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. 151463

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

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

*Note: This Reply is in response to Culpert's **4-28-15** Answer in regard to PL-AT's **4-21-15** MSC Application to appeal the **3-10-15 COA Opinion**. PL-AT also filed a **4-13-15** 45-page Reply to Culpert's **3-23-15** Answer in regard to PL-AT's **3-10-15** MSC Application to appeal the **11-25-14 COA Order,** in case no. 151198. PL-AT's 4-13-15 Reply only appears on the Register of Actions in the comments section of item 106 for Sct Motion to Exceed Pg Limit and does not have its own entry. PL-AT's e-mailed request to Inger Meyer on 5-28-15 to obtain a separate Register of Actions entry for the 4-13-15 Answer was denied by voice mail message from Inger Meyer on 6-9-15 at 4:11p.m. (Refer to Exhibit U, 5-28-15 e-mail to Inger Meyer, MSC clerk).

Dated: June 9, 2015

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REPLY TO DF-AE'S STATEMENT OF JURISDICTION

DF-AE's "suggestion" that the MSC may not have jurisdiction to hear PL-AT's most recent 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion, due to the fact that PL-AT also filed a 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, is clearly erroneous. MCR 7.302(A)(2), states that the Supreme Court may, "*review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302).*" PL-AT's 4-21-15 Application for Leave to Appeal is in regard to the 3-10-15 Opinion issued by the COA, which PL-AT has a right to appeal, since it is a "*decision by the Court of Appeals*" to uphold dismissal of her case.

On May 21, 2015, PL-AT inquired at the MSC Clerk's counter about why her first, 3-10-15 MSC Application, assigned Docket No. 151198, was no longer appearing when a search of PL-AT's name was conducted in the online case search, and instead, only the second, 4-21-15 MSC Application, assigned Docket No. 151463 was shown. She was told by an experienced, longtime MSC clerk, Cheryl, that only the most recent MSC appeal will show up in a case search because only one MSC docket number can be assigned per COA docket number due to software limitations. In other words, a particular COA docket number cannot be linked to more than one MSC docket number. The clerk said, for example, that a person could be appealing 12 orders arising from the same COA case, but only the most recent MSC appeal number will show up in a search. The clerk's answer to PL-AT's inquiry lends further support that the MSC would have jurisdiction over both decisions made by the COA in regard to COA Case No. 317972, the 11-25-14 Order and the 3-10-15 Opinion.

DF-AE claims on pg. *vi*, ¶ 2, that "*Plaintiff's own averments indicate that only one of the two Court of Appeals decisions in this case (the November 25, 2014 Order and the March 10,*

2015 Opinion) can coherently be appealed from." PL-AT never made any statements that only one of the decisions could be appealed from. She stated that only one of the decisions, the 11-25-14 Order, could be considered legitimately valid, and that therefore the other decision, the 3-10-15 Opinion, needed to be disposed of in the proper manner by the MSC. There can only be one final decision, and it would be the first decision to uphold the decision of the case which was the 11-25-14 Order.

On pg. *vi*, ¶ 2, DF-AE states, "*Plaintiff has already elected her remedy by filing the first Application. A litigant may not take contradictory positions, and where he has a right to choose one of two modes of redress, and the two are so inconsistent that the assertion of one involves the negation or repudiation of the other, his deliberate and settled choice of one, with knowledge, or the means of knowledge, of such facts as would authorize a resort to each, will preclude him thereafter from going back and electing again."* The normal practice of the Court of Appeals is to issue only one final order or opinion in a case. The instant case is highly irregular in that the COA issued two different decisions (an 11-25-14 Order, and a 3-10-15 Opinion) that each upheld dismissal of PL-AT's case for different reasons. PL-AT should not have had to pay double to appeal one COA case to the MSC because there should have only been one decision made by the COA to uphold case dismissal. If the COA wanted to issue an Opinion after it already upheld case dismissal with the 11-25-14 Order, the Opinion should have contained a discussion of the reasons behind the entry of the 11-25-14 Order that granted Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel. If the Opinion and Order were one and the same, and the Opinion actually reflected the reasoning behind the Order, perhaps it could have been possible to choose either the 11-25-14 Order or the 3-10-15

Opinion to appeal to the MSC. However, since they each upheld case dismissal for different reasons, each had to be appealed.

Also, it is the 3-10-15 Opinion, not the 11-25-14 Order, that contains a discussion about the case that appears on the internet indefinitely. To have an Opinion that erroneously reflects the reasons for upholding case dismissal would not be just, ethical, or fair to this litigant because perception of the reasons presented in the Opinion for upholding the dismissal could later be used to discredit PL-AT's arguments in another complaint filed in regard to the dismissal of Plaintiff's entire auto case that was based upon the 11-25-14 Order of the COA that dismissed her third party tort case in its' entirety. In addition to complicating other pending or future litigation by skewing the facts and bringing Plaintiff's credibility into question, it also paints Plaintiff in a negative light for all to see which could negatively impact the way her effectiveness is perceived in all aspects of her daily work and life activities. It also allows and promotes the dissemination of false information regarding her case to be regarded as fact, thus perpetuating even more injustice to occur without any consequence to those who caused the injustice by duping others into believing that the Opinion legitimately addressed issues no longer addressable after the case was dismissed in its entirety.

DF-AE's argument that PL-AT somehow had a choice of which of the two decisions to appeal is nonsensical and unsubstantiated. A court is not supposed to give two different decisions with different justifications for upholding the dismissal of the same case, and then let a Plaintiff choose the one they like best or which one they think they would have a better chance of winning an appeal on. No Plaintiff should be confronted with a decision of having to choose between two completely different decisions that each used different bases for upholding

dismissal of her case, and determine which of them to appeal. That would be unheard of, except that it is exactly what the DF-AEs are claiming PL-AT must do.

