Exhibit T

STATE OF MICHIGAN

SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

-vs-

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

Defendants-Appellees.

/

Supreme Court No. 151198

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

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PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-APPELLEE THOMAS K. CULPERT'S ANSWER TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL*

Note: *DEFENDANT –APPELLEE'S 3-23-15 ANSWER TO PL-AT'S APPLICATION FOR LEAVE TO APPEAL TO THE MSC was titled as follows: DEFENDANT-APPELLEE THOMAS K. CULPERT'S ANSWER TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL. The case caption in this Answer also states Thomas K. Culpert as the Defendant. Thomas K. Culpert, is not and has never been a party to this case. Kevin Thomas Culpert is the correct name of the Defendant-Appellee represented by attorney, Drew W. Broaddus, for Culpert.

Dated: April 13, 2015

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REPLY TO DF-AE'S STATEMENT OF JURISDICTION

MCR 7.302(B)(5) is applicable because PL-AT was denied a legitimate oral argument hearing, denying her right of due process, a right that is important to every citizen and important to maintaining the integrity of the legal system, since two issues from PL-AT's Brief on Appeal, IV, and V, to be heard by the Court of Appeals at an oral arguments session held on 3-3-15, were rendered moot by the previous 11-25-14 Order granting DF-AE's Motion to Affirm for Item 3, which upheld the circuit court's dismissal of PL-AT's entire case. MCR 7.302(B)(5) also applies because the COA's 11-25-14 granting of the DF-AE's Motion to Affirm based on the doctrine of collateral estoppel is clearly erroneous and will cause PL-AT material injustice if the COA's Order to uphold the dismissal is not overturned by the MSC.

PL-AT also claims grounds to appeal pursuant to MCR 7.302(B)(3) because PL-AT's case also involves a substantial legal issue in regard to the circuit court's refusal to accept SCAO-mandated form MC 315 for Plaintiffs to provide their records to Defendants, a decision which has been upheld by the Court of Appeals in both PL-AT's first- and third-party auto cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR 2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to become part of a records copying services' database where sales and access are restricted primarily to lawyers and insurance companies. Plaintiff's records that are copied by a record copy service ("RCS"), or with a Defendant's Attorney's own personal authorization forms, which contained language "This information is to be released for copying purposes to James C. Wright…" could still end up being given or sold to a RCS or placed in another database by the Defendant's attorney, for which Plaintiff has no access. The quoted statement from Mr. Wright's forms can be interpreted as giving the ability to Mr. Wright to re-

copy and re-disclose records he obtained from her. There would be no reason to copy PL-AT's information unless he planned to re-disclose it. The SCAO MC 315 authorization does not allow for the re-copying of records, which at least protects Plaintiff's private information from ending up in databases for perpetuity with Plaintiff's private information in the possession of entities that have nothing to do with the settlement of Plaintiff's PIP or 3rd Party tort case, enabling discriminatory actions against a Plaintiff to occur without detection or penalty to anyone. PL-AT was ordered by the lower court to use only Mr. Wright's authorization forms, denying her rights under MCR 2.314(C)(1)(a) and (d). In the instant case, Judge Borman stated she would dismiss Plaintiff's case if she did not use Wright's authorization forms to provide her records to him (Exhibit K, pg. 17, lines 19, 20). Plaintiff ended up using MC 315 authorization forms to have her providers release information to Mr. Wright.

The Supreme Court hereby has the opportunity to enforce the allowance of the forms approved and/or mandated by the Supreme Court Administrative Office, in this case, Form MC 315, when a Plaintiff is ordered by the lower court to provide medical authorizations to Defendants even when Defendant did not even request medical authorization forms from the Plaintiff, and only requested medical records, as was the case with Efficient Design's attorney Mr. Wright (Exhibit H, relevant page of 2-7-13 request for production). If the MSC truly stands behind the law, it will take this opportunity to correct the injustice being done to this PL-AT and future Plaintiffs who simply want to follow the court rules and provide their medical records directly to the Defendants, or if ordered by a presiding lower court judge forms to use authorization forms other than SCAO-mandated MC 315 forms, as in the instant case, to uphold the right of the Plaintiff to use SCAO-mandated MC 315 forms to satisfy an Order to provide completed medical authorization forms. Judge Borman had no legal authority under MCR

2.314(C)(1) to Order Plaintiff to provide medical release authorization forms directly to Mr. Wright when all that Mr. Wright requested in his Motion to Compel were medical records from Plaintiff that she had a right under MCR 2.314(C)(1)(a) to obtain directly from her medical care providers and provide to Mr. Wright. Mr. Wright clearly did not even have any of his personal medical authorization forms available at the hearing for Plaintiff to sign, did not timely e-mail any of his completed medical authorization forms to Plaintiff on 6-21-13, after he was ordered by Judge Borman to e-mail his forms to Plaintiff at the hearing on 6-21-13, and hard copies of Mr. Wright's authorization forms were never received by Plaintiff on 6-24-14 until after Judge Borman dismissed her case *sua sponte* on 6-24-13. It was unjust for Plaintiff's case to be dismissed sua sponte on 6-24-13 by Judge Borman, given the fact Mr. Wright only asked for medical records, not medical authorization forms in his Motion to Compel Plaintiff to provide medical records, the facts regarding the circumstances under which PL-AT used and mailed MC 315 authorization forms to her providers to meet her obligation to provide her medical records to Mr. Wright after Mr. Wright did not follow Judge Borman's order to timely e-mail his authorizations to her on 6-21-13; the fact that Mr. Wright never notified Plaintiff that the MC 315 forms that were hand-delivered to his law office on the morning of 6-24-13 were unacceptable to Mr. Wright and that he would be appearing before Judge Borman on 6-24-13 and it would be necessary for Plaintiff to appear, as well; the fact that Plaintiff never received any notice from the Court that she needed to appear on 6-24-13 to argue against Mr. Wright's objections to the MC-315 forms mailed to her providers on 6-21-13; and the fact that Plaintiff was not notified of the dismissal by the Court until it had already taken place.

REPLY TO COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. DF-AE presents the following question:

> **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 this court?**

This question is inapplicable to the case at hand and misrepresents the facts of the case. In DF-AE Culpert's first Motion to Affirm dated 12-30-13, which was denied by the Court of Appeals on 2-11-14, this same question was the only question presented in Culpert's first Motion to Affirm. Therefore, it should not appear again for consideration by the MSC when the COA already rejected it.

The COA already considered PL-AT's arguments in regard to DF-AE's question on pgs. 1-4 of her 1-21-14 Answer to DF-AE's 12-30-13 Motion to Affirm, in which she explained this question is irrelevant and inapplicable for the reason that PL-AT *did* sign authorizations to release her medical records to the Defendants. Prior to case dismissal *sua sponte* on June 24, 2013, PL-AT mailed completed SCAO-mandated Form MC 315 medical authorization forms to all of her healthcare providers (with the exception of three providers she inadvertently missed and mailed out on 6-24-13 and 6-26-13) so that both Defendants, Kevin Culpert and Efficient Design, Inc., could receive copies of her medical records. PL-AT explained in her 1-21-14 Answer that she in no way manipulated the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence, as DF-AE has alleged, since she not only provided both DF-AEs 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 them with completed

authorization forms for all of the healthcare providers she could recall that she ever obtained services from, *prior* to the accident. PL-AT permitted disclosure of her records all the way back to birth, which is beyond what Mr. Wright asked for in his Request for Production of Documents. 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 (Exhibit I, samples of completed MC 315 forms and cover letters; Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI).

If anyone could manipulate records and selectively decide what records would be received by the Defendants, it would be the Defendants attorneys themselves; James Wright and Michael O'Malley representing Defendant, Efficient Design; and Mr. Hassouna, representing Defendant Kevin Culpert, because simply receiving signed authorizations from the Plaintiff, Tamara Filas, in the third-party tort case, in no way guarantees Plaintiff that all of the authorizations signed by her would actually be sent to the PL-AT's health care providers by the Defendants, and subsequently, no guarantee all records would be received by the Defendant's from all health care providers. Plaintiff would have no way of knowing what records Mr. Wright had actually ordered and obtained until they were presented at a settlement conference. Since the Michigan Catastrophic Claims Association is a private, non-profit agency run by insurance companies, that does not deal with the public, there is clearly incentive for the Defendants'

insurance companies not to want to document all of a Plaintiff's injuries or to allow Plaintiff to check for inaccuracies in the medical records and address them with the health care providers, not just in first-party no-fault cases, but in third party tort cases as well, not only to reduce the damages paid to Plaintiff in the third-party tort cases often settled by attorneys behind closed doors, but also to limit Plaintiff's ability to make claims and collect benefits for future care from the MCCA, since all auto- related insurance claims affect all insurance companies that sell no-fault auto insurance, the rates they charge and their ability to compete. Although insurance companies are required to pay into the MCCA fund directly, they often have to charge more for their insurance products to offset the cost or realize less profit. The interest of insurance companies should not be a consideration in the settlement of no-fault auto cases or third-party auto tort cases where a victim's right to lifetime medical benefits is at stake or the amount of settlement is at stake.

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

II. DF-AE presents the following question:

Were Plaintiff's due process rights violated by the Court of Appeal's decision to grant Culpert's Motion to Affirm, in part, prior to oral argument?

DF-AE misrepresents the situation in this question by omitting the fact that this particular motion upheld the dismissal of the entire case in violation of MCR 7.214(E)(1) which only allowed for motions to be heard without oral argument if they met specific criteria, which were not met, as explained in argument I(B)(2) of PL-AT's 3-10-15 Application for Leave to Appeal to the MSC, pg. 15-16 . PL-AT understands that motions before the COA are generally not

subject to oral argument, but this particular motion, however, rendered PL-AT's oral argument session on 3-3-15 illegitimate since the COA could not reverse the dismissal already ordered on 11-25-14 by the granting of DF-AE's Motion to Affirm, by its inclusion of Issue III from PL-AT's 12-20-13 Brief on Appeal to the COA. A party filing timely briefs is entitled to oral argument in accordance with MCR 7.111(C), if requested in accordance with MCR 7.214(A), as PL-AT did. Not only was PL-AT denied oral arguments on DF-AE's 10-17-14 Motion to Affirm, but she was also denied a legitimate oral argument session on Issues IV and V at the 3-3-15 hearing because these issues were already rendered moot. Therefore, she could not present a valid oral argument or receive a valid oral argument session at all in regard to her appeal to COA on 3-3-15, after the COA had already dismissed her case in its entirety.

