Exhibit A

STATE OF MICHIGAN

IN THE COURT OF APPEALS

Appeal from the Circuit Court for the County of Wayne
The Honorable Susan Borman, Circuit Judge

TAMARA FILAS,

Court of Appeals No. 317972

Plaintiff-Appellant,

Lower Court No. 13-000652-NI

-vs-

THOMAS K. CULPERT and
EFFICIENT DESIGN, INC.,

Defendants-Appellees.

/

TAMARA FILAS
Plaintiff-Appellant Pro Se
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/

DEFENDANT-APPELLEE THOMAS K. CULPERT'S MOTION TO AFFIRM

Defendant-Appellee Thomas K. Culpert ("Defendant"), for his Motion to Affirm, states the following:

1. MCR 7.211(C)(3) allows a party to file a motion to affirm "[a]fter the appellant's brief has been filed ... on the ground that (a) it is manifest that the questions sought to be reviewed are so unsubstantial as to need no argument or formal submission; or (b) the questions sought to be reviewed were not timely or properly raised."

2. The issues raised in Plaintiff-Appellant's ("Plaintiff") Brief on Appeal fall squarely within both MCR 7.211(C)(3)(a) and 7.211(C)(3)(b), for reasons explained in the attached Brief.

3. Most significantly, Plaintiff's Brief on Appeal does not cite a single precedent from this Court or the Michigan Supreme Court. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mudge v Macomb County,* 458 Mich 87, 105; 580 NW2d 845 (1998) (citations omitted).

4. As an intermediate appellate court, the principal function of this Court of Appeals is to correct errors made by lower courts. *Halbert v Michigan,* 545 US 605, 617 n 3; 125 S Ct 2582 (2005). "If appellate review is to be meaningful, it must fulfill its basic historic function of correcting error in the trial court proceedings." *Barclay v Fla, 463* US 939, 989; 103 S Ct 3418 (1983) (Marshall, J., dissenting). Since Plaintiff has not cited any precedent contrary to the trial court's decision, it is impossible for her to say that the trial court erred. Error by the trial court is the *sine qua non* of intermediate appellate review, and Plaintiff-Appellant has not cogently identified any.

5. Moreover, Plaintiff's principal argument on appeal – that the trial court ordered her to sign authorizations that were inconsistent with the "SCAO-mandated" forms – was not raised below, and therefore is not preserved for appellate review. See *Peterman v Department of Natural Resources,* 446 Mich 177, 183; 521 NW2d 499 (1994). See also *Coates v Bastian Bros, Inc,* 276 Mich App 498, 510; 741 NW2d 539 (2007), where this Court noted that "[i]ssues raised for the first time on appeal are not ordinarily subject to review."

6. "The purpose of appellate preservation requirements is to induce litigants to do everything they can in the trial court to prevent error, eliminate its prejudice, or at least create a record of the error and its prejudice." *People v Taylor,* 195 Mich App 57, 60; 489 NW2d 99 (1992). Issue preservation requirements are designed to prevent a party from "sandbagging." *Polkton Charter Twp v Pellegrom,* 265 Mich App 88, 95; 693 NW2d 170 (2005). In order to succeed on appeal, the appellant must address the basis of the trial court's decision. *Derderian v Genesys Health Care Sys,* 263 Mich App 364, 381; 689 NW2d 145 (2004). The reasons why such arguments *should not* be considered on appeal were explained in *Estate of Quirk v Commissioner,* 928 F2d 751, 758 (6th Cir 1991):

> Propounding new arguments on appeal ... [that were] never considered by the trial court ... is not only somewhat devious, it undermines important judicial values. The rule disciplines and preserves the respective functions of the trial and appellate courts. If the rule were otherwise, we would be usurping the role of the first-level trial court with respect to the newly raised issue rather than reviewing the trial court's actions. By thus obliterating any application of a standard of review, which may be more stringent than a *de novo* consideration of the issue, the parties could affect their chances of victory merely by calculating at which level to better pursue their theory. Moreover, the opposing party would be effectively denied appellate review of the newly addressed issue.... In order to preserve the integrity of the appellate structure, we should not be considered a "second shot" forum, a forum where secondary, back-up theories may be mounted for the first time.

7. Plaintiff claims that some of her arguments were preserved "in her 5-17-13 Motion for Reconsideration." (Appellant's Brief, p 39.) However, the Register of Actions contains no reference to any such motion having been filed in this case. (Ex. D attached to Appellant's Brief, p 2.) Moreover, "[w]here an issue is first presented in a motion for reconsideration, it is not properly preserved." *Vushaj v Farm Bureau Gen Ins Co of Michigan,* 284 Mich App 513, 519; 773 NW2d 758 (2009).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant this motion, affirm the Circuit Court in all respects, and dismiss Plaintiff's appeal with prejudice.

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Dated: December 30, 2013

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Court of Appeals No. 317972

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THOMAS K. CULPERT and
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/

DEFENDANT-APPELLEE THOMAS K. CULPERT'S BRIEF IN SUPPORT OF HIS MOTION TO AFFIRM

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STATEMENT OF JURISDICTION

Defendant-Appellee Thomas K. Culpert ("Culpert") does not contest the Statement of Jurisdiction provided in the Brief on Appeal of Plaintiff-Appellant Tamara Filas ("Plaintiff"). This Court has jurisdiction over this appeal per MCL 600.308(1)(a) and MCR 7.203(A).

COUNTER-STATEMENT OF QUESTION INVOLVED

I. **Did the Circuit Court properly dismiss Plaintiffs' lawsuit, where Plaintiff put her medical condition into controversy by filing a personal injury claim, but refused to sign authorizations to release her medical records, and where this tactic – manipulating the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence – is expressly prohibited by *Domako v Rowe* and other precedents of the Supreme Court and this Court?**

The Trial Court said: "yes."

Plaintiff-Appellant says: "no."

Defendant-Appellee Efficient Design, Inc. will likely say: "yes."

Defendant-Appellee Thomas K. Culpert says: "yes."

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Plaintiff filed this third-party automobile negligence action on January 14, 2013, relative to a January 15, 2010 motor vehicle accident. (Appellant's Brief, p 1; Ex. D attached to Appellant's Brief, p 1.) The suit on appeal here was actually a re-initiation of a 2011 combined first and third-party suit, Wayne County Circuit Court No. 11-014149-NF, which Plaintiff had filed relative to the same accident. (Ex. 1.) The Circuit Court dismissed that suit without prejudice on August 22, 2012. (Id., p 2.)

In the instant action, Plaintiff filed suit against Culpert, the driver of the other vehicle involved in the January 15, 2010 accident, as well as Efficient Design, Inc. ("Efficient"), which Plaintiff believed was Culpert's employer at the time of the accident. (Appellant's Brief, p 1.) On or about February 7, 2013, Efficient requested (among other discovery) copies of Plaintiff's medical records. (Ex. A attached to Appellant's Brief.) Culpert also requested various discovery from the Plaintiff, including requests for medical authorizations, on or about March 22, 2013. (Ex. I attached to Appellant's Brief, ¶ 1.) Plaintiff did not timely respond to these requests. (See Id., ¶ 3.)

Around the time that these requests were due, Plaintiff had a falling out with her attorney, Daryle Salisbury. (See Ex. D attached to Appellant's Brief, p 2.) Mr. Salisbury moved to withdraw, and the Circuit Court granted his motion at a May 2, 2013[1] hearing. (See Id.) At that hearing, the Circuit Court also stayed the case so as to allow Plaintiff to find a new attorney. (See 6/21/13 trans, p 11.) Plaintiff did not retain a new attorney, and elected to proceed in pro

[1] There is no indication that Plaintiff has ordered this transcript. "Normally, failure to provide this Court with the relevant transcript, as required by MCR 7.210(B)(1)(a), constitutes a waiver of the issue." *People v Anderson,* 209 Mich App 527, 535; 531 NW2d 780 (1995). Therefore, Plaintiff has waived any purported error with respect to the May 2, 2013 hearing. See also *Myers v Jarnac,* 189 Mich App 436, 444; 474 NW2d 302 (1991).

per. (See Id.; 8/9/13 trans.) Representing herself, Plaintiff had a number of issues with Defendants' discovery requests.

The Circuit Court first attempted to resolve these issues at a June 21, 2013 motion hearing. On that date, Efficient brought "a general basic motion to compel." (6/21/13 trans, p 5.) Efficient had actually attempted to argue this motion on May 2, 2013, but the court adjourned it at that time and "stayed [the case] to allow Ms. Filas to obtain successor counsel...." (Id., p 11.) As part of this motion to compel, Efficient sought "signed medical authorizations" from the Plaintiff. (Id., p 6.) As Efficient's counsel explained, this had been an ongoing problem dating back to the 2011 case. (Id.) At that time, the Circuit Court advised Plaintiff that "you have to do that" or Plaintiff would "leave the Court no alternative but to dismiss this case too." (Id.)

Plaintiff objected on the grounds that Efficient was contesting liability, and Plaintiff did not want to give medical authorizations to a party that might not have liability. (Id., pp 6-7.) The Circuit Court attempted to explain that this was not a coherent basis for refusing to sign the authorizations. (Id., p 7.) Plaintiff then said "I will fill out authorizations for them." (Id., p 8.) Plaintiff did not express any objection to the language of the authorizations at that time. (See Id.) The Circuit Court then held that the authorizations had to be signed by 2:00 p.m. the following Monday (June 24, 2013) or "I'm going to dismiss the case on Monday." (Id.) Plaintiff could not simply sign the authorizations at the hearing because Efficient's counsel learned the identies of the Plaintiff's treaters for the first time at that hearing (there were "about 27" of them and interrogatory requests had not been timely answered), so he was unable to prepare the authorizations in advance. (Id., p 17.) Counsel for Culpert requested "the same relief" that

Efficient had been given because Culpert had also been seeking "authorizations as well and I would like the answers to interrogatories." (Id., p 9.)