PL-AT's two MSC Applications are not contradictory or inconsistent with each other, as DF-AE claims. Both are different and ask for different remedies. PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that PL-AT can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order. These remedies are therefore completely consistent with one another, and the only logical solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates.

According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." The first order that disposed of all the claims was the 11-25-14 Order. Therefore, in her 4-21-15 MSC Application, PL-AT requested that the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real final Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198.

On pg. *vi*, ¶ 1, DF-AE claims that PL-AT "*represented to this Court that the Court of Appeals' November 25, 2014 Order in this case effectively ended this appeal, leaving her with nothing to argue that the Court of Appeals subsequently held oral arguments on March 3, 2015.*" PL-AT never claimed she had nothing to argue at the 3-3-15 oral arguments hearing. At

the 3-3-15 hearing, PL-AT argued that since the COA already upheld case dismissal with the 11-25-14 Order, any arguments she presented in regard to the numbered items IV and V of her 12-20-13 COA Brief on Appeal, were rendered moot. Neither the Court of Appeals panel or the Defendant's attorneys argued against PL-AT's claims at the 3-3-15 hearing that her case was already dismissed by the 11-25-14 Order.

On pg. *vi*, ¶ 1, DF-AE alters a quote from PL-AT's argument from her 4-21-15 MSC Application, citing it as follows: "*[o]nce a case is dismissed…the Court [of Appeals] cannot dismiss the same case again…"* This quotation was from PL-AT's Argument I, and read as follows, the bolded parts having been the parts replaced by points of ellipsis by the DF-AE: "*Once a case is dismissed* ***for specific reasons****, the Court cannot dismiss the same case again* ***on a later date for different reasons.****"* DF-AE left out the most important parts of PL-AT's argument, which is the fact that the 11-25-14 Order and the 3-10-15 Opinion upheld dismissal of PL-AT's case for completely different reasons, which is highly irregular and should never have occurred. The COA issued the 11-25-14 Order to dismiss PL-AT's entire case by applying the doctrine of collateral estoppel, including only issues I-III and VI of PL-AT's Brief on Appeal. Due to the inclusion of item III in the ruling, the entire case dismissal was upheld. The COA left issues IV and V from PL-AT's Appeal for oral argument on 3-3-15, even though oral arguments that take place after the dismissal of a case can have no validity. Then the COA issued the 3-10-15 Opinion primarily in regard to issues IV and V. Again, the only decision that can be considered a legitimate final decision is the 11-25-14 Order since it was the <u>first</u> decision made to uphold case dismissal.

DF-AE uses the altered quote cited in the paragraph above to claim that PL-AT's position is "*that the Court of Appeals erroneously rejected her remaining arguments in its March 10,*

2015 Opinion." This is not PL-AT's position. PL-AT's position is that the 3-10-15 Opinion clearly cannot be considered legitimate since it was issued after case dismissal was already upheld by the 11-25-14 Order granting Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel, which upheld dismissal of her entire case by its inclusion of Item III from her 12-20-13 COA Brief on Appeal. To have two MSC Applications pending in relation to the same case, for two different decisions, both upholding dismissal for different reasons, is ludicrous and unreasonable. Clearly, only the 11-25-14 order is valid because it is the only one that comports with the definition of a "final order" under MCR 7.202(6)(a)(i), since it was the first order upholding dismissal of PL-AT's entire case. The 3-10-15 Opinion therefore must be disposed of in the proper manner by the MSC, as requested in PL-AT's 4-21-15 MSC Application.

It is not normal for a plaintiff to be confronted with two different decisions on their case from a court. It is absurd for DF-AE to claim that PL-AT is required to choose which of the two different decisions she wants to appeal, when there should have only been one decision. DF-AE claims on pg. *vii*, ¶ 1, "*Plaintiff elected her remedy and her first Application to this Court and 'cannot thereafter go back and elect again.'*" PL-AT had no choice but to appeal both decisions of the COA. It is the COA that first made a decision to uphold case dismissal based on collateral estoppel in its 11-25-14 Order, then went back and elected to uphold case dismissal for different reasons, in its 3-10-15 Opinion. This should never have happened. A court is not allowed to make two different decisions, on two separate occasions, to uphold dismissal of a case. Therefore, in accordance with MCR 7.202(6)(a)(i), only the first 11-25-14 Order can be considered the valid final order.

Pursuant to MCR 7.302(B)(5), the issuance of the COA's 3-10-15 Opinion, declaring different reasons to uphold case dismissal a second time, after the COA already upheld dismissal of the entire case by its 11-25-14 Order using the doctrine of collateral estoppel as justification, is clearly erroneous and will cause PL-AT material injustice if the 3-10-15 Opinion is not stricken from the court record, and PL-AT therefore requests that the MSC grant her Application for Leave to Appeal.

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, which has been upheld by the Court of Appeals in two of PL-AT's cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR 2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to become part of a records copying services' database for sale to other lawyers and insurance companies. By the COA's use of the tactic of entering the 11-25-14 Order to uphold the dismissal of the case, and including all the issues in regard to MC 315 within this Order, thereby not having to actually state or discuss any reasons in the Order for its granting of the DF-AE's Motion to Affirm based on collateral estoppel, the COA concealed the true nature of the case by then issuing a legally invalid Opinion on 3-10-15 that contains a discussion upholding the case based upon different reasons than the basis of the 11-25-14 Order, avoiding any mention of MC 315 at all.

