 315 authorization forms do not allow for the re-copying of records, which at least protects Plaintiff's private information from ending up in databases for perpetuity with Plaintiff's private information in the possession of entities that are not parties to the litigation of Plaintiff's separately filed first-party PIP or third-party tort cases, enabling discriminatory actions against a Plaintiff to occur without detection or penalty to anyone. PL-AT was ordered by the lower court to re-do the process of disclosing medical records using Mr. Wright's personal authorization forms, denying her rights under MCR 2.314(C)(1)(a) and (d), by refusing to accept the already executed and mailed copies of MC 315 to twenty-some health care providers, from which Mr. Wright had already been receiving PL-AT's medical records (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright; Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI).

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, when a Plaintiff is ordered by the lower court to provide medical authorizations to Defendants. Allowing a Plaintiff to choose how they wish to provide their medical records to

Defendants as allowed under MCL 2.314(C)(1), does not infringe upon the discovery rights of anyone in no fault auto or third party auto tort cases, and is not sufficient grounds to dismiss a Plaintiff's case. Mr. Wright lied to the Court at the 6-21-13 hearing when he stated PL-AT was refusing to provide "signed medical authorizations" when all he asked for were "copies of her medical records" in his request for production. The trial Court had no legal authority based upon Mr. Wright's 6-21-13 lie that PL-AT refused to sign medical authorizations, under MCR 2.314(C)(1) to Order Plaintiff to provide the personal medical release authorization forms written by Mr. Wright's law firm. The only medical release authorization form the Court could have legally ordered PL-AT to use was the form mandated by the SCAO, MC 315. (Exhibit D, relevant page of 2-7-13 request for production; Exhibit E, 6-21-13 transcript, pg.6, lines 17,18; Exhibit C, 6-23-11 memorandum from Chad C. Schmucker, State Court Administrator). For the lower Court not to accept PL-AT's executed copies of MC 315 is unjust and a clearly unlawful.

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 provide their medical records directly to the Defendants, or to use MC 315 if ordered by the court to provide medical release authorization forms.

REPLY TO COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. DF-AE presents the following question:

> **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?**

There are multiple erroneous claims and misrepresentations within DF-AE's question, which PL-AT will address below in the order they appear in the question.

PL-AT did not place her mental condition at issue, as DF-AE claims. The alleged personal head injury, in itself, does not place a mental condition at issue in the complaint as filed. No legitimate diagnosis of any mental disorders are contained in PL-AT's medical records. Mr. O'Malley's accusations regarding her demeanor and motives are malicious and without substance.

PL-AT denies that she "*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.*" It would have been impossible to "repeatedly" refuse, because there was only one opportunity, given at the 6-21-13 hearing, at which two motions to compel were scheduled to be heard: One dated 4-19-13 filed by Mr. Hassouna, representing Culpert; and one dated 4-30-13, filed by Mr. Wright, representing EDI.

Both motions were heard on 6-21-13, which is when PL-AT's objections(objected) to providing medical records to Mr. Wright since EDI had denied liability in its Answer to PL-AT's complaint. Prior to the start of the 6-21-13 hearing, PL-AT already hand-delivered to Mr. Hassouna, completed interrogatories and copies of MC 315 medical record authorizations with mailing receipts that she brought to the court with her, although the transcript and Culpert's 3-23-15 Answer to PL-AT's Application for Leave to Appeal to the MSC gave the appearance that PL-AT did not provide Culpert anything. Exhibit J, copies of letters from health care providers verifying both Culpert and Wright received PL-AT's medical records, proves this is untrue. Mr. Hassouna did not object to receiving the copies of MC 315 authorizations with cover letters to each health care provider, listing dates of treatment for convenience and ability to check for completeness (Exhibit I, samples of MC 315 and cover letters given to Hassouna). Mr. Wright received the same forms and cover letters as Mr. Hassouna, on the morning of 6-24-13 (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright). Therefore, there were no "repeated refusals" from PL-AT, only her initial claim in regard to EDI's denial of liability that was addressed at the hearing on 6-21-13. Secondly, it should be clear that whether PL-AT disagreed with providing records to EDI before establishing liability became a moot point in regard to her agreeing to providing medical authorizations, after the trial court indicated at the 6-21-13 hearing that they "don't wait for liability," and therefore required parties to provide records to any defendants the plaintiff named on the case, regardless of whether that defendant is denying liability in their pleadings, and if she didn't provide them, the court would dismiss her case and she would have "no case." During the 6-21-13 hearing, PL-AT agreed to provide medical release authorizations on EDI's Motion to Compel *before* liability was established. PL-AT delivered copies of executed MC 315 medical

release authorizations at 11:24 a.m., on 6-24-13 to Mr. Wright's Office, so she wouldn't have to appear back in Court on 6-24-13 after 2 p.m. It was not a matter of "proving" that the DF-AE was liable, or that DF-AE didn't "admit" to being liable, which is the way it is presented in DF-AE's filing and the 3-10-15 COA Opinion. DF-AE flat-out denied liability in its 2-5-13 Answer to PL-AT's Complaint, Item #16, claiming that "**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, 6-21-13 transcript pg 7; Exhibit F, Relevant page of Mr. Wright's 2-5-13 Answer to Complaint against Efficient Design). It was not until 6-21-13 Mr. Wright affirmed to the Court that EDI had vicarious liability (Exhibit E, 6-21-13 transcript, pg. 9. lines 21-23).

PL-AT included the question of liability in her 12-20-13 Appeal to the COA because she still believes it is ludicrous for her to have been ordered to provide her private medical information to an entity that may not even be a party to the case, especially one that has denied that Culpert was even their employee at the time of the accident. PL-AT wanted that important question answered by the COA, because if PL-AT is correct, then her entire case would have to be reinstated because it should never have been dismissed before PL-AT was permitted to send interrogatories to Culpert and EDI, and complete her discovery as to whether or not Culpert was an employee of EDI and if so, whether he was in the course and scope of his employment. However, rather than providing an answer to Question/Issue I as presented in PL-AT's 12-20-13 COA Brief on Appeal, the COA avoided giving an answer by lumping it with the other three issues it claimed PL-AT was prevented from litigating due to the doctrine of collateral estoppel because of their similarity---II, III, and VI, as ruled in the 11-25-14 Order for which this MSC

Application pertains[1]. Issue I of PL-AT's 12-20-13 COA Brief on Appeal, in regard to establishment of liability prior to disclosing medical records, certainly was not similar to the MEEMIC case, since there was no question of liability in the MEEMIC case. There was no dispute that MEEMIC was PL-AT's insurer and was therefore the company responsible for paying PL-AT's PIP benefits. PL-AT's discussion in regard to the inapplicability of the doctrine of collateral estoppel to Issue I of PL-AT's 12-20-13 Appeal is contained in Argument III, presented on pgs. 26-31 of PL-AT's 3-10-15 MSC Application for Leave to Appeal the 11-25-14 Order of the COA.

DF-AE's question states, "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." This absurd statement has no merit. PL-AT never made said claims. PL-AT was ordered on 6-21-13 to sign Mr. Wright's personal authorization forms after the Court refused to accept the already executed and mailed copies of MC 315 PL-AT mailed to twenty-some health care providers on 6-21-13, 6-24-13, and 6-26-13. Mr. Wright had already been receiving PL-AT's medical records related to these authorizations prior to the 8-9-13 hearing. The only authorization forms PL-AT ever requested to use at any time, during either her first-party or third-party case, were the forms provided by the individual health care providers, or MC 315, neither of which were accepted by the Court, even though the attorney she dismissed agreed to allow her to provide her copies of medical records she had obtained from her health care providers to the Defendants. PL-AT never "created her own" authorizations or stated that she believed she could. She used SCAO-mandated Form MC 315. It would be nonsensical for PL-AT to limit the scope of discovery, as PL-AT wanted to be

[1] It is important that the MSC understands that the 3-10-15 Application is only in regard to the 11-25-14 Order, not the 3-10-15 Opinion, which is being appealed separately in PL-AT's 4-21-15 Application (MSC Case No. 151643).

compensated for all of her injuries and never had any objections to providing medical records to the Defendants. In fact, in addition to requesting any and all records, she even included a cover letter with each copy of MC 315 sent to each healthcare provider, listing the dates of treatment, so that the Defense attorneys could verify they had received records for each of those dates. PL-AT permitted disclosure of her records all the way back to birth, which is beyond what Mr. Wright asked for in his Request for Production of Documents (Exhibit D, Request for Production; Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

If anyone could manipulate records and selectively decide what records would be received by the Defendants, it would be the Defendant's attorneys themselves; James Wright and Michael O'Malley representing Defendant, Efficient Design; and Mr. Hassouna, representing Defendant Kevin Culpert, because simply receiving signed authorizations from the Plaintiff, Tamara Filas, in the third-party tort case, in no way guarantees Plaintiff that all of the authorizations signed by her would actually be sent to the PL-AT's health care providers by the Defendants, and subsequently, does not guarantee all records would be received by the Defendant's from all health care providers. Plaintiff would have no way of knowing what records Mr. Wright had actually ordered and obtained until they were presented at a settlement conference. Since the Michigan Catastrophic Claims Association is a private, non-profit agency run by insurance companies, that does not deal with the public, there is clearly incentive for the Defendants' insurance companies not to want to document all of a Plaintiff's injuries or to allow Plaintiff to check for inaccuracies in the medical records and address them with the health care providers, not just in first-party no-fault cases, but in third party tort cases as well, not only to reduce the damages paid to Plaintiff in the third-party tort cases often settled by attorneys behind closed doors, but also to limit Plaintiff's ability to make claims and collect benefits for future

care from the MCCA, since all auto- related insurance claims affect all insurance companies that sell no-fault auto insurance, the rates they charge and their ability to compete. Although insurance companies are required to pay into the MCCA fund directly, they often have to charge more for their insurance products to offset the cost or realize less profit. The interest of insurance companies should not be a consideration in the settlement of no-fault auto cases or third-party auto tort cases where a victim's right to lifetime medical benefits is at stake or the amount of settlement is at stake.

DF-AE's question states *"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."* As stated above in paragraph 3 of this section, there could not have been "repeated refusals" when she was only ordered one time on 6-21-13, and she complied with the Order to provide signed medical authorizations when she executed copies of MC 315 for Mr. Wright. Secondly, the "final hearing" on 8-6-13 was a sham, and was only in regard to PL-AT's objections to a 7-day Order of Dismissal. PL-AT was tricked by the Court and the attorneys into believing could reverse the dismissal of her case by filing said objections, which was untrue, as only a Motion for Reconsideration would have had that capability (See pgs. 16-17 below for details).

DF-AE also makes a claim about PL-AT's "*ongoing refusal to participate in discovery*." PL-AT cannot be accused of this since she provided everything Culpert's attorney requested (interrogatories and signed medical authorizations) prior to Culpert's Motion to Compel being heard on 6-21-13 (and it should not have even been heard by the court for the reason he already received what was being compelled, but Culpert's attorney pretended he hadn't received anything, according to the transcript). PL-AT provided everything she was compelled to provide

to EDI, based on EDI's 2-7-13 Request for Production of Documents (Exhibit D), upon which EDI's 4-30-13 Motion to Compel was granted on 6-21-13. It was DF-AE EDI and the Court that were unwilling to follow the court rules in regard to discovery procedures, by their refusal to accept PL-AT's use of MC 315, which is the only approved form to be used under MCR 2.314(C)(1)(d). (The Court was lied to by both Mr. Wright and Ms. McGrath, co-counsel for EDI at the 6-21-23 hearing, claiming the Court had stayed discovery until PL-AT had obtained successor council and therefore, they were unable to depose Kevin Culpert to determine if he was on the phone with his employer at the time of the accident. The fact is, on 5-2-13, the Court stayed only the deposition of PL-AT for 30 days or until successor counsel made an appearance, which ever was sooner, not *all* discovery, as the defendants implied. DF-AEs had plenty of time to depose Kevin Culpert before the 6-21-13 hearing to determine if he was in the scope of his employment and if EDI was liable (Exhibit H, 5-2-13 transcript page 5, lines 11-25; Exhibit E 6-21-13 transcript page 10, lines 31-25, page 11, lines 1-25, page 12, lines 1-5).

This case is about the trial court's refusal to permit PL-AT's use of form MC 315 to release her medical records, not about PL-AT's refusal to release her medical records, as DF-AE misleads the Court to believe with the question he presented.

II. DF-AE presents the following question:

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*?

PL-AT provided a detailed analysis of the questions presented in *Filas v MEEMIC* compared with *Filas v Culpert and Efficient Design Inc*. in Argument IIB on pgs. 18-23 of PL-AT's 3-10-15 MSC Application, showing that the issues are definitely not the same, and in some

cases, not even similar. Most importantly, even if the issues were somehow deemed "the same," they were not actually litigated, which is a requirement for the doctrine of collateral estoppel to apply. 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 PL-AT presented in her appeal in regard to the use of MC 315, 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 dated 10-14-14, 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 Records Deposition Services Inc. ("RDS") forms solely due to wording in a Protective Order (PO) entered in the MEEMIC case by Plaintiff-Appellants attorney, that was entered in breach of the hiring agreement between Plaintiff-Appellant and her attorney.

As no Protective Order ("PO") 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 to the instant case.

III. DF-AE presents the following question:

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?

DF-AE misrepresents the situation in this question by omitting the fact that this particular motion upheld the dismissal of the entire case in violation of MCR 7.214(E)(1), which only allows for motions to be heard without oral argument if they met specific criteria, which were not met, as explained in argument I(B)(2) of PL-AT's 3-10-15 Application for Leave to Appeal

to the MSC, pg. 15-16. PL-AT understands that ordinary motions before the COA are generally not subject to oral argument, but this particular motion, however, rendered PL-AT's oral argument session on 3-3-15 illegitimate since the COA could not reverse the dismissal already ordered on 11-25-14 by the granting of DF-AE's Motion to Affirm, by its inclusion of Issue III from PL-AT's 12-20-13 Brief on Appeal to the COA. A party filing timely briefs is entitled to oral argument in accordance with MCR 7.111(C), if requested in accordance with MCR 7.214(A), as PL-AT did. Further, not only was PL-AT denied oral arguments on DF-AE's 10-17-14 Motion to Affirm, but she was also denied a legitimate oral argument session on Issues IV and V at the 3-3-15 hearing because these issues were already rendered moot by the 11-25-14 Order upholding case dismissal. Therefore, PL-AT received no legitimate oral arguments on any of the six issues presented in her 12-20-13 Appeal to the COA. According to the Internal Operating Procedure 7.214(E), if the COA intended to decide the case without oral arguments, PL-AT was supposed to have been notified so that she could file a motion to object. Therefore, the COA erred in upholding case dismissal on 11-25-13 without notifying PL-AT her case would be decided without oral arguments.

INTRODUCTION

DF-AE EDI presents a disturbing, falsified history of the events of this case at both the circuit court and Court of Appeals level. Dates of important filings are altered or omitted. Court rule numbers and IOP numbers are purposefully altered to give the appearance PL-AT did not already address them in her 3-13-15 Application. Quotations from pleadings are altered or important wording omitted to change the meaning. PL-AT apologizes for the length of this filing, but PL-AT has never before encountered an Answer from a Defendant that required so many rebuttals and required such a detailed analysis to even determine all the content that needed to be addressed due to the sophisticated trickery involved in its writing.

PL-AT sincerely prays the MSC will read her pleadings, examine the exhibits before them, and listen to the 5-minute audio recording of the 3-3-15 oral argument hearing, and be able to separate and acknowledge the truth from the lies presented by the DF-AEs and even the COA, in its 3-10-15 Opinion, and grant her Application for Leave to Appeal to the MSC this very important issue of being permitted to use MC 315 to provide medical records to defendants in a personal injury suit, as provided by MCR 2.314(C)(1)(d), and not having her entire case dismissed because of her use of SCAO-mandated MC 315 authorization forms.

REPLY TO COUNTER-STATEMENT OF FACTS

It is disturbing to PL-AT to have re-butted the same "facts" presented by the DF-AEs in this case numerous times, providing hard evidence to prove they are untrue, and yet they appear again in this filing, exactly or similar to how they were written in previous filings. In an effort to maintain brevity, to the extent possible, PL-AT will reference other filings to address them.

Pg. 1 of DF-AE's 3-30-15 Reply states, "*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." These claims have no merit as PL-AT *did* follow the cited court rules. To put forth "all" material facts would have required a brief much longer than 50 pages. PL-AT put forth the relevant facts, which are only in regard to the Court of Appeals' actions, not the circuit court's, as the DF-AE's presentation of circuit court events would lead the MSC to believe were somehow relevant. DF-AE not only falsifies the history presented, but avoids mention of the most important facts, i.e. that 1) PL-AT provided EDI with executed copies of SCAO-mandated MC 315, the only acceptable form to be used in accordance with MCR 2.314(C)(1)(d), the rule under which she was compelled to provide her medical information; and 2) that PL-AT's case was already dismissed on 11-25-14, prior to the 3-3-15 hearing on oral arguments held by the COA panel. If anyone's facts section should be stricken, it is the DF-AE's, because the lies can easily be proven simply by examining the register of actions, a few court filings, and a couple exhibits (a couple of exhibits, transcripts of the 5-2-13 and 6-21-13 hearings in the circuit court and the digital audio recording of the 3-3-15 COA oral arguments.

Besides continual claims that PL-AT did not provide authorizations, when it is evident she provided copies of MC 315, below are some of the other major falsifications in this filing:

1) DF-AE falsely refers to PL-AT having had a "Motion to Reinstate the Case" when she merely filed Objections to a 7-day Order of Dismissal, having been tricked into

believing these objections could reverse dismissal of her case (refer to pgs. 54-55).

2) Alteration of the 6-21-13 transcript by putting a period where there was none, changing the meaning of the Court's sentence (refer to pg. 14).
3) Use of quotations to falsely claim a statement was from PL-AT's pleading when only a similar statement was made and DF-AE had removed the important wording (refer to pg. 39).
4) Use of points of ellipsis to remove the important argument from heading 6 of PL-AT's 12-20-13 brief to falsely represent the argument (refer to pgs. 42-43).
5) Use of quotations around statements never made by PL-AT (refer to pgs. 57-58).
6) False claims that Culpert's 10-17-14 Motion to Affirm was a renewal of the 12-20-13 Motion to Affirm when the 10-17-14 Motion had its basis in the doctrine of collateral estoppel and was clearly a different motion (refer to pgs. 23-24).
7) Mis-citing court rule 7.214 as 7.213, to give appearance the rule was presented for the first time by EDI, when PL-AT already argued it in her 3-10-15 Application (refer to pg. 76).
8) Mis-citing IOP 7.214(E) as 714(E) in order to misrepresent the COA's internal policies in regard to deciding cases without oral arguments (refer to pgs. 82-83).

One verified lie should be enough to strike the DF-AE's fact section, and PL-AT has presented 8 easily verified lies and misrepresentations above, not to mention the biggest one of all claimed by both DF-AEs Culpert and EDI, that PL-AT did not provide medical authorizations to DF-AEs, which can be verified to be false by viewing Exhibits A, B, I and J.

DF-AE's Statement of Facts contains a separate section to discuss "*Discharge of Plaintiff-Appellant's Attorney.*" This has no relevance to the issues in this appeal. However,

since there are false statements in the section, PL-AT feels compelled to address them, DF-AE's inclusion of this issue seems to be an attempt to defame and discredit PL-AT by portraying PL-AT as person who does not work well with others and/or tried to stall the case, when just the opposite was true. Plaintiff dismissed her attorney because her attorney failed to honor specific hiring agreements. It was the Defendants who were uncooperative and refused to communicate with PL-AT unless she agreed to substitute herself, which she refused to do, instead of accepting her pro per status, that delayed the case. On pg. 2, DF-AE states, "*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*." Details surrounding PL-AT's attorney's breach of his hiring agreement, subsequent dismissal by PL-AT, and details of the Defense attorneys pressuring PL-AT to substitute herself and refusing to speak to her until she did, are provided on pg. 9 of PL-AT's 4-13-15 Reply to Culpert's Answer to PL-AT's MSC Application.

DF-AE claims on pg. 2 that because in her 3-8-13 letter discharging Salisbury, PL-AT referenced the return of two binders, one with MEEMIC records, and one with medical records, "*evidencing that Plaintiff-Appellant was in possession of a significant amount of medical records.*" This argument is without merit---binders come in different sizes. One "binder" of medical records could be a few, or a lot of records. Most importantly, the reason Mr. Salisbury had PL-AT's medical records in the first place was because when he was hired by PL-AT, he agreed that she could provide her own records to DF-AEs without using records copying service forms, an agreement that was breached when he refused to stand up for PL-AT's right to do so. The fact that Salisbury already had copies of PL-AT medical records, albeit not all records had been reviewed for accuracy by PL-AT before disclosure to DF-AEs, lends further support that

PL-AT always intended to comply with discovery, and that she had always intended to provide her medical records to DF-AEs.