Plaintiff did not sign the authorizations by 2:00 p.m. the following Monday. (6/24/13 trans.) Efficient's counsel appeared before the Circuit Court at approximately 2:30 p.m. to seek enforcement of the ruling from the previous Friday. (Id., p 3.) Efficient's counsel explained that Plaintiff "did stop by my office and she provided some authorizations" but "they were altered." (Id.) Plaintiff had also failed to return some of the requested authorizations at all. (Id.) Plaintiff did not appear for this hearing. The Circuit Court attempted to telephone the Plaintiff but there was no answer. (Id., p 5.) Shortly thereafter, someone "called back and said they were her mother. The person identified herself as her mother. [The court] clerk, who talked to her said it sounded like Ms. Filas herself. However, this person claiming to be her motion gave us a telephone number. And we called that number as well and no answer." (Id.) In light of Plaintiff's non-compliance with the June 21, 2013 ruling, the Circuit Court dismissed Plaintiff's case "in its entirety without prejudice." (Id., p 6.) The court delayed entry of this order until July 1, 2013, so that Plaintiff would have an opportunity to object. (Id.)

Plaintiff did object, and the parties returned to the Circuit Court on August 9, 2013. At that time, the Circuit Court explained the situation to Plaintiff as follows:

> ...if you want to proceed with your case, you'll have to sign these authorizations. They have them with them today. If you want to proceed and you want the Court to reinstate the case, sit down and sign the authorizations. I'm going to give you one last chance. (8/9/13 trans, p 3.)

At that point, Plaintiff indicated, for the first time in this lawsuit, that "I have a problem with some of the clauses." (Id.) The Circuit Court, presumably in reference to Plaintiff's related first-party suit (see Appellant's Brief, p 5), responded that "I've already ruled on that." (8/9/13 trans, p 3.) Plaintiff again indicated that she would not sign the authorizations as written, so the

Circuit Court ruled that "the dismissal stands." (Id., p 4) Plaintiff then brought this appeal by right.

STANDARDS OF REVIEW

Plaintiff appeals from Judge Borman's Order dismissing Plaintiff's lawsuit for discovery violations. "This Court reviews for an abuse of discretion a trial court's decision with regard to whether to impose discovery sanctions." *Linsell v Applied Handling, Inc,* 266 Mich App 1, 21; 697 NW2d 913 (2005). "[A]n abuse of discretion occurs *only* when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons,* 477 Mich 8, 12; 727 NW2d 132 (2007) (emphasis added).

In the discovery context, such deference is warranted because the trial court "is in the best position to determine if a party has complied with" discovery rules. *Melendez v Illinois Bell Tel Co,* 79 F3d 661, 670-671 (7th Cir 1996). "Similarly, the [trial] court has primary responsibility for selecting an appropriate sanction," and appellate courts generally will not disturb that selection "absent a clear abuse of discretion." *Id.* See also *State v Belken,* 633 NW2d 786, 796 (Iowa 2001): "Generally, we defer to the trial court on discovery matters ... because the trial court is in the best position to determine whether prejudice resulted."

ARGUMENT

In this third-party automobile negligence suit, the Circuit Court properly dismissed Plaintiffs' lawsuit, where Plaintiff put her medical condition into controversy by filing a personal injury claim, but refused to sign authorizations to release her medical records. This tactic – manipulating the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence – is expressly prohibited by *Domako v Rowe* and other precedents of the Supreme Court and this Court.

Defendant's entitlement to the discovery sought is clear under the court rules. See MCR 2.305(A)(1); MCR 2.306(A)(1); MCR 2.314(B). "It is well settled that Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Reed Dairy Farm v Consumers Power Co,* 227 Mich App 614, 616; 576 NW2d 709 (1998). There are no "good cause" or "admissibility" requirements for discovery requests. *Domako v Rowe,* 438 Mich 347, 359 n 10; 475 NW2d 30 (1991).

Under Michigan law, a plaintiff who brings a personal injury action waives the physician-patient privilege. MCL 600.2157; *Holman v Rasak,* 486 Mich 429, 436; 785 NW2d 98 (2010). A plaintiff who puts his or her medical condition at issue in a lawsuit waives any assertion of privilege when disclosure furthers the goals of discovery. *Howe v Detroit Free Press, Inc.,* 440 Mich 203, 214; 487 NW2d 374 (1992); *Domako, supra* at 354. MCR 2.314(B)(2) states that "if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information otherwise discoverable ... the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or mental or physical condition." The waiver of the physician-patient privilege is codified at § 2157:

> If the patient brings an action against any defendant to recover for any personal injuries ... and the patient produces a physician as a witness on the patient's own behalf who has treated the patient for the injury... the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease or condition.

This waiver of privilege is based on the fundamental fairness of permitting defense counsel equal access to investigate the facts put at issue by plaintiff's claims alleging personal injuries. *Domako, supra* at 354-355. "The purpose of providing for waiver is to prevent the suppression of evidence ... an attempt to use the privilege to control the timing of the release of information exceeds the purpose of the privilege and begins to erode the purpose of the waiver by repressing evidence." *Id.* (citations omitted).

The rules in Michigan allow the assertion of the physician-patient privilege at various stages of the proceedings. The court rules do permit, however, an implied waiver when the patient fails to timely assert the privilege. MCR 2.314(B)(1) requires that the party assert the privilege "in the party's written response under MCR 2.310," and MCR 2.302(B)(1)(b) requires the assertion of the privilege "at the deposition." The penalty for not timely asserting the privilege, under either of these court rules, is to lose the privilege for purposes of that action. The rules obviously recognize that "it is patently unfair for a party to assert a privilege during pretrial proceedings, frustrate rightful discovery by the other party, and then voluntarily waive that privilege at trial, thereby catching the opposing party unprepared, surprised, and at an extreme disadvantage." *Domako, supra* at 355-356. "Thus the rule requires that a party choose between the existing privilege and the desired testimony. The party may not have both." *Id.*

Here, Plaintiff placed her medical condition into controversy by filing this personal injury action, thereby waiving the privilege under § 2157. Moreover, the record is devoid of any indication that Plaintiff timely asserted the privilege in accordance with MCR 2.314(B)(1).

Under these circumstances, the Circuit Court correctly noted that Plaintiff left "the Court no alternative but to dismiss...." (6/21/13 trans, p 6.)

Moreover, Plaintiff's principal argument on appeal – that the trial court ordered her to sign authorizations that were inconsistent with the "SCAO-mandated" forms – was not raised below, and therefore is not preserved for appellate review. See *Peterman v Department of Natural Resources,* 446 Mich 177, 183; 521 NW2d 499 (1994). See also *Coates v Bastian Bros, Inc,* 276 Mich App 498, 510; 741 NW2d 539 (2007), where this Court noted that "[i]ssues raised for the first time on appeal are not ordinarily subject to review."

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"second shot" forum, a forum where secondary, back-up theories may be mounted for the first time.

Although Plaintiff claims that some of her arguments were preserved "in her 5-17-13 Motion for Reconsideration" (Appellant's Brief, p 39), the Register of Actions contains no reference to any such motion having been filed in this case. (Ex. D attached to Appellant's Brief, p 2.) Moreover, "[w]here an issue is first presented in a motion for reconsideration, it is not properly preserved." *Vushaj v Farm Bureau Gen Ins Co of Michigan,* 284 Mich App 513, 519; 773 NW2d 758 (2009).

Apart from being a proper sanction for Plaintiff's discovery violations, the dismissal of this suit fell squarely within the Circuit Court's authority under MCL 600.611, which states that "[c]ircuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments." Dismissing the case, in light of Plaintiff's conduct, also fell squarely within the Circuit Court's broad inherent authority, as recognized by the Supreme Court in *Dep't of Envtl Quality v Rexair, Inc,* 482 Mich 1009; 761 NW2d 91 (2008) and *Oram v Oram,* 480 Mich 1163, 1164; 746 NW2d 865 (2008) ("Trial courts possess inherent authority to sanction litigants and their attorneys, including the power to dismiss a case."). See also *Anway v Grand Rapids R Co,* 211 Mich 592, 603, 622; 179 NW 350 (1920), where the Court observed that the power "to enter a final judgment and enforce such judgment by process, [is] an essential element of the judicial power...." Additionally, in *Underwood v McDuffee,* 15 Mich 361, 368 (1867), the Court held: "It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power...."

CONCLUSION AND RELIEF REQUESTED

There is no dispute that Defendants were entitled to the authorizations requested. Plaintiff placed her medical condition into controversy by filing this personal injury action. As the Supreme Court noted in *Domako, supra* at 354-355, it would have been manifestly unfair to allow Plaintiff to use her medical privacy as a shield. Additionally, Plaintiff's Brief on Appeal does not cite a single precedent from this Court or the Michigan Supreme Court. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mudge v Macomb County,* 458 Mich 87, 105; 580 NW2d 845 (1998) (citations omitted).