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. 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 protect their rights to privacy of their medical records. This PL-AT should not have to lose both her first- and third-party auto cases for the same reason of wanting to use, and using, respectively, Form MC 315 to provide her medical records to the DF-AEs in her cases. Clearly, there is a big problem at both the circuit court and appellate court level in regard to the acceptance of MC 315 and only the MSC can correct this by granting PL-AT's Application for Leave to Appeal to the MSC. Although PL-AT's MSC Application for leave to appeal COA Case No. 316822, dismissing her first party auto case, MSC Docket No. 150510, regarding her wanting to use MC 315 forms instead of those of a Record Copy Service was denied 5-28-15 for the following reason: "*On order of the Court, the application for leave to appeal the October 14, 2014 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court,"* PL-AT prays thc court will give use of the MC 315 form in providing medical records in an auto injury case a second thought, since the instant case has no encumbrances preventing the use of MC 315, especially since the MC 315 forms were already executed and the DF-AEs received PL-AT's records from them, and a MSC ruling in PL-AT's favor will give credence that the SCAO is more than a powerless agency that issues mandates that are not enforced or respected by the legal system.

Since the two decisions of the COA (the 11-25-14 Order and the 3-10-15 Opinion) are different, and PL-AT argues the second decision made 3-10-15 is legally invalid, PL-AT's two appeals are also different, with remedies consistent with each other. Therefore, both

Applications should be granted by the MSC, as both must be considered to result in a fair and just outcome.

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 Application at hand and misrepresents the facts of the circuit court 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 12-30-13 Motion to Affirm. Therefore, it should not appear again for consideration by the MSC when the COA already rejected it. Let it be clear there has never been any *renewed* Motion to Affirm similar to the first one, as DF-AE Efficient Design, Inc. has claimed in its 3-5-15 Answer to PL-AT's Application in MSC Case No. 151198, and 5-12-15 Answer to PL-AT's Application in MSC Case No. 151463. In the aforementioned filings, DF-AE Efficient Design, Inc. even used an incorrect date for Culpert's first Motion to Affirm, which was filed 12-**30-13**, not 12-**13-15** as EDI stated. In a further effort to make it more difficult for the MSC to verify to what the second Motion to Affirm was in regard, so it could be compared with the 12-30-13 Motion, EDI did not properly mention the October 17, 2014 filing date of the second Motion to Affirm anywhere in its 3-5-15 and 5-12-15 Answers to PL-AT's MSC Applications in cases 151198 and 151463, respectively.

Culpert's first 12-30-13 Motion to Affirm, pursuant to MCR 7.211(C)(3), was denied 2-11-14, but there was never any "renewed motion," as EDI's Answers would lead the MSC to believe. Culpert's second Motion to Affirm was filed October 17, 2014, and claimed the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI due to the 10-14-14 Opinion of the COA issued in the MEEMIC case. There was no mention of collateral estoppel in the 12-30-13 Motion to Affirm. In the 12-30-13 Motion, claims were made that PL-AT didn't cite any precedents, and that her issues of using MC 315 were not preserved. The October 17, 2014 motion does not make these claims. These two motions are completely different and therefore the second one can in no way be considered a "renewal" of the first. This question has therefore already been answered by the COA when Culpert's 12-30-13 Motion to Affirm was denied on 2-11-14.

The COA already considered PL-AT's arguments in regard to DF-AE's Question I 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. Question I was also presented word-for-word in Culpert in his 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, case no. 151198, where it was also irrelevant. Therefore, for further discussion and rebuttals to the claims contained within the question, refer to pgs. 1-3 of PL-AT's 4-13-15 Reply to Culpert's Answer in MSC Case 151198, attached as Exhibit T.

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. Still, the trial court's actions are not in question in regard to this MSC Application because the MSC is only being asked to

determine whether or not the 3-10-15 Opinion should be disposed of in the proper manner by the MSC since a final Order was already entered by the COA on 11-25-14 that disposed of the case for different reasons than the 3-10-15 Opinion. The only issue of the instant Application, disposing the 3-10-15 Opinion, is not addressed by DF-AE's Question I, nor any other Questions 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?

This question is inapplicable to the Application at hand and is only relevant to PL-AT's first MSC Application dated 3-10-15 for case no. 151198. This is the same Question II that was presented by Culpert in his 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, Case no. 151198. PL-AT's 3-10-15 Application, in regard to the 11-25-14 Order, was the only application claiming that her due process rights were violated by not providing a legitimate oral arguments hearing on her appeal, and Question II was therefore appropriate in Culpert's **3-23-15** Answer to PL-AT's 3-10-15 Application. However, it is not appropriate in the **4-28-15** Answer to PL-AT's 4-21-15 Application. PL-AT's 4-21-15 Application, in regard to the 3-10-15 Opinion, case no. 151463, for which she is writing this reply, requests only that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order. The only issue of the instant Application, disposing the 3-10-15 Opinion, is not addressed by DF-AE's Question II. PL-AT's original response to Question II above, where it was properly presented in Culpert's 3-23-15

Answer in regard to PL-AT's appeal of the 11-25-14 order, appears on pgs. 3-4 of PL-AT's 4-13-15 Reply to Culpert's Answer in MSC Case 151198, attached as Exhibit T.

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?

As with Question II, Question III is also inapplicable to the Application at hand and is only relevant to PL-AT's first MSC Application dated 3-10-15 for case no. 151198. This is the same Question III that was presented by Culpert in his 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, case no. 151198. PL-AT's 3-10-15 Application, in regard to the 11-25-14 Order, is the only application arguing against the application of the doctrine of collateral estoppel. The instant 4-21-15 MSC Application, in regard to the 3-10-15 Opinion, case no. 151463, for which PL-AT is writing this reply, requests only that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order, and which *is* in regard to the application of the doctrine of collateral estoppel. The only issue of the instant Application, disposing the 3-10-15 Opinion, is not addressed by DF-AE's Question III. PL-AT's original response to Question III above, where it was properly presented in Culpert's 3-23-15 Answer in regard to PL-AT's appeal of the 11-25-14 order, appears on pgs. 4-5 of PL-AT's 4-13-15 Reply to Culpert's Answer in MSC Case 151198, attached as Exhibit T.

