Exhibit O

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

Filing Party

Filing Party Last Name or Business/Entity/Agency Name: CULPERT KEVIN THOMAS

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Summary of Items Filed

Type	Filename/Description	Filing Fee	Doc Fee	Total This Filing
Motion - Regular	Defendant-Appellee Thomas K. Culpert's Motion to Affirm and Brief in Support	$5.00	$100.00	$105.00
		3% Service Fee:		$003.15
		Total All Filings:		$108.15

Fee Substitute/Alternate Payment

Reason:

- ☐ **Appointed Counsel**
- ☐ **Motion To Waive Fee**
- ☐ **Fees Waived in this Case**
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WAYNE CIRCUIT COURT	**Proof of Service**	CIRCUIT: 13 000652 N9
		COURT OF APPEALS: 317972

Case Name: TAMARA FILAS V KEVIN THOMAS CULPERT

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

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

was delivered to the persons listed below:

Date: 12/30/2013

Signature: /s/Sandra L. Vertel

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P-	59108	O'Malley, Michael	E-Serve	momalley@vgpclaw.com
P-		Vertel, Sandra	E-Serve	svertel@secrestwardle.com

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STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

TAMARA FILAS,

Court of Appeals No. 317972

Plaintiff-Appellant,

Lower Court No. 13-000652-NI

-vs-

THOMAS K. CULPERT and
EFFICIENT DESIGN, INC.,

Defendants-Appellees.

/

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

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

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

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

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

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

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

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

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

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

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

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Dated: December 30, 2013

STATE OF MICHIGAN

IN THE COURT OF APPEALS

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The Honorable Susan Borman, Circuit Judge

TAMARA FILAS,

Court of Appeals No. 317972

Plaintiff-Appellant,

Lower Court No. 13-000652-NI

-vs-

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

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STATEMENT OF JURISDICTION

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

COUNTER-STATEMENT OF QUESTION INVOLVED

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

The Trial Court said: "yes."

Plaintiff-Appellant says: "no."

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

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

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARDS OF REVIEW

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION AND RELIEF REQUESTED

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

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Dated: December 30, 2013

2416057_2

Exhibit P

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Signature: /s/Sandra L. Vertel

	Bar Number	Name	Delivery Method	Service Address
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STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

TAMARA FILAS,

Plaintiff-Appellant,

v

THOMAS K. CULPERT and
EFFICIENT DESIGN, INC.,

Defendants-Appellees.

Court of Appeals No. 317972

Lower Court No. 13-000652-NI

/

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Plaintiff-Appellant Pro Se
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(734) 751-0103
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/

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

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

1. On October 14, 2014, this Court issued its opinion in *Filas v MEEMIC,* unpublished per curiam opinion (No. 316822) (Ex. 1).

2. *Filas v MEEMIC* arose out of the same motor vehicle accident that gave rise to the instant appeal (*Filas v MEEMIC* was Ms. Filas' first party suit for PIP benefits whereas the instant case is her tort claim). *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). (See Appellant's Brief, p 5; 8/9/13 trans, p 3.)

3. 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. Compare Ms. Filas' "Questions Presented" in this appeal (Ex. 2) with her Brief on Appeal in *Filas v MEEMIC* (Ex. 3).

4. This Court's rejection of Ms. Filas' arguments in *Filas v MEEMIC* collaterally estops her from raising the same arguments in this case. "Collateral estoppel, also known as issue preclusion, is a common-law doctrine that gives finality to litigants." *People v Wilson,* 496 Mich 91, 98; 852 NW2d 134 (2014). "In essence, collateral estoppel requires that once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Id.* For the doctrine to apply, "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co,* 469 Mich 679, 682–684; 677 NW2d 843 (2004). Mutuality of estoppel exists if the party asserting collateral estoppel would have been bound by the previous

litigation if the judgment had gone against that party. *Id.* at 684–685. However, 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." *Id.* at 691–692. Therefore, the fact that Culpert was not a party to *Filas v MEEMIC* does 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.

5. "The doctrine of collateral estoppel serves many purposes: it relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." *People v Wilson, supra* at 99 (citation omitted). All of these purposes would be advanced by applying the doctrine to bar the instant case.

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

7. The issues raised in Plaintiff-Appellant's Brief on Appeal fall squarely within both MCR 7.211(C)(3)(a) and (3)(b), in light of this Court's opinion in *Filas v MEEMIC*.

