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 TAMARA FILAS'S REPLY TO DEFENDANT-APPELLEE CULPERT'S AND DEFENDANT-APPELLEE EFFICIENT DESIGN'S RESPONSES TO PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION

Dated: November 12, 2015

Now comes Plaintiff-Appellant ("PL-AT"), Tamara Filas, and for her Reply to Defendant -Appellee ("DF-AE") Culpert's 10-7-15 and Efficient Design's 10-15-15 Responses to PL-AT's Motion for Reconsideration in MSC Case No. 151198, hereby states the following:

On 10-19-15, PL-AT filed motions for leave to reply to DF-AE Culpert's and DF-AE Efficient Design's responses in MSC Case Nos. 151463, and 151198, requesting 28 days to file her replies if the motions were granted. The motions were granted in part on 10-28-15, providing only 15 days to file replies, an unreasonable amount of time for the arduous task of preparing four 10-page replies to pleadings with numerous erroneous statements and outright lies, often regarding extraneous issues. Due to the fact that since 10-28-15, PL-AT has been inundated with legal matters requiring timely action, such as scheduled hearings, filing motions and/or applications, sending letters of inquiry often related to these MSC cases, plus other ongoing employment and legal issues, coupled with health issues, PL-AT was unable to start work on the replies due 11-12-15 for this MSC case and the related case, MSC Case No. 151463, until the late evening of 11-11-15. For these reasons, in lieu of four separate filings in reply to each DF-AE's Response for each case, which PL-AT intended to prepare, PL-AT is submitting the same reply to all four responses, with the same filing being submitted one time in each MSC case.

PL-AT listed ten untruthful statements derived from DF-AE Culpert's and EDI's filings in her 10-19-15 Motion for Leave to file Replies (Exhibit A, 10-19-15 Motion), which took up almost ten pages to explain. Here, PL-AT will attempt to clarify some of the most important issues for the MSC, that have been misconstrued by the DF-AEs.

I. PL-AT's MSC Applications in Case Nos. 151198 and 151463 are in regard to *different* decisions made by the COA on different dates, and they request *different* remedies.

Both DF-AEs have lied by stating both MSC applications above are one and the same. MSC Case 151198 is in regard to appealing an 11-25-14 final Order in COA Case No. 317972 so that oral arguments may be heard on all 6 arguments presented by PL-AT, and MSC Case 151463 is in regard to getting a COA Opinion in the same COA Case No 317972 disposed of, since it upheld dismissal of the case for different reasons than the 11-25-14 Order. PL-AT's prays the Court will not misconstrue these differences, as PL-AT had to address issues from both cases in a single filing to be entered in both MSC case 151198 and 151463, which is completely contrary to what PL-AT would have done if she had been afforded adequate time to prepare her replies as requested in her 10-19-15 Motion for Leave to Reply to the four separate responses filed by DF-AEs.

II. PL-AT's first-party PIP case was NOT combined with this third-party auto negligence case as stated in the 1st sentence of EDI's introduction.

This is an Application to Appeal COA decisions made in a *third-party* auto negligence lawsuit only. Kevin Culpert was the only defendant in a combined first-party PIP and 3rd party tort Case No. 12-016693 in the 3rd Circuit Court where a stipulated Protective Order (PO) was entered the same day the case was dismissed by stipulation, who was party to the 3rd Party Circuit court Case No. 13-000652-NI timely filed on 1-14-13 within the 3-year statute of limitations, the only Case for the which the Applications to the MSC, MSC Case Nos. 151198 and 151463 were filed regarding the same COA Case No. 317972. No PO was ever entered by attorney Daryle Salisbury in the separate 3rd Party tort Case No. 13-000652 where the only parties of record were Kevin Culpert and EDI. EDI was never subject to a PO. Without a PO filed in Case