DF-AE claims on pg. 2 that *"Mr. Salisbury was dismissed via Order (consistent with the Court Rules) on May 3, 2013."* PL-AT disagrees he was dismissed on May 3, 2013 consistent with the court rules. PL-AT dismissed Mr. Salisbury on March 8, 2013 via certified letter. The attorneys had attempted to force PL-AT to substitute herself, which she refused to do, and Mr. Salisbury refused to withdraw. The Register of Actions states that an Order to Withdraw was granted, which is untrue. The 5-3-13 Order states *"Daryle Salisbury is hereby discharged as counsel for Plaintiff."* No motion to Withdraw was filed by Salisbury. Still, whether or not PL-AT is representing herself in this case, or whether she has an attorney, should have no relevance to this case. Exhibit W, 5-3-13 Order Discharging Daryle Salisbury and granting 30-day stay on Discovery; Exhibit X, Salisbury's 4-29-13 Motion to Enter Substitution of Attorney Order; Exhibit H, 5-2-13 transcript, pgs. 3-4)

DF-AE claims on pg. 2 that *"Included in the discovery [the 2-7-13 Request for Production] was a request for Plaintiff-Appellant to sign medical authorizations. (See Motion to Compel Discovery from Plaintiff-Appellant at* ***Exhibit A,*** *Interrogatory No. 49)."* Interrogatory 49 was not a "request" for PL-AT to sign authorizations. It was only a question. It is presented below along with PL-AT's answer contained in the completed, notarized interrogatories hand-delivered to Mr. Wright on 6-21-13 prior to the hearing on the Motion to Compel.

> *49. Will you, without the necessity of a motion, sign medical and employment authorization forms?*
>
> ***ANSWER:***
>
> *I am a public school teacher. My employment records are public record and available upon request. My authorization is not required to view my employment records.*

Contrary to DF-AE's claims, the Motion to Compel filed by James Wright, attorney for Efficient Design, did not seek signed medical authorizations. According to Efficient Design's Request for Production of Documents dated 2-7-13, Efficient Design sought "*copies of any and all medical records relating to injuries received as a result of the subject accident.*" (Exhibit D, relevant page of 2-7-13 Request for Production). Instead of allowing and ordering Plaintiff to provide copies of her medical records as requested by Efficient Design, or accepting the already executed copies of MC 315 PL-AT had mailed to her health care providers, as were Plaintiff's rights under MCR 2.314(C)(1), the Court ordered Plaintiff to re-do the medical records disclosure process, and to use only Mr. Wright's personal medical release authorizations to release her records to Mr. Wright. By the time of the 8-9-13 hearing at which the PL-AT was ordered to re-do the medical records disclosure process with Mr. Wright's personal forms, Mr. Wright had already received records from the health care providers as the result of the copies of SCAO-mandated MC 315 authorizations Plaintiff mailed to her providers on 6-21-13 (and a few that were inadvertently omitted and sent a few days later) to provide her records to Mr. Wright (Exhibit B, sample of MC 315 and cover letter for Mr. Wright; Exhibit J, Letters from health care providers indicating that records were sent to Mr. Hassouna and Mr. Wright). DF-AE claims on pg. 2, *"Not knowing the entirety of Plaintiff-Appellant's complaints, the discovery sought blanket medical releases*." The request for production of records did not seek blanket medical releases, just "copies of any and all medical records related to injuries received as a result of the subject accident." Again, EDI's discovery requests did not include requests for medical releases. The 2-7-13 Request for Production only requested that PL-AT provide copies of her medical records.

On pg. 3, DF-AE quotes pg. 6 of the 5-2-13 transcript in which the Court states:

> *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.*

The discussion between the Court and PL-AT on pg. 6 of the 5-2-13 transcript from which the above quote was taken, was about PL-AT's first-party auto case against MEEMIC, which was dismissed on 4-26-13 not for PL-AT's refusal to sign records release authorizations, but for the court's refusal not to accept either the health care providers' forms, MC 315, or a modified Records Copy Service form as the authorization form(s) to be used to provide PL-AT's medical records to defendant MEEMIC. PL-AT only refused to sign unmodified, third-party records copying service forms in the MEEMIC case, as she was ordered to do by the court. The "restrictions" PL-AT included on the RDS form were that the records were to be released only to the Defendant (Exhibit G, modified form from MEEMIC case). PL-AT only limited future disclosures of her records by the records service, a private company that doesn't even allow PL-AT to view her own records that the service obtains. The 5-2-13 transcript shows PL-AT as having been cut off when she tried to explain the "restrictions," but PL-AT believes she was able to speak a few more words and finished that sentence, stating "*The only restriction that I put on it was that only the attorneys [received the records.]"* This is further exemplified by PL-AT's statement on pg. 7 of the 5-2-13 transcript, stating that she "*just wanted to clarify that it was just going to the one attorney"* and that she "*just wanted to make sure it just went to that attorney though and it didn't say Records Deposition who it was even being disclosed to. Basically the way the form is written it allowed them --"* Before she was cut off, PL-AT was trying to explain that the RDS form had no indication to whom the records were being released, and that the way

it was written, RDS could make further disclosures (Exhibit G, 5-2-13 Transcript).

DF-AE continues on pg. 3 of the 3-30-15 Answer, "*The Court reiterated its point that Plaintiff-Appellant would have to provide the authorizations or the case would be dismissed.*" DF-AE references pg. 7, line 3 of the transcript in which the Court states: "*This is what the law requires. I understand you don't want to do it, but in order to bring such a lawsuit, you have to do it*." DF-AE avoids mention of PL-AT's response to the Court. In its 3-10-15 Opinion, the COA actually went so far as to falsify the conversation following the aforementioned quotation from the Court. The COA falsely stated that PL-AT's response was, "*But I'm being asked to give records to a third-party, not just the attorneys. I'm being asked to give them to this deposition service, and I just wanted to clarify that it was just going to the one attorney*." This statement was not PL-AT's response to the quoted statement by the court. Knowing that there exists no law or court rule requiring PL-AT to provide private medical records to a third party, in its 3-10-15 Opinion, the COA deliberately left out PL-AT's real response, and the Court's response to it, as indicated by the transcript, which was:

> *MS. FILAS: I just don't see where the law requires to give it to a third party.*
> *THE COURT: okay, I don't care what you see. I don't care what you see. We've gone over this. It's not what you see.*

The 5-2-13 transcript clearly indicates on pg. 8 that PL-AT had no problem providing her records to the attorneys and insurance company, and that her only objection was to providing records to a third party records copy service ("RCS"). The Court erroneously claims on pg. 8 of the 5-2-13 transcript that her records were "*not going to go to any third party*," but the copying service itself *was* the third party PL-AT was objecting to (Exhibit G, 5-2-13 transcript).

On pg. 3 of the 3-30-15 Answer, DF-AE states, "*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," referencing pg. 7 ln 14-18 of the 5-2-13 transcript, which states, "*It goes through Record Copy Service. They don't care about your medical records, but that's the way it's done, okay. That's the way it's done. That way they know they get all your records and that you're not keeping any back."* The Court's comment about PL-AT keeping back records is unfounded. PL-AT wanted to be compensated for all of her injuries. To do that, it would have been illogical for her to hold back records. By using a RCS that only discloses records to attorneys and insurance companies, it is actually the PL-AT who cannot be certain whether all of her records were truly provided and considered in the case so that she can receive a fair settlement. PL-AT would have no way of determining which records the service actually obtained since RDS would not disclose them to her. As explained above, PL-AT never placed any limitations on the records to be disclosed.

Similarly to the 3-10-15 COA Opinion, EDI's 3-30-15 Answer gives the false impression that EDI simply hadn't admitted liability, when PL-AT made it clear that they had denied liability. On pg. 3 of EDI's Answer, DF-AE cites two quotations from PL-AT's 6-18-13 Answer to EDI's 4-30-13 Motion to Compel, the same two quotations appearing on pg. 2, ¶2 of the COA's 3-10-15 Opinion, indicating that PL-AT objected to providing records to a party that had not admitted responsibility and for whom it was not yet established through discovery that EDI was liable for harm caused by Kevin Culpert. However, EDI, just like the COA, leaves out the most important statement on pg. 2 of PL-AT's 6-18-13 Answer: "*According to Defendant, Efficient Design Inc.'s 2-6-13 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." Plaintiff still needs to obtain interrogatories from Kevin Culpert and Efficient Design, Inc. to determine the liability of Efficient Design, Inc.*"

(Exhibit F, Relevant page of Mr. Wright's Answer to Complaint against Efficient Design, dated 2-5-13, filed 2-6-13). There is a big difference between "not admitting" something, and "denying" something. The COA neglects to mention that EDI actually denied liability in this case by stating Culpert was not an agent of Efficient Design, as quoted above from EDI's 2-6-13 Answer to PL-AT's complaint. PL-AT would not even need to send interrogatories to EDI to determine if they were liable, if they hadn't denied liability in their answer, or to Kevin Culpert, to determine if he was in the scope of his employment when the accident occurred. On 6-21-13, when Culpert's attorney, Mr. Hassouna, was asked by the Court if Mr. Culpert was an employee of Efficient Design, he answered "yes". If Culpert was an employee, then he would have also been an agent of EDI (Exhibit E, 6-21-13 transcript pg. 5, lines 9-11.)

On pg. 4 of EDI's 3-30-15 Answer, it is stated, "*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*," and references specific dialogue by page and line number of the Hearing transcript of June 21, 2013, but does not directly cite the quotations. The first reference is to pg. 6 ln 20-23, in which the Court states, "*Right, and you know you have to do that [sign authorizations], Ms. Filas. So you know you're going to leave the Court no alternative but to dismiss this case [as well as the first-party MEEMIC case] too."* The second reference is to pg. 7 ln 13-17, in which the Court states, *"They don't -- that's not how it works [in reference to Court's previous statement on pg. 7 that "We don't wait for liability"]. You have a choice, you either do it or no case. Now, we've been through this before with your first party case. Nobody cares about your medical records."* Neither of these referenced statements support the DF-AE's claim that PL-AT made arguments about establishing liability before providing medical records in the MEEMIC case. There was no dispute that MEEMIC was PL-AT's insurer at the time of the accident and

that they would be the responsible party to pay PIP benefits. Therefore, EDI's argument has no merit, and is a poor attempt at covering up the fact that Issue I, in regard to liability, did not belong with the other issues deemed similar to the MEEMIC case that PL-AT was prevented from litigating due to the doctrine of collateral estoppel, as argued by the DF-AEs and opined by the COA in the 11-25-14 Order that dismissed the entire case. PL-AT's Argument III on pg. 26-31 of her 3-10-15 MSC Application is that Issue I should not have been included along with issues II, III, and VI with the 11-25-14 Order, as it clearly did not belong.

On pg. 4 of EDI's 3-30-15 Answer, it is stated, "*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).*" What DF-AE leaves out, is that following each statement of the Court on the cited pages that can be interpreted as an "order," is either a valid objection, or an agreement that PL-AT would provide authorizations. Below are the Court's statements referenced by DF-AE, with Plaintiff's responses to each statement. Page 14 has been omitted because there is nothing on page 14 that would constitute an "order"

Pg. 6-7 of 6-21-13 transcript:

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

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

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

Pg. 7 of 6-21-13 transcript:

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

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

THE COURT: Either do it or no case, okay.
MS. FILAS: Okay, it's just that Efficient Design hasn't said they were liable, so.
THE COURT: Do it or no case.
MS. FILAS: Okay.

Pg. 8 of 6-21-13 transcript:
THE COURT: Now are you going to sign the authorizations or not?
MS. FILAS: I will fill out authorizations for them.

Pg. 17 of 6-21-13 transcript:
THE COURT: Okay, you're going to sign all those authorizations, otherwise no case.
MS. FILAS: Can I fill out something that says that the Protection Order's been vacated or that it doesn't exist?
THE COURT: Fill out a blank order. It doesn't exists. It wasn't even in this case.

The statements quoted from the transcript above do not necessarily constitute "orders" and were more of a discussion between the Court and PL-AT. How many times PL-AT was considered to have been verbally ordered at the 6-21-13 hearing is irrelevant, since she can only ultimately be considered to have formally been ordered once---when the Motion to Compel was granted, and an Order was entered into the court records. Most importantly, PL-AT complied with the 6-21-13 Order to provide medical authorizations to Mr. Wright by 2 p.m. on 6-24-13 by hand-delivering copies of executed Form MC 315 to all of the PL-AT's health care providers to Mr. Wright's office at 11:24 a.m. on 6-24-13 (Exhibit A, 6-24-13 signed cover letter from Wright's office).

On pg. 4 of EDI's 3-30-15 Answer, it is stated, *"Prior to the [6-21-13] motion hearing, Plaintiff-Appellant provided some discovery responses, in which she identified approximately 27 treatment facilities."* PL-AT did not provide "some" discovery responses. She provided Mr. Wright with extensive, completed interrogatories consisting of 29 pages, that were signed and notarized, including a CD of photographs of the damaged vehicles, as requested in the 2-7-13 Request for Production of Documents.

On pg. 4 of EDI's 3-30-15 Answer, it is stated, *"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,"* referencing the Hearing transcript of June 21, 2013, at p.14, ln 9-12. What EDI fails to mention here[2] is that Mr. Wright did not even have <u>any</u> authorizations with him at the court for the 6-21-13 hearing, as pg. 17 of the 6-21-13 transcript verifies (Exhibit E, 6-21-13 Transcript):

> THE COURT: All right, okay. I think that takes care of everything. I'll see you Monday, hopefully not. How come you didn't just bring authorizations with you today knowing that --
> MR. WRIGHT: Your Honor, I didn't know who her treaters were until I got the interrogatories this morning.
> THE COURT: Okay.
> MR. WRIGHT: So that's why I didn't.

On 6-21-13, if Mr.Wright was expecting Plaintiff to sign his personal authorization forms instead of just providing copies of her medical records as requested in his 2-7-13 Request for Production, then he clearly would have asked for the names of her medical providers before the Motion to Compel hearing or would have at least brought blank copies to court with him.

On pg. 4 of EDI's 3-30-15 Answer, it is stated, *"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*." The DF-AE claims to disagree with this representation, but not for the same reasons as PL-AT. PL-AT also now

[2] DF-AE tells the story out of order in order to give the appearance that PL-AT did not want to sign authorizations on 6-21-13. DF-AE finally includes the fact that Mr. Wright didn't have the authorizations with him that day at the bottom of pg. 6, but still is untruthful, when it is stated that "*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*." **It is not true that Mr. Wright didn't have authorizations for "all" providers. He didn't have "any" authorizations with him, period.**

disagrees with this statement and has already corrected this statement on pg. 6, 10, and 11of her 3-10-15 MSC Application, when she realized that EDI never actually filed a Motion to Dismiss, as she previously thought when she wrote the 12-20-13 COA Brief. Therefore, this claim, which was Issue V presented in PL-AT's 12-20-13 COA Brief on Appeal, was not accurate. PL-AT still claims she was denied due process when her case was dismissed at the 6-24-13 special conference. PL-AT also claims that she was tricked by both the attorneys and the Court into believing she could reverse the dismissal by filing objections to the 7-day Order filed by Mr. Wright and provided a sham of a hearing on 8-9-13 in regard to said objections. Reference pg. 16-17 of PL-AT's 4-13-15 Reply to Culpert's Answer for details.

On pg. 5, in DF-AE's explanation of why PL-AT should have known about the 6-24-13 special conference, it is very unsettling that DF-AE provided only a partial quote by the Judge to change it's meaning to the opposite of what she intended. On pg. 5, ¶1, last line, DF-AE shortened Judge Borman's quote from pg. 17 of the 6-21-13 transcript from: "*I'll see you Monday, hopefully not.*" to "*I'll see you Monday.*", deliberately deceiving this court by placing a period where the sentence did not actually end, thereby altering the meaning so it would seem that PL-AT was to appear on Monday, 6-24-13, instead of the understanding at the 6-21-13 hearing that the PL-AT had to deliver the signed authorizations to Mr. Wright before 2:00 p.m. on 6-24-13, thus, there would be no reason for anyone to appear before Judge Borman at 2:00 on 6-24-13 if the authorizations were already delivered. The authorizations *were* timely delivered (Exhibit A, 6-24-13 signed cover letter from Wright's office).

On pg. 5 of EDI's 3-30-15 Answer, it is stated, *"In a related motion, heard the same day [as DF-AEs' Motions to Compel, 6-21-13], Plaintiff-Appellant agreed to accept return of prior discovery from a prior lawsuit via e-mail."* First, PL-AT is not sure why this statement even

appears in EDI's Brief as it has no relevance to the issues of this appeal. The motion DF-AE is referring to is PL-AT's 6-14-13 "Motion to Compel Defendant to Return Inadvertently Produced Discovery Materials" which relates to Culpert's attorney, Mr. Hassouna, who received unsigned interrogatories from PL-AT's prior attorney that he never should have received. He refused to return them after receiving PL-AT's written requests for them, and she was forced to file the Motion to Compel. This motion did not relate to EDI in any way. The only way it can be considered "related" to the DF-AEs' Motions to Compel, as EDI claims, is that it was also a motion to compel, like theirs were. In PL-AT's 6-14-13 Motion to Compel, PL-AT requested on pgs. 6-7 that the Court would "*enter an Order to Compel Mr. Hassouna to 1) disclose to whom the unsigned interrogatories were distributed; 2) make arrangements to retrieve the 2012 unsigned interrogatories from any persons or entities named in #1, and to return all copies of said interrogatories given to other parties, to Plaintiff upon their receipt by Mr. Hassouna; and 3) return Mr. Hassouna's personal copy(ies) of said interrogatories to Plaintiff within 7 days of this hearing."* Even though PL-AT's motion was supposedly "granted" by the Court, as evidenced by the Register of Actions (Exhibit K, Register of Actions dated 6-24-13, Register of Actions dated 3-10-15). Mr. Hassouna only complied with #3 above. It is also important to understand that pg. 16-17 of the 6-21-13 transcript erroneously refer to Mr. Wright having made the statements below, when it was actually Mr. Hassouna:

> THE COURT: These [the interrogatories] are useless. You didn't sign them and they're drafts, so they don't even have anything.
> MS. FILAS: They're still out there and I think they should be returned to me because I've never seen them.
> THE COURT: Can you return them to her? Just give them back. Do you have them?
> MR. WRIGHT [**MR HASSOUNA**]: In electronic format, yeah, I'll send them back.
> THE COURT: Just send them back to her.
> MR. WRIGHT [**MR HASSOUNA**]: Via e-mail?

THE COURT: Do you have e-mail?
MS. FILAS: Yes, that's fine. He has my e-mail.
THE COURT: Okay, send them back by e-mail. They don't have any validity, Ms. Filas.
MS. FILAS: I understand. I just want to know what they said.
THE COURT: This is useless.
MS. FILAS: I've never seen them. My attorney gave them out without my permission.

On pg. 5 of EDI's 3-30-15 Answer, it is stated, *"Despite Plaintiff-Appellant submitting some authorizations, it is undisputed that Plaintiff-Appellant did not provide all authorizations that had been requested*." Of course it is undisputed that PL-AT did not provide all authorizations that had been requested---this was PL-AT's Argument IV, presented in her 12-20-13 Brief on Appeal to the COA: Following the granting of its motion to compel on 6-21-13, DF-AE requested signed authorizations for completely different records besides medical records, which would have required a new motion to compel. PL-AT complied with the 6-21-13 Order by supplying executed copies of MC 315 to all of her health care providers. Refer to Argument IA1 of PL-AT's 3-10-15 MSC Application, pgs. 6-11.

On pg. 5 of EDI's 3-30-15 Answer, in reference to the 6-24-13 Order of Dismissal, that the court *"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."* A 7-day Order was filed by Efficient Design's attorney, Mr. Wright, that did not include the notice required under MCR 2.602(B)(3). Both the Court and DF-AE tricked PL-AT into believing that by filing objections to the 7-day Order, she could reverse case dismissal, when in reality, she could only correct any inaccuracies to the Order involving the 6-24-13 dismissal in accordance with MCR 2.602(B)(3). The final dismissal of the PL-AT's case in the trial court was 6-24-14, when the case was dismissed *sua sponte*, not 8-9-13, when her Objections to the 7-day Order were heard, and when

DF-AEs and the COA have misled the Court to believe. It should also be noted that by dismissing the case *sua sponte* on 6-24-13, the Court went against its own word because previously, on 5-2-13, the Court told EDI that a motion would be required to dismiss PL-AT's case. On pg. 8 of the 5-2-13 transcript (Exhibit H), the following dialogue appears:

> MR. O'MALLEY: With respect to the 30 days, can we have a self-executing order that if we don't receive the answers to the interrogatories sworn under oath and the executed authorizations --
> THE COURT: No.
> MR. O'MALLEY: -- that the case is dismissed without prejudice?
> THE COURT: No. You'll bring a motion. No. N-O. So I'm going to instruct my judicial attorney to make out a scheduling order now. You don't even have to come back. But you'll sit down and she's going to give it to you. And instead of the usual 120 days that we give, we'll be giving 150 days, okay.