III. DF-AE presents the following question:

Did the Court of Appeals motion panel properly apply collateral estoppel where this Court held in *Monat v State Farm* that mutuality is not required when the party being estopped - in this case, the Plaintiff - had a full and fair opportunity to litigate the issue?

DF-AE faults PL-AT for not addressing the issue of mutuality that was addressed in *Monat v State Farm,* but mutuality cannot even be considered until it is determined whether or not the PL-AT had a full and fair opportunity to litigate the issue, which in the instant case, PL-AT has not. In *Monat*, the plaintiff was determined to have had a full and fair opportunity to litigate the issue because he relinquished his right to appeal by agreeing to a settlement. *Monat v State Farm* addressed the issue of the meaning of a full and fair opportunity, which "*normally encompasses the opportunity to both litigate and appeal*." As PL-AT explained on pg. 24 of her 3-10-15 Application for Leave to Appeal to the MSC, PL-AT has appealed the MEEMIC case, (COA Case No. 316822, MSC No. 150510) upon which the COA's 11-25-14 ruling has

determined that the Doctrine of Collateral Estoppel can be applied to prevent PL-AT from litigating the issues she presented in the instant case. Therefore, since the appeal process has not been completed in the MEEMIC case, PL-AT has not had a full and fair opportunity to litigate the issue and the doctrine was therefore inapplicable. Further, as PL-AT explained in Arguments II B, C, and D on pgs. 18-24 of her 3-10-15 Application, besides the nonexistence of mutuality of estoppel, the Doctrine of Collateral Estoppel was also inapplicable because: (1) the issues were not identical; (2) the issue was not actually litigated; and (3) the judgment (the 10-14-14 MEEMIC Opinion, Case No 316822), upon which the 11-25-14 Order granting Culpert's second motion dated 10-17-14 was based, was not a final judgment and was not decided on the merits.

IV. DF-AE presents the following question:

Did Plaintiff preserve any arguments regarding SCAO Form MC 315 for appellate review?

The arguments presented on pgs. 17-18 of DF-AE Culpert's Answer to PL-AT's 3-10-15 Application in regard to this question, are the same, word-for-word, as presented in Culpert's first Motion to Affirm dated 12-30-13, pg. 7-8, that was denied by the COA on 2-11-14. Clearly, if the COA believed PL-AT had not preserved her arguments in regard to SCAO Form MC 315, they would have granted DF-AE's 12-30-13 Motion to Affirm on the issue of preservation alone. The DF-AE misleads the MSC by stating that "*The Court of Appeals did not answer this question*." The COA *did* answer the question when it denied DF-AE's 12-30-13 Motion to Affirm which contained this same argument word-for-word.

INTRODUCTION

DF-AE Culpert presents a disturbing, falsified history, concealing the fact that he received completed interrogatories, copies of MC 315 that were signed and mailed to PL-AT's health care providers listed in the interrogatories, and records from some of the health care providers that executed the MC 315 forms they were sent. PL-AT never expected DF-AE to falsely claim these items were never received. Now, DF-AE is making the preposterous claim, and fraud against the court, that Culpert never even filed a written motion to compel said items, when the court record is clear that he did file a Motion to Compel on 4-19-13 (Exhibit N, Culpert's 4-19-13 Motion to Compel; Exhibit G, Registers of Actions dated 6-24-13 and 3-10-15). Culpert's 3-23-15 Answer also uses arguments word-for-word that were presented as the sole arguments in his first Motion to Affirm dated 12-30-13, that was already denied by the COA on 2-11-14. These arguments should not be re-stated here, for any kind of consideration by the MSC, not to mention they contained falsehoods about the actual events of the case.

As argued in Issue V in her Brief on Appeal to the COA, Culpert should not even be part of this appeal process since his attorney never objected to the records he received. 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 using MC 315. It has been very unusual that Mr. Broaddus, appellate attorney replacing circuit court attorney, Mr. Hassouna, has been arguing on behalf of Defendant Efficient Design throughout the appeals process in the COA, whom he does not even represent, instead of arguing on behalf of Culpert. Meanwhile, Mr. James Wright, the sole attorney who was responsible for having PL-AT's entire case dismissed based on his word that he did not receive what he asked for in his Motion to Compel (an attorney only representing the claims against <u>one</u> of two

different liability insurance policies held by Efficient Design), has not even filed an answer to PL-AT's MSC Application.

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

REPLY TO COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

DF-AE PRESENTS THE SAME FALSIFIED ACCOUNTING OF THE TRIAL COURT EVENTS THAT HAS ALREADY BEEN DISPROVEN BY PL-AT.

It is disturbing to PL-AT to have re-butted the same "facts" presented by the DF-AEs in this case numerous times, providing hard evidence to prove they are untrue, and yet they appear again in this filing, exactly as written in previous filings. Pgs. 1-3 and the first paragraph of pg. 4 of DF-AE's 3-23-15 Answer are identical to pgs. 1-3 and the first paragraph of pg. 4 of DF-AE's first Motion to Affirm dated 12-30-13, that was denied by the COA on 2-11-14, with the exception of the change from referring to Efficient Design Inc. as "Efficient" in the former, and "Efficient Design" in the latter, and the mention of PL-AT's former attorney, Daryle Salisbury, by name in the former, but not in the latter (Exhibit A, DF-AE Culpert's first Motion to Affirm dated 12-30-13 denied 2-11-14).

PL-AT's presentation of the truth seemed to fall on deaf ears at the Court of Appeals, when it issued a 3-10-15 Opinion that also relied on the "facts" provided by the DF-AEs, without

examining PL-AT's pleadings and proofs, which would have made it obvious that the DF-AE's representation of events, portraying PL-AT as uncooperative with discovery, was deceitful.

Instead of providing a repeat of the complete rebuttal that has already been provided to the COA in PL-AT's 1-21-14 Answer to DF-AE's first Motion to Affirm dated 12-30-13, which was denied on 2-11-14 by the COA, PL-AT will refer to the pages in her 1-21-14 Answer to this Motion to Affirm for further details, which has been included as Exhibit B for convenience.

This case was not a re-initiation of the combined 2011 suit, as DF-AE claims on pg. 1 ¶ 1 of the 3-23-15 Answer. The first- and third-party cases are no longer combined, and are now each separately before the MSC, having been dismissed for the reason of the trial 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, as should have been permitted under MCR 2.314(C)(1)(d), which mandates the use of MC 315.

Efficient Design, Inc. was not a defendant in the original 2011 combined first- and third-party suit, contrary to the portrayal by DF-AE on pg. 2 ¶ 2. The original combined case was dismissed on July 20, 2012 by stipulation of the parties, to buy time for PL-AT to have her injuries diagnosed, and was not due to PL-AT's refusal to sign authorizations. (Refer to pg. 4-5 of Exhibit B, PL-AT's 1-21-14 Answer).

Contrary to DF-AE's claims on pg. 1 ¶ 2 of the 3-23-15 Answer, PL-AT's attorney, Daryle Salisbury, did not provide Plaintiff with the DF-AE's requests for discovery until February 21, 2013 (from Efficient Design) and March 8, 2013 (from Kevin Culpert), although they were dated February 7, 2013 and February 20, 2013, respectively. On March 9, 2013, PL-AT dismissed her attorney, Mr. Salisbury (Exhibit P, letter from PL-AT to Salisbury dated 3-8-13 mailed 3-9-13). 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. On April 29, 2013, Mr. Salisbury filed a Motion to Enter Substitution of Attorney Order, trying to get Ms. Filas to substitute herself. Mr. Salisbury never filed a motion to withdraw, contrary to the Register of Actions which falsely shows a Motion to Withdraw having been granted on 5-3-13. The 5-3-13 Order states *"Daryle Salisbury is hereby discharged as counsel for Plaintiff."* 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 a combined PIP and 3rd party case was dismissed in 2012, without prejudice. However, Mr. Salisbury 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 (Refer to pg. 5-8 of Exhibit B, PL-AT's 1-21-14 Answer; Exhibit C, 2-21-13 and 3-8-13 e-mails from Salisbury to Filas; Exhibit D, 3-19-13 request for extension to complete interrogatories, e-mailed from Filas to Hassouna and Mr. O'Malley, and their responses; Exhibit E, 5-3-13 Order Discharging Daryle Salisbury and granting 30-day stay on Discovery; Exhibit F, Salisbury's 4-29-13 Motion to Enter Substitution of Attorney Order).

DF-AE states on pg. 2 ¶ 2 of the 3-23-15 Answer, "*Efficient Design had actually attempted to argue this [general basic motion to compel] on May 2, 2013, but the court adjourned it at that time and "stayed [the case] to allow Ms. Filas to obtain successor counsel*." This is not the reason Efficient Design could not argue its Motion to Compel on May 2, 2013. The Motion was scheduled to be heard on May 10, 2013 and it would have been unfair to hold it early since the PL-AT was not prepared to argue it at the status conference held May 2, 2013 (Exhibit Q, Notice of Hearing from EDI's 4-30-13 Motion to Compel, Exhibit S, 5-2-13 Transcript – see pg. 9-10). The Register of Actions falsely states that on 5-2-13, Efficient Design's Motion date was reset by the court from 5-10-13 to 5-2-13 and the result falsely indicates it was held. Efficient Design's Motion to Compel was heard 6-21-13, as the Register of Actions does correctly state (Exhibit G, Registers of Actions dated 6-24-13 and 3-10-15).

DF-AE states on pg. 2 ¶ 2 of the 3-23-15 Answer, *"As part of this motion to compel, Efficient sought 'signed medical authorizations' from the Plaintiff."* The Motion to Compel filed was filed by James Wright, attorney for Efficient Design did not seek signed medical authorizations. According to Efficient Design's Request for Production of Documents dated 2-7-13, Efficient Design sought "*copies of any and all medical records relating to injuries received as a result of the subject accident."* (Exhibit H, relevant page of 2-7-13 request for production). Judge Borman, instead of allowing and ordering Plaintiff to provide copies of her medical records as requested by Efficient Design, or accepting the already executed copies of MC 315 PL-AT had mailed to her health care providers, as were Plaintiff's rights under MCR 2.314(C)(1), the Judge Ordered Plaintiff to re-do the medical records disclosure process, and to use only Mr. Wright's personal medical release authorizations to release her records to Mr. Wright. Mr. Wright had already received records from the health care providers as the result of

the copies of SCOA MC 315 authorizations Plaintiff mailed to her providers on 6-21-13 (and a few that inadvertently omitted and sent a few days later) to provide her records to Mr. Wright by the time of the 8-9-13 hearing at which the PL-AT was ordered to re-do the medical records disclosure process with Mr. Wright's personal forms (Exhibit I, samples of completed MC 315 forms and cover letters; Exhibit J, Letters from health care providers indicating that records were sent to Mr. Hassouna and Mr. Wright).