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Dated: December 30, 2013

2416057_2

EXHIBIT 1

REGISTER OF ACTIONS
CASE NO. 11-014149-NF

RELATED CASE INFORMATION

Related Cases
13-000652-NI (Prior Action)

PARTY INFORMATION

		Lead Attorneys
Defendant	**CULPERT, KEVIN THOMAS**	**Ahmed M. Hassouna** *Retained* (248) 764-1210(W)
Defendant	**Culpert, Kevin Thomas**	**Ahmed M. Hassouna** *Retained* (248) 764-1210(W)
Defendant	**Culpert, Kevin Thomas**	**Ahmed M. Hassouna** *Retained* (248) 764-1210(W)
Defendant	**MEEMIC INSURANCE COMPANY**	**Simeon R. Orlowski** *Retained* (248) 641-3892(W)
Plaintiff	**FILAS, TAMARA**	**Terry L. Cochran** *Retained* (734) 425-2400(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

11/15/2011 **Case Filing Fee - Paid**
$150.00 Fee Paid (Clerk: Taylor,L)

11/15/2011 **Service Review Scheduled**
(Due Date: 02/14/2012) (Clerk: Taylor,L)

11/15/2011 **Status Conference Scheduled**
(Clerk: Taylor,L)

11/15/2011 **Complaint, Filed**
(Clerk: Taylor,L)

11/15/2011 **Jury Demand Filed & Fee Paid**
$85.00 (Clerk: Taylor,L)

12/16/2011 **Service of Complaint, filed**
(Clerk: Allen,L)

12/16/2011 **Service of Complaint, filed**
(Clerk: Allen,L)

01/05/2012 **Appearance of Attorney, Filed**
(Clerk: Allen,L)

01/05/2012 **Answer to Complaint, Filed**
Proof of Service, Filed; Reliance on Jury Demand, Filed; Affirmative Defenses, Filed (Clerk: Allen,L)

01/05/2012 **Response to Request for Admissions, Filed**
(Clerk: Allen,L)

01/26/2012 **Answer to Complaint, Filed**
Proof of Service, Filed; Reliance on Jury Demand, Filed; Affirmative Defenses, Filed (Clerk: Allen,L)

01/26/2012 **Witness List, Filed**
Proof of Service, Filed/EXHIBIT LIST (Clerk: Bynum,D)

01/26/2012 **Response to Request for Admissions, Filed**
(Clerk: Bynum,D)

01/26/2012 **Proof of Service, Filed**
(Clerk: Bynum,D)

02/14/2012 **Status Conference** (9:30 AM) (Judicial Officer Borman, Susan D.)
Result: Held

02/14/2012 **Status Conference Scheduling Order, Signed and Filed** (Judicial Officer: Borman, Susan D.)
s/c 8-14, w/l 4-17, disc 6-17, ce 7-9, 2nd s/c 8-20 (Clerk: Smith,P)

02/15/2012 **Settlement Conference Scheduled**
(Clerk: Fowler,R)

03/22/2012 **Motion to Compel Answers to Interrogatories, Filed**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Smith,L)

04/12/2012 **Motion And/Or Praecipe Dismissed** (Judicial Officer: Borman, Susan D.)
per Michelle f's mtn to compel (Clerk: Smith,P)

04/13/2012 *CANCELED* **Motion Hearing** (10:30 AM) (Judicial Officer Borman, Susan D.)
Dismiss Hearing or Injunction
Dismiss Hearing or Injunction

04/17/2012 **Witness List, Filed**
Proof of Service, Filed (Clerk: Allen,L)

04/20/2012 **Witness List, Filed**

(Clerk: Smith,L)

06/01/2012 **Motion to Extend Time, Filed**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Boguslaski,C)

06/11/2012 **Witness List, Filed**
Certificate of Service, Filed Supplemental (Clerk: Smith,L)

06/13/2012 **Motion Hearing** (10:30 AM) (Judicial Officer Borman, Susan D.)
df mtn to adjourn dates
Result: Held

06/13/2012 **Order Adjourning Settlement Conference, Signed and Filed** (Judicial Officer: Borman, Susan D.)
(Clerk: Smith,P)

07/10/2012 **Motion to Withdraw as Attorney, Filed**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Corder,S)

07/11/2012 **Motion to Adjourn, Filed**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Harrison,S)

07/12/2012 **Motion Received for Scheduling** (Judicial Officer: Borman, Susan D.)
Plaintiff/Attorney Terry L. Cochran (Clerk: Roberts,B)

07/19/2012 **Answer to Motion, Filed**
(Clerk: Allen,L)

07/19/2012 **Answer to Motion, Filed**
(Clerk: Allen,L)

07/20/2012 **Case Evaluation - General Civil**
O.d. on 7/20 by Judge Borman. sm (reset from: 7/11 to Aug per e/m on 6/13. sm (Clerk: Fowler,R) (Complete Date: 07/20/2012)

07/20/2012 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Plaintiff/Attorney Terry L. Cochran -- First Adjournment of Trial
Result: Held

07/20/2012 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Plaintiff/Attorney Terry L. Cochran -- A Protective Order
Result: Held

07/20/2012 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Plaintiff/Attorney Terry L. Cochran -- Extend Discovery For 90 Days
Result: Motion and/or Praecipe Dismissed

07/20/2012 **Injunctive/Restraining Order, Signed and Filed** (Judicial Officer: Borman, Susan D.)
protective order Re: production medical, employment, etc (Clerk: Smith,P)

07/20/2012 **Motion And/Or Praecipe Dismissed** (Judicial Officer: Borman, Susan D.)
pl mtn to extend discovery (Clerk: Smith,P)

08/10/2012 **Motion to Vacate Order, Filed**
Fee: $20.00 PAID BRIEF,PROOF, NOTICE (Clerk: Oliver,P)

08/14/2012 **Notice of Hearing, Filed**
Renotice; mot to vacate; Prf (Clerk: Rutledge,L)

08/17/2012 **Motion to Withdraw as Attorney, Filed**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Taylor,L)

08/20/2012 **Answer to Motion, Filed**
(Clerk: Allen,L)

08/20/2012 **Answer to Motion, Filed**
(Clerk: Allen,L)

08/22/2012 **Closed/Final - Order of Dismissal, Signed and Filed** (Judicial Officer: Borman, Susan D.)
w/o prejudice & w/o costs (Clerk: Smith,P)

08/24/2012 **Miscellaneous Motion, Filed-WVD**
Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Corder,S)

08/24/2012 **Miscellaneous Motion, Filed**
MOTION TO CLARIFY Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Corder,S)

08/28/2012 **Brief in Opposition to Motion, Filed**
(Clerk: Tyler,F)

08/28/2012 **Brief in Opposition to Motion, Filed**
(Clerk: Tyler,F)

08/31/2012 *CANCELED* **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Case Disposed/Order Previously Entered
pl mtn to vacate order adj per Tamara
Case Disposed/Order Previously Entered
08/24/2012 Reset by Court to 08/31/2012

08/31/2012 *CANCELED* **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
Case Disposed/Order Previously Entered
pl mtn to withdraw
Case Disposed/Order Previously Entered

08/31/2012 **Notice of Hearing, Filed**
(Clerk: Tyler,F)

09/07/2012 **Answer to Motion, Filed**
(Clerk: Tyler,F)

09/07/2012 **Answer to Motion, Filed**
(Clerk: Tyler,F)

09/12/2012 **Miscellaneous Response, Filed**
(Clerk: Tyler,F)

09/12/2012 **Miscellaneous Response, Filed**
(Clerk: Tyler,F)

09/13/2012 *CANCELED* **Settlement Conference** (9:30 AM) (Judicial Officer Borman, Susan D.)
Case Disposed/Order Previously Entered
w/l 4-17, disc 7-22, ce 8-6, 2nd s/c 9-17
Case Disposed/Order Previously Entered
08/14/2012 Reset by Court to 09/13/2012

09/14/2012 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
pl's mtn to withdraw
08/30/2012 Reset by Court to 09/14/2012
Result: Held

09/14/2012 **Motion Hearing** (9:00 AM) (Judicial Officer Borman, Susan D.)
pl's mtn for continuance

	08/30/2012 Reset by Court to 09/14/2012
	Result: Motion and/or Praecipe Dismissed
09/14/2012	**Motion And/Or Praecipe Dismissed** (Judicial Officer: Borman, Susan D.) *(Clerk: Smith,P)*
09/14/2012	**Motion to Withdraw as Attorney Granted, Order to Follow** (Judicial Officer: Borman, Susan D.) *(Clerk: Smith,P)*
09/14/2012	**Motion Denied, Order to Follow** (Judicial Officer: Borman, Susan D.) *denied mtn to vacate dismissal (Clerk: Smith,P)*
09/19/2012	**Order Denying, Signed and Filed** *(Clerk: Tyler,F)*
09/19/2012	**Order Granting Motion, Signed and Filed** *(Clerk: Tyler,F)*
04/24/2013	**Notice of Hearing, Filed** *(Clerk: Tyler,F)*

Lower Court or Tribunal	STATE OF MICHIGAN IN THE COURT OF APPEALS	CASE NO. Year Number Case Type
WAYNE CIRCUIT COURT	**Proof of Service**	CIRCUIT: 13 000652 N9
		COURT OF APPEALS: 317972

Case Name: TAMARA FILAS V KEVIN THOMAS CULPERT

On 12/30/2013 , one copy of the following documents:

Motion - Regular — Defendant-Appellee Thomas K. Culpert's Motion to Affirm and Brief in Support

was delivered to the persons listed below:

Date: 12/30/2013

Signature: /s/Sandra L. Vertel

	Bar Number	Name	Delivery Method	Service Address
P-	67613	Wright, James C.	E-Serve	appeals@zkac.com
P-		Filas, Tamara	Mail	In Pro Per; 6477 Edgewood; Canton, MI 48187
P-	64658	Broaddus, Drew W.	E-Serve	dbroaddus@secrestwardle.com
P-		Coomer, Kim	E-Serve	kcoomer@vgpclaw.com
P-	59108	O'Malley, Michael	E-Serve	momalley@vgpclaw.com
P-		Vertel, Sandra	E-Serve	svertel@secrestwardle.com

Exhibit B

STATE OF MICHIGAN

IN THE COURT OF APPEALS

TAMARA FILAS,

Plaintiff-Appellant,

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

-vs-

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

Defendants-Appellees.