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

SECREST WARDLE

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Attorney for Defendant-Appellee Culpert
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dbroaddus@secrestwardle.com

Dated: October 17, 2014

STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

TAMARA FILAS,

Plaintiff-Appellant,

v

THOMAS K. CULPERT and
EFFICIENT DESIGN, INC.,

Defendants-Appellees.

Court of Appeals No. 317972

Lower Court No. 13-000652-NI

/

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/

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

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COURT RULES

ARGUMENT

This Court's October 14, 2014 opinion in *Filas v MEEMIC*, affirming the trial court's dismissal of Ms. Filas' suit, collaterally estops the instant case, where Ms. Filas has raised the very same issues in this appeal that she raised – and that this Court rejected – in *Filas v MEEMIC*.

On October 14, 2014, this Court issued its opinion in *Filas v MEEMIC,* unpublished per curiam opinion (No. 316822) (Ex. 1). *Filas v MEEMIC* arises out of the same motor vehicle accident that gave rise to the instant appeal (*Filas v MEEMIC* was Ms. Filas' first party suit for PIP benefits whereas the instant case is her tort claim). *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). (See Appellant's Brief, p 5; 8/9/13 trans, p 3.)

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. Compare Ms. Filas' "Questions Presented" in this appeal (Ex. 2) with her Brief on Appeal in *Filas v MEEMIC* (Ex. 3).

This Court's rejection of Ms. Filas' arguments in *Filas v MEEMIC* collaterally estops her from raising the same arguments in this case. "Collateral estoppel, also known as issue preclusion, is a common-law doctrine that gives finality to litigants." *People v Wilson,* 496 Mich 91, 98; 852 NW2d 134 (2014). "In essence, collateral estoppel requires that once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Id.* For the doctrine to apply, "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v*

State Farm Ins Co, 469 Mich 679, 682–684; 677 NW2d 843 (2004). Mutuality of estoppel exists if the party asserting collateral estoppel would have been bound by the previous litigation if the judgment had gone against that party. *Id.* at 684–685. However, 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." *Id.* at 691–692. Therefore, the fact that Culpert was not a party to *Filas v MEEMIC* does 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 doctrine of collateral estoppel serves many purposes: it relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." *People v Wilson, supra* at 99 (citation omitted). All of these purposes would be advanced by applying the doctrine to bar the instant case.

CONCLUSION AND RELIEF REQUESTED

The facts and procedural history of this case are virtually identical to those of Ms. Filas' parallel lawsuit, which arose out of the same motor vehicle accident, *Filas v MEEMIC.* In both cases, 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. In this case, although it is unclear whether she ever raised the argument in the trial court,[1] Ms. Filas has argued on appeal that SCAO Form 315 was an acceptable substitute, and that the trial court should have allowed her to execute that in place of what she had been ordered to sign. In *Filas v MEEMIC,* this Court squarely rejected that argument. (Ex. 1, pp 4-6.)

[1] See Culpert's 1/9/14 Brief on Appeal as Appellee, pages 7-8.

Ms. Filas' other arguments in *Filas v MEEMIC* are similarly indistinguishable from the arguments she has raised here. (Compare Ex. 2 with Ex. 3.)

MCR 7.211(C)(3) allows a party to file a motion to affirm "[a]fter the appellant's brief has been filed ... on the ground that (a) it is manifest that the questions sought to be reviewed are so unsubstantial as to need no argument or formal submission; or (b) the questions sought to be reviewed were not timely or properly raised." The issues raised in Plaintiff-Appellant's Brief on Appeal fall squarely within both MCR 7.211(C)(3)(a) and 7.211(C)(3)(b), in light of this Court's opinion in *Filas v MEEMIC*. For these reasons, Culpert respectfully requests that this Honorable Court grant his motion, affirm the Circuit Court in all respects, and dismiss Plaintiff's appeal with prejudice.

SECREST WARDLE

BY: /s/Drew W. Broaddus
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(616) 272-7966/FAX: (248) 251-1829
dbroaddus@secrestwardle.com

Dated: October 17, 2014

INDEX OF EXHIBITS

Exhibit 1	Court of Appeals opinion from *Filas v MEEMIC*
Exhibit 2	Excerpts from Plaintiff-Appellant's Brief on Appeal in the instant case
Exhibit 3	Plaintiff-Appellant's Brief on Appeal from *Filas v MEEMIC*

2860836_1

Exhibit Q

Gmail

Lawsuit Discovery Issues

Daryle Salisbury <darylesalisbury@att.net> Thu, Feb 21, 2013 at 12:06 AM
To: Tamara Filas <e-mail redacted>

Hello Tamara,

I am glad we had a chance to talk today. The PDF attachments should also help.