On pg. 2 ¶ 2 of the 3-23-15 Answer, DF-AE claims Efficient Design's counsel explained in reference to PL-AT signing medical authorizations at the 6-21-13 hearing, "*This had been an ongoing problem dating back to 2011 case."* DF-AE is referencing pg. 6 of the 6-21-13 transcript, in which Mr. Wright, Efficient's counsel, stated, *"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 disturbing to PL-AT that Mr. Wright claimed he was involved in the case in 2010. Plaintiff has no knowledge or record of attorney James Wright having ever being involved in any way in 2010 with her auto accident case that was filed on November 15, 2011 by her previous attorney Terry Cochran after she hired him on 11-4-11. Mr. Cochran had his secretary provide PL-AT with her complete case file in June of 2012. There was nothing with Mr. Wright's name on it. There is nothing in the court records or case file Mr. Salisbury provided to PL-AT after she dismissed him, indicating Mr. Wright was involved in her case in 2010, or any information identifying names of the insurance companies under which EDI held liability policies that provided attorneys James Wright and Michael O'Malley to represent Efficient Design. Efficient Design did not become a Defendant represented by Mr. Wright in the third-party case until it was separately filed on January 14, 2013. It is not true that PL-AT would not provide signed medical authorizations to obtain

records for the Defendants in either the dismissed combined first- and third- party case, 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 copy and provide her records to anyone they wanted to, including any known non-party to the case such as a records copy service, to copy and re-release her records to anyone who qualified to subscribe to their services, which is limited to attorneys and insurance companies. DF-AE misleadingly gives the appearance that at the 6-21-13 hearing, the Court was referring to the 2011 case by providing the quotation that the plaintiff would "*leave the court no alternative but to dismiss this case too*." The words 'this case' are actually referring not to the 2011 combined first and third-party case, but to PL-AT's separately filed MEEMIC case, that had just been recently dismissed by the same judge, Judge Borman, on 4-26-13 due to plaintiff's refusal to sign Records Deposition Services Inc. forms for MEEMIC, and the court's refusal to accept SCAO-mandated form MC 315, which PL-AT had requested to use to provide her medical records to the defendant in the MEEMIC case.

On pg. 2 ¶ 3 of DF-AE's 3-23-15 Answer, DF-AE claims, "*Plaintiff did not want to give medical authorizations to a party that might not have liability.*" Even though PL-AT believed she should not have to provide medical records to Efficient Design since they had <u>denied</u> liability in their 2-6-13 Answer to Plaintiff's Complaint, this is now irrelevant. The Court claimed on pg. 7 of the 6-21-13 transcript "*We don't wait for liability*," and PL-AT did not want her case to be dismissed, so PL-AT *did* provide medical authorizations to Efficient Design on 6-24-13 that had already been mailed to her health care providers. By the DF-AE's mention of PL-AT's irrelevant prior objections in regard to liability, it gives the appearance that PL-AT has been uncooperative,

which is untrue, since she ultimately provided the records regardless of the establishment of liability (Refer to pg. 8-12 of Exhibit B, PL-AT's 1-21-14 Answer; Exhibit K, 6-21-13 transcript).

DF-AE's next argument on pg. 2 ¶ 3 of the 3-23-15 Answer, is fallacious: *"Plaintiff did not express any objection to the language of the authorizations at that time."* As explained on pg. 12 of PL-AT's 1-21-14 Answer (Exhibit B), it would have been impossible for PL-AT to object to authorizations that Mr. Wright did not even have with him at the court that day. PL-AT objected to the authorizations at the first opportunity available, which was the 8-9-13 hearing in regard to the 7-day 'proposed' order of dismissal, where PL-AT was led to believe by Mr. Wright's having left out the notice required under MCR 2.602(B)(3) and giving the appearance that her case was not actually dismissed by calling it a "proposed order," that she could reverse the dismissal by filing objections, but in reality she was only supposed to be objecting to the accuracy and content of the 6-24-13 Order of Dismissal, not to the dismissal itself.

When PL-AT provided Mr. Hassouna, the attorney representing Culpert in the trial court, completed interrogatories and copies of already signed and mailed Form MC 315 for all the healthcare providers listed in the interrogatories just before the hearing on his Motion to Compel on 6-21-13, she did not ask Mr. Hassouna to sign a paper indicating he had received said items, as is now PL-AT's current practice for all other important paperwork to be filed or submitted. PL-AT never anticipated that Mr. Broaddus, the attorney representing Culpert in the appellate cases, would make false claims that Mr. Hassouna did not receive anything at all from PL-AT. Even the COA has provided this false accounting of events in its 3-10-15 Opinion, even though PL-AT provided proof that attorneys for both Culpert and Efficient Design received records from her health care providers by execution of the MC 315 forms PL-AT provided to Hassouna on 6-

21-13 and Wright on 6-24-13 (Exhibit I, samples of completed MC 315 forms and cover letters; Exhibit J, letters from health care providers indicating that records were sent to Mr. Hassouna and Mr. Wright).

It also appears from the 6-21-13 transcript that Mr. Hassouna deliberately made statements that indicated he had not received the interrogatories and authorizations even though they were already in his possession, setting up the ability to make this false claim in the future, and PL-AT was cut off by twice by the court as she tried to explain that she already fulfilled her obligations to provide the requested discovery materials to him that morning. According to the 6-21-13 transcript, pg. 9, Mr. Hassouna stated, "*Your Honor, I would simply ask for the same relief before you do Efficient Design for Mr. Culpert."* PL-AT then stated, *"I have his though."* By the word "his," PL-AT was referring to the completed interrogatories and copies of signed, executed copies of SCAO-mandated MC 315 forms that had already been mailed to all of the health care providers listed in the interrogatories, as Culpert's Motion to Compel had requested. The Court then stated, "*Excuse me, what same relief?"* Mr. Hassouna stated, "*I would like authorizations as well and I would like the answers to the interrogatories."* The transcript then continues with a discussion about who the parties were and the liability of Efficient Design. PL-AT explains at the bottom of pg. 9 of the 6-21-13 transcript, "*But I have everything for Mr. Hassouna"* and is then cut off by the court. Again, by the word "everything," PL-AT is referring to the completed interrogatories and copies of medical record authorizations with mailing receipts for Mr. Hassouna that she brought to the court with her and hand-delivered to him prior to the hearing. The transcript indicates that the issue of providing Hassouna with the authorizations and answers to the interrogatories was never revisited during the hearing (Exhibit K, 6-21-13 transcript).

PL-AT provided Mr. Hassouna with the completed interrogatories and the executed and mailed medical authorizations. Mr. Hassouna received records from these authorizations as can be verified by letters sent to the healthcare providers by PL-AT. It is a fraud against the court for DF-AE to claim that PL-AT did not provide the requested discovery materials. PL-AT's evidence provided clearly indicates both defendants, Culpert and Efficient Design, received completed and mailed copies of MC 315 for PL-AT's healthcare providers, and received medical records from the execution of some of these forms by the providers (Refer to pg. 12-13 of Exhibit B, PL-AT's 1-21-14 Answer; Exhibit J, Letters from health care providers indicating that records were sent to Mr. Hassouna and Mr. Wright).

Pg. 3 ¶ 2 of DF-AE's 3-23-15 Answer contains numerous misrepresentations of fact. PL-AT did not alter Mr. Wright's authorizations because she did not even 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. 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 24, 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 (refer to pg. 13-15 of Exhibit B, PL-AT's 1-21-14 Answer). PL-AT did not appear at the 6-24-14 special conference, which was not a "hearing" as DF-AE refers to it, because she was never contacted by Mr. Wright that the authorizations he received that morning were unacceptable to him and that there would be a need to appear at the court on 6-24-14. The 6-24-14 special conference did not even appear on the Register of Actions on 6-24-14 (Exhibit G, Registers of Actions dated 6-24-13 and 3-10-15).

In reference to the arguments presented by DF-AE on pg. 3 ¶ 2 of the 3-23-15 Answer, The court *did* call PL-AT's mother, not PL-AT herself, at a number that was never provided to the court by PL-AT. Plaintiff already rebutted the court clerk's claim that the person that called the clerk back was PL-AT's mother, not PL-AT impersonating her mother, 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. The court clerk, Precious, did not call PL-AT's phone number listed on all of her filings with the court until she received that phone number after calling PL-AT's mother and her mother called her back and gave her Plaintiff's telephone number. (refer to pg. 15- 16 of Exhibit B, PL-AT's 1-21-14 Answer; Exhibit L, 6-24-13 phone and caller ID records, 8-5-13 affidavit of Kathleen Filas).

Pg. 3 ¶ 2 of DF-AE's 3-23-15 Answer states, "*the court delayed entry of this order [the order of dismissal made 6-24-13 at the special conference] until July 1, 2013, so that plaintiff would have an opportunity to object.*" This move was trickery on the part of both the trial court and Mr. Wright, since both certainly would have known that a 7-day order under 2.602(B)(3) could only be objected to if it did not comport with the court's decision or if it involved the accuracy or completeness of the judgment. In accordance with MCR 2.602(B)(3), the DF-AE was supposed to provide a notice to PL-AT along with the proposed order, explaining to PL-AT "*that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice.*" By not including the required notice with the Order, PL-AT was led to believe she could reverse the dismissal by objecting to the proposed order she was served with by Mr. Wright, and did not understand she could only object to accuracy or completeness (Exhibit M, EDI's 6-25-13 Notice of Submission of Seven-Day Order). A hearing was held on 8-9-13 to hear PL-AT's futile

objections to the 7-day Order, further leading PL-AT to believe she was being given the opportunity to reverse the dismissal of her case and that her objections were legitimately being heard. DF-AE makes a point of mentioning that the 8-9-13 hearing is the first time in this lawsuit that PL-AT informed the court that she had a problem with some of the clauses in Mr. Wright's authorization forms. As explained, the 8-9-13 hearing was the first court appearance following PL-AT's receipt of Mr. Wright's forms, and therefore was the first time she could object. In PL-AT's 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 by executing MC 315 and that her case should not be 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 in the 7-5-13 and 8-6-13 Objections filed prior to the 8-9-13 hearing (refer to pg. 16-18 of Exhibit B, PL-AT's 1-21-14 Answer). Plaintiff now understands that her case was dismissed *sua sponte* by Judge Borman at the special conference on 6-24-13 without PL-AT's knowledge or presence, and all the time and effort Plaintiff spent filing objections was futile since she was tricked into believing that objections to a 7-day order had the potential to reverse the dismissal.