/

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

PLAINTIFF-APPELLANT'S ANSWER TO DEFENDANT-APPELLEE THOMAS K. CULPERT'S MOTION TO AFFIRM

*****ORAL ARGUMENT REQUESTED*****

Plaintiff-Appellant, Tamara Filas, for her answer to Defendant-Appellee Thomas K. Culpert's Motion to Affirm, states the following:

1. Denied. Appellant denies that the questions sought to be reviewed in her appeal are unsubstantial and need no argument or formal submission, and denies that the questions sought to be reviewed were not timely or properly raised.
2. Denied, for reasons explained in the attached Answer to Defendant-Appellee's Brief.
3. Denied. 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). See attached Answer to Defendant-Appellee's Brief for further explanation.
4. Admits that "*as an intermediate appellate court, the principal function of this Court of Appeals is to correct errors made by lower courts.*" Denies that *"Since Plaintiff has not cited any precedents contrary to the trial court's decision, it is impossible to say that the trial court erred."* Plaintiff-Appellant contends no precedent would be required to determine whether the trial court erred because this case involves the trial court's violation of a clear and unambiguous court rule, MCR 2.314(C)(1).
5. Denied. Plaintiff's *principal* argument on appeal was not *"that the trial court ordered her to sign authorizations that were inconsistent with the 'SCAO-mandated' forms,"* Although Plaintiff-Appellant did argue that she cannot be required to sign forms that differed from the State Court Administrative Office, Plaintiff-Appellant's *principal* argument on appeal was that she had met her legal obligation to provide her medical records to the Defendants under MCR 2.314(C)(1)(a) and/or MCR 2.314(C)(1)(d)

when she sent copies of SCAO-mandated Form 315 to her health care providers so both Defendants, Kevin Culpert, and Efficient Design, Inc. would receive copies of medical records from all of the providers she listed in her answers to both Defendants' interrogatories.

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

With regard to the production of medical records for Mr. Wright, Defendant Efficient Design's Motion to Compel was based on their request for production of "*copies of any and all medical records relating to injuries received as a result of the subject accident*", (Exhibit A, relevant page from Efficient Design's Request for Production of Documents to Plaintiff dated 2-7-13, but mailed 4-30-13). At 11:24 a.m. on June 24, 2013, Plaintiff-Appellant delivered to Mr. Wright's office, copies of signed SCAO MC 315 authorization forms for her healthcare providers, and copies of

certificates of mailing verifying they had been mailed to her health care providers on June 21, 2013.

Plaintiff-Appellant not only provided Mr. Wright with authorization forms that were sent to healthcare providers that treated her as a result of injuries received in the 1-15-10 auto accident, but also provided him with records from all of the healthcare providers she could recall that she ever obtained services from, prior to the accident. Mr. Wright's Motion to Compel.

Let it be clear that at the August 9, 2013 hearing, Plaintiff-Appellant began to raise her issues regarding Mr. Wright's authorization forms which were not received by Plaintiff-Appellant until after she had already completed and mailed out MC 315 forms to her health care providers, and that the Judge did not permit Plaintiff to state her arguments concerning Mr. Wright's forms on the record. Plaintiff contends Judge Borman did not allow Plaintiff to speak about her issues regarding the authorization forms from Mr. Wright at the 8-9-13 hearing because Judge Borman had already ruled to dismiss Plaintiff's separate first-party case on April 26, 2013, based upon Plaintiff's refusal to release her medical records to a third-party records copying service instead of directly to the defendant, MEEMIC's attorney, from records copied by the custodian of the records of her health care providers, for Mr. Orlowski (Exhibit P, 8-9-13 transcript, pg. 3-4, showing Ms. Filas was not permitted to present her arguments regarding Mr. Wright's forms). The dismissal of the first-party case was appealed to the Court of Appeals on June 20, 2103.

Let it be clear that Plaintiff-Appellant has never refused to provide medical records to the Defendants in the separately filed first-party case filed 12-18-12, or the

third-party tort case filed on January 14, 2013. If Plaintiff-Appellant objected to privileged records that were requested that were not included on the SCAO form, they would have been psychiatric records. Plaintiff-Appellant did object objected to disclosing her records to a party that had not yet, to the best of her knowledge, been determined to be liable for damages (Efficient Design), and still does not believe she should have been ordered to disclose her records to Efficient Design until it was determined they were liable for damages, but she complied with the Order to Compel and provided authorizations to Efficient Design Attorney, Mr. Wright, for him to receive her medical records despite her objection, in an attempt to avoid her claims against Efficient Design from being dismissed from her third party case on June 24, 2013. She did not expect the entire third party case, including claims against Kevin Culpert, to be dismissed as well, since Mr. Hassuona had already been given all discovery materials he had requested by June 21, 2013. Plaintiff-Appellant continues to take the position that Kevin Culpert had no grounds to have his case dismissed and his concurrence with Efficient Design case being dismissed has no legal weight or relevance as an argument to dismiss the Efficient Design case or to claim the Kevin Culpert's case should also be dismissed.

6. Admitted. However, Plaintiff does not consider herself to have raised any new arguments in her appeal that were not already raised before the same judge, and previously ruled upon in the trial court.

7. Denied. As stated at the bottom of page 38 of Appellant's brief, *"as explained above, issues A-C above were preserved in her first-party case against MEEMIC Insurance Company before the same judge, now being appealed to the Court of Appeals, Case*

#316822, as documented below." A claim of appeal was filed with the Appellate Court on June 20, 2013 in regard to Judge Borman's dismissal of Plaintiff's first party case because Plaintiff would not sign the forms Judge Borman ordered her to sign. The reason Plaintiff-Appellant refers to filings from the first-party case is because the judge did not allow her to provide oral arguments in regards to Plaintiff's issues with the medical authorization forms she was being asked to sign in the third-party case. If Plaintiff had filed a motion for reconsideration in the third-party case, although she could have discussed her objections to the medical authorization forms in writing, she likely would have been accused by the judge of filing a frivolous motion for the fact that the judge told her that she already ruled on this issue in the first-party case and that she wasn't reconsidering it, just moments before dismissing her third-party case (Exhibit P, 8-9-13 transcript pg. 3-4, showing Ms. Filas was not permitted to present her arguments regarding Mr. Wright's forms).

Defendant-Appellee states that, "[w]here an issue is first presented in a motion for reconsideration, it is not properly preserved." Let it be clear that on page 39 of Appellant's Brief, Plaintiff-Appellant refers not only to her 5-17-13 Motion for Reconsideration filed in the first-party case, but also to her 3-11-13 Emergency Motion to Substitute Forms, where the issues were originally raised. The re-filed MEEMIC case was initially assigned to the wrong court or Judge Murphy instead of Judge Borman. Plaintiff's scheduled hearing for her 3-11-13 Motion was not held, and instead, Judge Murphy made an order on 3-15-13 without allowing the parties to present oral arguments. On 3-19-13, the case was re-assigned to the proper

courtroom of Judge Borman by the Presiding Judge (Exhibit Q, 3-19-13 Order Reassigning Case from Murphy to Borman's Court).

signature redacted

1-21-14
Date

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

STATE OF MICHIGAN

IN THE COURT OF APPEALS

TAMARA FILAS,

Plaintiff-Appellant,

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

-vs-

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

Defendants-Appellees.

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

PLAINTIFF-APPELLANT'S ANSWER TO DEFENDANT-APPELLEE THOMAS K. CULPERT'S BRIEF IN SUPPORT OF HIS MOTION TO AFFIRM

*****ORAL ARGUMENT REQUESTED*****

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DEFENDANT-APPELLEE'S COUNTER-STATEMENT OF QUESTION INVOLVED IS INAPPLICABLE TO THE CASE AT HAND AND MISREPRESENTS THE FACTS

On page vi, Defendant-Appellee presents the following Counter-Statement of Question Involved:

> *Did the circuit court properly dismiss Plaintiff's lawsuit, where Plaintiff put her medical condition into controversy by filing a personal injury claim, but refused to sign authorizations to release her medical records, and where this tactic - manipulating the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence - is expressly prohibited by Domako v Rowe and other precedents of the Supreme Court and the court?*

Defendant-Appellee's question is irrelevant and inapplicable for the reason that Plaintiff *did* sign authorizations to release her medical records to the Defendants. Prior to the case dismissal on June 24, 2013, she mailed completed SCAO-mandated Form MC 315 medical authorization forms to all of her healthcare providers so that both Defendants, Kevin Culpert and Efficient Design, Inc., could receive copies of her medical records.

Plaintiff only refused to sign *Mr. Wright's personal authorization forms*, which 1) were not even received by her prior to the 2:00 p.m. June 24, 2013 deadline for which completed authorization forms had to be submitted to Mr. Wright in order to prevent Plaintiff's case from being dismissed by Judge Borman on June 24, 2013 after the 2:00 p.m. deadline; and 2) contained clauses similar to records copying service forms that Plaintiff was in disagreement with, as already explained to the Judge in her first-party case.

As already explained in Appellant's Brief, at 11:24 a.m. on June 24, 2013, Plaintiff-Appellant personally delivered copies of cover letters to the healthcare providers, signed authorizations, and copies of the certificates of mailing to Mr. Wright's office, meeting her obligation of providing signed authorizations disclosing her medical records to Mr. Wright by 2:00 PM June 24, 2013, and meeting her obligation under MCR2.314(C)(1) to *"(a) make the information available for inspection and copying as requested*;" and/or *"(d) 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"* (Exhibit C, signed cover letter verifying authorizations were received by Mr. Wright's law firm at 11:24 AM on 6-24-13; Exhibit O, Sample of one of Mr. Wright's HIPAA Privacy Authorization forms).

Plaintiff-Appellant in no way manipulated the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence, as Defendant-Appellee has alleged. With regard to the production of medical records, Defendant Efficient Design's Motion to Compel was based on their request for production of *"copies of any and all medical records relating to injuries received as a result of the subject accident*", (Exhibit A, relevant page from Efficient Design's Request for Production of Documents to Plaintiff dated 2-7-13, but mailed 4-30-13). Plaintiff-Appellant not only provided Mr. Wright with authorization forms that were sent to healthcare providers that treated her as a result of injuries received in the 1-15-10 auto accident, but also provided him with records from all of the healthcare providers she could recall that she ever obtained services from, prior to the accident. Note that Plaintiff-Appellant 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. She even included detailed lists for each healthcare provider of every visit date that was related to the 1-15-10 auto accident, to ensure that Defendants had a checklist upon which they could rely to verify that they received all records from the provider, as Plaintiff herself experienced prior difficulty obtaining certain visit notes in her own records simply by stating "any and all records" on the records request. It is clear from these actions that Plaintiff-Appellant permitted disclosure of all of the medical records discoverable using SCAO Form MC 315, and did not selectively choose which records to disclose.