On pg. 6 of EDI's 3-30-15 Answer, it is stated, *"It is indisputable that no specific time was directed by the Court or discussed on the record."* The only thing that is truly indisputable is that no specific time is shown to have been discussed on the record according to the 6-21-13 transcript. However, PL-AT does remember a conversation in which it was understood that DF-AE would provide the authorizations by the end of the business day. Whether or not this occurred on the record, PL-AT cannot be certain. However, it would be unreasonable to expect that PL-AT would have to wait until the weekend to receive the authorizations (as 6-21-13 was a Friday) that were supposed to be completed and provided to Mr. Wright prior to 2 p.m. on 6-24-13. DF-AE continues, "*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."* As stated, it was understood DF-AE would provide the authorizations by the end of the business day. DF-AE continues, "*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*," and references ¶¶ 11-12 of PL-AT

7-2-13 Objections to the 7-day Order, which are stated in their entirety below:

> *11. Given Mr. Wright's uncooperative attitude he has displayed in dealing with her to date, and his failure to provide the medical authorization forms to Plaintiff by the close of business on June 21,2013, as ordered by the court. Plaintiff decided it would be foolish to count on Mr. Wright to provide the forms necessary for her to meet the deadline of getting them filled out, signed and returned to Mr. Wright before 2:00 PM June 24,2013 as ordered by the Court.*
>
> *12. Thereby, Plaintiff decided to fill out and provide the same SCAO medical authorization forms she provided to Mr. Hassouna, for Mr. Wright. Since these forms were acceptable to Mr. Hassouna, Plaintiff reasoned they would also be acceptable to Mr. Wright.*

PL-AT's 7-2-13 Objections continue on pg. 4-7 with an explanation of how difficult and tedious a process it was to complete the authorizations, and how she made the decision to hand-deliver them, rather than mail them, in case the post office didn't deliver them by the 2 p.m. deadline (Exhibit K, PL-AT's 7-2-13 Objections). Most importantly, these were not PL-AT's "own" authorizations, as DF-AE claims. They were SCAO-mandated Form MC 315, the only form to be used to provide medical records under MCR 2.314(C)(1)(d), the court rule under which PL-AT was compelled to provide her medical records.

DF-AE continues, "*Throughout her [7-2-13] Objection filing, Plaintiff-Appellant conceded knowledge of the 2:00 pm, June 24, deadline*." Of course she did---it was the reason she chose to use MC 315 and not count on Mr. Wright to provide the forms, worried that she was being "set up" to fail to meet the Court's deadline. It was the reason she hand-delivered the copies of MC 315 that she had sent to her providers to Mr. Wright's office at 11:24 a.m. on 6-24-13---to make sure she did meet the 2 p.m. deadline to provide the completed medical authorizations. FedEx did not deliver Mr. Wright's forms to PL-AT until after 3:00 pm 6-24-13, after the 2 p.m. deadline (Exhibit R). Nonetheless, her so-called 7-2-13 "Objection filing" would have had no bearing on the dismissal that took place 6-24-13 and could not have been reversed by hearing PL-AT's objections to the 7-day order on 8-9-13.

DF-AE states on pg. 6, that in PL-AT's 8-7-13 Reply to Plaintiff's Objections to the 7-day order, "*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'*" referencing PL-AT's statement on pg. 8, ¶17. Below is PL-AT's statement from ¶17 in its entirety:

> *The fact that Mr. Wright did not inform Plaintiff that he was dissatisfied with the forms, and he appeared before the Court on June 24,2013 to have the case dismissed without Plaintiffs knowledge, denied Plaintiff due process of law. She was led to believe she had met her obligation to provide the signed authorizations to Mr. Wright in a timely manner by his inaction to inform her of his dissatisfaction with the forms she executed. Mr. Wright did not meet his obligation of getting the e-mailed forms to her before the close of the business day on Friday, June 21,2013 as promised. Plaintiff tried to include every record that the Defendant was entitled to under the no-fault law. She even allowed the Defendant to have her records back to birth, even though they had only been requested from 2002 to present in some cases. Plaintiff was very concerned about complying with the Judge's order and not having her case dismissed by not getting the forms to Mr. Wright on time.*

Again, PL-AT did not use her "own" authorizations---she used SCAO-mandated Form MC 315. In her objections, she had to make the distinction that she provided said forms because Mr. Wright had lied to the court on 6-24-13, when it is shown on pg. 3 of the transcript that he stated that the authorization forms PL-AT provided were "altered." (Exhibit M, 6-24-13 Transcript). PL-AT could not have "altered" forms she hadn't received, as she has explained in many previous filings. DF-AE claims, "*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.*" This is completely untrue, as establishment of liability became a moot point since she already *did* provide medical authorizations on 6-24-13, regardless of whether EDI was actually liable. The word "liability" only appears two times in PL-AT's 8-7-13 Reply to Plaintiff's Objections, on pg. 2-3, ¶4, as quoted below:

> *Plaintiff 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 (Exhibit H, 2-*

> *5-13 Answer to Plaintiffs Complaint, item #16). Plaintiff still contends she should not have to release personal 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 records to Mr. Wright, as explained below.*

The word "liable" only appears one time in PL-AT's 8-7-13 Reply to Plaintiff's Objections, on pg. 10, ¶23, as quoted below:

> *Plaintiff 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.*

These occurrences of "liability" and "liable" were simply claims that PL-AT disagreed with providing DF-ΛE with the additional records requested when they were not part of the Motion to Compel granted on 6-21-13. These claims did not change the fact that she already did provide EDI with medical authorizations even though liability was not established. It is disingenuous for EDI to mislead the court into believing PL-AT was still arguing liability in her Objections that were heard on 8-9-13, when PL-AT's primary argument was that her already executed copies of MC 315, for which both defense attorneys had already received records from, and were still receiving records from health care providers due to the processing of these forms since their mailing between 6-19-13 and 6-26-13, should have been accepted by the Court (Exhibit V, 8-9-13 Transcript). PL-AT had only objected to providing <u>newly</u> requested, different records beyond the medical records from PL-AT's health care providers (i.e. tax and education records), for which authorizations were sent by Mr. Wright following the granting of his Motion to Compel,(Put in what motion to compel you are referring too?) until liability had been established. DF-AE twists around the story, giving the appearance that these "new" records were medical records from PL-AT's health care providers, when it states on pg. 7, ¶1, "*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." PL-AT could not have possibly objected to production of records from "new" medical providers because she had already provided authorizations for all her health care providers---there were no more to provide. PL-AT only objected to providing the newly requested academic records, employment records, tax returns, Blue Cross Blue Shield and MEEMIC insurance records, psychotherapy notes, and records from Don Massey Cadillac (Exhibit E, first three pages of Efficient Design's Request for Production dated 6-21-13 showing additional records requested beyond medical records from health care providers).

DF-AE seems to think it makes a difference that "*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*." Of course she didn't deny the authorizations were sent---PL-AT was disputing these very additional authorization forms that were sent that requested records beyond medical records from her health care providers. It didn't matter what time or day she received the additional authorizations---she still would have objected since they were not part of the motion to compel that was granted on 6-21-13. This is the content of Issue IV as presented in PL-AT's 12-20-13 Brief on Appeal to the COA. It is not clear why DF-AE is arguing these matters here, except to confuse the MSC. PL-AT claimed in her 3-10-15 MSC Application, Argument IA1, that she did not receive legitimate oral arguments in regard to Issue IV, since the case was already dismissed by the COA's 11-25-14 Order when the 3-3-15 oral arguments hearing took place.

DF-AE also claims PL-AT had "*more opportunities to provide the requested authorizations*," referring to the "opportunity" provided at the 8-9-13 hearing on PL-AT's

Objections to the 7-day Order of Dismissal. Objections to a 7-day order can only clarify or correct inaccuracies in what was already ordered by the court, in this case, a *sua sponte* dismissal on 6-24-13. Therefore, this "opportunity" was not a valid one, since only a Motion for Reconsideration could have reversed the dismissal of PL-AT's case, not PL-AT agreeing to signing the additional authorization forms, or re-doing the entire process of disclosing medical records from her health care providers using Mr. Wright's personal authorization forms. On pg. 8 of the 3-30-15 Answer, in reference to the 8-9-13 hearing on PL-AT's Objections to the 7-day order, EDI claims, "*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*." The circuit court could not have legally "rescinded" or "reversed" the dismissal of PL-AT's case by simply hearing objections to a 7-day Order.

On pages 8-9 of the 3-30-15 Answer, DF-AE claims, "*the Circuit Court dismissed Plaintiff-Appellant's lawsuit in Filas v. MEEMIC on substantially similar grounds"* and that *"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."* The only similarities between the instant case and MEEMIC case are that in the MEEMIC case, PL-AT was refused the right to provide her medical records to MEEMIC using Form MC 315, and in the instant case, the court refused to accept already executed copies of form MC 315. Contrary to DF-AE's claims, the COA upheld the dismissal of PL-AT's case based on the novel argument, constructed by the COA, that a protective order issued in the MEEMIC case required PL-AT to sign only Records Deposition Services Inc. authorization forms. PL-AT never refused to sign medical authorizations in the MEEMIC case. She only refused to sign unmodified third-party records copying service authorization forms. DF-AE has

therefore failed to point out any similarities between the two cases.

On pages 8-9 of the 3-30-15 Answer, DF-AE states, "*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.*" This is a disturbing attempt to mislead court into believing that both Motions to Affirm, the one filed on 12-30-13, and the one filed 10-17-14, filed by Culpert's attorney, Mr. Broaddus, were one and the same, when they couldn't have been more different, which will be explained below. There are also other errors in his statement, which PL-AT will address first. Culpert's first motion to affirm, was filed on 12-**30-13**, not 12-**13-14**, as DF-AE stated. Culpert's second motion to affirm, was filed on 10-**17**-14, not 10-**14**-14, as DF-AE stated. Culpert's 12-30-13 Motion to Affirm did not state that PL-AT failed to cite any <u>law</u> in support of her appeal--- it argued that PL-AT failed to cite any <u>precedents</u>. PL-AT argued on pg. 25-26 of her 1-21-14 Answer to Culpert's 12-30-13 Motion, "*No precedent would be required for a case in which clear and unambiguous court rule, MCR 2.314(C)(1), has been violated by the Circuit Court's ruling to dismiss Plaintiff-Appellant's case based on the court's refusal to allow Plaintiff-Appellant to provide her medical records to the Defendant-Appellees in the method(s) provided for under MCR 2.314(C)(1)(a) and/or MCR 2.314(C)(1)(d)*" and "*it would not even be logical that all cases before the Court of Appeals would be required to state a*

precedent, because no new issues could ever be brought up and settled and there would be no point in even having a Court of Appeals." Even if it were true that Culpert's Motion claimed PL-AT did not cite any laws, similarly to precedents, it would be unnecessary to cite any laws since PL-AT's appeal was only in regard to her attempts to require the DF-AE and the Court to follow court rule MCR 2.314(C)(1)(d). In addition to the argument that PL-AT did not cite any precedents, Culpert's 12-30-13 Motion was also primarily in regard to PL-AT's preservation of the issue of her use of MC 315. The COA did not agree with DF-AE's arguments and denied Culpert's 12-30-13 Motion to Affirm. DF-AE now makes the preposterous claim that this denied motion to affirm was somehow renewed on 10-17-14. The 10-17-14 Motion to Affirm argued that PL-AT was collaterally estopped from litigating claims against Culpert and EDI that were the same as those that were litigated in the MEEMIC case. The 10-17-14 Motion does not mention issue preservation. The 12-30-13 Motion does not even mention the MEEMIC case, or the issue similarity at all, nor does it mention the doctrine of collateral estoppel, which is the only basis of the 10-17-14 Motion to Affirm. The 10-17-14 Motion to Affirm therefore cannot possibly be considered a renewal of the 12-30-13 Motion to Affirm (Exhibit O, 12-30-13 Motion to Affirm; Exhibit P, 10-17-14 Motion to Affirm).

It should also be mentioned that Culpert's 3-23-15 Answer to PL-AT's MSC Application used arguments from the old 12-30-13 Motion to Affirm, regarding issue preservation and PL-AT's failure to cite precedents, and portrayed them to the court as if they were new arguments to mislead the MSC to believe they should be ruling on them, when they were already ruled on by the COA when they denied the 12-30-13 Motion to Affirm on 2-11-14. For both Defendants to mislead the Court in regard to this matter, to persuade the MSC to rule upon issues that were already determined and are not part of this appeal, is highly unethical.

DF-AE's portrayal of the COA's ruling on 11-25-14 to grant Culpert's second 10-17-14 Motion to Affirm is misleading. DF-AE states on pg. 9-10 of the 3-30-15 Answer, "*In short, the Court of Appeals, by dismissing those Issues [I-III, and VI, from PL-AT's 12-20-13 COA Appeal], 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.*" First, let it be clear, the issues presented in the quotation are not the issues from PL-AT's 12-20-13 Appeal, presented as Items I-III, and VI, and therefore were not the issues determined by the COA's 11-25-14 Order. Issues II, III, and VI were in regard to her use of Form MC 315, and Issue I was in regard to establishment of liability before producing medical records, which clearly should not have been included in the 11-25-14 since there was no liability dispute in the MEEMIC case. Most importantly, even if DF-AE's presented issues were the real ones, the issues that PL-AT presented to the COA in the MEEMIC appeal were not even addressed, and were therefore not actually litigated, since the COA created a novel argument that it was a Protective Order in place in the MEEMIC case that was responsible for PL-AT not being able to use MC 315, and being required instead to use Records Deposition Services Inc. forms. There was no protective order entered in the instant case, which is Argument is IIC from PL-AT's 3-10-15 Application, pg. 23-24, and was not addressed by DF-AE.

DF-AE's portrayal of PL-AT's Issue V is also incorrect, when it is stated on pg. 10 ¶2, *"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."

There are two things that are very wrong with this statement. PL-AT will begin by quoting Question V exactly as presented in her 12-20-13 COA Brief:

> Question V 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?***

As can be observed in the quoted question, PL-AT makes no mention of a Motion to Compel, written or oral. This statement by EDI is made only to support DF-AE Culpert's lie, presented in the 3-23-15 Answer to PL-AT's MSC Application, in which it was claimed that Culpert's attorney didn't file a written motion to compel, and only made an oral motion to compel at the 6-21-13 hearing. Culpert filed a written Motion to Compel on 4-19-13. A detailed explanation is provided on pg. 18 of PL-AT's 4-13-15 Reply to Culpert's Answer. The DF-AEs' Motions to Compel were not responsible for dismissing PL-AT's case. As explained, when PL-AT wrote the 12-20-13 Appeal, she had not realized her case was dismissed *sua sponte* on 6-24-13, and incorrectly stated that EDI motioned for the dismissal. There was no motion for dismissal filed by either DF-AE.

On pg. 10 ¶3 of EDI's 3-30-15 Answer, it is stated, "*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."* This statement should have cited a "Motion to Affirm" not a "Motion to Dismiss" as it was Culpert's 10-17-14 Motion to Affirm that was granted on 11-25-14, leaving Issues IV and V behind for future oral arguments.

On pg. 10 ¶3 of EDI's 3-30-15 Answer, it is stated, "*Plaintiff-Appellant was given the*

opportunity to present her argument on these two Issues [IV and V from PL-AT's 12-20-13 COA Brief on Appeal], but Plaintiff-Appellant chose to chastise the Panel instead of presenting her arguments." PL-AT prays the MSC will listen to the 3-3-15 Oral Arguments session, that is only about 5 minutes long. There is nothing that can be interpreted as the PL-AT having chastised the panel, as DF-AE claims. There was only one part in the dialogue in which PL-AT had to correct the judge's statement in which Judge Gleicher claimed that the 11-25-14 panel was a completely different panel, when in reality, it was not, since Judge Fort Hood was on the 11-25-14 panel as well as the 3-3-15 panel. This is explained with quotations made from the audio file in PL-AT's 4-13-15 Reply to Culpert's Answer on pg. 22. PL-AT was nothing but respectful and polite while before the 3-3-15 COA panel, even while correcting Judge Gleicher's statement.

On pg. 10 ¶3 of EDI's 3-30-15 Answer, it is stated in regard to the 3-3-15 COA hearing held on oral 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.'*" First, PL-AT never "exclaimed" anything at the hearing on 3-3-15---she kept a calm demeanor throughout the hearing, as can be evidenced from the audio recording. Second, she did not even make the quoted statement at the hearing. PL-AT said the following: "*What I'm basically saying is, <u>that</u> panel dismissed the case. Item III was---involved dismissal of the entire case. So I---I guess I don't really understand the purpose of this hearing since the matter was already decided by the COA's November 24th [meant to say 25th] Order which upheld the dismissal of the entire case, so arguing issues IV and V at this time wouldn't have any impact or purpose whatsoever because even an outcome in my favor is not going to change the November 24th [meant to say 25th] order that already dismissed the entire case under item III.*" Neither the COA nor the DF-AEs countered PL-AT's claims that her case was already dismissed by the 11-

25-14 Order and that the COA could not reverse the dismissal ordered by the 11-25-14 panel based on any arguments presented at the 3-3-15 hearing. It is not true that "*Defendant-Appellees simply relied on their Briefs on Appeal,*" as EDI states on pg. 10. When the DF-AEs were provided an opportunity to speak at the 3-3-15 hearing, Mr. Broaddus for Culpert rested on his briefs after affirming the COA had no questions for him. Judge Gleicher then directed her attention to Mr. O'Malley, and asked the leading tag question, "*You don't have anything to say, do you?*" which speaks for itself that she alerted Mr. O'Malley not to say anything. Mr. O'Malley then stated his name, confirmed that the COA did not have any questions for him, and said, "*thank-you*." Mr. O'Malley did <u>not</u> comment that he would be resting on his briefs, as he claims he did in this Answer.

On pg. 10 ¶3 of EDI's 3-30-15 Answer, it is stated, "*On March 10, 2015, the Court of Appeals issued its Opinion regarding Issues IV and V."* It should be clear that the Opinion does not only reference issues IV and V. Technically, the 3-10-15 Opinion shouldn't have referenced anything but issues I-III and VI, the issues included in the 11-25-14 Order that upheld dismissal of the case, but they are barely mentioned. Although the mention of the words "collateral estoppel" is completely avoided in the Opinion, even though it was the reason PL-AT was not permitted to litigate issues I-III, and VI, the Opinion does state on pg. 3 ¶3 *"Culpert filed a motion to affirm pursuant to MCR 7.211(C)(3), arguing that many of the issues raised by plaintiff in this appeal were raised and rejected by this Court in plaintiff's appeal related to the dismissal of her first-party insurance case. This Court granted the motion in part, holding that this appeal could proceed only with respect to Issue IV, regarding the motion to compel, and Issue V, regarding the dismissal of the case against both defendants*." The Opinion also heavily focuses on a discussion of establishment of liability, which was Issue I of PL-AT's COA Appeal,

and was disposed of with the 11-25-14 Order to grant Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel.

By EDI making the statement, "*Plaintiff-Appellant filed her Application for Leave to Appeal to this Court on March 10, 2015*" directly following statements in regard to the issuance of the 3-10-15 Opinion, it gives the appearance that PL-AT is trying to appeal the 3-10-15 Opinion in this application, which is NOT the situation. In this application, PL-AT is only appealing the 11-25-14 Order that is the only valid order upholding dismissal of her case. PL-AT has a separate 4-21-15 Application to the MSC to appeal the 3-10-15 Opinion, since the 3-10-15 opinion does not have any legal validity.

REPLY TO STANDARDS OF REVIEW

Contrary to DF-AE's claims, it should be evident to the court that PL-AT *did* provide applicable standards of review when she explained in the Jurisdictional Statement of her 3-10-15 MSC Application that MCR 7.302(B)(3) and (B)(5) were applicable. PL-AT explained that (B)(5) applied 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 was clearly erroneous and will cause PL-AT material injustice if it is not reversed. She explained that due process is a right that is important to every citizen and important to maintaining the integrity of the legal system. PL-AT explained (B)(5) applied since 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 DF-AEs have gone through great lengths to construct a tangled web of lies, inclusion of irrelevant facts, and avoidance of the mention of SCAO-mandated medical authorization Form MC 315, MCR 2.314(C)(1), and collateral estoppel, the main issues of this case, to confuse the court and to conceal the rights of Plaintiffs to provide their medical records under court rule MCR 2.314(C)(1).