Call me right away.

Daryle

3 attachments

- **02-20-13 filas client letter.pdf** 118K
- **02-20-13 filas efficient design discovery requests.pdf** 881K
- **02-20-13 filas culpert witness and exhibit list.pdf** 313K

Gmail

Culpert interrogatories and Production Request and deposition notice

Daryle Salisbury <darylesalisbury@att.net> Fri, Mar 8, 2013 at 7:36 PM
To: Tamara Filas < e-mail redacted

Hello Tamara,

My guess is that trying to keep track of and on top of the various discovery requests when you are not
feeling well presents a whole other challenge. You should not be putting yourself through this, but, of
course, that is your choice.

Do not get behind on any of the discovery requests, including all the discovery requests from Efficient Design.
Any lapse will be used against you.

I am actually quite concerned about what will happen with you, but again, that is your choice.

Daryle

2 attachments

03-08-13 filas culpert interrogatories and production request.pdf
643K

03-08-13 filas culpert deposition notice.pdf
72K

Exhibit R

From: (248) 851-4111
James C. Wright
ZKACT, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48334

Origin ID: DEOA

FedEx Express

Ship Date: 21JUN13
ActWgt: 1.0 LB
CAD: 103129091/INET3370

Delivery Address Bar Code

SHIP TO: (734) 751-9103
Tamara Filas

6477 Edgewood

CANTON, MI 48187

BILL SENDER

Ref # 9470-00121
Invoice #
PO #
Dept #

MON - 24 JUN 3:00P
STANDARD OVERNIGHT

TRK# 0201 7960 6816 0170

66 NFBA

48187
MI-US
DTW

Exhibit S

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

TAMARA FILAS,

Plaintiff,

v.

Case No. 13-000652-NI
Honorable Susan D. Borman

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

Defendants.

13-000652-NI
FILED IN MY OFFICE
WAYNE COUNTY CLERK
6/25/2013 2:15:44 PM
CATHY M. GARRETT

TAMARA FILAS
In Pro Per
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momalley@vgpclaw.com

DEFENDANT EFFICIENT DESIGN, INC.'S NOTICE OF SUBMISSION OF SEVEN-DAY ORDER

To: All Attorneys of Record as listed above

PLEASE TAKE NOTICE that, pursuant to MCR 2.602(B)(3), Defendant Efficient Design, Inc. has submitted the attached proposed Order of Dismissal Without Prejudice to the Court for entry, absent written objections filed on behalf of the parties within seven (7) days of service of the herein Notice.

Zausmer, Kaufman, August & Caldwell, P.C.

/s/ James C. Wright
JAMES C. WRIGHT (P67613)
Attorneys for Defendant Efficient Design
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Dated: June 24, 2013

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

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Tamara Filas
Plaintiff (s)

Case No. 13-000652-NI

-vs-

Kevin Thomas Culpert and
Efficient Design, Inc. A michigan Corporation
Defendant (s)

At a session of said Court, held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan on

Present: HONORABLE SUSAN D. BORMAN
CIRCUIT COURT JUDGE

IT IS HEREBY ORDERED:

That Plaintiff Tamara Filas' case is dismissed in its entirety without prejudice.

It is further ordered that this Order will be entered on July 1, 2013, if no objection is filed on or before July 1, 2013.

SDB

Honorable Susan D. Borman
Circuit Court Judge

Plaintiff Attorney #

James Wright (P67613) Michael O'Malley (P59108)
Defendant Attorney #

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

TAMARA FILAS,

Plaintiff,

v.

Case No. 13-000652-NI
Honorable Susan D. Borman

KEVIN THOMAS CULPERT and
EFFICIENT DESIGN, INC., a Michigan Corporation,

Defendants.

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In Pro Per
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momalley@vgpclaw.com

PROOF OF SERVICE

Shirley M. Biernacki, certifies that she is an en employee of the law firm of Zausmer, Kaufman, August & Caldwell, P. C. and states that on the 24th day of June, 2013, she caused to be served a copy of Defendant Efficient Design, Inc.'s Notice of Submission of Seven-Day Order, proposed Order and this Proof of Service upon Tamara Filas, In Pro Per, Ahmed M. Hassouna, Attorney for Defendant Culpert and Michael Charles O'Malley, Attorney for Defendant Efficient Design, electronically via Wayne County Circuit Court.