It should be understood that Mr. Broaddus, attorney in this appeal for Kevin Culpert, replacing Mr. Culpert's trial court attorney, Mr. Hassouna, is the attorney filing this Motion to Affirm. Mr. Broaddus is not representing Efficient Design, yet throughout this motion, he mentions primarily content regarding Efficient Design. It is evidenced by the fact that Mr. Broaddus states in answer to the Counter-Statement of Question Involved, "Defendant-Appellee Efficient Design, Inc. will likely say: "yes," that he doesn't even have the affirmation in regard to this motion from the two attorneys representing Efficient Design. As pointed out in Appellant's Brief, Mr. Hassouna, Mr. Culpert's trial court attorney, did not have any valid objections to the dismissal of Plaintiff's third-party case against Kevin Culpert. It was Efficient Design's attorney, Mr. Wright, who filed the Motion to Dismiss. In the lower court proceedings, Plaintiff complied with all requests from Kevin Culpert's attorney, Mr. Hassouna, and he did not object to the method by which Plaintiff provided medical records to him. Although Mr. Hassouna did state that he was in concurrence with Mr. Wright's Order to Dismiss, he provided no additional reasons on his own behalf (Exhibit L, 7-22-13 Culpert's Concurrence with Efficient Design's Response to Plaintiff's Objection to Proposed Order of Dismissal).

Further, in the 2011 case, Mr. Hassouna was ready to settle the case without Plaintiff's submission of any medical records (Exhibit Z, 6-1-13 Culpert's Motion to Extend Scheduling Dates stating he had no medical records for Plaintiff, 6-29-13 e-mail from Hassouna to Orlowski to determine if he will settle based on written discovery from Plaintiff (interrogatories); Exhibit M, 7-19-12 e-mail from Terry Cochran and attached settlement offer from Mr. Hassouna). Therefore, it doesn't appear to make sense for Mr. Broaddus to be arguing on behalf of Efficient Design since he does not represent them.

In conclusion, Defendant-Appellee's Counter-Statement of Question Involved is irrelevant and inapplicable because Plaintiff *did* sign and mail SCAO-mandated MC 315 authorizations to release any and all medical records to the Defendants, from health care providers prior to and after the accident, back to birth, without exceptions. Let it be clear that Plaintiff-Appellant's case was dismissed because she refused to sign Mr. Wright's *personal medical authorization forms*, which were non-compliant with the requirements on Form MC 315, *after* she had already mailed form MC 315 to over 20 health care providers and thereby had *already* satisfied her obligation to provide medical records under MCR 2.314(C)(1) (a) and/or (d).

PLAINTIFF-APPELLANT'S ANSWER TO

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

On page 1, Defendant-Appellee erroneously states, *"the suit on appeal here was actually a re-initiation of a 2011 combined first and third-party suit, Wayne County Circuit Court No. 11-014149-NF, which Plaintiff filed relative to the same accident. (Ex 1) the Circuit Court dismissed the suit without prejudice on August 22, 2012."* Let it be clear that this was not a re-initiation of

that combined 2011 suit. This third-party case was re-filed separately from Plaintiff's first party case. The first- and third-party cases is are no longer combined, and are now each separately before the court of appeals on the same issue of being dismissed for the reason of the Court not permitting Plaintiff to use SCAO-mandated Form MC 315 to produce her medical records to the Defendants in either the first- or third-party case. It should be clear that Efficient Design, Inc. was not part of the original 2011 combined first- and third-party suit because Plaintiff's first attorney did not investigate whether Kevin Culpert was in the course and scope of his employment when the accident occurred, and did not add Efficient Design, Kevin Culpert's Employer, to the case at any time before it was dismissed. The Judge ordered the combined cases to be dismissed at a hearing held on July 20, 2012. The order to dismiss was later clarified and amended in regard to the refiling of the first party case only and what damages the Plaintiff could claim against MEEMIC.

On page 1, Defendant-Appellee states, *"on or about February 7, 2013, Efficient requested (among other discovery) copies of Plaintiff's medical records. Culpert also requested various discovery from the Plaintiff, including requests for medical authorizations, on or about March 22, 2013. Plaintiff did not timely respond to these requests. Around the time that these requests were due, Plaintiff had a falling out with her attorney, Daryle Salisbury."* Mr. Salisbury did not provide Plaintiff with said requests until February 21, 2013 (from Efficient Design) and March 8 (from Kevin Culpert), although they were dated February 7, 2013 and February 20, 2013, respectively (Exhibit R, 2-21-13 and 3-8-13 e-mails from Salisbury to Filas). At the time Plaintiff received Efficient Design's interrogatories and request for documents on 2-21-13, Plaintiff and Mr. Salisbury were involved in extensive discussions about matters concerning the no-fault auto case and she was not aware they were attached to an e-mail Mr. Salisbury sent.

Plaintiff dismissed her attorney in a certified letter dated March 8, 2013 (Exhibit S, 3-8-13 letter of dismissal from Filas to Salisbury). As will be further explained below, although the Register of Actions states that a Motion to Withdraw was granted, it is incorrect because Mr. Salisbury did not withdraw as her attorney---he was discharged by the Plaintiff. On March 19, 2013, Plaintiff requested extensions from both Culpert's and Efficient Design's attorneys to complete the interrogatories.) Both attorneys replied that they could not speak with Ms. Filas because the dismissal of Mr. Salisbury was not complete until an order had been entered by the court (Exhibit T, 3-19-13 request for extension to complete interrogatories, e-mailed from Filas to Hassouna and Mr. O'Malley, and their responses). Mr. Salisbury had attempted to persuade Ms. Filas to sign a substitution of attorney stipulation, substituting herself as the attorney of record. Ms. Filas wanted more time to secure the services of another attorney and refused to substitute herself and did not sign the stipulation. Plaintiff received a letter dated April 15, 2013 from Mr. Wright, attorney for Efficient Design, stating that her deposition had been adjourned until the Substitution of Attorney Order had been entered (Exhibit U, 4-15-13 letter from Wright to Filas regarding Substitution of Attorney Order). On April 29, 2013, Mr. Salisbury filed a Motion to Enter Substitution of Attorney Order---he never filed a motion to withdraw (Exhibit V, Salisbury's 4-29-13 Motion to Enter Substitution of Attorney Order).

Mr. Broaddus refers to a May 2, 2013 hearing for which Plaintiff did not order the transcript. Let it be clear that there were no hearings scheduled for May 2, 2013. The Register of Actions for May 1, 2013, indicates only a Status Conference to be held May 2, 2013, with Plaintiff's Motion for Continuance to be heard May 3, 2013, and Efficient Design's Motion to Compel Discovery from Plaintiff to be heard May 10, 2013 (Exhibit W, 5-1-13 and 5-23-13 Register of Actions). When Plaintiff entered the courtroom on Thursday, May 2, 2013, the court

was not conducting motion hearings, as would be held on Fridays in Borman's courtroom. Plaintiff doubts there is any transcript on file for May 2, 2013, because she does not believe any of the statements were made on the record that day. The judge decided not to grant any of the upcoming motions (Plaintiff's Motion for Continuance to be heard May 3, 2013, and Efficient Design's Motion to Compel Discovery from Plaintiff to be heard May 10, 2013) and issued a 30-day stay on discovery or until Plaintiff retained new counsel. A 5-23-13 Register of Actions indicates that the aforementioned scheduled hearings were reset by Court to 5-2-13 on 5-3-13 (Exhibit W, 5-1-13 and 5-23-13 Register of Actions). The judge told Mr. Salisbury she would not enter a substitution order because the Plaintiff wasn't an attorney and that he was supposed to file an order of withdrawal with the court. In a discussion occurring in the court hallway, Mr. Salisbury stated that he would not put in an order to withdraw, and Plaintiff stated that she wasn't going to substitute herself, so the blank order was written to contain the language, *"Daryle Salisbury is hereby discharged as counsel for Plaintiff"* (Exhibit X, 5-3-13 Order Discharging Daryle Salisbury and granting 30-day stay on Discovery). The current Register of Actions incorrectly shows a Motion to Withdraw as Attorney having been granted on 5-2-13 (Exhibit D, Register of Actions dated 6-24-13 and 1-21-14). No motion to Withdraw was ever filed by Mr. Salisbury, and therefore could not have been granted.

On page 2, Defendant-Appellee states, *"Representing herself, Plaintiff had a number of issues with Defendant's discovery requests."* Let it be clear that the issues Plaintiff had with signing medical authorization forms for third-party record copying services arose shortly before the dismissal of the combined first and third-party case that was filed in 2011, before she even hired Mr. Salisbury to represent her. Before Plaintiff-Appellant hired Mr. Salisbury to refile the cases, it was agreed she could provide discovery materials herself, without the use of a records

copy service, which had been an unresolved issue with her previous attorney when the case was dismissed without prejudice. However, her new attorney breached this agreement by sending her third-party, Legal Copy Services authorization forms to sign from the third-party Defendant, Kevin Culpert, and refused to stand up for her right not to use the Legal Copy Services (LCS) forms to meet her obligation to provide discovery material to release her records to the Defendants. Let it be clear that this was the reason that Ms. Filas had to discharge this attorney and that he did not withdraw based on any of Ms. Filas's actions.