#13-000652-NI, whereby Judge Borman affirmed on the record during a hearing there was no PO in this case, the doctrine of collateral estoppel could never have applied, and the COA should not have granted Culpert's 10-17-14 Motion to Affirm on the basis of this doctrine in its 11-25-14 Order, upholding dismissal of PL-AT's entire case due to the inclusion of Issue III from her 12-20-13 COA appeal, nor should it have later opined on 3-10-15 that the PO was the sole reason that Judge Borman did not abuse her discretion by dismissing PL-AT's case when she didn't sign third-party records copy service forms, an argument never preserved in the lower court. Thereby the COA erred in upholding the dismissal of PL-AT's case based upon the Doctrine of Collateral Estoppel and the Case should have been remanded back to the CC by the COA in the first place or remanded back to the CC by the MSC. A judge or judges should always be aware that the judicial system is for the benefits of the litigant and the public, not the judiciary. It can reasonably be argued, the use of an unpreserved argument regarding the PO by the COA to justify Judge Borman's dismissal of PL-AT's separately filed PIP and 3rd Party cases, was to the benefit of the Judicial system, not to this **litigant or the public.**

The separate first-party MEEMIC case is only relevant to this separate third-party case because in the COA's 11-25-14 Order granting third-party Culpert's 10-17-14 Motion to Affirm, the COA ruled that the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI, falsely claiming that the issues in the instant case were the same as the separately-filed MEEMIC case. The COA disregarded the first requirement to legitimately apply the doctrine of collateral estoppel---the fact that the MEEMIC case had not been fully litigated when the COA made its rulings, nor had it been fully litigated when the MSC denied PL-AT's Applications for Leave to Appeal and that the separate MEEMIC 1st party case had a major difference from the separate 3rd party case, one with a PO, and the other without a PO, that gave

PL-AT a legitimate reason to challenge the decision of the COA.

By Defendant including a false statement stating that both the first- and third-party case were combined, and that Plaintiff's entire argument that the doctrine of collateral estoppel did not apply would be an argument without merit if the cases were combined and the PO applied to both the first-party defendant MEEMIC *and* the third-party Defendant's Culpert and Efficient Design, Inc., because there would have been no other case for the COA to cite to claim application of the doctrine of collateral estoppel, since PL-AT's argument was the doctrine of collateral estoppel did not apply because the separate MEEMIC case differed from the instant, separate third-party case because the Protective Order was filed only in the separately-filed first-party MEEMIC case, and not the third-party tort case separately filed in the lower court did not have a Protective Order, which would have been necessary to uphold the dismissal of the third party case based on the doctrine of collateral estoppel since the COA had created the novel argument, never argued in any of MEEMIC's pleadings, that it was the PO that gave Judge Borman authority to order PL-AT to sign third-party Records Deposition Services, Inc. forms to provide her records to MEEMIC.

III. The actions of the circuit court are NOT being considered in either of PL-AT's MSC Applications. Only the Court of Appeals' actions are relevant.

Both DF-AEs relentlessly and falsely portray the case as having to deal with *circuit court* events, when only the *Court of Appeals* events and decisions are being considered in PL-AT's two MSC Applications. PL-AT's 3-10-15 MSC Application in case no. 151198 is in regard to the COA's decision to uphold dismissal of PL-AT's case for different reasons than the circuit court dismissal, by applying the doctrine of collateral estoppel in its 11-24-15 Order, an argument that was never raised in the circuit court. PL-AT's 4-21-15 MSC Application in case no. 151463 is in

regard to the COA's decision to hold oral arguments after it had already dismissed the case, and issue a 3-10-15 Opinion that upheld dismissal for different reasons, on a different date, than the first and only valid dismissal of the case on 11-25-14. Nothing from the circuit court proceedings is relevant, since in case no. 151198, the MSC would only need to determine whether the doctrine of collateral estoppel legitimately applied, even though the case upon which it was based was not fully litigated, and for which the COA upheld dismissal based upon the novel argument that a protective order entered in the MEEMIC case gave judge Borman the authority to require plaintiff to sign third-party records copy service forms, and dismiss PL-AT's case because she objected to using them and did not sign them. In the second case, no. 151463, the MSC would only need to determine if the COA erred by holding illegitimate oral arguments on 3-3-15 which would have been moot since it already dismissed the case on 11-25-14, and by issuing a 3-10-15 Opinion that upheld dismissal of the case for different reasons than the 11-25-14 Order it already issued that dismissed the case in its entirety.