The above ends the discussion of the duplicated, falsified facts section that was already rebutted by PL-AT in her 1-21-14 Answer to DF-AE's 12-30-13 Motion to Affirm, which was denied on 2-11-14 by the COA.

Culpert should not have even been attached to the dismissal of PL-AT's case, as PL-AT argued in Issue V, presented in her Brief on Appeal to the COA, since he made no objections to

the interrogatories and completed MC 315 medical authorizations PL-AT provided to his attorney, Mr. Hassouna. In order to substantiate having the claims against Culpert dismissed, DF-AE created the falsified story discussed above. In order to help corroborate DF-AE's falsified story that PL-AT did not provide any discovery materials to Culpert's attorney, on pg. 5 ¶ 1 and corresponding footnote #3 of DF-AE's 3-23-15 Answer, DF-AE now makes the new, preposterous claim, and fraud against the court, that Culpert's attorney had never filed a "written" Motion to Compel and had only "*brought an oral motion to compel at the June 21, 201[3] hearing*..." According to the register of actions, Mr. Hassouna filed a motion to compel on behalf of Culpert on April 19, 2013. The hearing date was originally set for hearing set for 5-3-13, re-noticed for 6-7-13 on 5-3-13, re-noticed for 6-21-13 on 6-10-13. Culpert's written motion to compel was heard on 6-21-13, as scheduled (Exhibit N, Culpert's 4-19-13 Motion to Compel and Re-notices of Hearing; Exhibit G, Registers of Actions dated 6-24-13 and 3-10-15). DF-AE's statement on Pg. 5 ¶ 1 also misrepresents PL-AT's Issue V presented in her Brief on Appeal to the COA by insinuating this issue was in regard to a motion to compel. Issue V was in regard to both PL-AT's case against Efficient Design and Culpert having been dismissed when only Efficient Design requested dismissal[1]. PL-AT argued that since she had complied with Culpert's 4-19-13 Motion to Compel and Culpert's attorney had no objections to receiving copies of the MC 315 authorization forms with mailing receipts from PL-AT resulting in records being released to him, her case against Culpert should not have been dismissed.

[1] At the time of writing PL-AT's Brief on Appeal to the COA, she had not realized her case was actually dismissed *sua sponte* without a Motion to Dismiss having been filed by EDI. PL-AT inadvertently referred to a "motion to dismiss" when she phrased the argument and question in Issue V of her Appeal, when in actuality, no one filed a "motion to dismiss."

DF-AE PRESENTS A FALSIFIED ACCOUNTING OF THE EVENTS FOLLOWING THE TRIAL COURT'S DISMISSAL OF THE CASE AND INCLUDES ARGUMENTS, NOT FACTS.

It is stated on pg. 4 ¶ 2 DF-AE's 3-23-15 Answer, "*Around the same time, plaintiff's suit against MEEMIC was also dismissed for virtually the same reasons.*" First, this is not a fact and does not belong in this section, as it is in dispute in this case whether or not the issues were the same or similar, due to the 11-25-14 order of the COA granting Culpert's 10-17-14 Motion to Affirm based on collateral estoppel, which PL-AT has hereby requested leave to appeal to the MSC. Among other reasons, PL-AT has argued that the doctrine of collateral estoppel should not have been applied because the issues were <u>not</u> similar in the two cases (refer to pg. 18-24 of 3-10-15 MSC Application). It is worth mentioning that on pg. 4, in DF-AE's description of this second motion to affirm dated 10-17-14, granted on 11-25-14, that upheld dismissal of PL-AT's case, the words "collateral estoppel" do not appear, similarly to the 3-10-15 Opinion of the COA, which also avoids mention of the words "collateral estoppel" throughout the entire Opinion. Clearly, both the COA and the DF-AEs are aware that something is very wrong with upholding the dismissal of PL-AT's case by using collateral estoppel as justification, or it would be mentioned succinctly in the 3-10-15 Opinion as the appropriate reason for refusing PL-AT the opportunity to litigate her issues in the instant case and upholding the dismissal of PL-AT's entire case against both Defendants, Culpert and EDI.

It is stated on pg. 4 ¶ 3 DF-AE's 3-23-15 Answer, "*In accordance with its standard operating procedure, the Court of Appeals decided the [10-17-14] Motion to Affirm [on 11-25-14] without a hearing…*" Again, this is not a fact. It is an argument. PL-AT argued on pgs. 15-16 in her 3-10-15 MSC Application, Argument I(B)(2), that the COA did <u>not</u> follow its standard operating procedure outlined in MCR 7.214(E)(1), which provides specific reasons the COA can

hear a motion without providing oral arguments, none of which were applicable in this situation. DF-AE did not address PL-AT's arguments that these criteria were not met.

It is stated on pg. 5 ¶ 1 of DF-AE's 3-23-15 Answer, "*Plaintiff filed a Motion for Reconsideration of this [11-25-14] Order, and was also granted leave to file a reply relative to same, even though replies to motions in the Court of Appeals are not permitted. Court of Appeals IOP 7.211(B)-2.*" IOP 7.211(B)-2 states as follows:

> IOP 7.211(B)-2 — Replies to Answers to Motions
> There is no provision in the court rules for the filing of a reply to an answer to a motion. The clerk's office will return any reply to an answer that is not accompanied by a motion for leave to file it.

This rule does not state that replies are not permitted as DF-AE claims. It states that a motion for leave to file a reply must be filed with the court. On 1-12-15, PL-AT filed a Motion for Leave to File Reply to Answer to Motion for Reconsideration (item 76 on the Register of Actions). Her motion was granted on 1-27-15. PL-AT therefore followed proper procedure and was not given any special treatment by the COA, as DF-AE seems to imply by making this unnecessary commentary.

The description of events occurring at the 3-3-15 hearing on oral arguments presented on pg. 5 ¶ 2 of DF-AE's 3-23-15 Answer is out of order and does not accurately state PL-AT's oral arguments presented at the hearing. DF-AE claims, "*Plaintiff seemingly wanted to either (1) to collaterally attack Filas v MEEMIC or (2) for this panel to revisit the motion panel's November 25, 2014 ruling.*" DF-AE's statements are pure speculation. PL-AT is not sure what DF-AE means by item (1), collaterally attacking *Filas v MEEMIC*. The audio recording of the 3-3-15 hearing does not seem to support his statements. PL-AT clearly, there is nothing on the 3-3-15 audio recording indicating PL-AT asked the COA panel on 3-3-15 to revisit the motion panel's

11-25-14 ruling. Without DF-AE clarifying what he meant by the terms "*collaterally attack*," PL-AT cannot adequately respond to statement (1) above.

It is stated on pg. 5 ¶ 2 DF-AE's 3-23-15 Answer, "*Plaintiff was given an opportunity to argue the remaining issues [IV and V from her COA Appeal], but declined.*" Let it be clear that this opportunity was given to her by the COA panel after PL-AT had already explained the following to the panel:

> *This is a third-party auto case against two defendants, Kevin Culpert, and his employer, Efficient Design, Inc., EDI, whose name does not appear on the case caption. EDI is represented by two different attorneys, representing two different companies. EDI has a $1,000,000 policy with each company. Kevin Culpert has a $20,000 policy liability policy with Progressive Insurance Company.*
>
> *Even though I fulfilled my obligation to provide medical records to both Defendants by executing and mailing SCAO-mandated Form MC 315 to over 20 health care providers, the circuit court granted EDI's motion to dismiss my entire case against both Culpert and EDI, for my refusal to re-do the extensive process using attorney, Mr. Wright's personal forms that contained language above and beyond the requirements of MC 315.*
>
> *I also have a first-party case against MEEMIC Insurance Company pending in the MSC in which I <u>requested</u> to use MC 315, but hadn't actually <u>provided</u> records to the defendant yet, as I have in this case. In an October 14, 2014 Opinion, the COA upheld the circuit court's dismissal of the MEEMIC case, using the novel argument that was never presented in any court filings, that due to a stipulated Protective Order entered in that case, I could not use MC 315 to provide my records to MEEMIC and had to instead use third-party record copying service forms provided by MEEMIC.*
>
> *On November 25, 2014, with neither the Plaintiff-Appellant or the Defendant-Appellees present, the COA heard and issued an order on Culpert's Motion to Affirm, which argued that the doctrine of collateral estoppel barred me, the Plaintiff-Appellant, from having the same claims against Culpert and EDI, since the COA had ruled in the MEEMIC case that I could not use MC 315 to provide my medical records. Not only is there no Protective Order in the instant case upon which the MEEMIC opinion is based, but they are completely different defendants and different insurance companies. Collateral estoppel cannot bar a plaintiff from making the same or similar claims against <u>different</u> defendants. Nonetheless, the COA granted the Motion to Affirm for items 1-3, and 6 that were presented in my brief on appeal.*
>
> *This hearing is therefore supposed to be only in regard to items 4 and 5 from my brief on appeal. However, by the COA affirming item 3, they affirmed that the circuit court did not err when it dismissed my entire case.*

Therefore, anything I argue today in regard to items 4 and 5 would be moot, since there only needs to be <u>one</u> reason to dismiss a case. By its granting of item 3, the COA has already chosen to affirm the circuit court's dismissal of the entire case for my refusal to complete forms provided by the Defendant. The case can't be dismissed twice. I now have to argue item 3 in the Supreme Court if I want to try to reverse the COA's upholding of the circuit court's dismissal of my case.

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

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

IV and V that were supposed to be heard that day. PL-AT now realizes this statement could also be interpreted to mean that she could continue arguing the issue of her case already having been dismissed by the 11-25-14 Order. Judge Gleicher then informed PL-AT that if her [Plaintiff's] analysis was correct, then her time for filing an appeal with the MSC was ticking, which PL-AT acknowledged.