On page 2, Defendant-Appellee states, *"as part of this motion to compel, Efficient sought 'signed medical authorizations' from the Plaintiff."* As explained in Appellant's Brief, according to Efficient Design's Request for Production of Documents, Efficient Design sought "*copies of any and all medical records relating to injuries received as a result of the subject accident*" and Plaintiff complied with this request by sending copies of SCAO-mandated form MC 315 to her health care providers so that Mr. Wright could receive copies of said records. Defendant-Appellee continues, *"as Efficient's counsel explained, this had been an ongoing problem dating back to the 2011 case"* and refers to page 6 of the 6-21-13 transcript. On this page of the transcript, Mr. Wright, Efficient's counsel, states, *"the problem is that I think 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."*

It is not true that Ms. Filas would not provide signed medical authorizations to obtain records for the Defendants in either the dismissed combined first- and third- party case referenced in Mr. Wright's 6-21-2013 statement above or after the first- and third- party cases were filed separately in 2012 and 2013, respectively. Plaintiff-Appellant only refused to sign medical authorizations provided by the defense attorneys that she felt had clauses in them that

she was not required to accept, and/or that gave the defendant's attorney permission to release her records to anyone they wanted to, or that they gave permission to a known non-party to the case, a records copy service, to copy and re-release her records to anyone who qualified to subscribe to their services, which Plaintiff contends is limited to attorneys and insurance companies.

Prior to the 6-21-13 hearing, Ms. Filas was never aware of Mr. Wright's involvement in the combined first- and third- party auto case filed by Mr. Cochran on November 15, 2011. Plaintiff-Appellant informed Mr. Cochran when she hired him that she thought Kevin Culpert may have been in the scope of his employment when he rear-ended her vehicle, because prior to the accident he had almost run her off the road. After he drifted into her lane and she avoided hitting him, she passed him. As she was passing him, she observed he was using a cell phone or other lighted device near the console in his vehicle. Mr. Cochran told Ms. Filas that he would investigate any and all sources of re-numeration that could be provided to Plaintiff- Appellant related to her accident.

Mr. Cochran told Ms. Filas not to sell her vehicle until his investigation was complete. On or around February 2012, Mr. Cochran informed Plaintiff-Appellant, that the maximum award she could get on the third party tort against Kevin Culpert was $20,000 from the Progressive Policy held by Mr. Culpert. Mr. Cochran never mentioned any other sources to Plaintiff-Appellant, from which she could file a claim for damages. In March of 2012, he told her she could sell her truck. The person Plaintiff-Appellant sold her truck to asked he if she looked into any other policies that might offer benefits such as a homeowner's policy or an employer's liability policy. Mr. Cochran continued to state all she could collect was $20,000 in the third party case. He stated this again on May 29, 2012 when she met with him at his office.

When asked if he was still going to hire a biomechanical engineer, as he stated he might do when she hired him, he said no, because she only had a $20,000 third-party claim. He said that if her claim would have been a million dollars, then it would have justified the cost of hiring the engineer.

In July of 2012, Mr. Cochran presented Ms. Filas with a settlement agreement from Mr. Hasounna, Mr. Culpert's attorney, that required her to agree to settle what she believed to be all third party claims, for $20,000 (Exhibit M, 7-19-12 e-mail from Terry Cochran and attached settlement offer from Mr. Hassouna). Ms. Filas did not want to sign any settlement until it had been determined for certain that Mr. Culpert was not in the course and scope of this employment when the accident occurred. Mr. Cochran claimed he was not, but offered no proof. He told her that Mr. Hassouna would vigorously defend any further claims against Kevin Culpert in a letter dated 7-16-12. The submission of this document for evidence does imply that Plaintiff-Appellant accepts the views and accountings of Mr. Cochran's assessment of her medical condition to be factual or accurate. (Exhibit Y, 7-16-12 letter from Cochran to Ms. Filas regarding settlement from Hassouna).

Plaintiff was led to believe by Mr. Cochran that there were not any other responsible parties other the Kevin Culpert that could be added to the third party case. Mr. Cochran said Mr. Hassouna would provide a sworn statement from Mr. Culpert that he was not in the scope of his employment. This was never provided by Mr. Hassouna. Ms. Filas wanted Mr. Cochran to get Mr. Culpert's phone records first and then go from there. He never did any further discovery prior to the final discovery date set by Judge Borman of June 17, 2012 (Exhibit N, Scheduling order for initial consolidated first- and third-party cases showing Discovery Cutoff of 6-17-12).

Plaintiff finds it disturbing that Mr. Wright admits to being involved in her prior combined first- and third-party case filed 11-15-11 by Terry Cochran. Why would Mr. Wright be allowed involvement with that case if he was never listed as a Defendant on that case? Kevin Culpert's phone records were never obtained by Mr. Cochran. Mr. Cochran never deposed Kevin Culpert or sent him interrogatories to determine whether or not Efficient Design was liable for any damages. As Plaintiff has mentioned, she does not understand why Mr. Hassouna could settle Ms. Filas's case with his adjuster in 2012, before or after Judge Borman dismissed the combined first and third party case, without any medical information, based solely on written statements from Plaintiff (unsigned interrogatories from Tamara Filas provided by Mr. Cochran without her final authorization or signature) as he claimed was all he had in in a 6-29-12 e-mail to MEEMIC's attorney, Mr. Orlowski, and, then when the third party tort case was filed separately on January 14, 2013, with Efficient Design added, he all of sudden needed new interrogatories and more medical information than he had before offering to settle in 2012 (Exhibit Z, 6-1-13 Culpert's Motion to Extend Scheduling Dates stating he had no medical records for Plaintiff, 6-29-13 e-mail from Hassouna to Orlowski to determine if he will settle based on written discovery from Plaintiff (interrogatories); Exhibit M, 7-19-12 e-mail from Terry Cochran and attached settlement offer from Mr. Hassouna).

It is reasonable for Plaintiff –Appellant to argue that Mr. Hassouna's adjuster from Progressive Insurance may not have authorized funds from Progressive Insurance to settle the case against Kevin Culpert without additional medical verification of Plaintiff's injuries, and that another entity was going to provide the funds to settle the claim against Kevin Culpert other the Progressive Insurance, or that Mr. Hassouna already had medical records from another source, such as MEEMIC Insurance who was given medical records from the U of M Healthcare System

and/or another major health care provider, or from Mr. Cochran from the personal medical records Ms. Filas gave Mr. Cochran when she hired him in the presence of her father November 3, 2011, or records obtained from blank records copy service forms Mr. Cochran directed Plaintiff to sign at the time she hired him.

Plaintiff believes that even if Mr. Cochran did add Efficient Design to the case a few days before the discovery was scheduled to end, he may not have been able to obtain the evidence he needed to prove Kevin Culpert was in the scope of his employment in time to pursue a claim against Efficient Design.

On page 2 of the 6-21-13 hearing transcript, Defendant-Appellee states, *"Plaintiff did not express any objection to the language of the authorizations at that time,"* the time referred to being at the June 21, 2013 hearing. Let it be clear that at this time, Plaintiff had not even seen the authorizations that Mr. Wright planned to provide to her. Judge Borman ordered Mr. Wright to e-mail his authorization forms to Ms. Filas on 6-21-2013. Ms. Filas did not receive the forms by 5 o'clock at the standard close of business on 6-21-2013. The FedExed authorizations were not delivered to Ms. Filas's porch until 3:00 PM on June 24, 2013 (Exhibit E, 6-24-13 FedEx time/date stamped envelope, stamped 3:00 PM). She did not discover them until after 3:30 p.m. 6-21-13. It would not have been possible for Plaintiff to express objections to authorizations she had never seen. Although Efficient Design's counsel claims he was unable to prepare the authorizations in advance because they didn't know Plaintiff's providers until she had submitted completed interrogatories, Plaintiff-Appellant contends he could have provided blank copies for the Plaintiff to fill in her providers. On pages 2-3, Defendant-Appellee refers to page 9 of the transcript for the June 21, 2013 hearing, and states "*counsel for Culpert,[Mr. Hassouna,] requested 'the same relief' that the Efficient had been given because Culpert had also been*

seeking 'authorizations as well and would like the answers to interrogatories.'" If one were to read the transcript from page 9 to the end, one would see that twice, Plaintiff attempted to inform the judge that she already provided answers to interrogatories and signed, completed, and mailed copies of SCAO-mandated form MC 315 to Mr. Hassouna that morning before the hearing, but she was cut off by the judge and the topic was never returned to (Exhibit AA, pages 9-10 of 6-21-13 transcript). As previously stated, although Mr. Hassouna filed a concurrence with Mr. Wright's motion to dismiss, he stated no arguments or reasons for his concurrence, such as being unsatisfied by the interrogatory answers or the copies of Form MC 315 that had been sent to Ms. Filas is healthcare providers (Exhibit L, 7-22-13 Culpert's Concurrence with Efficient Design's Response to Plaintiff's Objection to Proposed Order of Dismissal).

On page 3, Defendant-Appellee states that, "*Plaintiff did not sign the authorizations by 2:00 PM the following Monday [6-24-13]*" and refers to page 3 of the 6-24-13 transcript, further stating that "*Efficient's counsel explained that Plaintiff 'did stop by my office and she provided some authorizations' but 'they were altered.'*" Plaintiff-Appellant later realized that what Defendant meant by "altered" was that she provided Mr. Wright with copies of completed SCAO-mandated form MC 315 instead of his own personal forms. Plaintiff-Appellant contends that this is not an alteration because in order to make an alteration, she would have had to have Mr. Wright's forms in her possession at the time she delivered the copies of form MC 315 to his office at 11:24 AM on 6-21-13, which she did not. Defendant-Appellee continues, "Plaintiff had also failed to return some of the requested authorizations at all." Again, Plaintiff did not return *any* of Mr. Wright's *personal authorization forms* as she did not have them in her possession yet on the morning of June 21, 2013. She submitted only copies of signed and completed SCAO-mandated Form 315 that had been mailed to her healthcare providers listed in the interrogatories

on June 21, 2013, and certificates of mailing to verify this, were provided to Mr. Wright along with the copies of the forms on the morning of 6-24-13.