/s/ Shirley M. Biernacki
Shirley M. Biernacki

Exhibit T

Mandatory Creation of or Use of SCAO-Approved Forms

The following lists identify court forms that are required by court rule or statute to be: 1) approved by the SCAO; 2) used as approved by the SCAO; or 3) used in a form substantially in the form approved by the SCAO.

FORMS SCAO HAS BEEN MANDATED TO CREATE AND APPROVE - USE NOT MANDATORY

Although these forms are SCAO-Approved, their use is not specifically mandated by court rule or statute. Forms are denoted with an asterisk (*) when court rule or statute requires the use of a form substantially in the form of the SCAO-Approved form. In this particular chart, MC forms are for use in circuit, district, and probate courts; DC forms are for use in district courts, FOC forms are for use in friend of the court offices and circuit courts, and PC forms are for use in family divisions of circuit court.

MC 12*, Request and Writ for Garnishment (Periodic), MCR 3.101(C)

MC 13*, Request and Writ for Garnishment (Nonperiodic), MCR 3.101(C)

MC 14*, Garnishee Disclosure, MCR 3.101(C)

MC 15, Motion for Installment Payments, MCR 3.101(C)

MC 15a, Order Regarding Installment Payments, MCR 3.101(C)

MC 16, Motion to Set Aside Order for Installment Payments, MCR 3.101(C)

MC 16a, Order on Motion to Set Aside Order for Installment Payments, MCR 3.101(C)

MC 48, Final Statement on Garnishment of Periodic Payments, MCR 3.101(C)

MC 49, Objections to Garnishment and Notice of Hearing, MCR 3.101(C)

MC 50, Garnishment Release, MCR 3.101(C)

MC 51, Order on Objections to Garnishment, MCR 3.101(C)

MC 52*, Request and Writ for Garnishment (Income Tax Refund/Credit), MCR 3.101(C)

MC 203*, Writ of Habeas Corpus, MCR 3.303(H) and MCR 3.304(D)

MC 258*, Report of Nonpayment of Restitution, MCL 712A.30(18), MCL 780.766(18), MCL 780.794(18), and MCL 780.826(15)

MC 288*, Order to Remit Prisoner Funds for Fines, Costs, and Assessments, MCL 769.11

MC 292*, Disclosure of Employment or Contract in Michigan Public System, MCL 380.1230d(2)

DC 84*, Affidavit and Claim, Small Claims, MCR 4.302(A), MCL 600.8401a, and MCL 600.8402

FOC 50, Motion Regarding Support, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 51, Response to Motion Regarding Support, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 65, Motion Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 66, Response to Motion Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 67, Order Regarding Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 87, Motion Regarding Custody, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 88, Response to Motion Regarding Custody, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FOC 89, Order Regarding Custody and Parenting Time, MCL 552.505(1)(d) and MCL 552.519(3)(a)(v)

FORMS SCAO HAS BEEN MANDATED TO CREATE AND APPROVE - USE NOT MANDATORY (continued)

PC 117*, Notice to Minor of Rights Regarding Waiver of Parental Consent for an Abortion, MCR 3.615(C), (D)

PC 118*, Request and Order for Court Appointed Attorney /Guardian Ad Litem for Waiver of Parental Consent, MCR 3.615(C), (D)

PC 119*, Petition for Waiver of Parental Consent for an Abortion, MCR 3.615(C), (D)

PC 121*, Appeal of Order Denying Petition for Waiver of Parental Consent, MCR 3.165(K)

PC 122*, Confidential Information for Proceedings Concerning Waiver of Parental Consent, MCR 3.615(C), (D)

FORMS SCAO HAS CREATED AND APPROVED - USE MANDATORY

The use of these SCAO-Approved forms, without modification, is mandated by court rule or statute. In this particular chart, MC and UC forms are for use in circuit, district, and probate courts; DC forms are for use in district courts, CC forms are for use in circuit courts, and FOC forms are for use in friend of the court offices and circuit courts.