PL-AT does not believe the point regarding a dismissal of her entire case based on Item III evaded the panel as claimed by Judge Gleicher, especially since Judge Fort Hood was on the panel that made the ruling to dismiss Plaintiff's case. When Plaintiff mentioned it, everyone on the panel "perked up" and became very friendly, which was not anything like PL-AT's previous experience presenting oral arguments in her first-party auto case against MEEMIC before a different panel of COA Judges. PL-AT finds it unusual that no one on the panel had any questions or appeared to be looking through any paperwork to determine whether PL-AT's arguments in regard to the inclusion of Issue III with the 11-25-14 ruling had any merit. With six issues having been presented in PL-AT's case, PL-AT herself found it difficult to remember which numbered item was which. PL-AT would imagine that as a judge on the panel, it would be necessary to re-read Issue III or at least ask PL-AT to read it to the panel, in order to fully comprehend PL-AT's argument that she believed the COA had already upheld the dismissal of her entire case due to the 11-25-14 Order having included Issue III.

The audio recording PL-AT received from the COA[2] did not contain the reading of Plaintiff's name or case number, as read by Judge Gleicher on 3-3-15 when she called the case. Instead, the recording begins with Judge Gleicher reading Defendant's name, Culpert, but she did not mention Efficient Design as a Defendant. Then PL-AT states her name for the record

[2] PL-AT filed a Motion for Access to the Audio Recording of the 3-3-15 oral argument hearing, which was granted 3-30-15 by providing a temporary link to the mp3 file that expired after 7 days.

and Judge Gleicher apologized for pronouncing PL-AT's name wrong. PL-AT does not believe the disclaimer in the Order granting PL-AT's Motion for Access to the Audio Recording is legal: "*The temporary hypertext link to the audio recording will reproduce the oral argument as it was originally recorded. The Court assumes no additional responsibility for the quality or completeness of the recording*." PL-AT would expect that the recording should be complete or this would constitute an alteration.

The DF-AEs were then provided an opportunity to speak, but they declined to make any oral arguments. Mr. Broaddus for Culpert rested on his briefs after affirming the COA had no questions for him. Judge Gleicher then directed her attention to Mr. O'Malley, and asked the leading tag question, "*You don't have anything to say, do you?*" which speaks for itself that she alerted Mr. O'Malley not to say anything. Mr. O'Malley then stated his name, confirmed that the COA did not have any questions for him, and said, "thank-you." Mr. O'Malley did not comment that he would be resting on his briefs. Judge Gleicher informed PL-AT that "*We'll give that one a little bit more thought. You may get an Opinion for what it's worth*." DF-AE's claims that PL-AT "*more or less gave up*" after the 3-3-15 panel "*indicated that it was unable to review Filas v MEEMIC, and unwilling to review the motion panel's decision in this case*" are untrue because PL-AT never asked for the panel to review *Filas v MEEMIC*, as transcribed above. She simply declined to argue issues that were already rendered moot by the 11-25-14 Order of the 11-25-14 panel, which cannot be considered "giving up."

It should be noted that although James Wright, attorney for Efficient Design, was present at oral arguments on 3-3-15, along with Mr. Broadus representing Mr. Culpert and Mr. O'Malley representing an insurance company different than the one Mr. Wright represents for Efficient Design. However, Mr. Wright did not state his name for the record, similarly to how he has also

concealed his involvement by having the other two attorneys argue this case almost in its entirety, even though he is the sole attorney responsible for having PL-AT's entire case dismissed at the trial court. Mr. Wright also did not file an Answer to PL-AT's 3-10-15 MSC Application.

Even the MSC already seems to have the misconception that Mr. Wright is somehow "dispensable" in this case, as the 3-12-15 Notice from Supreme Court Clerk, Larry Royster, was not sent to Mr. Wright and was only sent to Culpert's attorney, Mr. Broaddus, and one of the attorneys representing Efficient Design, Mr. O'Malley. Mr. O'Malley represents one of two different insurance policies with different companies, held by Efficient Design. Mr. Wright represents the other policy (See pg. 9 of 5-2-13 transcript, Exhibit S). Therefore, there are actually three defendants, since each attorney is truly representing the interests of the insurance company for which they work. When PL-AT called the MSC on 3-17-15 to inform them of the error in not including Mr. Wright in their correspondence, the clerk, Cheryl, again seemed to misunderstand that he is not a co-attorney with Mr. O'Malley. He is a co-defendant for Efficient Design, working for a completely different insurance company. Cheryl said she would mail him a copy of the 3-12-15 Notice from the MSC, but would not be making an entry into the Register of Actions. PL-AT mailed Mr. Wright a copy of the letter as well, to insure he did indeed receive it (Exhibit R, 3-17-15 letter and return receipt from PL-AT to Mr. Wright and attached MSC letter dated 3-12-15).

DF-AE states on pg. 6 ¶ 1 of DF-AE's 3-23-15 Answer, "*The [COA's 3-10-15] opinion noted the motion panel's decision of November 25, 2014 and proceeded to address, in some detail, the two arguments that had survived the Motion to Affirm (Id., p 3) even though Plaintiff had effectively waived those issues at the March 3, 2015 oral argument*." As explained above, PL-AT cannot be considered to have "waived" issues IV and V. They were rendered moot by

the motion panel's 11-25-14 order that upheld the dismissal of PL-AT's entire case. The COA's upholding of the dismissal of PL-AT's case could only be ordered once, and it already was, on 11-25-14. DF-AE is attempting to confuse the court by providing two pages of quotations from the 3-10-15 COA opinion in regard to issues IV and V, which are not even relevant since they are not included in the 11-25-14 Order that PL-AT has filed an Application for Leave to Appeal. To clarify, PL-AT filed her Application for Leave to Appeal the 11-25-14 order to uphold the dismissal of her case due to the granting of Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel. The 11-25-14 Order included only includes issues I-III, and VI. Therefore, PL-AT will not be discussing issues IV and V from the COA's 3-10-15 Opinion, as presented on page 6-8 of DF-AE's 3-23-15 Answer, because they are not part of this Application for Leave to Appeal to the MSC, which is in regard only to the 11-25-14 Order.

REPLY TO STANDARDS OF REVIEW

THE DOCTRINE OF COLLATERAL ESTOPPEL WAS INAPPLICABLE BECAUSE PL-AT HAS NOT YET HAD A FULL AND FAIR OPPORTUNITY TO LITIGATE HER FIRST PARTY MEEMIC CASE, UPON WHICH THE DOCTRINE HAS BEEN APPLIED. THE DISMISSAL OF PL-AT'S CASE WAS CLEARLY ERRONEOUS AND NOT IN ACCORDANCE WITH COURT RULES.

On pg. 8 ¶ 1 of the 3-23-15 Answer, DF-AE disagrees with PL-AT that MCR 7.302(B)(3) applies to her MSC Application, but states no rebuttal of PL-AT's argument presented in her 3-10-15 MSC Application, in which PL-AT claimed her case involves a substantial legal issue in regard to the circuit court's refusal to accept SCAO-mandated form MC 315 for Plaintiffs to provide their records to Defendants, which has been upheld by the Court of Appeals in two of PL-AT's cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR

2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to be re-copied or become part of a records copying services' database for sale to other lawyers and insurance companies.

DF-AE also disagrees with PL-AT that MCR 7.302(B)(5) applies to her MSC application, claiming on pg. 8 ¶ 1 of the 3-23-15 Answer, "*the dismissal of plaintiff's suit was completely in accord with, if not mandated by, the Court Rules and established precedent.*" PL-AT's actions of using MC 315 to provide her medical records to the defendants cannot possibly warrant the sanction of dismissal when MCR 2.314(C)(1)(d), a clear and unambiguous court rule that mandates the use of SCAO form MC 315. It was clearly erroneous for the COA to uphold the dismissal of PL-AT's first-party MEEMIC case for her desire to use MC 315 in lieu of third-party Records Deposition Services Inc. forms, and to uphold the dismissal of PL-AT's third-party case for her actual use of MC 315 to provide her medical records to DF-AEs in the instant case.

Pg. 8 ¶ 1 of the 3-23-15 Answer continues, "*Simply put, plaintiff wanted to control what medical records the defendants did, and did not, see, and this is not permitted in a personal injury action.*" The MC 315 forms PL-AT provided contained a cover letter that included the relevant treatment dates so DF-AEs could verify they had received all necessary records. PL-AT in no way restricted what medical records would be disclosed when she disclosed "any and all" records back to birth (Exhibit I, samples of completed MC 315 forms and cover letters).

On pg. 8 ¶ 1 of the 3-23-15 Answer, DF-AE argues that the Court of Appeals correctly applied the doctrine of collateral estoppel per *Monat v State Farm Ins Co,* 469 Mich 679, 691-692; 677 NW2d 843 (2004), which holds that "*the lack of mutuality of estoppel should not preclude the use of collateral estoppel when it is asserted defensively to prevent a party from*

relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit." On pg. 9 ¶ 1 of the 3-23-15 Answer, DF-AE faults PL-AT, stating, "*Plaintiff has failed to even acknowledge the central holding of Monat, much less articulate any reason why this court should revisit it. She has therefore failed to state any grounds for invoking this court's review.*" The key words from the *Monat* case are "full and fair opportunity to litigate in a prior suit." Before one can even consider whether mutuality exists, one has to determine whether the party had a full and fair opportunity to litigate, which PL-AT did not, and therefore *Monat* is inapplicable to the instant case, and the reason this case was not addressed in her Application.

First, the so-called similar issues involving the use of MC 315 were not even actually litigated in the MEEMIC case, since the COA ruled that PL-AT was required to use Records Deposition Services Inc. forms to release her medical records to the DF-AE, and could not use MC 315, due to a stipulated protective order that was in effect in the MEEMIC case. The COA never actually made any rulings in regard to a plaintiff's use of MC 315 where no protective order was in place, such as in the instant case (Refer to PL-AT's argument IIC, pg. 23-24 of her 3-10-15 Application).