Because she did not have any of Mr. Wright's authorization forms at the time she dropped off copies of form MC 315 to his office on 6-24-13, Plaintiff-Appellant could not have selectively chosen specific forms to return to Mr. Wright. In addition to authorization forms for her medical providers, the FedEx packet mailed by Mr. Wrights law firm on June 21, 2013 and delivered to Plaintiff-Appellant's address at 3:00 pm June 24, 2013, after the deadline of Judge Borman's order for Plaintiff-Appellant to produce the medical authorization forms to Mr. Wright at 2:00 pm on June 24, 2013, included additional requests for Plaintiff-Appellant to produce documents and additional authorization forms for Plaintiff-Appellant to fill out to release the documents, which included her academic records, employment records, tax returns, Blue Cross Blue Shield and MEEMIC insurance records, psychotherapy notes, and records from Don Massey Cadillac, never previously requested. The packet from Mr. Wright delivered by FedEx June 24, 2013 at 3:00 pm was delivered after Plaintiff had personally delivered the SCAO medical authorization forms to Mr. Wright's office on June 24, 2013 at 11:24 am, and after the June 24, 2013, 2:00 pm deadline that Judge Borman ordered Plaintiff-Appellant to produce authorization forms provided by Mr. Wright, to Mr. Wright. None of the requests for the production of documents for which the additional authorization were sent, were previously requested by Efficient Design in the original Interrogatories or Requests for Production of Documents mailed to Plaintiff-Appellant April 30, 2013, that Plaintiff-Appellant complied with delivering to Mr. Wright on June 21, 2013 at the Court. Plaintiff-Appellant was not previously aware Efficient Design desired for her to produce the additional documents. Plaintiff-Appellant did not "alter" by selectively choosing specific records to be received by Efficient Design. The

request for these additional records was never made until after she mailed the SCAO medical authorizations to release her medical records to Mr. Wright on June 21, 2013. Plaintiff-Appellant contends a new Motion to Compel would need to be filed in order to request records beyond those originally requested and for which the 6-21-13 Motion to Compel was in regard.

Defendant-Appellee states on page 3 that the Plaintiff did not appear for the 6-24-13 hearing and brings up a claim that Ms. Filas was impersonating her mother, after Plaintiff already rebutted this claim and provided a sworn affidavit from her mother in her 8-6-13 Reply To Plaintiff's Objection To Defendant Efficient Design Inc.'s Proposed Order Of Dismissal Without Prejudice. Plaintiff-Appellant did not appear at the court on 6-24-13 because she was never contacted by Mr. Wright that the authorizations he received that morning were unacceptable to him. Plaintiff is disturbed that the court clerk, Precious Smith, would accuse her of impersonating her mother. Plaintiff is uncertain why Ms. Smith would have called her mother's phone number, 734-981-0666, in the first place, as it does not appear on any of the court filings or as the contact number in the e-filing records. Plaintiff only has one cell phone with the number 734-751-0103, that is equipped with voice mail service. Ms. Smith has called and left messages at Plaintiff's correct number in the past, so it is unusual that she would try to call Plaintiff's mother's number this time. Plaintiff has provided a sworn affidavit from her mother, with caller ID and phone records to substantiate that the court clerk spoke to Plaintiff's mother, not Plaintiff herself, and called Plaintiff's mother's number instead of the number on file for the Plaintiff (Exhibit BB, 6-24-13 phone and caller ID records, 8-5-13 affidavit of Kathleen Filas).

At the June 21, 2013 hearing, Plaintiff's understanding was that she had to deliver signed authorizations to Mr. Wright by 2:00 PM, not that she had to make a court appearance with the authorizations at 2:00 PM. On page 8 of the transcript, the Court states, "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." On page 17 of the 6-21-13 transcript, the Court states, "I'll see you Monday, hopefully not," indicating that if Plaintiff submitted the authorizations to Mr. Wright, there would be no reason for anyone to come to court at 2:00 p.m. on June 20, 2013. Plaintiff looked at the Register of Actions on the morning of June 24, 2013 and printed a Register of Actions on June 24, 2013 after the close of court at 4:30 PM and no hearing was shown for June 24, 2013 (Exhibit D, Register of Actions dated 6-24-13 and 1-21-14). However, currently the Register of Actions lists a "special conference" held on June 24, 2013 at 2:00 PM.

Plaintiff was not aware a "special conference" was going to be held on June 24, 2013 at 2:00 PM. Defendant's attorney, Mr. Wright never informed Plaintiff that the fully executed authorizations that Plaintiff had signed and mailed June 21, 2013 to her providers that she hand delivered copies to his office at 11:24 AM June 24, 2013 were deemed by Mr. Wright to be "altered", necessitating a court appearance at 2:00 PM June 24, 2013. Defendant-Appellee states on page 3, *"At that point [the 8-9-13 hearing], Plaintiff indicated, for the first time in this lawsuit, that 'I have a problem with some of the clauses.'"* Again, let it be clear that Plaintiff did not receive any authorization forms from Mr. Wright until <u>after</u> she had already mailed copies of SCAO-mandated Form MC 315 to her healthcare providers on June 21, 2013. Therefore, in her 7-5-13 and 8-6-13 Objections to the 7-Day Order of Dismissal, Plaintiff argued only that she had met her obligation to provide her medical records to Mr. Wright and that her case should not have been dismissed. Plaintiff argued that Mr. Wright requested records beyond those for which his Motion to Compel was based. Plaintiff never expected the judge to order her at the 8-9-13 hearing to either re-request her medical records from the same 20-some healthcare providers, using Mr. Wright's personal forms, or let her case be dismissed. Therefore, Plaintiff did not

argue her concerns with Mr. Wright's forms prior to the 8-9-13 hearing. Plaintiff had to allow her case to be dismissed, knowing that she had already completed her legal obligation to submit her medical records when she sent out copies of form MC 315 to her providers, and was under no obligation to repeat the entire process using Mr. Wright's forms. Let it be clear that as soon as Plaintiff brought up to Judge Borman that she had a problem with the clauses, she was immediately cut off from speaking about the issues because the Judge stated she had already ruled on that (Exhibit P, 8-19-13 transcript, pg. 3-4, showing Ms. Filas was not permitted to present her arguments regarding Mr. Wright's forms). Therefore, Plaintiff-Appellant should not be faulted for not bringing up her issues with the forms until 8-9-13, and for not having preserved them in writing in the third-party case. As stated previously, this is the reason Plaintiff-Appellant refers to filings from the first-party case---because the judge did not allow her to provide oral arguments in regards to Plaintiff's issues with the medical authorization forms she was being asked to sign in the third-party case. If Plaintiff had filed a motion for reconsideration in the third-party case, although she could have discussed her objections to the medical authorization forms in writing, she likely would have been accused by the judge of filing a frivolous motion for the fact that the judge told her that she already ruled on this issue in the first-party case, just moments before dismissing her third-party case, and would likely consider it a waste of the court's time since Plaintiff already knew the judge's opinion on the issue.

It is extremely important to note that prior to the hearing on Efficient Design's Motion to Compel on June 21, 2013, and prior to the dismissal of claims against Efficient Design on June 24, 2013 by Judge Borman in the third party tort case filed on January 14, 2013, Plaintiff-Appellant had already filed a Claim of Appeal with the Appellate Court on June 20, 2013, appealing the decision of Judge Borman to dismiss Plaintiff's first-party no-fault auto case

against MEEMIC Insurance because Plaintiff-Appellant refused to sign forms provided from a records copy service "as-is" that were provided by MEEMIC insurance for her to sign to release her medical information to that service to meet her obligation to provide medical records to MEEMICS's attorney (Exhibit CC, 4-26-13 transcript from dismissal of MEEMIC case, pg. 4-5).

PLAINTIFF-APPELLANT'S ANSWER TO STANDARDS OF REVIEW

Defendant-Appellee claims the Court of Appeals *"reviews for an abuse of discretion"* which *"occurs only when the trial court's decision is outside the range of reasonable and principled outcomes."* Plaintiff-Appellant contends that the trial court's decision to dismiss her case because it refused to accept the copies of SCAO-mandated Form MC 315 she had already sent to her healthcare providers to disclose copies of her medical records to both Defendants, Kevin Culpert and Efficient Design, is an abuse of discretion, and is outside the range of reasonable and principled outcomes. There are only 4 principled outcomes, a-d, when a party is served with a request for production of documents, as provided under MCR 2.314(C)(1).

MCR 2.314(C)(1), Response by Party to Request for Medical Information, states:

(1) A party who is served with a request for production of medical information under MCR 2.310 must either:

(a) make the information available for inspection and copying as requested;

(b) assert that the information is privileged;

(c) object to the request as permitted by MCR 2.310(C)(2); or

(d) 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.

Since Plaintiff-Appellant's submission of SCAO-Mandated form MC 315, the form approved by the state court administrator, to her health care providers would satisfy MCR 2.314(C)(1)(d), and Plaintiff can also be considered to have satisfied MCR 2.314(C)(1)(a) because she did make the information available to the Defendants by sending form MC 315 to her healthcare providers, the outcome of having her case dismissed cannot be considered to be a "reasonable and principled outcome."

PLAINTIFF-APPELLANT'S ANSWER TO ARGUMENT

On pages 5 and 6, Defendant-Appellee refers to assertions of privilege, which is completely irrelevant to this case as Plaintiff did not assert any privilege, and provided copies of signed, completed, medical authorization forms to her health care providers so that both Defendants, Kevin Culpert and Efficient Design, could receive copies of Plaintiff's medical records. Although Plaintiff's argument #1 in her Appellant's Brief Plaintiff-Appellant stated that she believed it was reasonable for her not to disclose her records to Efficient Design until it was verified they were a liable party in the case, this was not the same as an assertion of privilege under 2.314(B). Plaintiff still contends she should not have had to release personal or medical information to Efficient Design until they had admitted liability, to avoid having her case dismissed, so she followed the Judge's order to provide medical record authorization release

forms to Mr. Wright, as previously explained. (Exhibit B, Relevant page of Mr. Wright's 2-5-13 Answer to Complaint against Efficient Design stating Culpert was not an agent of Efficient Design and was not in the course and scope of his employment when the alleged accident occurred).