IV. DF-AEs make numerous representations of the persons involved in this case, including citing an incorrect COA panel, and concealing PL-AT's contact information from their filings.

A) EDI attorney, James Wright's involvement in the instant case has always been questionable, as explained by PL-AT in other filings, as Mr. Wright has never made any filings in the case, and did not even state his name for the record at the 3-3-15 Oral Arguments hearing. Both DF-AE's Responses contain the wrong e-mail address for Mr. Wright, preventing anyone interested in this case from contacting him easily via e-mail, and preventing him from actually receiving any messages in regard to this case by anyone who doesn't already know his real e-mail address, which is jwright@zkac.com, not jwright@zkact.com, as Mr. O'Malley has continued to erroneously supply on the cover page of filings, and not jtight@zkac.com, as Mr. Broaddus has supplied on his 10-7-15 Response.

B) On the cover page of its 10-15-15 Response, EDI again erroneously refers to James Wright as co-*counsel*, when he is actually a co-*defendant*. Pg. 4, ¶6 of the 3-10-15 Opinion states, "*plaintiff argues that her 'case involves three separate insurance companies and three separate insurance policies---one for Kevin Culpert and two for Efficient Design."* PL-AT does not simply "argue" this. It is the truth of the situation. On pg. 9 of the 5-2-13 Transcript, Mr. O'Malley refers to himself as "*co-defense counsel*" and explains that "*there's two of us representing Efficient Design's under two different policies*." Mr. O'Malley and Mr. Wright are co-defendants for Efficient Design, representing two different policies. However, in filings by the DF-AEs, they have been referred to as co-counsel, which is improper, because co-counsel could only be representing the same insurance company. Mr. O'Malley represents Hastings Mutual, and Mr. Wright represents a different policy for which he has never disclosed the name of the insurance company. Culpert's policy was with Progressive Insurance Company. Since these attorneys are acting on behalf of the interests of the insurance companies who hired them to protect the interests of the insurance companies while also defending the policyholders, Culpert and EDI, the insurance companies can also be considered defendants in the case. PL-AT clearly stated there were 3 insurance companies involved at the 3-3-15 hearing and none of the attorneys present 3-3-15 for oral argument, Mr. Wright, Mr. Broaddus or Mr. O'Malley rebutted her statement, as is evidenced on the digital audio recording of the 3-3-15 hearing.

C) The cover page of Mr. O'Malley's 10-15-15 Response on behalf of EDI now lists a new attorney, Matthew P. Salgat, who has never made an appearance in this case. Mr. Salgat was also served a copy of Mr. O'Malley's filing by mail, as indicated on the TrueFiling Proof of Service. This attorney should not appear on the cover page.

D) Both DF-AEs EDI and Culpert have purposely neglected to include PL-AT's contact

information on the cover pages of their filings. Mr. O'Malley's response lists only PL-AT's mailing address, not her phone number or e-mail address. Mr. Broaddus's response lists only PL-AT's mailing address and phone number, not her e-mail address. PL-AT's phone number and e-mail address have appeared on every one of her filings to the Court of Appeals and the Michigan Supreme Court. It is reasonable to argue that DF-AEs purposefully left this information off so it would be more difficult to contact PL-AT.

E) For reasons unknown to PL-AT, Mr. Broaddus's 10-17-15 Responses list the wrong panel of judges at the top, misleading the MSC to believe that different people had participated in the COA's decision of this case than actually did. The correct panel, as can be verified by the 3-10-15 Opinion, was Elizabeth L. Gleicher, Mark J. Cavanagh, and Karen M. Fort Hood. Contrary to Mr. Broaddus's responses, Michael J. Riordan and Christopher M. Murray were not on the panel that held oral arguments for this case on 3-3-15.

V. Contrary to Mr. O'Malley's assertions, PL-AT *did* provide grounds for review of her MSC Applications under MCR 7.305(B)(3) and (5) in both the 3-10-15 and 4-21-15 MSC Applications. They were contained in the Jurisdictional Statement of each Application.