All estate, trust, guardianship, conservatorship, and mental commitment forms, MCL 600.855 ansd MCL 700.3983

DCI-84, Collecting Money from a Small Claims Judgment, MCL 600.8409(2)

UC 01a and UC 01b, Uniform Law Citation, MCL 257.727c, MCL 600.8705, MCL 600.8805, and MCL 764.9f

MC 11, Subpoena (Order to Appear), MCR 2.506(D)(1)

MC 240, Order for Custody, MCR 6.106(B)(4)

* MC 315, Authorization for Release of Medical Information, MCR 2.314(C)(1)(d) and MCR 2.314(D)(2)(b)

CC 375, Petition for Personal Protection Order (Domestic Relationship), MCL 600.2950b(1)

CC 375M, Petition for Personal Protection Order Against Minor (Domestic Relationship), MCL 600.2950b(1)

CC 376, Personal Protection Order (Domestic Relationship), MCL 600.2950b(2)

CC 376M, Personal Protection Order Against Minor (Domestic Relationship), MCL 600.2950b(2)

CC 377, Petition for Personal Protection Order Against Stalking, MCL 600.2950b(1)

CC 377M, Petition for Personal Protection Order Against Stalking by a Minor, MCL 600.2950b(1)

CC 379, Motion to Modify, Extend, or Terminate Personal Protection Order, MCL 600.2950b(3)

CC 380, Personal Protection Order Against Stalking, MCL 600.2950b(2)

CC 380M, Personal Protection Order Against Stalking by a Minor, MCL 600.2950b(2)

CC 381, Notice of Hearing on Petition for Personal Protection Order, MCL 600.2950b(1)

CC 391, Advice of Rights (Circuit Court Plea), MCR 6.302(B)

FOC 10/52, Uniform Child Support Order, MCR 3.211(D)

FOC 10a/52a, Uniform Child Support Order (No Friend of Court Services), MCR 3.211(D)

FOC 10b, Uniform Spousal Support Order, MCR 3.211(D)

FOC 10c, Uniform Spousal Support Order (No Friend of Court Services), MCR 3.211(D)

FOC 101, Advice of Rights Regarding Use of Friend of the Court Services, MCL 552.505a(8)

Exhibit U

Approved, SCAO

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

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO.

Court address

Court telephone no.

Plaintiff	v	Defendant

☐ Probate In the matter of _____

1. _____ _____
Patient's name Date of birth

2. I authorize _____
Name and address of doctor, hospital, or other custodian of medical information

to release _____
Description of medical information to be released (include dates where appropriate)

to _____
Name and address of party to whom the information is to be given

3. I understand that unless I expressly direct otherwise:

a) the custodian will make the medical information reasonably available for inspection and copying, or
b) the custodian will deliver to the requesting party the original information or a true and exact copy of the original information accompanied by the certificate on the reverse side of this authorization.

I understand that medical information may include records, if any, on alcohol and drug abuse, psychology, social work, and information about HIV, AIDS, ARC, and any other communicable disease.

4. This authorization is valid for 60 days and is signed to make medical information regarding me available to the other party(ies) to the lawsuit listed above for their use in any stage of the lawsuit. The medical information covered by this release is relevant because my mental or physical condition is in controversy in the lawsuit.

5. I understand that by signing this authorization there is potential for protected health information to be redisclosed by the recipient.

6. I understand that I may revoke this authorization, except to the extent action has already been taken in reliance upon this authorization, at any time by sending a written revocation to the doctor, hospital, or other custodian of medical information.

_____
Date

_____ _____
Signature Address

_____ _____
Name (type or print) (If signing as Personal Representative, please state under what authority you are acting) City, state, zip Telephone no.

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

CERTIFICATE

1. I am the custodian of medical information for _____ (Organization).
2. I received the attached authorization for release of medical information on _____ (Date).
3. I have examined the original medical information regarding this patient and have attached a true and complete copy of the information that was described in the authorization.
4. This certificate is made in accordance with Michigan Court Rule.

I declare that the statements above are true to the best of my information, knowledge, and belief.

_____
Date

_____
Signature

_____
Name (type or print)

_____
Address

_____
City, state, zip Telephone no.

Exhibit V

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

TAMARA FILAS,

Plaintiff,

Case No. 13-000652 NI

vs.

KEVIN CULPERT and EFFICIENT DESIGN,

Defendants.

_____/

MOTION

BEFORE THE HONORABLE SUSAN D. BORMAN, Circuit Judge, Detroit, Michigan on Friday, August 9, 2013.