On page 7, Defendant-Appellee states, *"Plaintiff's principal argument on appeal - that the trial court ordered her to sign authorizations that were inconsistent with the 'SCAO-mandated' forms - was not raised below, and therefore is not preserved for appellate review."* Plaintiff's *principal* argument on appeal was not *"that the trial court ordered her to sign authorizations that were inconsistent with the 'SCAO-mandated' forms."* Although Plaintiff-Appellant did argue that she cannot be required to sign forms that differed from the State Court Administrative Office, Plaintiff-Appellant's *principal* argument on appeal was that she had met her legal obligation to provide her medical records to the Defendants under MCR 2.314(C)(1)(a) and/or MCR 2.314(C)(1)(d) when on June 21, 2013, she provided Defendant, Kevin Culpert's attorney, Mr. Hassouna, with copies of completed, signed SCAO-mandated Form MC 315 medical authorization forms, that had already been mailed to Plaintiff's healthcare providers on June 19, 2013; and provided Mr. Wright, attorney for Efficient Design, Inc., with the same documents (answers to interrogatories and completed, fully executed SCAO MC-315 medical release forms), but addressed so that Mr. Wright would receive the Plaintiff's medical records, from the authorizations mailed on June 21, 2013 at his business address. Plaintiff-Appellant delivered certificates of mailing and copies of the filled out SCAO forms that were already mailed, to Mr. Wright's office at 11:24 a.m. on June 24, 2013. Let it be clear that Plaintiff-Appellant began to raise her issues regarding Mr. Wright's authorization forms, which were not received by her until after she already mailed copies of MC 315 to her healthcare providers, at

the August 9, 2013 hearing. The judge did not permit Plaintiff to state her arguments on the record because she had already ruled on the issue of medical authorization forms in Plaintiff's first-party auto case. Plaintiff does not consider herself to have raised any new arguments in her appeal that were not already raised before the same judge, and previously ruled upon in the trial court.

Whether or not the issue of the SCAO forms was preserved or not still does not change the fact that the Plaintiff met her legal obligation under MCR 2.314(C)(1)(a) to provide her medical records to the Defendants by *"[making] the information available for copying and inspection as requested,"* as explained in Argument #2 of Appellant's Brief. Under MCR 2.314(C)(1)(a), it doesn't matter what forms were used, as long as the records were provided.

On page 8, Defendant-Appellee states, "*Dismissing the case, in light of Plaintiff's conduct, also fell squarely within the Circuit Courts' broad inherent authority.*" Plaintiff contends that her request to the Court to be permitted to follow the procedures outlined in the Michigan Court Rules, i.e. MCR 2.314(C)(1), in no way constitutes improper conduct on the Plaintiff's part.

There is no defined method of providing medical records under MCR 2.314(C)(1)(a), which merely states the obligation to *"make the information available for copying and inspection as requested"* which Plaintiff did. MCR 2.314(C)(1)(d) provides for the use of form MC 315, which states the option of "*furnish[ing] the requesting party with signed authorizations* ***in the form approved by the State Court Administrator*** *sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.*" Under MCR 2.314(C)(1)(d), it is mandated that the authorization form to be used is MC 315. The PDF of the

list of court-mandated forms, located at http://courts.mi.gov/Administration/SCAO/Forms/Documents/Mandatory%20Use%20List/mandatory_use_lists.pdf, indicates that MC forms are for circuit court use. MC 315 would therefore be used in the circuit court. (See Exhibit J, List of SCAO-mandated forms; and Exhibit K, SCAO-mandated form MC 315).

The position of the Michigan Supreme Court in regard to the use of Form MC 315 was re-confirmed on 6-23-11, in a memorandum from Chad C. Schmucker, State Court Administrator, sent to Chief Judges, Court Administrators/Clerks, Probate Registers, County Clerks, and SCAO Regional Administrators. He states, *"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."* Mr. Schmucker quotes the procedural rules regarding forms contained in MCR 1.109, stating, "*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."* Mr. Schmucker also clarifies that, "*Courts cannot impose additional procedures beyond those contained in the court rules. Therefore,* ***all courts must accept court forms approved by the Supreme Court or the state court administrator***" (Exhibit DD, 6-23-11 Memorandum from Chad C. Schmucker, State Court Administrator). Therefore, Plaintiff's submission of MC 315 should have been accepted by the lower court. Further, Plaintiff-Appellant previously contended that the only form Judge Borman could have ordered her to sign would have been SCAO-mandated Form MC 315. Plaintiff-Appellant now changes her position and contends that the Court could not have mandated her to use any specific form,

including MC 315.

PLAINTIFF-APPELLANT'S ANSWER TO CONCLUSION AND RELIEF REQUESTED

Defendant-Appellee states on page 9 that "*There is no dispute that Defendants were entitled to the authorizations requested.*" This statement is nonsensical because there is obviously a dispute or the case would not be in the Court of Appeals for the Plaintiff contending that she satisfied her obligation to produce her medical records and that she did not have to provide Mr. Wright with his own personal authorization forms.

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

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

employment when the accident occurred on January 15, 2010 (Exhibit H, 8-2-13 e-mail from Ms. Filas to Mr. Hassouna, Mr. Wright and Mr. O'Malley; and Mr. Hassouna's response).

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

Plaintiff-Appellant knows of no provision in the Michigan No Fault Insurance Act, or any other law, that would trump the use of mandated SCAO form MC 315 for the production of discovery documents containing Plaintiff-Appellant's private medical records or, would allow the lower court to order and mandate the Plaintiff-Appellant to produce the medical her records using an authorization form, "as-is," sight unseen, to be provided to Plaintiff-Appellant by the Defendant-Appellee without allowing Plaintiff-Appellant to object to and/or refuse to sign the "as-is" documents. As the 6-23-11 Supreme Court memo states, quoted from MCR 1.109, "*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*" (Exhibit DD, 6-23-11 Memorandum from Chad C. Schmucker, State Court Administrator). Therefore, the Court could not order Plaintiff to use any specific form.

Plaintiff also contends she is not required to provide medical records not listed on the SCAO form that were required on Mr. Wright's forms she received on 6-24-13, without a "just cause" hearing, before she could be required to provide them. Plaintiff-Appellant further contends she was not obligated to produce records beyond the medical records requested in Mr. Wright's 4-30-13 Request for Production of Documents to Plaintiff, which was the basis for his

Motion to Compel, for which the hearing was held on 6-21-13, and that a new Motion to Compel must be filed by Mr. Wright to obtain an order for her to produce additional records that were not requested in the 4-30-13 Request for Production of Documents to Plaintiff, and this was also not a valid reason to dismiss her case.

On page 9, Defendant-Appellee states, "*Since Plaintiff has not cited any precedent contrary to the trial court's decision, it is impossible for her to say that the trial court erred.*" 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).

It is also highly probable that there are no other similar cases to Plaintiff's current first- and third- party cases, in which a party is attempting to uphold court rule MCR 2.314(C)(1). It can reasonably be argued that most people involved in an auto accident hire an attorney to handle their claims. It is not uncommon for a person to trust what their lawyer tells them. Plaintiff herself was caught in this trap when she signed illegal blank forms for her first attorney, believing that his practices were legal at the time until she was told otherwise by one of her healthcare providers. It can reasonably be argued therefore that most people would sign the forms they were provided by their attorneys without question, and without investigating the court rules regarding the production of medical records. Therefore, it is highly probable that no other case such as Ms. Filas's first- and third- party cases currently in the Court of Appeals, regarding the right of the Plaintiff to use the SCAO form MC 315 to provide medical information to Defendants, has ever been challenged, dismissed and appealed to the Court of Appeals.

It is also unusual that Plaintiff would have to go to such lengths to have a clear and unambiguous Court Rule, MCR 2.314(C)(1), followed by the Circuit Court. On page 9, Defendant-Appellee states, "*it is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.*" In her Brief, Plaintiff-Appellant clearly stated Court Rule MCR 2.314(C)(1) in its entirety, and provided clear arguments and rationale for having met the requirements to provide her medical records to the Defendants. There is nothing the Court of Appeals would be required to discover, unravel or elaborate for the Plaintiff-Appellant. Their only responsibility is to require that the lower court uphold the provisions of MCR 2.314(C)(1) and consider Plaintiff-Appellant's obligation to provide her medical records to have been met under MCR 2.314(C)(1)(a) and/or MCR 2.314(C)(1)(d).

Further, 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.

As an intermediate appellate court, the principal function of this Court of Appeals is to correct errors made by lower courts. *Halbert v Michigan,* 545 US 605, 617 n 3: 125 S Ct 2582 (2005). Clearly, an error has been made by the lower court's refusal of Plaintiff-Appellant's submission of SCAO-mandated Form MC 315, that was sent to her health care providers so that her medical records could be received by both Defendants, Kevin Culpert and Efficient Design. As previously stated, the proper relief would be to require that the lower court uphold the provisions of MCR 2.314(C)(1) and consider Plaintiff-Appellant's obligation to provide her medical records to the Defendants to have been met under MCR 2.314(C)(1)(a) and/or MCR

2.314(C)(1)(d). For the reasons stated above, Plaintiff-Appellant requests that the Court deny Defendant-Appellee's Motion to Affirm.

Further, Plaintiff believes it was an error on the part of the Circuit Court to dismiss her entire case against both Kevin Culpert and Efficient Design. They involve different insurance companies and different policies. In the lower court proceedings, Plaintiff complied with all requests from Kevin Culpert's attorney, Mr. Hassouna, and he did not object to the method by which Plaintiff provided medical records to him. Although Mr. Hassouna did state that he was in concurrence with Mr. Wright's Order to Dismiss, he provided no additional reasons on his own behalf to have Kevin Culpert's case dismissed. Also, as explained previously, it is unusual that Mr. Broaddus, appellate attorney replacing circuit court attorney, Mr. Hassouna, is now arguing his Motion to Affirm on behalf of Defendant Efficient Design, whom he does not even represent, and still does not bring up any issues regarding the forms that Plaintiff provided to Mr. Hassouna. Plaintiff still contends that the dismissal of her case against Kevin Culpert should be reversed by this Court, regardless of the decision pertaining to the dismissal of Plaintiff's case against Efficient Design.

signature redacted

1-21-14
Date

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