VI. PL-AT presented new justification for her Motion for Reconsideration of MSC Applications for Case Nos. 151198 and 151463, which was the fact that the MSC prematurely ruled on her Culpert/EDI Applications in cases 151198 and 151463 since it hadn't yet made a final ruling on PL-AT's Motion for Reconsideration in the MEEMIC case, Case No. 150510.

EDI claims on pg. 2, that "*Filas's Motion for Reconsideration simply restates arguments that she made in the lower courts and in her Application for Leave to Appeal*," and that her motion should therefore be denied. This is not true. PL-AT presented a completely new justification for her Motion, which was the fact that the MSC prematurely ruled on her

Culpert/EDI MSC Applications in cases 151198 and 151463 since it hadn't yet made a final ruling on PL-AT's Motion for Reconsideration in the MEEMIC case, Case No. 150510. The MEEMIC case would have to be finalized prior to issuing any decisions on the Culpert/EDI case since the doctrine of collateral estoppel can not be applied unless there is a final decision in the case upon which the doctrine will be based. Instead of addressing this new issue, DF-AE EDI has accused PL-AT of not having mentioned it. Even more reprehensible, DF-AE Culpert claims that this issue is moot since the MSC denied PL-AT's MEEMIC reconsideration on September 29, 2015, but he fails to mention that the MSC denied PL-AT's two separate Culpert/EDI Applications *prior to* September 29, 2015, on September **9**, 2015, which definitely made the MSC's Culpert/EDI decisions premature, and provided a valid reason for the MSC to reconsider the 9-9-15 denials.

VII. PL-AT questions whether her MSC Application for the MEEMIC case, the case upon which the instant case was dismissed by the COA by erroneously applying the doctrine of collateral estoppel, or the Culpert/EDI case were even properly reviewed by the MSC since none of the transcripts for the MEEMIC case were sent over to the MSC, and two of the most important transcripts appear to be missing from the Culpert/EDI circuit court case file, which were extremely important to validate PL-AT's arguments.

Although the majority of PL-AT's first-party MEEMIC case and third-party tort case against Culpert and EDI were e-filed, the transcripts were not e-filed, and there is no link to an electronic version that is viewable from the Wayne County Circuit Court public access kiosks computers in the lower level of the Coleman A. Young Municipal Center. On 9-8-15, the day before the MSC denied both PL-AT's MSC Applications in the instant case, Plaintiff requested her MEEMIC file (circuit court case no. 12-016693-NF) and Culpert/EDI file (circuit court case no. 13-000652-NI) from the clerk. To PL-AT's astonishment, all three hard copy transcripts for the MEEMIC case were there at the circuit court, so there was no way they had been sent to the

MSC, as the COA/MSC Register of Actions indicated. Even more disturbing was that a piece of paper in the Culpert/EDI file had a notation that the case was "all e-filed," and had a check mark next to the words "2 transcripts" which listed the 6-21-13 and 8-9-13 transcripts, when there were actually FOUR transcripts for this case. The missing 5-2-13 transcript was the one in which Mr. O'Malley admitted EDI had two different policies under two different insurance companies. The missing 6-24-13 transcript was the most important one of all because on 6-24-13, PL-AT's case was dismissed *sua sponte* by Judge Borman, at a so-called "special conference" PL-AT was never even informed would be occurring. The fact that these transcripts are now missing from the case file, and were apparently never sent to the MSC, means the case was never properly evaluated by the MSC, and is further reason PL-AT's MSC Applications should be granted. Clearly, there is a major cover-up taking place at both the circuit court and COA levels that needs to be investigated so that PL-AT can finally receive justice.

WHEREFORE, Plaintiff-Appellant, Tamara Filas prays the MSC will grant her leave to appeal both the COA's 11-25-14 Order (MSC Case No. 151198) and the COA's 3-10-15 Opinion (MSC Case No. 151463) that upheld dismissal for different reasons than the 11-25-14 Order that already dismissed the case in its entirety.

Dated: November 12, 2015

Respectfully submitted,

signature redacted

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