On pg. 11 ¶3 of EDI's 3-30-15 Answer, it is stated, "*Moreover, the [3-10-15] 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*." As PL-AT has explained throughout this case in most likely, every single filing with the COA and MSC, the DF-AEs continue to misrepresent the basis of the case, and the reasons it was dismissed. It is DF-AEs and the circuit court that violated discovery rules, not PL-AT, when they refused to accept PL-AT's use of SCAO-mandated Form MC 315 in accordance with MCR 2.314(C)(1)(d), even though the attorney had already received records and was still receiving records from these executed and mailed copies of MC 315 that went out to all of PL-AT's health care providers (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

On pgs. 11-12 of EDI's 3-30-15 Answer, it is stated, "*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…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." First, PL-AT did explain in her 12-20-13 COA Appeal that it was an abuse of discretion to dismiss her case when she clearly met her discovery obligations by providing her medical records using MC 315 under MCR 2.314(C)(1)(d) and therefore should not have received the discovery sanction of case dismissal. Secondly, the question before this Court in this appeal is not whether the COA erred in concluding the Circuit court did not abuse its discretion, because the COA never actually determined this, since the 11-25-14 Order relied on the Opinion in the MEEMIC case, which also never examined the true issues of the case, and ruled the sanction of dismissal was appropriate due to a protective order in the MEEMIC case. There was no PO in this case. The real question before this Court in this application, which is only in regard to the 11-25-14 Order, not the 3-10-15 Opinion, which is being separately appealed, is to determine whether the COA erred in ordering the upholding of the dismissal based on the doctrine of collateral estoppel when the issues in the instant case were not the same, and had not been litigated in the MEEMIC case, and failing to hold any valid oral arguments at all, which rendered two of PL-AT's arguments that could have reversed the dismissal, moot, leaving PL-AT with the only remedy of having the MSC remand the case to the COA for oral arguments on all six issues, so that a legally valid opinion can be issued.

REPLY TO LAW AND ARGUMENT

Contrary to DF-AE's assertions, PL-AT has presented valid questions that should be reviewed by this court, that involve legal principles of major significance, and it is clear that the COA's decision to uphold case dismissal based on the doctrine of collateral estoppel, is erroneous and causes a material injustice, for the reasons presented in her 3-10-15 Application.

On pg. 13 ¶2 of EDI's 3-30-15 Answer, it is stated, "*The [3-10-15] 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." This statement is untrue. PL-AT has only tried to enforce the court rules, which are supposed to dictate the course of litigation, specifically MCR 2.314(C)(1)(d), which requires that the form to be used to disclose medical records to another party in the case is MC 315, which PL-AT used to disclose her records to Culpert's attorney, with no complaints from him, and again, to EDI's attorney, who refused to accept them and was responsible for the dismissal of PL-AT's case by persuading the Court to dismiss PL-AT's case *sua sponte* without a motion from him, by appearing at the court on 6-24-13 for what the Register of Actions refers to as a special conference, and falsely claiming he did not receive all of the authorizations from PL-AT and that they were altered. It is DF-AEs, not PL-AT, who have not only ignored, but *refused* to follow the established discovery procedures as outlined by court rule. It is the DF-AE who defied the Court's 6-21-13 Order when Mr. Wright did not provide copies of his personal authorizations by the end of the business day. PL-AT complied with her discovery obligations by providing her medical records to both DF-AEs.

On pg. 13 ¶2 of EDI's 3-30-15 Answer, it is stated, "*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 argument has appeared in so many of the DF-AEs filings, it has become ridiculous. These are obvious attempts to conceal the fact that PL-AT's legal support couldn't be any clearer that MCR 2.314(C)(1)(d) gave her the right to use SCAO-mandated form MC 315 to provide her records to the DF-AEs, and that she therefore fully complied with discovery when she executed and mailed copies of

MC 315 to all of her healthcare providers and disclosed her medical records in their entirety to DF-AEs, and should therefore not have suffered case dismissal due to her refusal to repeat the process of medical records disclosure using Mr. Wright's personal authorization forms containing clauses above and beyond what is requested in MC 315. PL-AT has never left anything to the court to determine. Her arguments have always been in regard to the clear and unambiguous court rule, MCR 2.314(C)(1)(d). Still, it should be understood that although PL-AT has had to discuss the issues pertaining to the circuit court's actions involved in her 12-20-13 COA appeal, due to the fact that DF-AE has brought them up in EDI's 3-30-15 Answer, these issues are not what is being appealed in the 3-10-15 Application to the MSC. As explained, the real question before this Court in this application, is to determine whether the COA erred in ordering the upholding of the dismissal based on the doctrine of collateral estoppel when the issues in the instant case were not the same and had not been litigated in the MEEMIC case, and failing to hold any valid oral arguments at all, which rendered two of PL-AT's arguments that could have reversed the dismissal, moot, leaving PL-AT with the only remedy of having the MSC remand the case to the COA for oral arguments on all six issues, so that a legally valid opinion can be issued.

I. DF-AE's Argument I, presented on pg. 13-15 of the 3-30-15 Answer is completely irrelevant to PL-AT's 3-10-15 Application as PL-AT has not asked the MSC to review the Circuit Court's decisions to dismiss PL-AT's case, but instead to review the COA's decision to uphold case dismissal due to its erroneous application of the doctrine of collateral estoppel when it granted Culpert's 10-17-14 Motion to Affirm in its 11-25-14 Order without notifying the parties the case would be decided without oral arguments.

On pg. 13 ¶3 of EDI's 3-30-15 Answer, it is stated, "*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." PL-AT's primary argument in "the case" is that the trial court refused to accept MC 315 as provided for under MCR 2.314(C)(1)(d). PL-AT's arguments in the 3-10-15 "Application" are different than the arguments comprising the substance of the case. PL-AT argued the following three issues in her 3-10-15 Application (presented as I, II, and III in the Application, but as A, B, and C here so as not to be confused with DF-AE's numbered arguments):

A) 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.

B) 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.

C) 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 above three issues are the only issues PL-AT has requested the MSC consider in her 3-10-15 Application, which is only to appeal the 11-25-14 Order that upheld dismissal of her

case based on the doctrine of collateral estoppel so that she may receive valid oral arguments and a valid Opinion based on all six of her arguments presented in her 12-20-13 COA Brief on Appeal. DF-AE's argument I misleads the court to believe it is ruling in regard to a "battle of the forms" when this issue is not even before the MSC in this appeal. However, since DF-AE has made erroneous statements in this section on pgs. 13-15, they will be addressed below.

It should be noted that the quotation above from pg. 13 ¶3 of EDI's 3-30-15 Answer, DF-AE purposely conceals mention of MC 315 by name, just as the 3-10-15 COA Opinion did, and refers to MC 315, the form PL-AT used to disclose her medical records to the DF-AEs as "*a SCAO form*." There is only one SCAO form to release medical information---it is MC 315.

On pg. 13-14 of EDI's 3-30-15 Answer, it is stated, "*This is, instead, a case of Plaintiff-Appellant blatantly disregarding the authority of the Circuit Court regarding its decisions on discovery issues.*" The circuit court did not have the authority to mandate any particular authorization form to be used and should have accepted MC 315, the one mandated by court rule MCR 2.314(C)(1)(d). (Exhibit C, 6-23-11 memorandum from Chad C. Schmucker, State Court Administrator).

On pg. 14 ¶1 of EDI's 3-30-15 Answer, it is stated, "*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'.*" PL-AT could not have been considered to have obstructed discovery when she provided the requested records to both DF-AEs (Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI). It is not clear what DF-AE means by "open access," to her records. PL-AT only refused sign authorizations for a third-party records copying service for storage within a

database that other insurance companies and attorneys can pay for and obtain the records, and Mr. Wright's forms, which had language that could be interpreted as allowing re-disclosure of PL-AT's records. PL-AT is entitled to privacy in the sense that she should be able to disclose her records only to liable parties in the case with the understanding they would not be able to legally re-disclose her records after having received them, and not have to put her records in a database which would allow "open access" to anyone who paid to view them.

On pg. 14 ¶1 of EDI's 3-30-15 Answer, it is stated, "*As the record reveals, Plaintiff-Appellant continually disregarded the Circuit Court's directive based upon her misguided attempts to control the course of discovery*." This is not what the record reveals. Viewing the records in the first- and/or third-party case will reveal that PL-AT's only attempts to "control the course of discovery" involved her requests to use the health care providers' authorization forms, a modified Records Deposition Services form, and/or MC 315, as permitted under MCR 2.314(C)(1)(a) and (d). It is the DF-AEs and the Court who disregarded the Court Rules.

Pg. 14 ¶1-2 of EDI's 3-30-15 Answer contain other falsehoods and misrepresentations that were already addressed elsewhere in this filing. However, PL-AT will address DF-AE's conclusory statement on pg. 14-15, which states, "*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*." PL-AT's 3-10-15 Application does nothing of the sort, as it is not even in regard to the decisions made by the Circuit Court---it is in regard only to the 11-25-14 Court of Appeals' Order that prevented her from litigating her claims in regard to the use of MC 315 based on the erroneous application of the doctrine of collateral estoppel. DF-AE focuses on the circuit court proceedings to detract from the real issues that occurred at the Court of Appeals

level that are the basis of this appeal. Again, this Application does not involve the MSC making any determination about the proceedings at the Circuit Court level. It only pertains to the 11-25-14 Order of the COA to grant Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel, and whether or not the doctrine was applicable to issues I-III and VI of PL-AT's Appeal, and whether or not the 11-25-14 Order that upheld dismissal of PL-AT's entire case was in violation of IOP 7.214(E) that requires notice to parties if a case is to be determined without oral arguments, and whether it could have even legitimately been determined without oral arguments in accordance with MCR 7.214(E).

A. DF-AE again attempts to confuse the MSC by giving the appearance the MSC is to be deciding the question of whether liability must be established prior to disclosing records to the opposing party, Issue I of PL-AT's 12-20-13 COA Appeal; and whether PL-AT should have to agree to language above and beyond the requirements of MC 315, Issue VI of PL-AT's COA Appeal; and thus, a determination of whether the circuit court erred. In this Application, in regard to Issues I and VI, the MSC is only being asked the question of whether or not the Court of Appeals erred by including Issue I as one of the four issues that PL-AT was collaterally estopped from litigating due to the COA's decision in the MEEMIC case, even though there was no dispute in regard to liability in the MEEMIC case, and PL-AT therefore argues the doctrine of collateral estoppel thereby could not apply; and whether Issue VI was the same as any of the issues presented in the MEEMIC case, for which PL-AT argues it is not.

DF-AE's Argument IA is completely irrelevant to the PL-AT's 3-10-15 Application. DF-AE is making a presentation as if the question before the MSC is whether or not liability should have first been established prior to PL-AT having to provide records to EDI. That is not the question at all. DF-AE avoids the fact that Issue I of PL-AT's 12-20-13 COA Appeal, was not disposed of because the COA agreed with the circuit court or the DF-AEs that even though EDI denied that Culpert was their employee, and they therefore would not have been liable, they were still entitled to PL-AT's medical records. The COA avoided ruling on the liability issue by lumping it with the other supposedly similar issues in PL-AT's *MEEMIC* case (COA Case No

316822, MSC No. 150510) and ruling that it was the doctrine of collateral estoppel that prevented her from litigating the liability issue presented in Issue I. This is Argument III on pgs. 26-31 of PL-AT's 3-10-15 MSC Application to appeal the 11-25-14 Order, and was not even addressed in DF-AE's Answer.

PL-AT denies DF-AE's claims on pg. 15 that her "Statement of Facts" in her 3-10-15 MSC Application is "*wanting for reference or citation to the record, as required by MCR 7.212(C)(6)*" or that her "*facts are nothing more than her recollection and perception of events*" or that her "*alleged 'facts' are patently false or misleading."* PL-AT cited references to pleadings and transcripts where necessary in her Application. There are no pleadings or transcripts that PL-AT can cite in order to prove that the liability issue was never discussed in the MEEMIC case, because that would be impossible since liability in that case was never in question. It would be DF-AE who would have to prove that the liability issue *was* part of the MEEMIC case, and DF-AE has provided no such citations, since there are none. MEEMIC never denied liability. It was well-established that PL-AT had a policy with MEEMIC and there was no question that they would be the company PL-AT had to sue in order to obtain her PIP benefits. The question presented in Issue I, quoted below from the 12-20-13 COA Appeal, simply was not related to the MEEMIC case and therefore should not have been included in the ruling with the other issues that PL-AT was ruled to have been collaterally estopped from litigating against Culpert and EDI:

> 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?***

Again, this is not the question being presented to the MSC, as DF-AE has portrayed it to be. The MSC need only determine if this issue was presented and litigated in the MEEMIC case, which

PL-AT has claimed it was not, and cannot cite references to something that is absent from the record, and DF-AE has provided no references to support its claims that liability was indeed an issue litigated in the MEEMIC case.

DF-AE claims on pg. 15-16 of Argument IA of DF-AE's 3-30-15 Answer, "*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,"*" and references pg. 26 of PL-AT's MSC Application. This is a deliberate alteration of PL-AT's MSC pleading in two ways. First, as explained above, PL-AT was not making allegations in regard to the circuit court's errors---her allegations were in regard to the Court of Appeals' error of ruling that Issue I in regard to liability, could be collaterally estopped. Secondly, this statement provides a "quotation" that is supposedly from pg. 26 of PL-AT's Application. This statement does not appear on that page or anywhere in her brief. The only similar quotation appears on pg. 26 of the 3-10-15 Application, in Argument III itself: "*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.*" It should be noted that DF-AE altered PL-AT's statement to remove the words "*medical record authorization forms of Efficient Design's choice*" and replaced it with "*her medical records.*" PL-AT was not ordered to provide medical records to EDI, even though that was what was requested in their Request for Productions upon which the Motion to Compel was based. PL-AT was ordered by the court at the 8-9-13 hearing to provide medical record authorizations, specifically, the personal forms of Mr. Wright, after she had already utilized MC 315 to complete the entire process of medical records disclosure from all of her health care providers.

Even though the MSC is not being asked to determine the liability issue itself, only whether it should have been included with the ruling to prevent PL-AT from litigating it due to collateral estoppel, since DF-AE has presented issues argued in regard to the issue itself, PL-AT will hereby address them. DF-AE continues on pg. 16 ¶1, in regard to the liability issue, "*Plaintiff-Appellant cites no court rule, statute or case law supporting this proposition.*" In the footnote for this statement, DF-AE also admits that they were "*unable to provide citations beyond the Court rules, mostly because Plaintiff's position is, simply, unsupported by law*." There would be nothing in the court rules about providing one's private medical records to non-parties to a case because it would be nonsensical to include the topic in the court rules since it is clearly absurd based on simple common sense. If a Plaintiff is suing the company they believe to be the employer of the driver that hit their vehicle, and that company answers the complaint that the person that hit them is not their employee, but that they'd like to request and compel the Plaintiff to produce her medical records anyway, that would be absolutely ridiculous! Yet that is exactly what has happened in this case. If Kevin Culpert was not an employee or agent of Efficient Design, then Efficient Design should have motioned the Court to have the case against them dismissed from the beginning.

DF-AE continues on pg. 16 ¶1, "*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*." Let it be clear that if EDI had not answered the way they did in their 2-5-13 Answer to PL-AT's complaint, PL-AT would not have even needed to do any discovery (Exhibit F, relevant page of 2-5-13 Answer). The only reason PL-AT had to do discovery was to determine whether or not EDI was being untruthful when they claimed Culpert was not their employee at the time of the accident. Ironically, in the footnote of DF-AE's

Answer on pg. 16, it is stated, *"Liability is one issue that is addressed during discovery, along with issues of damages*." Therefore, the DF-AE also admits that liability should have been addressed during discovery, and it would only be logical that it would be addressed before the release of private medical information.

DF-AE states on pg. 16 ¶2, "*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."* It is important to note that just like the 3-10-15 COA opinion, DF-AE avoids mention of the fact that the applicable court rule is MCR 2.314(C)(1)(d) that mandates the use of SCAO form MC 315. The reason PL-AT did not provide any authority to allow her to refuse to sign authorizations or limit the information sought is because she did not do either of these things and therefore would not need to justify doing them. PL-AT signed copies of MC 315 for all of her health care providers for both DF-AEs and requested any and all records back to birth (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

DF-AE continues on pg. 16 ¶2, "*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."* The "true" crux of PL-AT's argument is that she met her obligation under MCR 2.314(C)(1)(d) to provide her medical records to both DF AE's using MC 315, which is not just any authorization form, but the one mandated by the State Court Administrative Office, which must be accepted by the courts (Exhibit C, 6-23-11

memorandum from Chad C. Schmucker, State Court Administrator). PL-AT's Argument IV of her 12-20-13 COA Brief on Appeal addressed the issue of PL-AT not having provided all of the authorizations requested, which was because only medical records were requested in DF-AE's 2-7-13 Request for Production upon which the 4-30-13 motion to compel was based. In Argument IV, PL-AT argued that a new motion to compel would need to be filed in order to compel new and different types of records, such as educational and tax records, that had not been requested in the 2-7-13 Request for Production. PL-AT did not limit information to that she deemed to be relevant, as DF-AE claims, since she provided any and all records back to birth from all of her health care providers.

DF-AE states on pg. 16 -17, *"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 of photocopies, use of an expiration event instead of a date, allowance of records to be released "for copying purposes")."* DF-AE cites Plaintiff-Appellant's Brief on Appeal at p. 32, Heading 6 for this quotation. The points of ellipsis contain the most important wording of PL-AT's argument 6 of her 12-20-13 COA Brief on Appeal, which is presented in full below, with the section removed by DF-AE in bold.

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

PL-AT's argument 6 from her 12-20-13 Brief was a comparison between Mr. Wright's forms and SCAO-mandated form MC 315. The removal of the bolded wording from the quoted argument by the DF-AE completely changes its meaning. The bolded wording *was* the citation

and support that DF-AE claims PL-AT's argument lacked. PL-AT's argument was that any authorization form can be used as long as it does not require PL-AT to give up rights she would have had by signing MC 315 instead. PL-AT cannot be required to do anything above and beyond what the court rules require, and therefore cannot be required to do anything beyond what MC 315 requires, since MC 315 is the mandated form to be used under court rule MCR 2.314(C)(1)(d). Refer to Argument 6 on pgs. 32-29 of 12-20-13 COA Brief for details of the differences between Mr. Wright's forms and MC 315. Again, it is important to note that DF-AEs and the Court of Appeals have gone through great lengths to cover up the court rule and form name that are the basis of PL-AT's Appeal---MCR 2.314(C)(1)(d), and MC 315, respectively.

DF-AE states on pg. 17 ¶1, *"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."* This statement is meritless. The record clearly shows that PL-AT did allow a full release of her medical records using MC 315.

DF-AE states on pg. 17 ¶2, *"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."* DF-AE has made multiple claims in other filings like this, claiming that PL-AT didn't cite anything to support her arguments, when she clearly stated that MCR 2.314(C)(1)(d) and MC 315 were the applicable authorities. Again, by the DF-AE's even arguing this issue of the circuit court's dismissal at all in this filing, DF-AE is misleading the MSC to believe it is supposed to be examining the actions of the circuit court, and determining

whether or not PL-AT should have been able to use MC 315, and that is not the basis of PL-AT's appeal at all. PL-AT's 3-10-15 appeal is not about the MSC determining whether or not the actions of the Circuit Court were erroneous. It is about the MSC determining whether or not the Court of Appeal's actions were erroneous when it upheld the dismissal of PL-AT's case based on the doctrine of collateral estoppel by its inclusion of Issue III, thereby denying PL-AT due process because she did not receive any valid oral arguments on her COA Appeal. The MSC needs only to determine whether or not issues I-III and VI are the same as those presented in PL-AT's MEEMIC appeal, and if so, determine whether or not the issues were actually litigated, and whether or not the appeal process must be exhausted before collateral estoppel can be applied, arguments for which PL-AT has provided support in her 3-10-15 MSC Application.

In conclusion of this section, DF-AE merely presents arguments to justify EDI's position on PL-AT's issues I and VI of her 12-20-13 brief on appeal, that the circuit court did not err by dismissing her case for the reasons presented in these issues. DF-AE should have been arguing why the Court of Appeals was justified in including issues I and VI in their ruling to collaterally estop PL-AT from litigating these issues due to the 10-14-14 opinion in the MEEMIC case. However, DF-AE provides no such arguments.

B. DF-AE again attempts to confuse the MSC by providing an irrelevant description of events from the circuit court in order to justify the sanction of dismissal of PL-AT's case, while this application is only in regard to the actions of the Court of Appeals in its 11-25-14 Order granting Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel, which PL-AT claims is inapplicable for the reasons provided in her 3-10-15 MSC Application.

DF-AE's Argument IB is completely irrelevant to the PL-AT's Application. DF-AE's argument IB is, "*The Circuit Court Properly Dismissed Plaintiff-Appellant's Complaint for Her Willful Refusal to Comply with Discovery and the Orders of the Court.*" Not only is that not the

reason PL-AT's case was dismissed by the Circuit Court, but the arguments presented to the MSC by the PL-AT are only in regard to the Court of Appeals' decision to apply the doctrine of collateral estoppel, claiming PL-AT's Issues I-III, and VI of her 12-20-13 COA Appeal were already litigated in the MEEMIC case. This Application is not in regard to any of the issues in regard to the actions of the circuit court, only those of the COA. Thus, this section should not appear in DF-AE's Answer. However, since there are multiple erroneous claims within, they will be addressed by PL-AT below.