IV. DF-AE presents the following question:

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

This is the same Question IV that was presented by Culpert in his 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, case no. 151198. The arguments presented on pgs. 17-18 of Culpert's 4-28-15 Answer to PL-AT's 4-21-15 Application in regard to this question, are not only the same as those on pg. 17-18 of Culpert's 3-23-14 Answer, but most importantly, they 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. The MSC must ignore the team effort of the two DF-AEs, Culpert and Efficient Design, Inc., to mislead the MSC to believing that the 10-17-14 Motion to Affirm was a renewal of the 12-30-13 Motion to Affirm, which is untrue, as explained in the section above for Question I.

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 and the case would have been over. 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. Therefore, the issue of preservation was resolved on 2-11-14 in the COA's Order denying Culpert's 12-30-13 Motion to Affirm and this question should not be considered by the MSC. Again, the instant 4-21-15 MSC Application, in regard only to the 3-10-15 Opinion, case no. 151463, for which PL-AT is writing this reply, requests only that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order, and which *is* about the COA's

erroneous application of the doctrine of collateral estoppel. The only issue of the instant Application, disposing the 3-10-15 Opinion, is not addressed by DF-AE's Question IV.

In summary, DF-AE's 4-28-15 Answer to PL-AT's 4-21-15 MSC Application poses the same exact questions as in Culpert's 3-23-15 Answer to PL-AT's 3-10-15 MSC Application. By including irrelevant circuit court events and issues in regard to the 11-25-14 Order and 3-3-15 oral arguments hearing that only pertain to the 3-10-15 MSC Application, Case no. 151198, DF-AE's questions do nothing but mislead the MSC from the true basis of PL-AT's 4-21-15 MSC Application, which is to dispose of the invalid 3-10-15 Opinion.

INTRODUCTION

Despite the fact that PL-AT's two MSC Applications are appealing different COA decisions and requesting two different remedies, DF-AE Culpert has submitted a nearly identical Answer to the instant Application, as was submitted on 3-23-15 in Answer to PL-AT's 3-10-15 MSC Application, which was only in regard to the 11-25-14 Order. Let it be clear that the instant Application is only in regard to the 3-10-15 Opinion, not the 11-25-14 Order. PL-AT's two MSC Applications are not contradictory or inconsistent with each other, as DF-AE claims in the 4-28-15 Statement of Jurisdiction. Both PL-AT's Applications are different and ask for different remedies. PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order. These remedies are therefore completely consistent with one another, and the only logical solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates.

With the exception of the new claims in DF-AE's 4-28-15 Statement of Jurisdiction that PL-AT was required to choose which COA decision to appeal and that she already chose the 11-25-14 COA Order when she filed her 3-10-15 MSC Application and therefore cannot appeal the 3-10-15 COA Opinion, DF-AE has submitted essentially the same brief in answer to PL-AT's 4-21-15 Application as DF-AE Culpert submitted in answer to PL-AT's 3-10-15 Application. DF-AE has not addressed the true issue of this Application, which is simply the disposal of the 3-10-15 COA Opinion in the proper manner by the MSC, since it was issued for different reasons, after a final order had already been issued on 11-25-14, upholding dismissal of the entire case.

In these two nearly identical 3-23-15 and 4-28-15 Answers, 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.

There has been an effort of team work on the part of the two DF-AEs in which both Culpert's 3-23-15 and 4-28-15 Answers to PL-AT's separate MSC Applications, focus on repeating the arguments from his denied 12-30-13 Motion to Affirm, then both EDI's 3-30-15 and 5-12-15 Answers refer to a "renewed" Motion to Affirm, without ever stating the correct date of Culpert's second motion, filed 10-17-14, giving the impression that the second 10-17-14 Motion to Affirm was the same as the 12-30-13 Motion to Affirm, when they were completely different. Culpert's second 10-17-14 Motion to Affirm claimed the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI due to the 10-14-14 Opinion of the COA issued in the MEEMIC case. There was no mention of collateral estoppel in the 12-30-13 Motion to Affirm. In the 12-30-13 Motion, claims were made that PL-AT didn't cite any precedents, and that her issues of using MC 315 were not preserved. The 10-17-14 motion does not make these claims. Like Culpert's 3-23-15 Answer, Culpert's 4-28-15 Answers uses arguments word-for-word that were presented as the sole arguments in Culpert's first Motion to Affirm dated 12-30-13, that was already denied by the COA on 2-11-14. The arguments from Culpert's first 12-30-15 Motion to Affirm should not be re-stated here, for any kind of consideration by the MSC, not to mention they contain falsehoods about the actual events of the case.

In the 4-28-15 Answer, DF-AE Culpert also continues to make the same preposterous claim contained in the 3-23-15 Answer, that Culpert never even filed a written motion to compel, and only made an oral motion on 6-21-13, when the court record is clear that he did file a written 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).

As argued in Issue V in her 12-20-13 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 one of two different liability insurance policies held by Efficient Design), has not even filed Answers to either PL-AT's 3-10-15 or 4-21-15 MSC Applications.

The COA's issuance of a 3-10-15 Opinion that differs in the reasons for upholding the dismissal of the case from the 11-25-14 Order that actually upheld the dismissal of PL-AT's entire case is clearly erroneous since case dismissal cannot be upheld on two different dates, for different reasons. Only the first order to uphold the dismissal can be considered valid. The second Order (Opinion) would be meaningless and invalid.