Second, PL-AT has not had a full opportunity to litigate the issue since she has filed an application for leave to appeal to the MSC in the MEEMIC case which is currently pending. The *Monat* case dealt with the issue of determining what constituted a "full and fair opportunity to litigate" because Mr. Monat had "*voluntarily relinquished the opportunity to pursue an appeal in return for consideration - the guaranteed receipt of a minimal sum of damages regardless of the jury's verdict.*" The *Monat* opinion states, "*the general rule permits relitigation when "[t]he party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action.*" The COA ruled that Monat could not agree to relinquish his

appeal rights in his third-party auto case, in order to avoid being collaterally estopped from pursuing similar claims against his first party insurer for injuries sustained in the same accident. This is the "gamesmanship" that DF-AE refers to on page 9 ¶ 1, which is inapplicable to the instant case, since PL-AT made no such negotiations to waive any appeals. The Monat opinion states that "*the 'full and fair opportunity to litigate' normally encompasses the opportunity to both litigate and appeal."* This statement in *Monat* would not be considered *dicta,* like the other cases DF-AE mentioned, because it was an issue that had to be considered to determine this case. Therefore, because PL-AT has not completed the appeals process, as the COA ruled in the *Monat* Opinion is necessary to be considered to have had a "full and fair opportunity to litigate," the Doctrine of Collateral Estoppel was inapplicable to her case because PL-AT has not had a "full and fair opportunity to litigate," due to her pending Application for Leave to Appeal to the MSC.

THE SANCTION OF DISMISSAL WAS AN ABUSE OF DISCRETION. IN THE INSTANT CASE, THE TRIAL COURT IS NOT IN THE BEST POSITION TO MAKE THE DETERMINATION IF PL-AT HAS COMPLIED WITH DISCOVERY RULES SINCE THE COURT HAS VIOLATED PL-AT'S RIGHT UNDER MCR 2.314(C)(1)(d) TO USE SCAO-MANDATED FORM MC 315 TO PROVIDE HER MEDICAL RECORDS TO THE DF-AE'S.

On pg. 9 ¶ 2 of the 3-23-15 Answer, DF-AE states, "*Plaintiff appeals from judge Borman's Order dismissing plaintiff's lawsuit for discovery violations*." PL-AT did not commit any discovery violations. It is the court that violated MCR 2.314(C)(1)(d) when it refused to accept executed copies of MC 315 that had already been mailed to PL-AT's healthcare providers. It was an abuse of discretion to rely on Mr. Wright's word about what he received the morning of 6-24-13, prior to the Court's ordering the dismissal, without examining what Mr. Wright actually received from PL-AT. PL-AT disagrees with DF-AE's claim that the trial court "*is in*

the best position to determine if a party has complied with discovery rules," since the court is clearly in violation of MCR 2.314(C)(1)(d). It is evident from the State Court Administrator, Chad Smucker's memo, clarifying that circuit courts must accept SCAO forms, that it is not uncommon for the circuit courts to refuse to allow the use of SCAO-approved and/or -mandated forms, such as MC 315, the form PL-AT used to disclose her medical records to the DF-AE's (Exhibit O, 6-23-11 Memorandum from Chad Schmucker, State Court Administrator). It is also clear from PL-AT's experience that the Court of Appeals does not want to rule on the issue of the use of MC 315, which is why (1) it created the novel argument, never presented or preserved in any pleadings, that the protective order was the reason that PL-AT could not use MC 315 to disclose her medical records to DF-AE MEEMIC in the first-party auto case; and (2) it included all issues in regard to MC 315 with its 11-25-14 Order, so it would not have to include these issues in its Opinion, which would appear online[3].

[3] The 3-10-15 COA Opinion does not even mention MC 315 by name. Instead, it only states that PL-AT used "some SCAO forms" and "some SCAO medical authorizations." There is only one SCAO-mandated form to provide medical records, and it is MC 315, as mandated under MCR 2.314(C)(1)(d).

REPLY TO ARGUMENT

I. Not only is the argument presented by DF-AE in item I a misrepresentation of the facts of the case, but it was the sole argument presented in DF-AE's first Motion to Affirm dated 12-30-13, which was denied by the COA on 2-11-14. DF-AE did not file a Motion for Reconsideration, or an Application for Leave to Appeal to the MSC, and therefore, this argument cannot be revisited by the MSC and should not even appear in DF-AE's 3-23-15 Answer.

DF-AE presents the following Argument I on pg. 10 of the 3-23-15 Answer:

In this third-party automobile negligence suit, the Circuit Court properly dismissed 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. 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.

In DF-AE Culpert's first Motion to Affirm dated 12-30-13, which was denied by the Court of Appeals on 2-11-14, this same exact argument was the only argument presented. PL-AT explained in detail on pgs. 1-4 of her 1-21-14 Answer to DF-AE's 12-30-13 Motion to Affirm that the question associated with this argument was irrelevant and inapplicable, as is the argument itself, for the reason that prior to the case dismissal on June 24, 2013, PL-AT 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-Appellant in no way manipulated the physician-patient privilege so as to allow the Plaintiff to selectively disclose relevant evidence, as DF-AE has alleged, since she provided any and all records from each provider, as explained in her Reply to Counter-Statement of Questions pg. 1-3 of this Reply to Culpert's Answer to PL-AT's Application for Leave to Appeal to the MSC.

The arguments appearing on pg. 10 ¶ 1 and 2 of the 3-23-15 Answer are word-for-word from pg. 5 of Culpert's first Motion to Affirm dated 12-30-13. The arguments appearing on pg.

11 ¶ 1-4 and pg. 12 ¶ 1 of the 3-23-15 Answer are word-for-word from pg. 6 and 7 of Culpert's first Motion to Affirm dated 12-30-13. The argument appearing on pg. 12 of the 3-23-15 Answer is word-for-word from pg. 8 of Culpert's first Motion to Affirm dated 12-30-13. These arguments were already rejected by the COA on 2-11-14 and the Order was not appealed to the MSC. Therefore, said arguments should not appear in this brief for consideration by the MSC, as they were already rejected by COA and the statute of limitations has expired to appeal the COA's rejection of DF-AE's 12-30-13 Motion to Affirm. Further, even if these arguments could be heard by the MSC, they are still irrelevant as DF-AE takes up two pages referring to assertions of privilege, and Plaintiff did not assert any privilege, and simply provided the signed, executed copies of MC 315, disclosing any and all records to the DF-AEs. Should the MSC still wish to evaluate said arguments, PL-AT's response to these duplicated pages from the 12-30-13 Motion to Affirm denied 2-11-14, are explained in detail on pg. 19-20 of PL-AT's 1-21-14 Reply to Culpert's 12-30-13 Motion to Affirm attached here as Exhibit A).

II. In violation of MCR 7.214 and MCR 7.111(C), the COA erred in failing to provide a legally valid hearing on oral arguments on 3-3-15 since PL-AT's entire case had already been dismissed by the COA's 11-25-14 Order.

Pg. 12 ¶ 1 of Argument II presented in DF-AE's 3-23-15 Answer states that PL-AT "*seems to be implying that she was denied oral argument in the Court of Appeals, although it is unclear what exactly her grievance is.*" PL-AT never claimed she was denied oral argument. PL-AT claimed she was denied a "legally valid" hearing on oral arguments on 3-3-15 where her arguments for Issues IV and V from her Brief on Appeal could have been legitimately heard. Argument IA of PL-AT's 3-10-15 MSC Application addresses the fact that it was not possible for the COA to hear and make a legitimate ruling in regard to any arguments against the dismissal of

PL-AT's cases against either Culpert or EDI, as were contained in Issues IV and V, at the oral arguments hearing on 3-3-15 since the COA had already affirmed the Circuit Court's dismissal of the entire case against both defendants, Culpert and EDI with its 11-25-14 Order to grant DF-AE's Motion to Affirm with regard to items 1-3 and 6 presented in PL-AT's 12-20-13 Brief on Appeal, which, due to the inclusion of item 3, resulted in the dismissal of PL-AT's entire case. DF-AE continues, "*to the extent that [PL-AT] is claiming that the March 3, 2015 hearing was inadequate, this was of her own doing, as the panel was ready to hear her arguments on the remaining issues but Plaintiff declined."* The panel being "ready to hear" PL-AT's arguments is not the same as being "able to hear" them and "able to issue a legitimate ruling" in regard to issues IV and V. Issues IV and V had been rendered moot by the 11-25-14 Order and this was the COA's doing, not the PL-AT's. PL-AT saw no purpose in arguing the issues if they could not change the outcome of dismissal, as she explained at the 3-3-15 hearing on oral arguments. The COA did not disagree with PL-AT. Judge Gleicher's comment to PL-AT, "*if you want to continue to argue the issue that is before us, feel free"* is ambiguous in that it is unclear if she was giving the PL-AT the opportunity to argue Issues IV and V, or simply more time to argue the issue of her case already having been dismissed on 11-25-14. The DF-AEs also did not present any arguments contrary to PL-AT's claims that her case had already been dismissed in its entirety by the 11-25-14 Order. Footnote #5 at the bottom of pg. 12 of DF-AE's 3-23-15 Answer refers to MCR 7.214(E)(1) as justification for the COA panel being authorized to decide an appeal without oral argument, even when it is requested by both parties. MCR 7.214(E)(1) lists three specific reasons for the panel to deny oral argument, and none of these criteria were satisfied, as already addressed in Argument I(B)(2) on pgs. 15-16 of PL-AT's 3-10-15 MSC Application. DF-AE does not address PL-AT's arguments in regard to the inapplicability of the

criteria in MCR 7.214(E)(1). PL-AT was denied due process when the DF-AE's 10-17-14 Motion to Affirm was granted, upholding the dismissal of PL-AT's claims against both parties, Culpert and EDI, without providing oral arguments as properly requested in PL-AT's timely brief in accordance with MCR 7.111(C).

III. Even if the COA has ruled that mutuality is not required for the Doctrine of Collateral Estoppel to be applied, the other criteria for application of the doctrine were still not met: the PL-AT has not had a full and fair opportunity to litigate the issue, nor was the issue even actually litigated, and the issues in the MEEMIC case were not identical to those in the instant case.

Pg. 14 ¶ 1 of Argument III presented in DF-AE's 3-23-15 Answer states, "*Filas v MEEMIC involved a dismissal by the same Circuit Court judge, for the same reason that the instant suit was dismissed (Ms. Filas refused to sign authorizations, despite putting her medical condition into controversy, and was trying to place her own arbitrary limitations on what would be discoverable).*" As rebutted numerous times, PL-AT's first-party MEEMIC case was dismissed for PL-AT's refusal to sign third-party Records Deposition Services Inc. ("RDS") medical authorizations. The Court refused to accept MC 315 authorization forms as PL-AT had requested to use in the MEEMIC case. PL-AT did not place any restrictions on release of her records in the MEEMIC case except to add language to the RDS form that her records were only to be disclosed to the attorney in the MEEMIC case. The instant case was dismissed for PL-AT's refusal to re-do the process of disclosing her medical records using attorney, Mr. Wright's personal forms, and the Court's refusal to accept the already executed and mailed copies of MC 315 PL-AT sent to her health care providers. DF-AE continues, "*For all intents and purposes, the issues raised by Ms. Filas in her appeal in Filas v MEEMIC are identical to the issues raised by Ms. Filas in the instant appeal*," and references pages 18 through 24 of PL-AT's 3-10-15

MSC Application. However, these referenced pages contain PL-AT's arguments showing that the issues are not identical. DF-AE has never presented any analysis of how the issues are the identical, nor even succinctly stated what the issues even were that were being compared in the two cases.