PL-AT did not place her mental condition at issue, as DF-AE claims. The alleged personal head injury, in itself, does not raise a mental condition issue in the complaint as filed. No legitimate diagnosis of any mental disorders are contained in PL-AT's medical records. Mr. O'Malley's accusations regarding her demeanor and motives are malicious and without substance.

DF-AE states on pg. 17, ¶2 of Argument IB, "*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."* DF-AE has not cited any particular applicable law. Therefore, PL-AT cannot respond to this aspect of the statement. DF-AE also has never, in any filings or court sessions, stated how the additional requested records beyond medical records, were relevant to this auto case. For example, DF-AE never gave any reason for requesting PL-AT's educational records or tax records. DF-AE never gave any reason for requesting employment records beyond wage and salary records that would be needed to determine wage loss in a third-party auto case such as this one.

DF-AE states on pg. 18, ¶1, "*Contrary to Plaintiff-Appellant's hypertechnical argument on appeal that she is not obliged to sign additional authorizations because Defendant-Appellee*

Efficient originally asked for fewer providers." This statement is an outright lie. From the beginning, within EDI's 2-7-13 Request for Production of Documents, EDI has requested *"copies of any and all medical records relating to injuries received as a result of the subject accident."* The argument has never been about how many providers were requested by EDI. The argument is about what types of records were requested by EDI. The only types of records DF-AE requested prior to the Motion to Compel hearing were copies of medical records. Before granting DF-AE's Motion to Compel on 6-21-13, the Court substituted, without any further input or motion from DF-AE, the DF-AE's request for medical records, to a request for medical authorization release forms provided by Mr. Wright. Upon granting Mr. Wright's Motion to Compel, the Court did not order PL-AT to provide any medical records as requested by Mr. Wright, instead she was only ordered only provide medical authorization release forms. It was after the Motion to Compel was granted, that Mr. Wright sent authorization release forms to PL-AT to release records other than medical records that he never previously requested from Plaintiff. PL-AT's Argument IV of her 12-20-13 COA Brief on Appeal explains this argument in detail. Again, arguments in regard to the substance of Argument IV should not have appeared in DF-AE's 3-30-15 Answer because the MSC is not being asked to determine the merits of PL-AT's argument IV from her COA appeal. The MSC is being asked to determine whether or not argument IV was the same as another argument presented in the MEEMIC case, and if so, whether it was litigated and whether or not the appeal process must be exhausted before collateral estoppel can be applied, arguments for which PL-AT has provided support in her 3-10-15 MSC Application that the doctrine of collateral estoppel could not be applied.

DF-AE states on pg. 18, ¶2, "*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." This statement is untrue. The filings and PL-AT's statements during oral arguments indicate that PL-AT had no objections to providing her medical information, but that she did not want to use a records copy service's or Mr. Wright's forms, which contains language that could be interpreted that Mr. Wright could re-disclose PL-AT's records. PL-AT's employment was that of a public school teacher. Those records are public record and do not require her to sign an authorization for anyone to review them. The only reason Mr. Wright would have needed PL-AT to sign his authorization form for those records would be if he wanted permission to copy and re-disclose her employment information for purposes not revealed to PL-AT.

DF-AE states on pg. 18, ¶2, "*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****."* Let it be clear there were not "various" discovery requests from both DF-AEs. There was one request from Culpert dated 2-20-13 but not received until 3-8-13 from PL-AT's attorney; and one request from EDI dated 2-7-13 but not received until 2-21-13 from PL-AT's attorney (Exhibit Q, 2-21-13 and 3-8-13 e-mails from Salisbury to Filas). More importantly, PL-AT fully responded to both DF-AEs' discovery requests by providing completed interrogatories and executed and mailed copies of MC 315 to all of her health care providers. Let it be clear that PL-AT discharged her attorney because he breached his hiring agreement. One of those breaches was his agreement to allow PL-AT to provide her own medical records to DF-AEs without the use of a records copying service. Let it be clear that PL-AT has never objected to providing medical records in either her first-party or third-party auto cases. PL-AT has only objected to the

use of specific authorization forms to copy and release her records, and to the court's refusal to allow her to provide her own copies of medical records, use a modified Records Deposition Services form, the health care provider's own forms, or MC 315.

DF-AE states on pg. 18, ¶2, "*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."* It is true the issue is not the "format" of the authorizations---it is the court's refusal to follow the court rules, specifically MCR 2.314(C)(1)(d), which allows for the PL-AT to use MC 315 to provide her medical records. DF-AE has cited no court rule that permits "open access" to PL-AT's medical records, nor does DF-AE define the meaning of "open access." PL-AT defines "open access" as the ability to copy and redistribute her records, and this is not permitted under any court rule, which is likely the reason DF-AE has not cited one. The only court rule in regard to production of medical records is MCR 2.314, of which DF-AE has avoided mention, since it would reveal that MCR 2.314(C)(1)(d) requires the mandatory use of MC 315.

DF-AE states on pg. 18-19, "*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."* This is a fallacious argument because it is not possible to object to something until one has seen it. Mr. Wright's authorizations were not delivered to PL-AT until 6-24-13 at 3:00 PM. By this time, PL-AT's case was already dismissed *sua sponte* by Judge Borman, so it would not have been possible to object to the releases until after 6-24-13. PL-AT objected at her next court appearance, which was 8-9-13. DF-AE falsely (states) that PL-AT's objections were still in

regard to liability following the 6-24-13 hearing, by quoting PL-AT's statements from the 6-**21**-13 transcript, rather than the 6-**24**-13 transcript. Liability was no longer an issue after 6-21-13 since the court told plaintiff at the hearing on 6-21-13 that "we don't wait for liability" and therefore PL-AT provided completed medical authorizations to EDI to avoid having her case dismissed (Exhibit E, 6-21-13 Transcript page 7). For DF-AE to mislead the court in regard to PL-AT's arguments is highly unethical and fraudulent and should be sanctioned by the Court.

DF-AE states on pg. 19, ¶1, "*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."* This statement is completely false. A reading of the record shows PL-AT only objected to re-doing the process of disclosing medical records to Mr. Wright using his personal forms, after the process was already underway using MC 315 and he had already received records and was still receiving records from the executed forms. It can easily be verified that Mr. Wright received the copies of MC 315 and received records from them (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

DF-AE states on pg. 19, ¶1, "*It became clear to all involved that Plaintiff-Appellant's motivation was to manipulate the process; and to potentially "cherry-pick" the records.* If anyone wanted to cherry-pick the records, it was DF-AEs. Otherwise, why would EDI have complaints that PL-AT sent the copies of MC 315 directly to her health care providers, unless it was their intent to only submit certain authorization forms of the 20-some they received? PL-AT clearly disclosed "any and all" medical records from all health care providers, and even included dates of treatment as a courtesy (Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

DF-AE states on pg. 19, ¶1, "*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"." This is untrue. The reason EDI asked the circuit court for "no amendments" was because in PL-AT's first-party MEEMIC case, PL-AT modified the Records Deposition Services Inc. authorization forms provided to Mr. Orlowski, MEEMIC's attorney. The reason for this request for "no amendments" was not because of any attempts by PL-AT to avoid production of records, as DF-AE claims.

DF-AE states on pg. 19, ¶2, "*The Plaintiff-Appellant does not address the fact that she was ordered to sign all of the authorizations presented to her."* DF-AE doesn't address that Mr. Wright's authorizations weren't timely provided. DF-AE doesn't address that different types of authorizations other than medical authorizations were presented for signing, such as educational and tax records, which were not part of the Motion to Compel or the Request for Production upon which it was based, which was PL-AT's Issue IV, presented in her 12-20-13 COA Brief on Appeal. Again, this argument doesn't even belong in DF-AE's Answer, since the merits of Argument IV are not being examined by the MSC in this appeal, which only is in regard to the COA's actions in issuing the 11-25-14 Order upholding the dismissal of the case with the doctrine of collateral estoppel as justification. The MSC need only determine if Issue IV is same as one in MEEMIC that has been litigated, and if the appeal process must be complete before the doctrine of collateral estoppel can be applied, arguments that PL-AT has presented in her 3-10-15 MSC Application, that DF-AE has not rebutted in the 3-30-15 Answer.

DF-AE states on pg. 19, ¶3, "*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."* PL-AT did not refuse to sign Mr. Wright's authorizations as she had not even seen them when she filled out copies of MC 315 on 6-21-13. Mr. Wright's

authorizations were not timely provided (Exhibit R, 6-24-13 FedEx time/date stamped envelope, stamped 3:00 PM). PL-AT did not use "her own" authorizations. She used the SCAO-mandated form MC 315 in accordance with MCR 2.314(C)(1)(d), which is required to be accepted by the court (Exhibit C, 6-23-11 memorandum from Chad C. Schmucker, State Court Administrator).

DF-AE states on pg. 19, ¶3, "*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."* It is a lie that PL-AT's authorizations were amended and/or incomplete. They were fully-completed copies of MC 315, with nothing crossed out, and nothing written in except the required information (Exhibit B, sample of MC 315 and cover letter for Mr. Wright). DF-AE was provided a list of PL-AT's health care providers with her completed interrogatories. DF-AE claims PL-AT did not request authorizations for all treatment providers. This statement is illogical. PL-AT only needed to request that *records* were sent out from her providers through the *use* of authorizations---she wouldn't be requesting *authorizations* from the providers themselves---she would be requesting *records*. PL-AT sent copies of authorization form MC 315 to what she believed were all of her health care providers on 6-21-13. PL-AT inadvertently missed 3 providers and mailed out authorizations for them on 6-24-13 and 6-26-13 for both EDI and Culpert. Therefore, she did provide authorizations for <u>all</u> providers, to both Defendants. DF-AE's argument that Form MC 315 could mislead providers into producing the records to the PL-AT instead of the DF-AE is ludicrous. MC 315 is an approved court form that makes it very clear to whom the records are being released by stating "Name and address of party to whom the information is to be given."

MC 315 contains the unambiguous statement of "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]". Above the bracketed sections are lines to fill in the appropriate information. There is no confusion in regard to who would receive the records, as DF-AE claims (Exhibit U, SCAO-mandated form MC 315). It would be doubtful that an approved, standard court form would not be clearly written for the health care providers to understand what to do, when release of records is common in litigation. Even if the form were confusing, it is still the approved court form under MCR 2.314(C)(1)(d) and PL-AT had the right to use it. PL-AT's cover letters to the providers were a courtesy to DF-AEs, to help assure they received all records. They did not imply providers should only include certain dates. The exact wording was, "***Any and all*** *medical records from [DOB-redacted] to present pertaining to Tamara Filas DOB [DOB- redacted],* ***including, but not limited to****, the following practitioner visits" and continued with a list of known treatment dates."* The DOB was provided on the authorizations, but redacted in this filing for privacy reasons (Exhibit B, sample of MC 315 and cover letter for Mr. Wright). This quoted wording does not imply only certain dates should be included, as DF-AE claims.

DF-AE states on pg. 20, ¶1, "*In response to the [6-24-13] 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."* DF-AE's argument is fallacious. The circuit court's order was for PL-AT to sign Mr. Wright's authorizations prior to 2:00 p.m. on 6-24-13 or her case would be

dismissed. The whole reason for PL-AT providing MC 315 was because she did not timely receive Mr. Wright's authorizations and did not want her case to be dismissed. Receiving the authorizations *after* the June 24th hearing, at 3:00 p.m. made it impossible to complete them before 2:00 p.m. that day, and PL-AT's case would have been dismissed. PL-AT tried to prevent the dismissal by using MC 315 since she didn't know when she would receive Mr. Wright's forms after they didn't arrive by the end of the business day on 6-21-13.

DF-AE states on pg. 20, ¶1, "*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 email 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."* Despite the court record's absence of any statements indicating that the DF-AE was to provide the authorizations by the end of the business day, that was the understanding, whether discussed on the record or off. The court rule that applies to service of documents via e-mail is MCR 2.107(C)(4)(f), which states in pertinent part, "*An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday."* Therefore, DF-AE's e-mailing of the authorizations shortly after 5:00 p.m. on 6-21-13 would have deemed them to have been served the following Monday, 6-24-13, and DF-AE could not have been considered to have served the authorizations on 6-21-13. DF-AE's argument that PL-AT should have called to check on the status of the releases later that afternoon is unreasonable because she didn't know she wouldn't receive them until the close of the business day, after the attorneys would have left

the office, so it wouldn't make sense to call after 5:00 p.m. to check on the authorizations. PL-AT solved the problem of not receiving timely releases by filling out MC 315, which is mandated under MCR 2.314(C)(1)(d) and is a form that is required to be accepted by the courts, because she truly was worried about complying with the Circuit Court's order to complete medical authorizations for Mr. Wright by 2:00 p.m. on 6-24-13.

DF-AE states on pg. 20, ¶1, "*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.*" It would be without basis for PL-AT to sign the authorization forms during this time period, while she was awaiting the 8-9-13 hearing, which she was misled to believe could reverse the dismissal of her case. PL-AT had already completed MC 315 for all of her providers between 6-19-13 and 6-26-13 and both DF-AEs were receiving her medical records from their execution. PL-AT didn't sign Mr. Wright's releases prior to the 8-9-13 hearing because PL-AT never fathomed that on 8-9-13, Judge Borman would order her to re-do the process of disclosing medical records using Mr. Wright's personal forms after he already received and was still receiving records from the MC 315 forms. Let it be clear that there was no "Motion to Reinstate the Case," filed by PL-AT, as DF-AE claims. PL-AT only filed 7-2-13 Objections to Mr. Wright's "proposed" 7-day Order of Dismissal. With more knowledge of the court procedures, PL-AT now understands she should have filed a Motion for Reconsideration of the 6-24-13 dismissal if she wanted the dismissal overturned/reversed, but she was led to believe by the Court and the attorneys that objecting to a 7-day order could reverse the dismissal, due to the fact that Mr. Wright left out the required notice under MCR 2.602(B)(3) that explains that one is only allowed to make objections regarding accuracy and completeness, and PL-AT could not have had any objections to the fact that her case was

dismissed since that *is* what happened on 6-24-13. It is disturbing that since PL-AT brought up this trickery in her 3-10-15 MSC Appeal for the first time in any pleadings, DF-AE is now lying to give the appearance that PL-AT did file a motion to reinstate her case, when all she actually did was file objections to a 7-day order, which did not have the ability to reverse the dismissal (Exhibit K, Register of Actions dated 6-24-13, Register of Actions dated 3-10-15; Exhibit S, EDI's 6-25-13 Notice of Submission of Seven-Day Order 7-day order).

DF-AE states on pg. 20, ¶2, "*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"* and claims this is why the circuit court dismissed PL-AT's case. It is true that PL-AT is supposed to be able to choose the manner in which to provide her medical records to the DF-AEs, as outlined in MCR 2.314(C)(1), which states: *"[a] party who is served with a request for production of medical information under MCR 2.310 must either:*" Item (d) states, "*furnish the requesting party with signed authorizations* ***in the form approved by the State Court Administrator*** *sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.*" Under MCR 2.314(C)(1)(d), it is mandated that the authorization form to be used is MC 315. The PDF of the list of court-mandated forms, located at http://courts.mi.gov/Administration/SCAO/Forms/Documents/Mandatory%20Use%20List/mandatory_use_lists.pdf, indicates that MC forms are for circuit court use. MC 315 would therefore be used in the circuit court. (See Exhibit T, List of SCAO-mandated forms; and Exhibit U,

SCAO-mandated form MC 315). PL-AT's actions show the opposite of DF-AE's claims---she provided any and all records, whether or not they were relevant to the subject accident, even though in its 2-7-13 Request for Production, EDI only requested *"copies of any and all medical records relating to injuries received as a result of the subject accident."* (Exhibit D). DF-AE's claims that PL-AT wouldn't provide records until she was satisfied they were relevant is without merit. PL-AT cannot be accused of manipulating the process when she has only ever wanted to abide by the court rules, specifically MCR 2.314(C)(1)(d), that allows her to use MC 315. It is DF-AEs who want to manipulate the process by using records copying service forms or their own forms that allow them to freely re-disclose records, and referring to it as "open access," which is not permitted under any law or court rule without PL-AT's consent.

In EDI's discussion about the circuit court's sanction of dismissal being the harshest sanction available, but yet still applicable to PL-AT's case, DF-AE makes claims on pg. 22 ¶1 that, "*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."* There is no such thing as a "required" authorization form. The closest comparison would be form MC 315, which is "mandated" under MCR 2.314(C)(1)(d) and therefore the argument could be made that MC 315 is considered to be the "required" authorization form. Therefore, PL-AT has complied with signing the "required" authorizations. The record proves there was only <u>one</u> occasion that PL-AT argued she should not have to produce records to DF-AE EDI, and that was the 6-21-13 hearing. Following the 6-21-13 hearing, at which the court said "we don't wait for liability," PL-AT abided by the court's order and disclosed her medical records and gave copies of filled out

and signed MC 315 medical record release authorizations sent to her medical providers for Mr. Wright, representing EDI, to receive her records. Nonetheless, the argument of establishment of liability is not what is being considered by the MSC in this Application, as DF-AE portrays the situation, by arguing it so many times in his answer. The MSC need only consider whether the issue of liability, Issue I of PL-AT's 12-20-13 COA Brief on Appeal, was part of the MEEMIC case, and could therefore be collaterally estopped from being litigated in this case. As PL-AT explained, there was no question of liability in the MEEMIC case as they did not dispute being PL-AT's insurer. Therefore, the doctrine of collateral estoppel has been erroneously applied by the COA to this issue.

DF-AE states on pg. 22, ¶2, "*At the hearing on June 21, 2014, the Circuit Court required Plaintiff-Appellant to sign the authorizations provided by Efficient.*" Let it be clear, the circuit court "ordered" PL-AT to sign the authorizations that "would be provided" by DF-AE. Mr. Wright did not have any authorizations with him at the court as pg. 17 of the 6-21-13 transcript indicates (Exhibit E). DF-AE continues on pg. 22, ¶2, *"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."* These are outright lies. Note that there is no reference to a page number or line number in the transcript by DF-AE, as most of DF-AE's quoted statements contain. That is because PL-AT never said such things at the 6-21-13 hearing or any time for that matter. It is disturbing DF-AE would claim PL-AT made statements about checking her e-mail at the 6-21-13 hearing when nothing was even ordered to be e-mailed by Mr. Wright to PL-AT until that very hearing, so there was no e-mail to check at that point in time. It is equally disturbing for DF-AE to claim that at the 6-21-13 hearing, PL-AT said she would sign "her own" authorizations, which she never said on that date or any other

time. At the 6-21-13 hearing, she had agreed to sign Mr. Wright's authorizations, and he had agreed to e-mail them to her by the end of the business day. DF-AE has re-written history and falsified quotations to avoid the most important facts---that EDI received records from the MC 315 forms that were executed and it was ludicrous for PL-AT's case to be dismissed for refusing to repeat the process with Mr. Wright's personal forms, that Mr. Wright, by failing to provide notice to her explaining what she could and could not object to in a 7-day order, deceived PL-AT to believe she could reverse the *sua sponte* dismissal of her case on June 24, 2013, by filing an objection to the 7-day order of dismissal and appearing for the motion hearing on 8-9-13, whereby she was actually ordered to re-do the authorizations again using Mr. Wright's forms after the case had already been dismissed and the DF-AE had already received records as a result of the MC-315 authorizations she mailed out.

DF-AE states on pg. 22, ¶2, "*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."* The releases were not received until 3:00 p.m. on 6-24-13, after the special conference had taken place (Exhibit R). The circuit court's direction was to sign the releases **OR** appear at the June 24 conference, not **AND** appear at the June 24, 2013 conference. The Judge stated she hoped she would not have to see the parties the following Monday, meaning she hoped that PL-AT would provide the authorizations to Mr. Wright before 2:00 p.m. as ordered, which she did, at 11:24 a.m. on the morning of 6-24-13 (Exhibit E, 6-21-13 Transcript, pg. 17). Therefore, no special conference should have taken place on 6-24-13, especially since Mr. Wright did not notify PL-AT that he objected to the copies of MC 315 he received 6-24-13 that PL-AT mailed 6-21-13..

DF-AE states on pg. 22, ¶2, "*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." PL-AT provided all of the medical releases that she was compelled to provide based on EDI's Request for Production. As stated, DF-AE requested new, different types of records, such as educational and tax records, that required a new motion to compel, as explained in Argument IV of PL-AT's 12-20-13 COA Brief on Appeal. PL-AT could not have altered Mr. Wright's forms because she did not use his forms. She used unaltered MC 315 forms that allowed for release of any and all records in the manner provided under court rule MCR 2.314(C)(1)(d). Limitations such as the expiration date of the release may have been shorter on MC 315 than on Mr. Wright's forms, but as PL-AT argued, she should not have to agree to language beyond the requirements under court rules.