Since the 3-10-15 Opinion clearly cannot be considered legitimate, PL-AT requested in her 4-21-15 Application that the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198. Having to have had to file two appeals and to have two appeals pending in relation to the same case, for two different Orders upholding the dismissal of this one case for different reasons, although ludicrous and unreasonable, was necessary to effectuate a disannulment and invalidation of the 3-10-15 Opinion. Clearly, only the 11-25-14 order is valid. The 3-10-15 Opinion must be disposed of in the proper manner by the MSC. This primary issue of the instant Application, disposing the 3-10-15 Opinion, is not even addressed by Culpert's Answer. PL-AT prays the MSC will ignore the completely irrelevant Answers submitted by Culpert and EDI meant to detract from the true issue of this particular Application, which is in regard only to the disposal of the 3-10-15 Opinion.

Because Culpert's 4-28-15 Answer is almost identical to his 3-23-15 Answer, any content that was already rebutted and discussed by PL-AT in her 4-13-15 Reply to Culpert's 3-23-15 Answer, will be referenced rather than re-rebutted and re-discussed, for the reason that arguments in regard to the 11-25-14 Order that were presented in Culpert's 3-23-15 Answer to PL-AT's 3-10-15 MSC Application are irrelevant to the consideration of instant Application, which is only in regard to the MSC disposing of the 3-10-15 COA Opinion, not addressed by DF-AE.

REPLY TO COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

THE TRIAL COURT EVENTS ARE IRRELEVANT TO WHETHER OR NOT THE COA ERRED BY ISSUING TWO DIFFERENT DECISIONS ON TWO DIFFERENT DATES THAT BOTH UPHELD CASE DISMISSAL FOR DIFFERENT REASONS. DF-AE PRESENTS THE SAME FALSIFIED ACCOUNTING OF THE TRIAL COURT EVENTS THAT HAS ALREADY BEEN DISPROVEN BY PL-AT.

The events occurring at the trial court level are irrelevant to the consideration of PL-AT's 4-21-15 MSC Application. Only the events occurring at the Court of Appeals level are relevant to either of PL-AT's Applications. This Application pertains to the clearly erroneous actions of the COA to issue a 3-10-15 Opinion that differs in the reasons for upholding the dismissal of the case from the 11-25-14 Order that actually upheld the dismissal of PL-AT's entire case, since dismissal of a case cannot be upheld on two different dates, for different reasons. Only the first order to uphold the dismissal can be considered a valid final order. The second Order (Opinion) would be meaningless and would have no validity.

According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." The first order that disposed of all the claims was the 11-25-14 Order. Therefore, in her 4-21-15 MSC Application, PL-AT requested that the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real final Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198.

Therefore, none of the history presented by DF-AE on pgs. 1-8 in the Counterstatement of Facts and Proceedings section of Culpert's 4-28-15 Answer has any relevance to the MSC determining whether or not the COA erred in issuing the 3-10-15 Opinion, after case dismissal was already upheld by the COA's 11-25-14 Order when it granted Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel.

The only minor changes from Culpert's 3-23-15 Counterstatement of Facts and Proceedings, to Culpert's Counterstatement of Facts and Proceedings appearing in the 4-28-15 Answer, to which PL-AT is hereby replying, are the addition of the word, "purportedly," an addition to footnote #3, and a reference to PL-AT's 4-21-15 Application, as will be explained in detail below. Since the remainder of the 4-28-15 Counterstatement of Facts and Proceedings section is identical to the 3-23-15 filing, and this history is irrelevant to the consideration of PL-AT's 4-21-15 MSC Application, refer to pgs. 7-26 of PL-AT's 4-13-15 Reply to Culpert's Answer in MSC Case 151198, attached as Exhibit T, for rebuttals in regard to the inaccurate history of the trial court events as presented by DF-AE.

Both Culpert's 4-28-15 and 3-23-15 Counterstatement of Facts and Proceedings, contain on page 5, claims that Culpert only filed an oral motion to compel on 6-21-13, and not a written motion to compel. In PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer, PL-AT already provided proofs that Culpert's did indeed file a written 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). However, rather than correcting the clear error in Culpert's 4-28-15 Answer after PL-AT pointed it out in her 4-13-15 Reply, Culpert just added the word "purportedly" to this brief, stating, "***purportedly**, only Efficient Design had filed a written motion to compel*." The 4-28-15 answer also adds to footnote #3, in reference to this statement, stating, "*Plaintiff now protests*

that this is a "dishonest" description of her remaining arguments. (4/21/Application, pp 23-24.) Indeed, she calls the undersigned's description an "egregious lie." (Id., p 23.) However, it is unclear how her "clarification" of this issue establishes appealable error or advances her position in any way. (See Id.)" PL-AT did not provide a "clarification" of the issue, per se---She provided the truth, with accompanying proofs, to correct the erroneous statements of the DF-AE. PL-AT never claimed this correction would advance her position, or that it establishes appealable error, since the MSC is only required to examine the actions of the Court of Appeals, not the circuit court, when reviewing either her 3-10-15 Application in regard to the 11-25-14 COA order, or the 4-21-15 Application in regard to the 3-10-15 COA Opinion. The events of the trial court are irrelevant to either Application, but since it is the DF-AE who brought them up, the PL-AT could not comfortably leave false information in the file without providing a rebuttal. The fact that DF-AE included this false, yet irrelevant history, again in the 4-28-15 filing, rather than making the corrections to tell the true story after PL-AT provided hard evidence, further indicates that DF-AE is falsifying the history for no other reason than to put false statements on the record in regard to the past circuit court proceedings. The same could be said for the rest of the history presented by DF-AE, appearing word-for-word in the 4-28-15 Answer as presented in DF-AE's 3-23-15 Answer, that PL-AT already rebutted in her 4-13-15 Reply.