Further, as explained in argument on page of PL-AT's 3-10-15 MSC Application, the issues involving the use of Form MC 315 were never actually litigated in the MEEMIC case, since the COA invented a novel argument, never presented or preserved in any pleadings, that it was a protective order entered in the MEEMIC case that prohibited PL-AT using MC 315, and requiring her to instead use Records Deposition Services Inc. forms to disclose medical records to the defendant. There was no protective order in place in the instant case, and therefore no ruling has actually ever been made by the COA regard to the use of form MC 315 in a case where no protective order exists. Because the issues are not identical, and the "question of fact essential to the judgment" has not been actually litigated and determined by a valid and final judgment, collateral estoppel should not have been applied by the COA to prevent PL-AT from litigating her issues with MC 315 the third-party case.

On pg. 14 and 15 of DF-AE's 3-23-15 Answer, the *Monat v State Farm* case has been used as justification that "*a lack of mutuality of estoppel does not preclude the use of collateral estoppel when it is asserted defensively to prevent a party from relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit*." It is important to note that although DF-AE claims on pg. 15 ¶ 1, "*Therefore, the fact that Culpert was not a party to Filas v MEEMIC did not prevent him from invoking the doctrine, since Ms. Filas has now had a full and fair opportunity to litigate the precise issue presented here"* the DF-AE doesn't actually specify the "precise issue presented here," and makes no mention of Form MC 315 in

this Argument section, which is the main issue involved in both the MEEMIC and the instant case, similarly to the way the COA never mentioned MC 315 by name in its 3-10-15 Opinion, and lumped all the issues in regard to MC 315 with its 11-25-14 Order which required no written explanation to be published on the internet, thereby concealing the true issues involved in the instant case.

The *Monat* case is not relevant to the instant case because in *Monat*, the plaintiff was determined to have had a full and fair opportunity to litigate the issue because he had relinquished his right to appeal by agreeing to a settlement. *Monat v State Farm* addressed the issue of the meaning of a full and fair opportunity, which "*normally encompasses the opportunity to both litigate and appeal.*" On 11-25-14, PL-AT filed an application for leave to Appeal the MEEMIC case (MSC No. 150510, the case upon which the COA has ruled that the Doctrine of Collateral Estoppel can be used to prevent PL-AT from litigating the issues she presented in the instant case). Therefore, since the appeal process has not been completed in the MEEMIC case, PL-AT has not had a full and fair opportunity to litigate the issue, and therefore the doctrine of collateral estoppel should not have been applied by the COA in its ruling on 11-25-14.

The *Monat* case dealt with the issue of determining what constituted a "full and fair opportunity to litigate" before it could even examine the issue of mutuality of estoppel, and determined that having a full and fair opportunity to litigate <u>did</u> encompass the appeals process. Because Mr. Monat had "*voluntarily relinquished the opportunity to pursue an appeal in return for consideration - the guaranteed receipt of a minimal sum of damages regardless of the jury's verdict,*" he was deemed by the COA to have had a full and fair opportunity to litigate his claims. The *Monat* opinion states, "*the general rule permits relitigation when "[t]he party against whom*

preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action." The COA ruled that since Monat would have had an appeal by right under the law, Monat could not agree to relinquish his appeal rights in his third-party auto case, in order to avoid being collaterally estopped from pursuing similar claims against his first party insurer for injuries sustained in the same accident. This is the "gamesmanship" that DF-AE refers to on page 9 ¶ 1, which is inapplicable to the instant case, since PL-AT made no such negotiations to waive any appeals.

On pgs. 16-17 of DF-AE's 3-23-15 Answer, DF-AE "*acknowledges a line of cases suggesting that collateral estoppel cannot apply until 'all appeals have been exhausted or when the time available for an appeal has passed',"* but renders these cases invalid because the statements made in these Opinions were *dicta*, defined by the COA as "*a principle of law not essential to the determination of the case.*" The *Monat* Opinion states that "*the 'full and fair opportunity to litigate' normally encompasses the opportunity to both litigate and appeal."* This statement cannot be considered *dicta* because it was an issue that had to be considered to determine this case. The COA could not make the new ruling that mutuality of estoppel need not be present to invoke the doctrine of collateral estoppel if they hadn't examined the issue of what constituted a "full and fair opportunity to litigate,' since having the full and fair opportunity to litigate was without a doubt, essential to the doctrine's application. Therefore, because PL-AT has not completed the appeals process in the MEEMIC case, the Doctrine of Collateral Estoppel was inapplicable to her case because she has not had a "full and fair opportunity to litigate."

DF-AE makes claims on pg. 17 of the 3-23-15 Answer that "*if this Court were to squarely consider the issue of whether an order currently being appealed has preclusive effect, it would follow the Restatement approach, which is also the federal approach*." DF-AE suggests

that the Federal definition should apply, whereby "*the pendency of an appeal does not alter the finality of the case for purposes of res judicata or collateral estoppel.*" PL-AT argues that since her case is a civil case regulated by state and local laws, rules and/or precedents, it would be unjust to apply Federal precedents to her case. Cases involving auto accidents in Michigan come under the No Fault Auto Insurance Law, the Insurance Code of 1956, and are filed in civil courts in the State of Michigan. Third-party tort cases related to the auto accident are also filed in State civil courts. PL-AT finds no merit in DF-AE's argument that the Federal rule should apply to a State civil case which has its own rules and is not under the jurisdiction of the Federal Court. Most importantly, as already explained, the COA's Opinion in *Monat* clearly indicates the position of the state courts, which is that collateral estoppel cannot be applied until the party has had a full and fair opportunity to litigate, which encompasses the opportunity to both litigate and appeal. PL-AT has not actually been able to litigate her issues with the use of MC 315, since the COA relied on a Protective Order to avoid ruling on whether or not she could use MC 315 in the MEEMIC case. An Application for Leave to Appeal the MEEMIC case is also still pending. Therefore, the doctrine of collateral estoppel was inapplicable and should not have been used to uphold the dismissal of PL-AT's entire case in the 11-25-14 Order.

On pg. 15 of the DF-AE's 3-23-15 Answer, in further support of using the federal approach to application of the doctrine of collateral estoppel, DF-AE states, "*This proposition has ample support in federal precedent as well; in federal court 'the pendency of an appeal does not suspend the operation of an otherwise final judgment as res judicata or collateral estoppel, unless the appeal removes the entire case to the appellate court and constitutes a proceeding de novo.*" Questions of law *are* reviewed de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275 (2008); *People v Sierb*, 456 Mich 519, 522 (1998). Examples of questions of law include the

interpretation of statutes, constitutional provisions, *Estes v Titus*, 481 Mich 573, 578-579 (2008); *People v Meconi*, 277 Mich App 651, 659 (2008); *In re Carey*, 241 Mich App 222, 226 (2000), and court rules, *Estes*, 481 Mich at 578-579; *People v Clark (Paul)*, 274 Mich App 248, 251 (2007). PL-AT's primary issue in both the first-party MEEMIC and the third-party instant case involved the interpretation of court rule, MCR 2.314(C)(1)(d) and its requirement to use SCAO-mandated form MC 315, and therefore should have been reviewed *de novo* by the COA, which is another reason that the doctrine of collateral estoppel was inapplicable.

IV. DF-AE's Argument that PL-AT did not preserve her arguments in regard to SCAO-mandated form MC 315 was already rejected by the COA in its 2-11-14 Order and therefore should not have been presented in DF-AE's 3-23-15 Answer to PL-AT's Application for review by the MSC since the time to file for leave to appeal the 2-11-14 order has passed.

Once again, DF-AE presents an argument word-for-word from DF-AE's first Motion to Affirm dated 12-30-13, that was already rejected by the COA on 2-11-14. The arguments appearing on pg. 17-18 of the 3-23-15 Answer have been cut-and-pasted from pg. 7-8 of DF-AE's first Motion to Affirm dated 12-30-13. The last paragraph of DF-AE's Argument IV was only revised to state that PL-AT made certain claims specifically in the venue of the COA, rather than to just simply state that PL-AT had made the claims. Otherwise, this paragraph is also exactly the same as the one presented on pg. 8 of DF-AE's first Motion to Affirm dated 12-30-13. Should the MSC still wish to evaluate said arguments, PL-AT's response to these duplicated pages from the denied 12-30-13 Motion to Affirm are explained in detail on pg. 20-23 of PL-AT's 1-21-14 Reply to Culpert's 12-30-13 Motion to Affirm.

CONCLUSION AND RELIEF REQUESTED

DF-AE states on page 18 of the 3-23-15 Answer 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 have undergone the appeal process for the Plaintiff arguing that she satisfied her obligation to produce her medical records under MCR 2.314(C)(1)(d) by executing and mailing Form MC 315 to her health care providers, and that she did not have to re-do the process and provide Mr. Wright with his own personal authorization forms. PL-AT did not "*use her medical privacy as a shield*" as DF-AE argues, as she provided any and all records, back to birth, and as a courtesy, even included the treatment dates, so that DF-AEs could be assured they had received all relevant records.

PL-AT 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 PL-AT 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, PL-AT's 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.

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 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, that would allow the lower court to order and mandate the Plaintiff-Appellant to produce her medical 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 a 6-23-11 Supreme Court memo from State Court Administrator, Chad C. Schmucker 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 O, 6-23-11 Memorandum from Chad C. Schmucker, State Court Administrator). Therefore, the Court could not order Plaintiff to use any specific form or medical record authorization forms when it was Plaintiff's'choice to provide medical records by either obtaining them herself from her providers as permitted under MCR 2.314(C)(1)(a), or providing completed and signed and dated SCAO-mandated medical authorization forms to the defendants as permitted under MCR 2.314(C)(1)(d).