DF-AE states on pg. 22, ¶2, "*She did not sign them [Mr. Wright's personal authorization forms] (and now hides behind a façade that she was unable to check her e-mail).*" Checking her e-mail is irrelevant, because whenever she received them, albeit before or after the 6-24-13 special conference, she would have objected to the language on the forms that went above and beyond the requirements of MC 315, and she would have objected to signing authorizations for additional records beyond the medical records that were the subject of the Motion to Compel granted 6-21-13. PL-AT doesn't hide behind anything---She has clearly made her objections to Mr. Wright's forms and additional requested records, and clearly presented arguments for her right to use MC 315.

DF-AE states on pg. 22, ¶3, *"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."* First, the case could not have

been reinstated by PL-AT filing objections to the 7-day order, as PL-AT was misled to believe. Second, it would not make sense for PL-AT to fill out Mr. Wright's forms after her copies of MC 315 were already being executed by her healthcare providers, and she was awaiting the 8-9-13 hearing on her objections.

DF-AE states on pg. 22, ¶3, *"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 quoted statements above by the Court and Ms. Filas are from the 8-9-13 hearing PL-AT scheduled to have her objections to the 7-day order heard. On pg. 3 of the 8-9-13 transcript, the court states: *"Okay, is this your motion?,"* Mr. Wright immediately says *"Yes, for authorizations to be signed."* There were no motions heard on 8-9-13. The hearing was supposed to be held in regard to PL-AT's 7-2-13 Objections to Mr. Wright's 7-day Order of Dismissal of the case on 6-24-13. Mr. Wright filed only one Request for Production on 2-7-13 and only one Motion to Compel heard on 6-21-13 that was heard and granted on 6-21-13. The court requested PL-AT not only to re-do all of the MC 315 medical authorizations she already executed and gave copies of to the Defendants before the Court dismissed PL-AT's case 6-24-13, but to also sign authorizations beyond those for medical records that were not requested in DF-AE's 2-7-13 Request for Production that would have required a new motion by the DF-AEs which DF-AEs could not file after the case was dismissed *sua sponte* by the Court on 6-24-13. There was no "11th hour" opportunity for PL-AT to have the dismissal of the case reversed based upon her objections to the 7-day order of dismissal because PL-AT never filed a Motion for Reconsideration, so the Court could not reverse the 6-24-13 dismissal on 8-9-13 based on her

objections to the 7-day order to dismiss. Exercising her legal right not to produce authorizations that she was not ordered to produce prior to the dismissal, and for which Mr. Wright never requested or filed a motion to compel before the dismissal, or refusing to re-do the process of completing authorizations to disclose medical records using Mr. Wright's personal forms after her case was already dismissed 6-24-14, are not acts of defiance, but instead acts of exercising her legal rights. This is Issue IV of PL-AT's 12-20-13 COA Brief on Appeal, and PL-AT had a valid reason backed by court rules and procedures to object to the production of the additional records. It was the Court and/or Mr. Wright who was/were making a last ditch attempt to get PL-AT to sign Mr. Wright's authorizations by tricking PL-AT into believing the dismissal could be reversed by PL-AT filing Objections to the 7-day Order.

DF-AE states on pg. 23, ¶1, *"The record is clear: Plaintiff-Appellant has flagrantly and defiantly ignored the directive of the Circuit Court to provide medical authorizations."* This is a blatant lie. The truth is: PL-AT provided copies of MC 315 medical authorizations prior to 2:00 p.m. on 6-24-13 to both DF-AEs in this case, rendering it unnecessary for her to come back to court on 6-24-13 (Exhibit E, 6-21-13 transcript page 8, p. 17, lines 2-6). The case was dismissed 6-24-13 *sua sponte* by the Court based upon Mr. Wright's false allegations he made at the 6-24-13 special conference, claiming PL-AT had altered the authorizations she delivered to his office on 6-24-13 at 11:24 a.m. and that he received only about half of what he requested (Exhibit M, 6-24-13 transcript). No legitimate attempt to contact PL-AT was made to inform PL-AT about the resumption for the 6-21-13 hearing on 6-24-13 until after the case was already dismissed as explained in PL-AT's 4-13-15 Reply to Culpert's Answer on pg. 16 with supporting exhibits. It is important to note that the 6-24-14 transcript, Exhibit M, is conspicuously missing the times when the hearing proceeding recessed and resumed or when it concluded and contains asterisks

where the time normally appears on the other transcripts in PL-AT's case, indicating the court was concealing the time the special conference concluded because it may indicate PL-AT was not called before or during the conference, but only after it ended. With the case already dismissed, the Court had no authoritative basis upon which to require PL-AT to re-do the discovery process and fill out Mr. Wright's medical authorization forms after she already executed MC 315 medical authorization forms and gave them to Mr. Wright that met her discovery obligations under MCR 2.314 (C)(1)(d), or to fill out authorization forms for discovery information not requested on 2-7-13. PL-AT's refusal to fill out authorization forms at the 8-9-13 hearing was legally justified. Afterwards, she appealed the COA.

DF-AE states on pg. 23, ¶1, *"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"* PL-AT does not agree discovery is "open" because DF-AEs cannot simply request any type of information they want---it has to be related to the case. Again, these claims in the quotation in regard to PL-AT are untrue. Although PL-AT argued the liability issue in her 12-20-13 COA Appeal, PL-AT agreed to fill out authorizations on 6-21-13 without the establishment EDI's liability (Exhibit E, 6-21-13 transcript, pg.7. lines 4-25, pg. 8 lines 1-4). It was DF-AE's or PL-AT's attorney, or both, <u>who stalled discovery</u> by not deposing Kevin Culpert or obtaining Mr. Culpert's phone records for 1-

15-10, the date of the accident, to ascertain liability after the case was filed on 1-12-2013, and Mr. Wright's lie to the Court on 6-21-13 that the Court had stayed proceedings from 5-3-2013 to 6-21-2013, instead of only for 30 days, as a further excuse not to determine if Culpert was in the scope of his employment, as well as refusing to speak with PL-AT after she dismissed her attorney on March 3, 2013 unless she substituted herself for the attorney she dismissed (Exhibit E, 6-21-13 transcript pgs. 8-11). DF-AE continues to argue PL-AT kept arguing liability after the 6-21-2013 hearing. For DF-AE to continue repeating these lies about the liability issue and its relationship to Plaintiff providing authorizations in the circuit court ad nauseum, claiming throughout this Answer, that PL-AT " refused to provide discovery" when she truly did provide it, is a despicable, deceptive effort to manipulate the facts and hoodwink the Court on the part of Mr. O'Malley to misguide the Court and divert their attention from the main issue, which is the 11-25-14 dismissal of Plaintiff's case by the COA based upon the Doctrine of Collateral Estoppel (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright; Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI).

DF-AE states on pg. 23, ¶1, *"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."* Throughout this entire section, by discussing only the issues pertaining to the circuit court's actions, DF-AE has attempted to confuse the MSC into believing it is to be determining whether or not the sanction of dismissal was appropriate in the Circuit Court case, and that the MSC is to be examining the merits of PL-AT's questions I - VI presented in her 12-20-13 COA Appeal. This could not be more incorrect. PL-AT's 3-10-15 MSC application requires an examination by the MSC of the Court of Appeals' actions, not the Circuit

Court's. The MSC needs only to determine whether or not the doctrine of collateral estoppel was properly applied to issues (questions) I - III and VI of PL-AT's 12-20-13 COA Appeal by the COA in its 11-25-14 Order that upheld the dismissal of PL-AT's case its entirety by the inclusion of issue III, and whether or not PL-AT was therefore denied a valid oral argument session before the 11-25-14 Order was entered to dismiss her case, or on 3-3-15 since her case was already dismissed when the 3-3-15 hearing on oral arguments took place. The MSC needs to determine whether or not PL-AT's issues I - III and VI are the same as issues in the MEEMIC case, and if so, if they have been litigated, and if the doctrine of collateral estoppel can be legitimately applied prior to PL-AT exhausting the appeals process in the MEEMIC case. These were the arguments presented in PL-AT's 3-10-15 MSC application. The actual merits of the six arguments presented to the COA are not part of this appeal, as this Application is only in regard to the 11-25-14 Order, which is the only valid order that dismissed PL-AT's case, as PL-AT has a separate 4-21-15 MSC Application in regard to the 3-10-15 Opinion issued by the COA, which PL-AT argued should be invalidated since it was issued after the case was already dismissed by the 11-25-14 Order and contained different reasons for upholding the dismissal than the reasons the 11-25-14 Order was granted.

The DF-AE claims that the COA agreed with the Circuit Court and affirmed the circuit court's ruling regarding the dismissal in its 3-10-15 Opinion. Even though the 3-10-15 COA Opinion did provide new, different reasons for dismissing PL-AT's case with regard to Issues I, IV and V is presented in PL-AT's 12- 20-13 COA Brief on Appeal[3], the true reason for the COA upholding the dismissal was the doctrine of collateral estoppel, as ruled in their 11-25-15 Order,

[3] It would not be necessary for PL-AT to appeal the 3-10-15 Opinion separately from the 11-25-14 Order if the content were the same. The 3-10-15 Opinion should have been a reflection of the 11-25-14 Order, and should have contained a discussion of the upholding of dismissal due to collateral estoppel, but it contained completely different reasons for upholding the dismissal of PL-AT's case, and therefore required a separate appeal to the MSC.

but the words "collateral estoppel" did not even appear in the Opinion. Therefore, the COA never actually "affirmed" any of the circuit court's actions.

II. DF-AE falsely claims the 10-17-14 Motion to Affirm was a renewal of the 12-30-13 Motion to Affirm denied by the COA on 2-11-14, when these two motions contained completely different arguments.

On pg. 23, ¶1 of this section, the DF-AE used an incorrect date for the first Motion to Affirm, which was filed 12-**30-13**, not 12-**13-15** as DF-AE stated. The 12-30-13 Motion to Affirm, pursuant to MCR 7.211(C)(3), was denied 2-11-14, but there was never any "renewed motion" as DF-AE claims. In an effort to make it more difficult for the MSC to verify to what the second Motion to Affirm was in regard to, DF-AE does not properly mention the filing date anywhere in this Answer.[4] This second Motion to Affirm was filed October 17, 2014, and claimed the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI due to the 10-14-14 Opinion of the COA issued in the MEEMIC case. There was no mention of collateral estoppel in the 12-30-13 Motion to Affirm. In the 12-30-13 Motion, claims were made that PL-AT didn't cite any precedents, and that her issues of using MC 315 were not preserved. The October 17, 2014 motion does not make these claims. These two motions are completely different and therefore the second one can in no way be considered a "renewal" of the first. It should be noted that Culpert's 3-23-15 Answer to PL-AT's MSC Application contained arguments that were cut and pasted straight from his 12-30-13 Motion that was denied, trying to give the impression the MSC should be ruling on those issues, when they were denied by the COA on 2-11-14. Now DF-AE, EDI, is pretending as if the two motions were the same, and that the content Culpert cut-and-pasted from the 12-30-14 Motion into his 3-

[4] The only place a date even appears in reference to the so-called "renewed" Motion to Affirm is on pg. 9 of the 3-30-15 Answer, where it is stated, "On October 14, 2014, Defendant-Appellees renewed the *Motion to Affirm* following the Court of Appeals' decision in *Filas v. MEEMIC."* The date of October 14, 2014 is incorrect, as the date of the second Motion to Affirm is October **17**, 2014.

23-15 Answer is the same as the content in the 10-17-14 Motion. For both DF-AEs to work together to falsify the true content and outcome of the two different motions to affirm, in an effort to mislead the MSC, is egregious. See Exhibits O and P to compare the two Motions to Affirm from 12-30-13 and 10-17-14, respectively.

On pg. 24, ¶1 of the 3-30-15 Answer, in reference to the 11-25-14 Order of the COA, DF-AE states, "*The Court of Appeals granted the Motion and dismissed those issues in this appeal that had been decided in Filas v. MEEMIC."* Let it be clear that no issues presented to the COA in regard to the use of MC 315, were actually truly *decided* in the MEEMIC case because the COA ruled that PL-AT was required to use only Records Deposition Services Inc. forms to provide her medical records to MEEMIC due to a protective order that had been entered in the MEEMIC case. No protective order was entered in the instant case and therefore no similarity exists in regard to the use of MC 315 between the two cases. Refer to argument II C on pg. T3-24 of PL-AT's 3-10-15 MSC Application.

The only similarity between the cases was the lower Court's refusal to accept PL-AT's desire to use, or actual use SCAO Form MC 315 in accordance with MCR 2.314(C)(1)(d) to provide discovery of her medical records to the DF-AEs instead of using a record copy service, a third-party private business entity, not related to either case, to copy and electronically place her records into their database for perpetuity to be sold to and accessed only by selective customers, excluding PL-AT, with the potential of negatively impacting PL-AT's ability and the ability of other auto accident victims, to return to work and retain their current employment or procure alternate employment, by allowing employers and other entities access to private information they may otherwise not be legally entitled to under the law, to use to covertly or otherwise discriminate against the "victims" in the database.

On pg. 24, ¶2 of the 3-30-15 Answer, DF-AE states, "*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."* PL-AT stated five reasons the doctrine of collateral estoppel was inapplicable. Argument II on pg. 16 of PL-AT's 3-10-15 MSC Application states the following in pertinent part:

> *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.*

Pgs. 23-25 of EDI's 3-30-15 Answer contain a discussion that the courts have broadened the definition of collateral estoppel when it is asserted defensively, to no longer require mutuality (and thus, there is no longer a requirement that the defendants must be the same, or that one party would necessarily be bound by the litigation of the other party). PL-AT now understands that the defendants can sometimes be different, and therefore reasons #1 and #5 from PL-AT's 3-10-15 MSC Application may not be applicable. Nonetheless, there are still three remaining reasons the doctrine cannot be applied, and they have not been addressed in EDI's Answer. The issues of the two cases still have to be the same, and the party must have had a full and fair opportunity to litigate the issues, with a final judgment decided on the merits. None of these criteria are satisfied. PL-AT already presented a detailed analysis in Argument IIB on pgs. 18-23 of PL-AT's 3-10-15 MSC Application supporting her arguments that the issues in the two cases are not the same. No counter-analysis or rebuttal arguments have been provided by either DF-AE. PL-AT has filed an application for leave to appeal the 10-14-14 opinion of the COA in regard to the

MEEMIC case (MSC No. 150510), and therefore has not yet had a full and fair opportunity to litigate the issues. *Monat v State Farm* addressed the issue of the meaning of a full and fair opportunity, which "*normally encompasses the opportunity to both litigate and appeal.*" *Monat v State Farm Insurance Co.,*469 Mich 679, 691-692; 677 NW2d 843 (2004). The DF-AE does not address PL-AT's pending MSC Appeal in the MEEMIC Case (MSC No. 150510). As already mentioned, the issues of MC 315 were not even litigated in the MEEMIC case because the ruling was made that a Protective Order required the sole use of unmodified RDS forms. Therefore, Culpert's 10-17-14 Motion to Affirm, granted by the COA in its 11-25-14 Order, the Order upon which this Application is based, was both inapplicable and premature, and should be reversed by the MSC.

On pg. 26 of EDI's 3-30-15 Answer, it is stated that "*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.*" This is an interesting choice of words by the DF-AE. In other words, DF-AE claims PL-AT only had the opportunity to litigate her issues while the matter was in the Circuit Court. Once the matter was processed by the COA in its 10-14-14 Opinion in the MEEMIC case, the COA ruled that due to a protective order entered in the MEEMIC case, PL-AT was required to sign only RDS forms. Then, the COA used the COΛ's 10-14-14 Opinion in the MEEMIC case to dispose of the instant COΛ case by erroneously applying the doctrine of collateral estoppel. Therefore, the matter of a plaintiff using MC 315 when no protective order exists in a case, has never been litigated and the criteria for Doctrine of Collateral Estoppel to apply has not been met.

In regard to PL-AT's analysis provided on pgs. 18-23 Of PL-AT's 3-10-15 MSC Application, DF-AE states on pg. 26 of the 3-30-15 Answer, "*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."* The "literal words" that were "articulated" by PL-AT were the most concise representation PL-AT could construct of the issues of each case in her Questions Presented to the COA, most importantly, the issues surrounding the circuit court's refusal to accept SCAO Form MC 315, as mandated under MCR 2.314(C)(1)(d), a form name and court rule both the DF-AEs and COA have diligently concealed in their filings and Orders/Opinions, respectively.

Instead of mentioning the actual issue in the instant case of the circuit court's refusal to accept already executed copies of MC 315 the PL-AT had mailed to her providers so that both DF-AEs could receive copies of her medical records, on pg. 27, ¶1, DF-AE cites three reasons the MEEMIC case and the instant case are the "same," and thus the doctrine of collateral estoppel was appropriately applied. All three are untruthful statements and without merit. PL-AT will address them below as A, B, and C.

A. DF-AE states, *"In both proceedings, Plaintiff-Appellant's lawsuit was dismissed because she failed to comply with discovery and the Circuit Court's discovery orders."*

This is not the reason PL-AT's lawsuits were dismissed. PL-AT's MEEMIC lawsuit was dismissed for the reason of the circuit court refusing to allow PL-AT to use modified RDS forms, the healthcare providers' forms, or MC 315 to disclose the records to MEEMIC. PL-AT's third-

party lawsuit against Culpert and EDI was dismissed because Mr. Wright went to the Circuit Court and lied to the Court on 6-24-13. He falsely claimed PL-AT had altered the executed authorizations mailed 6-21-13, of which he received copies of from her on 6- 24-13, and falsely stated PL-AT had provided authorizations for only about half (1/2 of 27) of what he requested on 2-7-13 and in his subsequent Motion to Compel granted on 6-21-13. Mr. Wright's false claims resulted in the *sua sponte* dismissal of PL-AT's case by the Court. Mr. Wright failed to mention to the Court that he received fully executed, unaltered MC 315 forms from PL-AT for all but three providers. PL-AT inadvertently did miss 3 providers and quickly rectified it, by mailing out MC 315 authorizations to the providers on 6-24-13 and 6-26-13. Both defendants had already received and accepted PL-AT's medical records from at least one of her major providers within days after PL-AT filled out and mailed the MC 315 authorization forms to her providers on 6-19-13 for Culpert's attorney, Mr. Hassouna, and 6-21-13 for Mr. Wright, one of EDI's attorneys, and DF-AEs continued to accept records afterward as well. The Circuit Court could not legitimately reverse the 6-24-13 dismissal at PL-AT's 8-9-13 hearing on her Objections to the 7 day Order to Dismiss, nor could it order PL-AT to re-do the discovery process and fill out Mr. Wright's personal authorization forms to release he medical records again, nor order her to sign authorizations for other records Mr. Wright had not previously requested or filed a Motion to Compel PL-AT to provide, since PL-AT's case was already dismissed *sua sponte* on 6-24-13, Plaintiff did not file Motion for Reconsideration, and therefore no further orders could be made at all in the case. It was an act of trickery, when Mr. Wright sent PL-AT a 7-day order, omitting the mandatory notice in accordance with MCR 2.602(B)(3), explaining that she could object only to the accuracy and completeness of an order already made by the court, allowing PL-AT to falsely believe she could object to the dismissal itself. The Court never even brought up PL-

AT's objections at the hearing on 8-9-2013. Instead, the Court directed the first question, a tag question, to Mr. Wright: *"Okay, this is your motion?"* to which Mr. Wright falsely responded: *"Yes, for authorizations to be signed."* The Court wanted PL-AT to sign DF-AE's personal, medical authorizations forms they had brought with them to Court 8-9-13 after PL-AT had already fully executed and mailed out the MC 315 Authorizations to all of her medical providers on 6-21-13 (except three mailed on 6-24-13 and 6-26-13). Plus, the Court wanted PL-AT to sign additional personal authorization forms of Mr. Wright brought for records Mr. Wright never previously requested in his Motion to Compel heard on 6-21-2013. The Court stated it was not re-considering and directed PL-AT to sign the forms. PL-AT stated*: "Not for some of the things they are asking,"* after which the court stated: "*The dismissal stands*." There is no record of any motion filed by Mr. Wright for authorizations to be signed by PL-AT after the case was dismissed on 6-24-13 that would allow the Court to Order PL-AT to sign additional authorizations at PL-AT's hearing on objections PL-AT scheduled for 8-9-13. The Court could not re-consider, because PL-AT never filed a Motion to Reconsider, just Objections to the 7-day Order, which was a useless waste of PL-AT's time (Exhibit M, 6-24-13 transcript ps.3-4; Exhibit E, 6-21-13 transcript; Exhibit D, relevant page of 2-7-13 request for production).