REPLY TO STANDARDS OF REVIEW

DF-AE'S 4-28-15 STANDARDS OF REVIEW SECTION IS IDENTICAL TO THE 3-23-15 SECTION, FOCUSING ON ARGUMENTS IN REGARD TO THE DOCTRINE OF COLLATERAL ESTOPPEL, MUTUALITY OF ESTOPPEL, AND THE LOWER COURT'S IMPOSING OF DISCOVERY SANCTIONS. IT IS THEREFORE IRRELEVANT TO THE INSTANT APPLICATION THAT ONLY REQUESTS TO DISPOSE OF THE ILLEGITIMATE 3-10-15 OPINION.

DF-AE presents an identical discussion on pgs. 8-10 of the 4-28-15 Answer, to the one presented on pgs. 8-9 of the 3-23-15 Answer, focusing on arguments that were only part of PL-AT's 3-10-15 MSC Application in regard to the 11-25-14 Order, and therefore should not appear in the 4-28-15 Answer to the instant Application, which is only in regard to disposing of the illegitimate 3-10-15 COA Opinion, which was issued after the 11-25-14 COA Order already upheld dismissal of the entire case, and upheld dismissal of the case for different reasons than the 11-25-14 Order. Case dismissal can only be upheld one time, and for whatever reasons are chosen at that time. The COA chose to uphold case dismissal based on the doctrine of collateral estoppel when it granted Culpert's 10-17-14 Motion to Affirm on 11-25-14. DF-AE does not mention any arguments of relevance to the disposal of the 3-10-15 Opinion, which is the remedy requested of the MSC in the instant Application, and instead, only provides the same discussion as DF-AE's 4-28-15 Answer. Therefore, for PL-AT's rebuttals of these issues that are only relevant to Case No. 151198, refer to pgs. 26-29 of PL-AT's 4-13-15 Reply to Culpert's Answer in MSC Case 151198, attached as Exhibit T.

REPLY TO ARGUMENT

I. The argument presented by DF-AE in item I is irrelevant to the instant Application, is a misrepresentation of the facts of the case, and 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. The 10-17-14 Motion to Affirm was not a renewal of the 12-30-13 Motion, as DF-AE EDI has misled the court to believe in its 3-30-15 and 5-12-15 Answers. Therefore, this argument cannot be revisited by the MSC and should not even appear in DF-AE's 4-28-15 Answer.

DF-AE presents the following Argument I on pg. 10 of the 4-28-15 Answer, which is exactly the same as Argument I presented in the 3-23-15 Answer on pg. 10:

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.

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 argument he presented. Still, the trial court's actions are not even in question in regard to the instant MSC Application, or even PL-AT's other 3-10-15 MSC Application, for that matter, because the MSC is being asked to evaluate the actions of the *Court of Appeals*, not the *circuit court*. In the instant Application, The MSC is only being asked to determine whether or not the 3-10-15 Opinion should be disposed of in the proper manner by the MSC since a final Order was already entered by the COA on 11-25-14 that disposed of the case for different reasons than the 3-10-15 Opinion. The only issue of the instant Application, disposing of the 3-10-15 Opinion, is not addressed by DF-AE's Argument I.

Argument I contains arguments already denied on by the COA, which therefore should not be presented here for consideration by the MSC. 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, Argument I was the only argument presented. The arguments appearing on pg. 10-11 ¶ 1 and 2 of the 4-28-15 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 ¶ 1-3 and pg. 12 ¶ 1-2 of the 4-28-15 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 4-28-15 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.

Let it be clear there has never been any *renewed* Motion to Affirm similar to the first one, as DF-AE Efficient Design, Inc. has claimed in its 3-5-15 Answer to PL-AT's Application in MSC Case No. 151198, and 5-12-15 Answer to PL-AT's Application in MSC Case No. 151463. In the aforementioned filings, DF-AE Efficient Design, Inc. even used an incorrect date for Culpert's first Motion to Affirm, which was filed 12-**30-13**, not 12-**13-15** as EDI stated. In a further effort to make it more difficult for the MSC to verify to what the second Motion to Affirm was in regard, so it could be compared with the 12-30-13 Motion, EDI did not properly mention the October 17, 2014 filing date of the second Motion to Affirm anywhere in its 3-5-15 and 5-12-15 Answers to PL-AT's MSC Applications in cases 151198 and 151463, respectively.

Culpert's first 12-30-13 Motion to Affirm, pursuant to MCR 7.211(C)(3), was denied 2-11-14. Culpert's second and completely different Motion to Affirm was filed October 17, 2014, and claimed the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI due to the 10-14-14 Opinion of the COA issued in the MEEMIC case. There was no mention of collateral estoppel in the 12-30-13 Motion to Affirm. In the 12-30-13 Motion, claims were made that PL-AT didn't cite any precedents, and that her issues of using

MC 315 were not preserved. The October 17, 2014 motion does not make these claims. These two motions are completely different and therefore the second one can in no way be considered a "renewal" of the first. Argument I has therefore already been decided by the COA when Culpert's 12-30-13 Motion to Affirm was denied on 2-11-14.

Argument I also grossly misrepresents the facts of the circuit court case. 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 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. Since Argument I was also presented word-for-word in Culpert's 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, case no. 151198, where it was also irrelevant, for further discussion and rebuttals to Argument I, refer to pgs. 31-32 of PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer in MSC Case 151198, attached as Exhibit T.

In summary, Argument I is irrelevant to the application since it pertains to the actions of the circuit court. The MSC is only considering the action of the COA to issue two different decisions on two different dates, that both upheld dismissal of the case for different reasons: An 11-25-14 Order, and a 3-10-15 Opinion. Further, Argument I contains numerous false statements, was already rejected by the COA on 2-11-14 and should not appear again for consideration by the MSC. DF-AE does not mention any arguments of relevance to the disposal of the 3-10-15 Opinion, which is the remedy requested of the MSC in the instant Application.

II. The injustice of the COA 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, must be remedied by PL-AT's 3-10-15 MSC Application, not the instant Application. Thereby, DF-AE's discussion of the matter is inappropriate.