Page 18 of DF-AE's 3-23-15 Answer states, "*Additionally, Plaintiff's Application does not cite a single precedent from this Court or the Court of Appeals that is supportive of her position."* 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 Court of appeals upholding the Circuit Court's ruling to dismiss PL-AT'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 that she was told not to sign only, without including the date, believing that his practices were illegal 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, 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 or the MSC. DF-AE also has not cited any precedents to the contrary, that would disallow PL-AT to use MC 315 to provide her medical information. DF-AE avoids the topic of MC 315 completely by continuing to falsely claim PL-AT never provided any discovery information.

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 18-19 of DF-AE's 3-23-15 Answer, it is stated, "*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." PL-AT has clearly explained that MCR 2.314(C)(1)(d) mandates the use of Form MC 315. PL-AT provided clear arguments and rationale for having met the requirements to provide her medical records to the Defendants by her use of MC 315, copies of which were already mailed to both DF-AEs, Culpert and Efficient Design, prior to case dismissal *sua sponte* at the special conference on 6-24-13. There is nothing the Court would be required to discover, unravel or elaborate for the PL-AT. MCR 2.314(C)(1) is a clear, unambiguous court rule. The Court's only responsibility if PL-AT's Application for Leave to Appeal is granted, 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 have been met under MCR 2.314(C)(1)(a) and/or MCR 2.314(C)(1)(d), thereby reversing the dismissal of PL-AT's case.

Further, it would not even be logical that all cases before the appellate courts were 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 or a Supreme Court.

The COA scheduled a hearing for oral arguments on March 3, 2015, in regard only to items IV and V from PL-AT's 12-20-13 Brief on Appeal. However, by the COA already having granted Culpert's Motion to Affirm on 11-25-14 with respect to items I-III, and VI, of PL-AT's Brief on Appeal, the COA affirmed that the circuit court did not err when it dismissed PL-AT's entire case, because this was the pertinent question presented in item III of PL-AT's Brief on Appeal. Therefore, anything PL-AT would have argued at the 3-3-15 hearing in regard to items IV and V would have been moot, since there only needs to be <u>one</u> reason to dismiss a case, and the doctrine of collateral estoppel was used as the reason on 11-25-14. PL-AT did not claim she did not receive oral arguments in regard to her appeal, as DF-AE has tried to persuade the court

to believe---PL-AT has claimed that she did not receive a legitimate oral arguments hearing. By its granting of the Motion to Affirm in regard to Item III of PL-AT's Brief on Appeal, the COA chose to affirm the circuit court's dismissal of the entire case for PL-AT's refusal to complete personal forms provided by the Defendant Efficient Design. The case can't be dismissed twice. Even if the COA had ruled in PL-AT's favor on Items IV and V in the 3-10-15 Opinion, the new Opinion could not cancel out their 11-25-14 Order that already dismissed the case in its entirety due to its inclusion of Item III. The COA panel of judges at the 3-3-15 hearing did not counter PL-AT's assertions that the case was already dismissed and oral arguments would be moot, nor did the DF-AEs present 3-3-15 at the COA hearing, Mr. Wright, Mr. Broaddus and Mr. O'Malley, present any arguments to the contrary.

PL-AT still claims the COA violated MCR 7.214 when it failed to provide oral arguments on DF-AE's 10-17-13 Motion to Affirm, since none of the specified criteria under MCR 7.214 to dispose with oral argument were met. However, even if this action was permitted by the COA, PL-AT was still denied a legitimate oral arguments hearing on issues IV and V, since the COA upheld the dismissal of the entire case already on 11-25-14. Issues IV and V had the potential to change the outcome of dismissal for both Culpert (items IV and V) and EDI (item IV), as explained on pg. of PL-AT's 3-10-15 Application. The only way for PL-AT to be legitimately heard on issues IV and V would be for the MSC to reverse the 11-25-14 Order (since the Doctrine of Collateral Estoppel is inapplicable since the PL-AT has not had a full and fair opportunity to litigate, the issues were not actually litigated, and the issues are not the same), and to require that the COA hears oral arguments on all Items I-VI from PL-AT's 12-20-13 Brief on Appeal, and issue an Opinion that encompasses all of the issues.

PL-AT prays this Court will read and examine PL-AT's pleadings and exhibits and see the truth amongst the repetitive lies presented by DF-AE's, as the COA failed to do, that PL-AT *did* fulfill her discovery obligations by her use of MC 315 to disclose her medical records to both DF-AEs, and that the trial courts and COA have done all that is in their power to prevent this Plaintiff, and other Plaintiffs, from ever using or even knowing about MC 315. PL-AT prays this Court will grant her Application for Leave to Appeal, so the issue of acceptance of SCAO-mandated form MC 315 can be resolved in the courts throughout Michigan, and no one else will have to go through such an ordeal as this PL-AT has, simply to be permitted to follow a court rule, MCR 2.314(C)(1) and to use the associated mandated Form MC 315.

signature redacted

4-13-15
Date

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

Exhibit U

Gmail by Google

T Filas < e-mail redacted

Request for Separate Register of Actions entry for 4-13-15 Reply Brief, Case No. 151198

1 message

T Filas <e-mail redacted> Thu, May 28, 2015 at 1:30 AM
To: Inger Meyer <MeyerI@courts.mi.gov>

Dear Ms. Meyer,

On May 22, 2015, I showed Cheryl at the MSC clerk's counter that my 4-13-15 Reply to Culpert's Answer was not entered on the Register of Actions at all, although it did appear in the hard copy of the case file. She said she would leave you a message to correct this.

I received your voicemail message on Friday, May 22, 2015, informing me that you had made a change to the Register of Actions for *Tamara Filas v. Kevin Thomas Culpert and Efficient Design, Inc.*, MSC Case Nos. 151198 and 151463, with regard to the 4-13-15 Reply.

I see that you added a comment to item #106 on the Register of Actions. Item #106, for the date of 4-13-15, states, "**SCt Motion: Chief Justice – Exceed Pg Lmt"** and previously had no comments. Now, it states in small font at the bottom of the entry, "Comments: (151198); reply to Culpert attached." However, it is not true that my reply was "attached" to the Motion to exceed the page limit. It was a separate filing. The Truefiling e-filing system allows for one "bundle" of one or more filings to be sent to the court and/or the parties at one time. Each filing is separately attached and a category must be chosen from the drop-down menu for each particular filing. Then, if needed, attachments such as exhibits can be uploaded to be attached to each separate filing. My 4-13-15 Reply to Culpert's Answer was attached first, with the drop-down menu choice of "Answer" since there was not a choice for "Reply." Then, three attachments in the form of exhibits were attached to the Reply. Next, a separate filing was created and added to the bundle using the category "Motion – Regular." I have attached a copy of the e-mail I received via Truefiling verifying that the Reply was filed separately from the Motion.

Every other Reply to an Answer I have filed within the COA or the Supreme Court, including those filed along with Motions to exceed page limits, has been given a separate entry on the Register of Actions to indicate that a Reply was filed. For example, my Reply to EDI's Answer is entered on 5-11-15 as entry #118 and states, "**SCt: Reply – SCt Application**." A separate entry was also made on 5-11-15 for the Motion to exceed the page limit that I filed along with my Reply to EDI's Answer. This entry, #117, states, "**SCt Motion: Chief Justice – Exceed Pg Lmt."**

Clearly, there should have been two separate entries for 4-13-15: One for the Reply to Culpert's Answer, and one for the Motion to exceed the page limit. With a Register of Actions this complicated, due to the combining of two separate MSC appeals on one Register of Actions, it is extremely important that there is an entry stating that on 4-13-15, a Reply Brief was filed to Culpert's Answer to my 3-10-15 MSC Application in case 151198. A person examining the register is going to look for the word "Reply" to see if one was filed. With so many filings to scan through, it will likely be missed if it only shows in the comments section in tiny font, of another completely different filing.

I am requesting one of the following actions be taken to correct the Register of Actions, in order of preference:

1) Insert a new entry into the Register of Actions either before or after item # 106 with the date of 4-13-15, the title "**SCt: Reply – SCt Application**" and a comment indicating it is PL-AT's Reply to Culpert's Answer to her MSC application for Case no. 151198.

2) If #1 above is not possible because a new entry may not be inserted between two existing entries, please change item # 106 to read the title "**SCt: Reply – SCt Application,**" a comment indicating it is PL-AT's reply to Culpert's Answer to her MSC application for Case no. 151198, and a comment indicating that a Motion to exceed the page limit was also filed in regard to this reply.

The separate entry of my 4-13-15 Reply is of utmost importance.

In summary, I do not want my 4-13-15 Reply to be overlooked by the panel that makes decisions regarding my Application for Leave to Appeal to the MSC, because of a non-conforming entry on the Register of Actions whereby my Reply is not showing as the separately filed document it was on 4-13-15, but instead, gets lost in the fine print of a separately filed motion, making it prone to being missed in an already complicated Register of Actions.

Thank you for your prompt attention to this matter. Please send me an e-mail at e-mail redacted when you have made one of the corrections described above.

Yours truly,

Tamara Filas

2015-04-13 Gmail - TrueFiling_ Service Notification showing two separate filings in one bundle.pdf
120K

Gmail by Google

T Filas < e-mail redacted

TrueFiling: Service Notification - MI Supreme Court Case No. 151198

1 message

truefilingadmin@truefiling.com <truefilingadmin@truefiling.com> Mon, Apr 13, 2015 at 10:58 PM
To: e-mail redacted

You are being electronically served with the following document(s) for **TAMARA FILAS V KEVIN THOMAS CULPERT**, **Case No. 151198**, submitted to the **MI Supreme Court** by **Tamara Filas (Pro Per)**:

Filing Type: Answer
Document Title: PL-AT's Reply to DF-AE's Answer to PL-AT's MSC App
Link: Click to download document
Connected Filing Type: Exhibit
Connected Document Title: Exhibits A - B
Link: Click to download connected document
Connected Filing Type: Exhibit
Connected Document Title: Exhibits C - J
Link: Click to download connected document
Connected Filing Type: Exhibit
Connected Document Title: Exhibits K - S
Link: Click to download connected document

Filing Type: Motion - Regular
Document Title: PL-AT's Motion to Waive Page Limit on MSC Reply
Link: Click to download document

The following people were electronically served the above document(s):

- **Drew Broaddus** (dbroaddus@secrestwardle.com)
- **James Wright** (jwright@zkac.com)
- **Kimberly Coomer** (kcoomer@vgpclaw.com)
- **Michael OMalley** (momalley@vgpclaw.com)
- **Sandra Vertel** (svertel@secrestwardle.com)
- **Tamara Filas** (e-mail redacted

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The document(s) will be available for viewing until 10/11/2015.

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