B. DF-AE states, *"In both proceedings, Plaintiff-Appellant steadfastly refused to sign authorizations for the Defendant-Appellees to procure medical records, employment records, and education records."*

This statement is untrue and misleading. Let it be clear that PL-AT has always been willing to provide her medical records, but she was ordered by the court to sign authorization forms instead from either a record copy service or forms written by an attorney. In the MEEMIC case, PL-AT was ordered to sign third-party Records Deposition Services Inc. forms, which she did not sign. However, PL-AT *did* sign authorization forms for medical records in the instant

case. She completed copies of MC 315 for all of her healthcare providers and disclosed her medical records to both DF-AEs. In the instant case, Culpert accepted the copies of MC 315 PL-AT executed. However, EDI did not, and that is when PL-AT was ordered to re-do the process using Mr. Wright's personal forms on 8-9-13 by Judge Borman. Employment and education records were not part of EDI's Motion to compel that was granted on 6-21-13, and were contested by PL-AT as explained in issue IV presented to the COA in her 12-20-13 Brief on Appeal. Employment records were requested by MEEMIC, and PL-AT objected to providing employment records other than wage and salary records as required under the no-fault law, MCL 500.3158. Education records were never requested by MEEMIC, as DF-AE claims. Further, as a public school teacher, PL-AT's education records were publicly available and did not need an authorization to obtain, unless the intent of Mr. Wright to was to get permission copy PL-AT medical records and other records he received from the provider's that he would not have had using SCAO forms or getting them directly from PL-AT or her employer, so he could re-disclose her information; or in the case of MEEMIC, to get her forms in the database of a record copy service so MEEMIC could then re-disclose them or sell them to others not related to the case or so that others could legitimately access and use her private information. The "others" would even include her employer, who had PL-AT's private medical information in her employment file that they could not legally re-disclose unless Plaintiff authorized re-disclosure by signing an authorization like a RDS form or Mr. Wright's form.

C. DF-AE states, "*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.*"

As explained in items B and C above, PL-AT *did* sign authorizations for both DF-AEs in the instant case. She completed copies of MC 315. PL-AT would have signed modified RDS

forms for MEEMIC, but they were not accepted by the court. PL-AT's cases were dismissed as described in item A above.

DF-AE's presentation of the issues that were supposedly "the same" in the MEEMIC case and the instant case, is based on false statements and an avoidance of the true issue that was at least similar in the two cases, which was PL-AT's desire to use MC 315 in the MEEMIC case, and her actual use of MC 315 in the instant case, and the fact that the circuit court would not allow the use of MC 315 even though it is mandated under MCR 2.314(C)(1)(d).

On pg. 27, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" If anyone should be making a statement like this, it should be PL-AT, about both DF-AEs' Answers to her Application, that are packed with falsifications of events, incorrect dates, incorrect quotations, misrepresentations and lies. EDI's 3-30-15 Answer not only avoids the real issues of the case, but also the real issues of this particular Appeal to the MSC, which are in regard only to the COA's 11-25-14 Order, its application of the doctrine of collateral estoppel, and the COA's decision to uphold dismissal of the case without oral arguments without following its internal operating procedures of notifying the parties so they can object. In this Application, the MSC is <u>not</u> examining the Circuit Court's actions or the merits of PL-AT's issues presented to the COA, or even the 3-10-15 COA Opinion (since this is being appealed separately with the request that the 3-10-15 Opinion is invalidated since it was issued after the COA already upheld case dismissal using the justification of the doctrine of collateral estoppel in its 11-25-14 Order).

On pg. 27, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" As explained, there were not numerous occasions to disobey any of the court orders---only one occasion, as PL-AT was only legitimately ordered one time to produce medical record authorizations to DF-AE EDI, on 6-21-13, and she provided copies of executed MC 315 on 6-24-13. It is the DF-AEs and the circuit court that believe the Michigan Court Rules do not apply to them, as they are the ones who refused to allow PL-AT to use SCAO-mandated form MC 315 as provided under MCR 2.314(C)(1)(d). Whether it is the common, or, "well established" discovery procedure for a plaintiff in a personal injury case to provide record copy service authorization forms, or other forms that allow for re-disclosure of PL-AT's medical records, is still not the required discovery procedure under any court rule. PL-AT has the right to use MC 315 under MCR 2.314(C)(1)(d). Still, DF-AE is confusing the court by even discussing this issue because the MSC is not to be considering the actions of the circuit court---only the actions of the COA when it used the doctrine of collateral estoppel to justify upholding the dismissal of PL-AT's case in its 11-25-14 Order without holding oral arguments.

On pg. 27, ¶2 of EDI's 3-30-15 Answer, it is stated, "*For that reason, the Circuit Court dismissed her lawsuit and the Court of Appeals correctly struck previously litigated issues and affirmed the remaining issues.*" Again, PL-AT's case was not dismissed for the reasons quoted in the previous paragraph. It was dismissed for the court's refusal to accept already executed and mailed copies of MC 315. Nothing was previously litigated in the MEEMIC case since the COA ruled that the Protective Order in the case prevented her from using MC 315 or any other form besides unmodified RDS forms. The COA had no legal right to affirm the remaining issues in a

separate Opinion issued on 3-10-15 after it had already upheld the dismissal of the entire case due to collateral estoppel on 11-25-14. The upholding of dismissal of a case cannot be done on two different dates, for two different reasons. Only the first time can be the legal Order of the Court. PL-AT argues that the 3-10-15 Opinion is therefore invalid, and it has been separately appealed to the MSC on 4-21-15 (MSC No. 151463).

In conclusion of section II, it should be clear that EDI has attempted to confuse the Court as to the true issues it should be examining. The MSC needs only to determine whether or not issues I-III and VI are the same as those presented in PL-AT's MEEMIC appeal, and if so, determine whether or not the issues were actually litigated, whether or not the appeal process must be exhausted before collateral estoppel can be applied, and whether or not oral arguments should have been held before the order to uphold dismissal was made on 11-25-14. These are the arguments for which PL-AT has provided support in her 3-10-15 MSC Application. The MSC is only examining the actions of the Court of Appeals, not the Circuit Court because the COA did not actually affirm any of the circuit court's actions in its ruling. Let it be clear PL-AT's 3-10-15 Application is only in regard to the 11-25-14 Order of the COA, not the Opinion issued 3-10-15, since it was the 11-25-14 Order that upheld dismissal of the case due to the COA accepting Culpert's arguments that the doctrine of collateral estoppel was applicable, not the Opinion, issued after the case was already dismissed on 11-25-14, which contains different reasons for case dismissal.

III. The COA violated Internal Operating Procedure 7.214(E) when it did not notify the parties that the case would be submitted to a panel without oral argument. The requirements of MCR 7.214(E) were not satisfied in order to decide Culpert's 10-17-14 Motion to Affirm without oral arguments. DF-AE purposely used the wrong number for the aforementioned court rule throughout the Answer, to give the appearance that PL-AT did not already argue it in her 3-10-15 Application. DF-AE also cites the wrong number for the associated IOP because IOP 7.214(E) contains arguments that support PL-AT's position.

On pg. 27-28 of EDI's 3-30-15 Answer, DF-AE claims that PL-AT failed to provide this court with any source of law whatsoever regarding her argument that she was denied due process because she was denied oral arguments for the issues on appeal, and states that the court should not determine this for her. PL-AT clearly explained that MCR 7.214(E) was violated. This court rule was directly in the heading of argument I on page 4 of PL-AT's 3-10-15 MSC Application. It would be misleading enough for DF-AE to argue that PL-AT did not cite any legal justification for arguments, but even worse, the DF-AE has cited the very court rule PL-AT argued in her application, but gave it the wrong number, and referred to it as MCR 7.21**3**(E) instead of MCR 7.21**4**(E) so the court may think PL-AT did not argue against the only court rule that pertains to motions being heard without oral arguments, 7.21**4**(E), when she clearly rebutted each of the three items listed in this rule that could have allowed the COA to make a ruling without oral arguments on pgs. 15-16 of her 3-10-15 Application.

According to MCR 7.21**4**(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 IV and V 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 IV and V 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. The COA also violated the associated internal operating procedure 7.214(E) that required notification to the parties if the case was being submitted for decision without oral argument. 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.

On pgs. 28-29 of EDI's 3-30-15 Answer, in regard to the COA's 11-25-14 Order that upheld the dismissal of PL-AT's entire case, DF-AE points out that the decision was unanimous, as a decision to grant a motion to affirm must be unanimous according to MCR 7.211(C)(3). It is not clear why this information is relevant except that it may be an attempt to confuse the court about the other applicable court rule MCR 7.214(E)(1), mentioned above, which required a unanimous conclusion in regard to which of the three reasons could allow the COA to hear a motion without providing oral arguments. As explained above, none of the three requirements outlined in MCR 7.214(E) were satisfied to permit the COA to dispense with oral arguments.

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*Furthermore, Plaintiff did not have the right to oral argument on her two remaining issues.*" However, DF-AE states no basis for this claim, nor is any rebuttal provided to PL-AT's Argument IB1 on pg. 14-15 of PL-AT's 3-10-15 MSC Application, which explained she had met the requirements of MCR 7.214(A) and properly requested oral arguments on the front page of both her Answer to Culpert's 10-17-13 Motion to Affirm, and in her 12-20-13 COA Brief on Appeal. Therefore, the COA should not have upheld the dismissal of PL-AT's case by granting Culpert's 10-17-13 Motion to Affirm without holding oral arguments. DF-AE continues, "*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.*" It is not true that PL-AT declined the opportunity to argue her case, nor can anything PL-AT said be considered "chastising the Panel," as can be evidenced by listening to the approximately 5-

minute audio recording of the 3-3-15 COA hearing. Let it be clear that this "opportunity" was given to her by the COA panel after PL-AT had already explained the following to the panel:

> *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 case caption. EDI is represented by two different attorneys, representing two different companies. EDI has a $1,000,000 policy with each company. Kevin Culpert has a $20,000 policy liability policy with Progressive Insurance Company.*
>
> *Even though I fulfilled my obligation to provide medical records to both Defendants by executing and mailing SCAO-mandated Form MC 315 to over 20 health care providers, the circuit court granted EDI's motion to dismiss my entire case against both Culpert and EDI, for my 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.*
>
> *I also have a first-party case against MEEMIC Insurance Company pending in the MSC in which I requested to use MC 315, but hadn't actually provided records to the defendant yet, as I have 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 that case, I could not use MC 315 to provide my records to MEEMIC and had to instead use third-party record copying service forms provided by MEEMIC.*
>
> *On November 25, 2014, with neither the Plaintiff-Appellant or the Defendant-Appellees present, the COA heard and issued an order on Culpert's Motion to Affirm, which argued that the doctrine of collateral estoppel barred me, the Plaintiff-Appellant, from having the same claims against Culpert and EDI, since the COA had ruled in the MEEMIC case that I could not use MC 315 to provide my medical records. Not only is there no Protective Order in the instant case upon which the MEEMIC opinion is based, but they are completely different defendants and different insurance companies. Collateral estoppel cannot bar a plaintiff from making the same or similar claims against different defendants. Nonetheless, the COA granted the Motion to Affirm for items 1-3, and 6 that were presented in my brief on appeal.*
>
> *This hearing is therefore supposed to be only in regard to items 4 and 5 from my brief on appeal. However, by the COA affirming item 3, they affirmed that the circuit court did not err when it dismissed my entire case.*
>
> *Therefore, anything I argue today 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 item 3, the COA has already chosen to affirm the circuit court's dismissal of the entire case for my refusal to complete forms provided by the Defendant. The case can't be dismissed twice. I now have to argue item 3 in the Supreme Court if I want to try to reverse the COA's upholding of the circuit court's dismissal of my case.*

At this point, PL-AT was cut off by Judge Gleicher, who commented, "*And you understand that this panel didn't sign those orders. We're bound by those orders but we didn't sign them*." PL-AT acknowledged this and pointed out that one of the judges, Karen Fort Hood, on the 3-3-15 panel, was shown to have been on the 11-25-14 panel that signed the 11-25-14 Order to dismiss PL-AT case in its entirety. Judge Gleicher explained that they rule on about 40 motions a month and that it wouldn't surprise her if Judge Fort Hood was on that panel, although Judge Fort Hood did not acknowledge a recollection of having been on the 11-25-14 panel. PL-AT respectfully pointing out the fact that Judge Gleicher's statement that members on the current panel didn't sign the orders that upheld the dismissal was incorrect, cannot be considered "chastising the panel," when all PL-AT did was correct a misstatement for the record.

PL-AT then continued with her oral arguments, "*What I'm basically saying is, <u>that</u> panel dismissed the case. Item III was---involved dismissal of the entire case. So I---I guess I don't really understand the purpose of this hearing since the matter was already decided by the COA's November 24th [meant to say 25th] Order which upheld the dismissal of the entire case, so arguing issues IV and V at this time wouldn't have any impact or purpose whatsoever because even an outcome in my favor is not going to change the November 24th [meant to say 25th] order that already dismissed the entire case under item III.*" Judge Gleicher never asked PL-AT any questions in regard to item III. Judge Gleicher's response was, "*Well you've raised a very interesting jurisdictional question that I have to say evaded the rest of us so if you want to continue to argue the issue that is before us, feel free.*" PL-AT responded, "*I just, like I said, I don't see any point*---" At the time, PL-AT interpreted "the issue that is before us" to mean Issues IV and V that were supposed to be heard that day. PL-AT now realizes this statement could also be interpreted to mean that she could continue arguing the issue of her case already having been

dismissed by the 11-25-14 Order. Judge Gleicher then informed PL-AT that if her [Plaintiff's] analysis was correct, then her time for filing an appeal with the MSC was ticking, which PL-AT acknowledged.

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" This argument does not appear in PL-AT's Application or in any of PL-AT's COA filings and is fabricated by the DF-AE. Also, once again, DF-AE has cited the wrong number for this court rule[5]. Again, it is MCR 7.21**4**(E) that governs Motions to Affirm and which contains the three reasons they may be decided without oral arguments, not MCR 7.21**3**(E). Let it be clear there are <u>two</u> occurrences in which PL-AT did not receive proper oral arguments, that together resulted in her entire case being disposed of without <u>any</u> legitimate oral argument session. The first occurrence was when she was denied oral arguments for Culpert's 10-17-14 Motion to Affirm, which was granted on 11-25-14 and upheld the dismissal of the case based on the doctrine of collateral estoppel. This motion was only granted in part, for issues I – III, and VI of PL-AT's 12-20-13 COA Brief on Appeal. Issues IV and V were left behind to be heard by the COA on 3-3-15. However, since the COA already upheld the dismissal of the case on 11-25-14, they could not reverse the dismissal by hearing PL-AT's oral arguments on issues IV and V on 3-3-15, and this resulted in the second denial of oral arguments, the sum total being that PL-AT was denied any oral arguments at all on her 12-20-13 Appeal to the COA. The Michigan Court of Appeals Internal Operating Procedures ("IOP") do not allow for the COA to decide a case

[5] As explained on page 76 DF-AE purposely referred to MCR 7.214(E) as MCR 7.213(E) in order to give the appearance that PL-AT did not argue this court rule in her 3-10-15 MSC application, when in fact, she provided rebuttals for each of the three reasons that a motion may be decided by the COA without oral argument.

without oral argument without notifying the parties that it is going to be submitted to a panel without oral arguments and allowing the parties to object by motion. PL-AT was never notified by the COA that her case was going to be submitted to a panel without oral argument, thus IOP 7.214(E) was violated. DF-AE only discusses the court rule that allows a motion to affirm to be decided without oral arguments, MCR 7.214(E) which is erroneously referred to by DF-AE as MCR 7.213(E). DF-AE conceals the fact that an entire case cannot be decided without oral arguments but not the entire case, as evidenced by the also using the wrong procedure number of the COA IOP, as explained below, and not citing the pertinent content of IOP 7.214(E), which corresponds to MCR 7.214 in regard to deciding motions to affirm without oral argument.

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" There is no such thing as IOP 714(E). The pertinent IOP in regard to decisions without oral argument is IOP 7.214(E), the procedure corresponding to court rule 7.214(E), in regard to deciding motions to affirm without oral argument:

> **IOP 7.214(E)—Decision Without Oral Argument**
> The parties will be notified in writing if a case is submitted to a panel without oral argument pursuant to MCR 7.214(E). If a party believes oral argument is necessary in the case, the party should immediately file a motion for oral argument before the panel. The panel has the discretion, even absent a motion, to determine that the case requires oral argument. If this occurs, the parties will be notified of the date and location of the hearing before that panel.

Therefore, PL-AT should have been notified by the COA in writing that her case was going to be submitted to a panel without oral argument so that she could have filed a motion to object.

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*"

Since there are provisions for hearing motions without oral arguments in MCR 7.214(E) and IOP 7.214(E), it would be expected that the COA would follow these procedures and provide the appropriate notice to the parties when the COA believes it has a legitimate reason to deny oral arguments on a case. DF-AE suggests that nothing prevents the COA from giving the opportunity to present oral arguments anyway, but one would not expect that the COA would hold a phony hearing, and waste judicial resources and everyone's time if the COA was not legally required to hear oral arguments, because this simply would not make any common sense. More importantly, PL-AT argues that MCR 7.214(E) and its associated IOP would never allow for oral arguments to take place once it was decided that they were not necessary because the appeal would go straight to the panel for a decision, in accordance with IOP 7.214(E). If this IOP were actually followed, the COA would be prevented from even *scheduling* an oral arguments session, and a situation like the PL-AT's would never have even occurred. DF-AE's argument is therefore without merit.

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" Whether there were any concurring opinions or dissents does not change the fact that PL-AT did not receive any valid oral arguments session for any of the arguments I – VI of her 12-20-13 appeal to the COA. Further, the COA may have only issued one opinion on 3-10-15, but most importantly, the COA issued an 11-25-14 order that upheld the dismissal of the case. Upholding dismissal can only be done once, and it occurred on 11-25-14. The 3-10-15 opinion upholds the dismissal of the case for different reasons that the 11-25-14 order. If any opinion was to be issued at all, it should have contained only a discussion of the justification for using the doctrine

of collateral estoppel to uphold the dismissal of PL-AT's entire case. PL-AT has separately appealed the 3-10-15 opinion to request its invalidation since the 11-25-14 order resulted in the actual upholding of the dismissal of the case (MSC Case No. 151643).

On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*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.*" PL-AT agrees that the Court rules are not crafted to violate any due process rights. It is clear there are certain situations where oral arguments do not have to be granted, but they did not apply in PL-AT's case, as argued above. The court rules and internal operating procedures for 7.214(E) simply were not followed by the COA when it ruled on the 10-17-14 Motion that upheld dismissal of the entire case on 11-25-14 without providing oral arguments and without notifying the parties that the case would be submitted to a panel for decision without oral argument to that PL-AT could have had the opportunity to object. Therefore, PL-AT's due process rights *were* violated by the COA.

In summary, it is clear this section of DF-AE's Answer purposely concealed the true basis of PL-AT's arguments in regard to why she was entitled to oral arguments on Culpert's 10-17-14 Motion to Affirm, and on her case in general, by presenting faulty arguments and claiming they were the PL-AT's arguments, avoiding mention of PL-AT's real arguments, mis-citing MCR 7.214(E) to give the appearance PL-AT did not already argue it, mis-citing the corresponding IOP 7.214(E) and avoiding mention of the true basis of this IOP that outlines the procedures for

deciding a case without oral argument. DF-AE has therefore not provided any valid arguments in regard to why PL-AT was not entitled to oral arguments on her appeal to the COA.

CONCLUSION/RELIEF REQUESTED

On pg. 30, ¶1 of the Conclusion of EDI's 3-30-15 Answer, DF-AE claims "*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.*" PL-AT presented more than one question that warrant this Court's review. Below are the 3 questions from PL-AT's 3-10-15 MSC Application, which definitely warrant the court's review for the reasons provided in PL-AT's Statement of Jurisdiction:

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?

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?

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?

After further research, PL-AT admits that it may be possible to apply the doctrine of collateral estoppel to a case with different defendants. However, PL-AT still has provided other valid reasons that the COA's 11-25-14 Order erroneously applied the doctrine, and there is still the issue of the COA upholding the dismissal of PL-AT's entire case without holding a valid oral arguments session, denying her due process. Therefore, the only remedy is to remand PL-AT's case back to the COA for oral arguments on all six issues presented in PL-AT's 12-20-13 COA Brief on Appeal so that a legitimate Opinion can be issued that encompasses all six issues.

On pg. 30, ¶1 of the Conclusion, DF-AE claims PL-AT "*fails to identify any legal support for her claim" "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."* This statement is untrue, as explained in Argument III on pgs. 76-85 of this Reply. DF-AE falsified the court rule number to give the appearance that PL-AT did not argue the applicable court rule, MCR 7.21**4**, when she clearly explained her 3-10-15 MSC application that she properly requested oral argument on the front page of both her Answer to Culpert's 10-17-13 Motion to Affirm, and in her 12-20-13 COA Brief on Appeal in accordance with MCR 7.214(A); and provided rebuttals for each of the three reasons outlined in MCR 7.214(E) that the court can decide a motion without providing oral arguments. PL-AT further adds that the COA's Internal Operating Procedure 7.214(E), that corresponds with MCR 7.214(E), requires that the COA notify the parties that the case will be submitted to a panel that will decide the case without hearing oral arguments. PL-AT received no such notice, which is clearly a violation of IOP 7.214(E). therefore, the COA erred by upholding the dismissal of the case on 11-25-14 without providing oral arguments.