DF-AE presents the following Argument II on pg. 12 of the 4-28-15 Answer, which is exactly the same as Argument II presented on pg. 12 of the 3-23-15 Answer:

> **Plaintiff's due process rights were not violated by the Court of Appeals' decision to grant Culpert's Motion to Affirm, in part, prior to oral argument.**

DF-AE's Argument II presented on pg. 12 of the 4-28-15 Answer to PL-AT's 4-21-15 MSC Application in regard to the 3-10-15 COA Opinion, is the same exact Argument II, word for word, that was presented in DF-AE's **3-23-15** Answer to PL-AT's **3-10-15** MSC Application, which was in regard to the **11-25-14** COA order and 3-3-15 oral arguments hearing, even though PL-AT's two separate applications are in regard to different COA decisions and request different remedies. DF-AE's Argument II was only relevant to the 3-10-15 MSC Application, in which PL-AT requested the remedy of returning the case to the COA for oral arguments on all six issues presented in PL-AT's 12-20-13 COA Appeal since PL-AT was denied any oral arguments at all for Culpert's Motion to Affirm granted 11-25-14, and denied a legitimate oral arguments hearing on the remaining arguments left for 3-3-15, as explained in PL-AT's 3-10-15 MSC Application, Argument I. DF-AE's Argument II is therefore irrelevant to the instant Application which only requests for the 3-10-15 COA Opinion to be disposed of in the proper manner by the MSC.

The current situation of no valid oral arguments session having been held at all, can only be remedied by the COA providing a new oral arguments session for all six issues presented in PL-AT's 12-20-13 COA Appeal, which is the remedy requested in PL-AT's **3-10-15** MSC

Application, since in order to hear all six issues, the MSC would also have to reverse the 11-25-14 order which dismissed four of the issues, which cannot be accomplished by this 4-21-15 MSC Application that is only in regard to the 3-10-15 Opinion, not the 11-25-14 Order or 3-3-15 oral arguments hearing. PL-AT therefore has requested leave to appeal the 3-10-15 Opinion so it can be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, as it is not a legally valid opinion since the upholding of the dismissal of PL-AT's case can only be done one time, for the reasons provided at that time, and COA's 11-25-14 Order already upheld the dismissal based on the Doctrine of Collateral Estoppel. The 3-10-15 Opinion, presents different reasons for the dismissal, after the dismissal has already been upheld by the 11-25-14 Order, and therefore, should be stricken from the court record as it should never have been issued in the first place since the upholding of dismissal cannot be done a second time for different reasons. By disposing of the 3-10-15 Opinion, PL-AT can proceed with her Application for Leave to Appeal the 11-25-14 Order, the only valid Order upholding the dismissal of her case (MSC No. 151198).

DF-AE's Argument II is irrelevant to the current Application, and therefore will not be rebutted in this brief in an effort to help the court maintain a clear picture of what issues it is considering in this particular Application, since by providing the same exact argument in both the 3-23-15 and 4-28-15 Answers, DF-AE is giving the impression that PL-AT's two MSC Applications are the same or similar, when they are in regard to different actions of the COA, and contain different, consistent remedies. DF-AE does not mention any arguments of relevance to the disposal of the 3-10-15 Opinion, which is the only remedy requested of the MSC in the instant Application. Therefore, for PL-AT's rebuttals to the claims made in DF-AE's Argument II section on pgs. 12-13 of the 4-28-15 Answer, that are only relevant to Case No. 151198, refer

to pg. 32-34 of PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer in MSC Case 151198, attached as Exhibit T, where they were appropriately addressed.

III. The topics of collateral estoppel and similarities between the instant case and PL-AT's first-party MEEMIC case, are inapplicable to the instant Application and are only pertinent to PL-AT's 3-10-15 MSC Application. Thereby, DF-AE's discussion of these matters is inappropriate in its 4-28-15 Answer to PL-AT's 4-21-15 MSC Application.

DF-AE presents the following Argument III on pg. 14 of the 4-28-15 Answer, which is exactly the same as Argument III presented on pg. 14 of the 3-23-15 Answer:

> **The Court of Appeals' motion panel property applied collateral estoppel and Plaintiff's argument regarding the lack of mutuality was expressly rejected by this Court in *Monat v State Farm.***

DF-AE's Argument III presented on pg. 14 of the **4-28-15** Answer to PL-AT's **4-21-15** MSC Application in regard to the **3-10-15 COA Opinion**, is the same exact Argument III, word for word, that was presented in DF-AE's **3-23-15** Answer to PL-AT's **3-10-15** MSC Application, which was in regard to the **11-25-14 COA Order**, even though PL-AT's two separate applications are each in regard to different COA decisions and request different remedies, and therefore DF-AE's discussion of the application of the doctrine of collateral estoppel is irrelevant here, as explained below.

DF-AE's Argument III, defending the application of the doctrine of collateral estoppel in granting the 11-25-14 Order upholding dismissal of the entire case, was only relevant to the 3-10-15 MSC Application, in which PL-AT provided five reasons that the doctrine of collateral estoppel did not apply, and therefore why the 11-25-14 Order should be reversed by the MSC. Details on PL-AT's position were explained in PL-AT's 3-10-15 MSC Application, Argument II. DF-AE's Argument III is therefore irrelevant to the instant Application, which only requests for

the 3-10-15 COA Opinion to be disposed of in the proper manner by the MSC. The 3-10-15 Opinion upheld case dismissal for reasons other than the doctrine of collateral estoppel, but most importantly was *issued* after case dismissal was already upheld by the 11-25-14 order, and therefore cannot be considered legitimate. The valid final Order that used the doctrine of collateral estoppel as justification for upholding dismissal of PL-AT's case was the **11-25-14** Order that is being appealed through PL-AT's **3-10-15** MSC Application, case no. 151198.

DF-AE does not mention any arguments of relevance to the disposal of the 3-10-15 Opinion, which is the only remedy requested of the MSC in the instant Application. Therefore, for PL-AT's rebuttals to the claims made in DF-AE's Argument III section on pgs. 14-17 of the 4-28-15 Answer, that are only relevant to Case No. 151198, refer to pg. 34-39 of PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer in MSC Case 151198, attached as Exhibit T, where they were appropriately addressed. DF-AE also makes many false claims in an erroneous comparison with PL-AT's first-party MEEMIC Insurance Co. case. As these arguments and allegations are also irrelevant to the instant Application, please refer to the aforementioned filing for their rebuttal.

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.

DF-AE presents the following Argument IV on pg. 17 of the 4-28-15 Answer, which is exactly the same as Argument IV presented on pg. 17 of the 3-23-15 Answer:

> **Plaintiff did not preserve any arguments regarding SCAO Form MC 315 because she never raised the issue in the trial court in this case.**

Not only is this argument irrelevant to the instant Application, it was also irrelevant to the 3-10-15 Application, as already argued on pg. 39 of PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer in MSC Case 151198, attached as Exhibit T. Most importantly, just like DF-AE's Argument I, DF-AE presents statements in support of Argument IV 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, misleading the MSC to believe it should be evaluating preservation of issues, when this is not the subject of either MSC Application. 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 view 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, attached as Exhibit B.

Let it be clear there has never been any *renewed* Motion to Affirm similar to the first one, as DF-AE Efficient Design, Inc. has claimed in its 3-5-15 Answer to PL-AT's Application in MSC Case No. 151198, and 5-12-15 Answer to PL-AT's Application in MSC Case No. 151463. In the aforementioned filings, DF-AE Efficient Design, Inc. even used an incorrect date for Culpert's first Motion to Affirm, which was filed 12-**30-13**, not 12-**13-15** as EDI stated. In a further effort to make it more difficult for the MSC to verify to what the second Motion to Affirm was in regard, so it could be compared with the 12-30-13 Motion, EDI did not properly

mention the October 17, 2014 filing date of the second Motion to Affirm anywhere in its 3-5-15 and 5-12-15 Answers to PL-AT's MSC Applications in cases 151198 and 151463, respectively.

Culpert's first 12-30-13 Motion to Affirm, pursuant to MCR 7.211(C)(3), was denied 2-11-14. Culpert's second and completely different Motion to Affirm was filed October 17, 2014, and claimed the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI due to the 10-14-14 Opinion of the COA issued in the MEEMIC case. There was no mention of collateral estoppel in the 12-30-13 Motion to Affirm. In the 12-30-13 Motion, claims were made that PL-AT didn't cite any precedents, and that her issues of using MC 315 were not preserved. The October 17, 2014 motion does not make these claims. These two motions are completely different and therefore the second one can in no way be considered a "renewal" of the first. Argument IV has therefore already been decided by the COA when Culpert's 12-30-13 Motion to Affirm was denied on 2-11-14.

CONCLUSION AND RELIEF REQUESTED

DF-AE's 4-28-15 statement of Conclusion and Relief Requested is exactly the same as the 3-23-14 statement, which focuses on circuit court events, and contains erroneous allegations against PL-AT. Rather than detract further from the important issues of this Application, as is clearly DF-AE's goal, for rebuttals, refer to pg. 40-45 of PL-AT's 4-13-15 Reply to Culpert's 3-23-15 Answer in MSC Case 151198, attached as Exhibit T.

DF-AE's 4-28-15 whole Answer to PL-AT's 4-21-15 MSC Application is essentially the same as its 3-23-15 Answer to PL-AT's 3-10-15 MSC Application, and therefore contains numerous irrelevant arguments, since the instant Application requests only the remedy of disposing of the 3-10-15 COA Opinion, which is clearly illegitimate since there can only be one final decision, and it would be the *first* decision to uphold dismissal, which is the 11-25-14

Order. PL-AT's request to dispose of the 3-10-15 Opinion is not addressed by DF-AE in the 4-28-15 Answer.

In fact, the only part of DF-AE's 4-28-15 Answer in which the issues of the instant Application are even addressed is in the Counter-Statement of Jurisdiction, in which the DF-AE proposes the preposterous solution to the problem of having two different decisions made by the COA on two different dates, of requiring PL-AT to choose which of the two different decisions to appeal, even though each one upholds dismissal of her case for different reasons. The COA should never have put PL-AT in such a predicament. The COA should only ever issue one decision, on one date, for specific reasons, when it wishes to uphold the dismissal of a case. If the COA wanted to issue an Opinion after it already upheld case dismissal with the 11-25-14 Order, the Opinion should have contained a discussion of the reasons behind the entry of the 11-25-14 Order that granted Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel. If the Opinion and Order were one and the same, and the Opinion actually reflected the reasoning behind the Order, perhaps it could have been possible to choose either the 11-25-14 Order or the 3-10-15 Opinion to appeal to the MSC. However, since they each upheld case dismissal for different reasons, each had to be appealed.

PL-AT's two MSC Applications are not contradictory or inconsistent with each other, as DF-AE claims in the Counter-statement of Jurisdiction. Both are different and ask for different remedies. PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order. These remedies are therefore completely consistent with one another, and the only logical

solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates.

According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." The first order that disposed of all the claims was the 11-25-14 Order. Therefore, PL-AT requests that her 4-21-15 MSC Application is granted so that the 3-10-15 Opinion can be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real final Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198.

Exhibits attached:

A – B: 68 pages
C – J: 59 pages
K – S: 61 pages
T – U: 60 pages

Total pages of exhibits filed: 248 pages

signature redacted

6-9-15
Date

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