On pg. 30, ¶1 of the Conclusion, DF-AE claims PL-AT's "*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." As explained briefly above, and in detail on pgs. 76-85, it is the COA that violated MCR 7.214(E) and IOP 7.214(E) when it upheld the dismissal of PL-AT's case without hearing oral arguments, since PL-AT properly requested them under MCR 7.214(A). PL-AT *does* have a right to oral argument unless at least one of the three criteria under MCR 7.214(E) is satisfied, and if that were the situation, the COA should have notified PL-AT in accordance with IOP 7.214(E) so that she could have objected by motion.

On pg. 30, ¶2 of the Conclusion, in regard to PL-AT's arguments that the application of the doctrine of collateral estoppel could not legitimately be applied, DF-AE only mentions PL-AT's arguments about the defendants not being the same, and that the issues were different. PL-AT also argued that the issue of using MC 315 was not actually litigated and that she had not completed the appeal process for the MEEMIC case, and therefore did not have a "full and fair" opportunity to litigate the issues. Nonetheless, the issues were definitely not the same as explained in the detailed analysis of both cases in Argument IIB on pgs. 18-23 of PL-AT's 3-10-15 MSC Application, especially Issue I of PL-AT's 12-20-13 COA Brief on Appeal, in regard to liability, since the MEEMIC case did not involve a dispute about liability. DF-AE's comparison of the issues that were supposedly the same was factually erroneous, as explained on pgs. 69-73 of this Reply, and did not even mention the real similarities between the MEEMIC case and the instant case, which was PL-AT's desire to use in MEEMIC case, and actual use of MC 315 in accordance with MCR 2.314(C)(1)(d) in the Culpert and EDI case.. Clearly, the COA erred in its application of the doctrine of collateral estoppel to uphold the dismissal of the entire case with its 11-25-14 Order.

On pg. 30, ¶2 of the Conclusion, DF-AE states, "*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.*" Again, this is not the reason PL-AT's lawsuits were dismissed. PL-AT's first party case was dismissed for the Court's refusal to accept modified RDS medical authorization forms, the health care providers' forms, or MC 315. The third-party case was dismissed due to the Court's refusal to accept the already executed copies of MC 315 by which DF-AE EDI had already received records, and was still receiving records. Again, this Court is not even determining whether the circuit court erred in dismissing the case, as DF-AE continues to mislead the MSC to believe. This Application is does not involve the MSC making any determination about the proceedings at the Circuit Court level. It only pertains to the 11-25-14 Order of the COA to grant Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel, and whether or not the doctrine was applicable to issues I-III and VI of PL-AT's Appeal, and whether or not the 11-25-14 Order that upheld dismissal of PL-AT's entire case was in violation of IOP 7.214(E) that requires notice to parties if a case is to be determined without oral arguments, and whether it could have even legitimately been determined without oral arguments in accordance with MCR 7.214(E).

On pg. 31, ¶2 of the Conclusion, DF-AE states, *"The Application for Leave to Appeal presents nothing more than Plaintiff-Appellant's final effort to continue her fruitless litigation."* PL-AT's litigation has only been "fruitless" because the COA does not want to rule on the issue of MC 315. In the MEEMIC case before the COA, the 10-14-14 Opinion used the excuse that a protective order was the reason PL-AT could not use MC 315 and had to use RDS forms instead, which was an argument that was not reserved or presented by MEEMIC in any filings. In the instant case, the COA erroneously applied the doctrine of collateral estoppel, using the MEEMIC

case to block PL-AT from litigating her issues in regards to her use of MC 315, and avoided making a decision as to whether or not plaintiffs could use MC 315 to provide medical records to defendants in the absence of a protective order. PL-AT sincerely hopes that the MSC will grant PL-AT's application for leave to appeal so PL-AT can continue her pursuit of justice to eventually obtain a ruling by the COA or the Michigan Supreme Court to uphold MCR 2.314(C)(1)(d) without further stalling by DF-AE's and the refusal by the COA to address this court rule in their opinions, and the refusal of the lower court to follow this rule that it is mandated to follow when a Plaintiff in a personal injury case exercises their right to choose to provide discovery of their medical records using SCAO-mandated Form MC 315, so that PL-AT's cases can be reinstated and she can be fairly compensated for her injuries sustained in the auto accident.

On pg. 31, ¶2 of the Conclusion, DF-AE states, *"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."* This is untrue. The COA has not actually affirmed any of the circuit court's actions. As explained in the previous paragraph, in the MEEMIC case, the COA used the protective order to avoid ruling on whether or not PL-AT should have been able to use MC 315. Then, the COA used the doctrine of collateral estoppel to again avoid ruling on the issue of MC 315. Therefore, the COA never actually affirmed the circuit court's refusal to accept already executed copies of MC 315 and its sanction of dismissal for PL-AT's refusal to redo the process using Mr. Wright's personal authorization forms. The COA avoided making such an affirmation that "the Circuit Court did not abuse its discretion when it dismissed the lawsuit," as DF-AE claims it did, by upholding the dismissal of the case due to the doctrine of collateral estoppel in its 11-25-14 Order, which did not justify any

of the circuit court's actions---it just prevented PL-AT from litigating them. The COA cannot uphold the dismissal of PL-AT's case on two different dates, for two different reasons. The 3-10-15 COA Opinion discusses different reasons for upholding case dismissal than the 11-25-14 order, which is the reason all six arguments need to be presented for oral argument before the COA, so that a legitimate opinion can be issued, that encompasses all six issues presented to the COA, in one consistent opinion.

On pg. 31, ¶2 of the Conclusion, DF-AE states, *"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."* This is a fallacious argument. The basis of PL-AT's case is that she should be allowed to use MC 315 instead of the authorizations provided by the DF-AEs. If the MSC remanded this case back to the COA, the COA would have to hear all the issues of the case. If the Court of Appeals were to then remand the matter to the Circuit Court, part of their Opinion would be in regard to whether or not PL-AT is permitted to use MC 315. If the COA ruled that she could not use MC 315, the case would not even be remanded since the COA would be agreeing with the circuit court that case dismissal was appropriate. Therefore, the only way the case could even be remanded back to the circuit court would be if the COA agreed with PL-AT that her executed copies of MC 315 should have been accepted by the circuit court. Upon remand, there would be no more dispute over signing the DF-AE's authorizations because the COA would have ruled that MC 315 was an acceptable form to use.

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"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."* To the contrary, PL-AT has *only*

wanted to follow the rules, but the DF-AEs and courts will not allow her to follow MCR 2.314(C)(1)(d), the rule which mandates the use of SCAO Form MC 315 to provide medical records to the DF-AEs. PL-AT would have provided copies of her medical records, but neither her own attorney who had agreed to allow her to provide her own copies of her medical records for discovery when she hired him, the Court or the DF-AEs would accept her own copies of her medical records, even though all Mr. Wright asked for in his 2-7-13 Request for Production, were copies of medical records, not authorization forms, which leads PL-AT to believe there is more to this than just PL-AT's right to use MC 315 forms.

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"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."* Again, there is no court rule that permits "free" or "open" access to medical records, nor has DF-AE cited one. The only court rule pertaining to divulgence of medical information is MCR 2.314, the rule PL-AT has been trying to get the courts to uphold, so that her use of MC 315 to provide her medical information to DF-AEs is considered to have completed her obligation to produce the requested discovery. PL-AT provided any and all records, back to birth, from all health care providers (Exhibits A, B, I, J). DF-AEs who request medical records beyond medical records pertaining to physical injuries, that are "protected" such a psychological, psychiatric or alcohol or drug abuse records must prove legitimate reasons for requesting those kinds records. PL-AT denies she acted as the ultimate arbiter. Clear Court rules, such a MCR 2.314(C)(1)(d), should not even have to be arbitrated. Mr. O'Malley does not give PL-AT the respect worthy of an ultimate arbiter. His lying, name calling and innuendo, from PL-AT's experience, is the typical legal bullying to be expected of an attorney that has a

lack of laws or rules to cite to back up his arguments.

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"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."* Again, these claims are ludicrous and false, when it is clear the case is in regard to the court's acceptance of already executed MC 315 forms that did "divulge discoverable information" in its entirety (Exhibits A, B, I, J).

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"Eventually, the Circuit Court gave her a last chance: sign the releases that are presented to you or I dismiss your case."* This so-called "last chance" was given at the 8-9-13 hearing on PL-AT's objections to Mr. Wright's seven-day order of dismissal, whereby PL-AT was misled by the court and the attorneys to believe the Court could reverse the dismissal of her case, when it could not, since MCR 2.602(B)(3) only permitted "objections to the accuracy and completeness of the order," and Mr. Wright left that required notice that off the Order to deceive PL-AT. This "last chance" was also *after* the case was dismissed 6-24-14, and PL-AT had already executed and mailed copies of MC 315 to twenty-some health care providers, from which Mr. Wright had already been receiving PL-AT's medical records for over 6 weeks, and the Court still tried to ordered PL-AT to re-do the process using Mr. Wright's personal forms.

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"Despite the ultimatum, Plaintiff-Appellant took one last stab at maintaining control, herself."* DF-AE makes a point that PL-AT is pro per, which should not make any difference. It should be understood that PL-AT did argue on 8-9-13 that her executed MC 315 forms should have been acceptable to the court, and she

should have had such "control," since it was already a "given" that court rule, MCR 2.314(C)(1)(d) that mandated the use of MC 315, was PL-AT's choice to exercise. PL-AT had to handle this issue on her own because her attorney, Mr. Salisbury, breached his hiring agreement by refusing to stand up for her right to provide her own copies of records to the DF-AEs, which was one reason why she discharged him in a certified letter dated 3-8-13.

On pg. 31, ¶3 of the Conclusion, DF-AE states, *"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."* Again, it is DF-AEs and the circuit court that willfully violated discovery rules when they refused to accept the already executed copies of MC 315 that were mailed to all of PL-AT's healthcare providers, and the DF-AE who violated the circuit court's 6-21-13 order to provide PL-AT with Mr. Wright's authorization forms by the end of the business day on 6-21-13. This court has the opportunity to finally correct the injustice that has been done to PL-AT, and should grant PL-AT's 3-10-15 Application.

5-11-15
Date

signature redacted

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

Exhibit A

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 B

6477 Edgewood
Canton, MI 48187
June 24, 2013

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

RE: Correction of mailing address on medical authorizations dated June 21, 2013

Dear Medical Records Custodian,

On June 21, 2013, I sent a signed authorization and request to release certified copies of my medical records to Attorney James Wright. I **mistakenly** listed **31200 Middlebelt Rd.,** Suite 150, Farmington Hills, MI 48334 as the address to send the records. The **correct address** to send the records to is **31700 Middlebelt Rd.,** Suite 150, Farmington Hills MI 48334.

I have enclosed a cover letter and signed authorization forms reflecting the correct address to mail the certified copies of the records to Mr. Wright.

That address is:
Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

I apologize for any inconvenience this may have caused. Thank you for your patience.

Yours truly,

Tamara Filas

6477 Edgewood
Canton, MI 48187
June 21, 2013
(revised June 24, 2013)

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

RE: Request for records pertaining to Tamara Filas, DOB [redacted]

Dear Medical Records Custodian,

This cover letter replaces the original cover letter sent June 21, 2013, and corrects the mailing address of the records recipient only.

Attached is a signed Authorization for Release of Medical Information and Authentication Certificate, permitting the disclosure of records pertaining to Tamara Filas, DOB [redacted], as described in detail below, to:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

It is necessary that the attached Certificate, to be completed by the Records Custodian, is notarized, and sent by U.S. Certified Mail with Return Receipt, in order to satisfy MCR 2.506(I)(1)(b).

Description of records requested:

Redacted: Below was DOB

Any and all PHI from [redacted] until present.

Redacted: Below was DOB Redacted: Below was DOB

Any and all medical records from [redacted] to present pertaining to Tamara Filas DOB [redacted], including all medical reports, doctor notes/reports, nurse's notes/reports, consultation notes/reports, admission notes, treatment notes/history, radiographic study reports, medical orders, physical therapy notes/orders/regimen, performance appraisals, exam results, discharge summaries and the like, including, but not limited to the following practitioner visits:

Redacted: Additional letters of caregivers' names and type of report

4-7-10, K[redacted]S[redacted]
5-5-10, J[redacted]L[redacted] and C[redacted]E[redacted]
8-31-10, C[redacted]L[redacted]
9-16-10, V[redacted]S[redacted]

11-2-10, C[redacted]E[redacted]
4-14-11, N[redacted]C[redacted]
9-12-11, C[redacted]E[redacted]and J[redacted]M[redacted]
10-3-11, [redacted]testing reports
10-5-11, C[redacted]E[redacted]
12-13-11, C[redacted]L[redacted]
2-17-12, C[redacted]L[redacted]
3-8-12, J[redacted]N[redacted]
4-4-12, J[redacted]N[redacted]
4-9-12, J[redacted]N[redacted]
4-16-12, J[redacted]N[redacted]
4-19-12, J[redacted]N[redacted]
7-13-12, C[redacted]L[redacted]
10-5-12, C[redacted]L[redacted]

Thank you in advance for your assistance.

Yours truly,

signature redacted

Tamara Filas

Approved, SCAO

Original - Records custodian
1st copy - Requesting party
2nd copy - Patient

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO. ~~13-00652-NI~~ 13-000652-NI

Court address
2 Woodward Ave., Detroit, MI 48226

Court telephone no.
(313) 224-5261

Plaintiff		Defendant
Tamara Filas	v	Kevin Culpert and Efficient Design, Inc.

☐ Probate In the matter of _____

1. Tamara Filas [redacted]
Patient's name Date of birth

2. I authorize Henry Ford West Bloomfield Hospital, Attn: Medical Records, 6777 West Maple Rd., West Bloomfield, MI 48322
Name and address of doctor, hospital, or other custodian of medical information

to release (see attached letter dated 6-24-13)
Description of medical information to be released (include dates where appropriate)

to Mr. James Wright; Zausmer, Kaufman, August & Caldwell, P.C.; 31700 Middlebelt Rd., Suite 150; Farmington Hills, MI 48334
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.

06/24/2013
Date

signature redacted
Signature

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

6477 Edgewood
Address

Canton, MI 48187
City, state, zip

(734) 751-0103
Telephone no.

45 CFR 164.508, MCL 333.5131(5)(d), MCL 333.26265, MCR 2.506(I)(1)(b), MCR 2.314

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

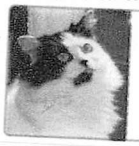
_____
City, state, zip Telephone no.

UNITED STATES POSTAL SERVICE®

Certificate Of Mailing

This Certificate of Mailing provides evidence that mail has been presented to USPS® for mailing. This form may be used for domestic and international mail.

From:



Ms. Tamara Filas
6477 Edgewood Rd.
Canton, MI 48187

To: Henry Ford West Bloomfield Hospital
Attn: Medical Records Custodian
6777 West Maple Rd.
West Bloomfield MI 48322

PS Form 3817, April 2007 PSN 7530-02-000-9065

1000

UNITED STATES POSTAL SERVICE

U.S. POSTAGE
PAID
CANTON, MI
48187
JUN 24, 13
AMOUNT

$1.20
0001429-04

Exhibit C

Michigan Supreme Court
State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909
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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 gentilozzit@courts.mi.gov or 517-373-2217.

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[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 D

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

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

Exhibit E

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

TAMARA FILAS,

Plaintiff,

Case No. 13-000652 NI

vs.

KEVIN CULPERT and EFFICIENT DESIGN,

Defendants.

_____/

MOTION

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

APPEARANCES:

Pro Per Plaintiff: TAMARA FILAS
6477 Edgewood
Canton, MI 48187
(734) 751-0103

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

For the Defendant: (Kevin Culpert) AHMED HASSOUNA, P67995
Vandeveer Garzia
1450 W. Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2940

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WITNESS:

None

EXHIBITS: IDENTIFIED RECEIVED

None

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

policies.

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

THE COURT: What is CGEL for?

MR. WRIGHT: CGL.

THE COURT: What is it?

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

THE COURT: What does CGL stand for?

MR. WRIGHT: Commercial General Liability.

THE COURT: I don't like abbreviations.

MR. WRIGHT: Sorry, Your Honor.

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

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

THE COURT: You're what?

MS. McGRATH: For Mr. Culpert.

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

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

THE COURT: Oh, that's your name.

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

Honor.

THE COURT: You're representing whom?

MR. HASSOUNA: Mr. Culpert, Your Honor.

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

MR. HASSOUNA: That's correct.

Third party defendant?

MR. HASSOUNA: Yes, Your Honor.

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

MR. HASSOUNA: Yes, Your Honor.

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

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

THE COURT: Okay.

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

THE COURT: Yeah, how many interrogatories are there?

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

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

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

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

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

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

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

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

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

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

THE COURT: Do it or no case.

MS. FILAS: Okay.

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

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

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

MR. WRIGHT: I have authorizations.

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

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

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

MR. WRIGHT: Okay.

THE COURT: If 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.

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

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

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

THE COURT: Okay, would you please give him

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.

THE COURT: Ma'am, just a second.

MS. FILAS: Okay.

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

MR. HASSOUNA: Mr. Culpert.

THE COURT: Culpert. Was he on the job?

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

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

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

THE COURT: Stay?

MR. WRIGHT: It was stayed, yes.

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

MS. McGRATH: He stayed the discovery.

THE COURT: What?

MR. WRIGHT: Yes, Your Honor, it was

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.

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

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

MR. WRIGHT: Okay.

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

THE COURT: For what?

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

THE COURT: What Protection Order?

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

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

THE CLERK: That's up next Friday.

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

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

both being heard today.

THE COURT: Does it?

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

THE COURT: When did you file it?

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

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

MS. FILAS: And they're already answered.

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

MS. FILAS: Sorry.

THE COURT: I can hear it today.

MS. FILAS: Okay.

THE COURT: Have you guys seen these motions?

MR. WRIGHT: Yes, Your Honor.

MR. HASSOUNA: Yes, Your Honor.

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

LAW CLERK: We had them for next Friday.

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

LAW CLERK: Okay.

THE COURT: Okay, we'll recall this case

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

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

THE COURT: What do you mean amendments?

MS. McGRATH: During the --

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.

MS. McGRATH: Thank you, Your Honor.

MR. WRIGHT: Thank you, Your Honor.

MR. HASSOUNA: Thank you, Your Honor.

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

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

THE COURT: Filas versus Culpert.

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

MS. FILAS: I do.

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

MR. WRIGHT: No.

MR. HASSOUNA: No.

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

MS. FILAS: Yes.

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

MR. WRIGHT: About?

THE COURT: Scolding the Court.

MR. WRIGHT: Well, Your Honor --

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

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

THE COURT: Counsel?

MR. WRIGHT: Yes, Your Honor?

THE COURT: I didn't appreciate it.

MR. WRIGHT: I apologize, Your Honor.

THE COURT: Okay.

MR. WRIGHT: But at the same time --

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

MR. WRIGHT: Thank you, Your Honor.

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

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

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

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

THE COURT: Just send them back to her.

MR. WRIGHT: Via e-mail?

THE COURT: Do you have e-mail?

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

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

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

THE COURT: This is useless.

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

attorney gave them out without my permission.

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

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

THE COURT: Okay.

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

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

MR. WRIGHT: About 27.

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

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

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

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

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

THE COURT: Okay.

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

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

MS. McGRATH: Yes, and we appreciate that.

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

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

MS. McGRATH: Thank you, Your Honor.

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

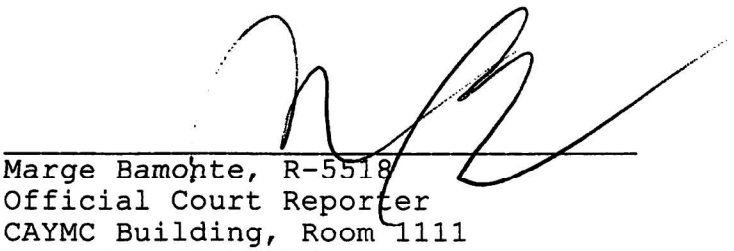
MR. WRIGHT: Thank you.

(Proceeding concluded - 11:20 a.m.

C E R T I F I C A T E

STATE OF MICHIGAN)
) .ss
COUNTY OF WAYNE)

I do certify that this transcript consisting of these pages are a complete, true, and correct transcript of the proceeding taken in this case in the County of Wayne, State of Michigan on Friday, June 21, 2013.



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