APPEARANCES:

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

For the Defendant: (Efficient Design) JAMES WRIGHT, P67613
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

For the Defendant: (Kevin Culpert) MATTHEW PICCIRILLI, P76550
340 E. Big Beaver Road, Suite 250
Troy, MI 48083
(248) 764-1127

TABLE OF CONTENTS

PAGE

WITNESS:

None

EXHIBITS: IDENTIFIED RECEIVED

None

Detroit, Michigan

Friday, August 9, 2013

Morning session - 11:03 a.m.

- - -

THE CLERK: Filas.

THE COURT: Okay, this is your motion?

MR. WRIGHT: Yes, for authorizations to be signed.

THE COURT: Okay, Ms. Filas, if you want to proceed with your case, you'll have to sign these authorizations. They have them with them today. If you want to proceed and you want the Court to reinstate the case, sit down and sign the authorizations. I'm going to give you one last chance.

MS. FILAS: I have a problem with some of the clauses.

THE COURT: All right, I've already ruled on that. I'm not going to go back to that. You've changed them. You got it changed to different forms. They've got the authorizations today. Last chance. Sit down and sign the authorizations. I'll reinstate your case, otherwise I'm dismissing this case.

MS. FILAS: I have some problems with some of the clauses they're asking for in the forms.

THE COURT: I'm sorry. We've already done this. I'm not reconsidering it, so sit down today and sign the authorizations.

MS. FILAS: Not for some of the things that they're asking.

THE COURT: The dismissal stands.

Call the next case.

(Proceeding concluded - 11:05 a.m.)

C E R T I F I C A T E

STATE OF MICHIGAN)
) .ss
COUNTY OF WAYNE)

I do certify that this transcript consisting of these pages are a complete, true, and correct transcript of the proceeding taken in this case in the County of Wayne, State of Michigan on Friday, August 9, 2013.

Marge Bamonte, R-5518
Official Court Reporter
CAYMC Building, Room 1111
Detroit, MI 48226
(313) 224-5243

Exhibit W

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Tamara Filas

Plaintiff (s)

Case No. 13-000652-NI

-vs-

Kevin Colpaert & Efficient Design, Inc.

Defendant (s)

13-000652-NI
FILED IN MY OFFICE
WAYNE COUNTY CLERK
5/3/2013 3:38:13 PM
CATHY M. GARRETT

Precious Smith

At a session of said Court, held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan on 5/3/2013

Present: HONORABLE SUSAN D. BORMAN
CIRCUIT COURT JUDGE

IT IS HEREBY ORDERED:

Daryle Salisbury is hereby discharged as counsel for Plaintiff.

IT IS FURTHER ORDERED that discovery is stayed for 30 days or until Plaintiff retains new counsel.

IT IS FURTHER ORDERED Plaintiff's Motion for Continuance is Denied.

Approved as to form:

P: Tamara Filas's signature redacted

D: Mark Zaborowski

/s/ Susan D. Borman

Honorable Susan D. Borman
Circuit Court Judge

FOR ALBERT MAY

Exhibit X

STATE OF MICHIGAN

WAYNE COUNTY CIRCUIT COURT

TAMARA FILAS,

Plaintiff,

vs.

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

Defendants.

/

Case No: 13-000652-NI

Hon. Susan D. Borman

13-000652-NI
FILED IN MY OFFICE
WAYNE COUNTY CLERK
4/29/2013 11:53:54 AM
CATHY M. GARRETT

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/

MOTION TO ENTER SUBSTITUTION OF ATTORNEY ORDER

Daryle Salisbury, who has been dismissed by the plaintiff as her attorney, seeks entry of the Stipulation for Substitution of Attorney by the In Pro Per Plaintiff and entry of the Substitution of Attorney Order, and in support of this Motion states:

1. That on March 8, 2013 Plaintiff terminated/dismissed Daryle Salisbury as her attorney by the following certified letter:

> "Dear Mr. Salisbury,
> Please be advised you are dismissed as my attorney.
> I am terminating the professional relationship and you should immediately cease working on any and all matters related to my first-party no-fault and personal injury cases (12-016693-NF and 13-000652-NI).
> I am requesting the return of the two binders I loaned you (MEEMIC records and medical records), and a complete copy of both case files, including any correspondence between you and the three defense attorneys.
> I would like to pick up these materials in person. I will be contacting you to set up a date to do so.
> Please send me an itemized bill listing all pending fees and expenses.
> Thank you for your services."

2. That in response to the Plaintiff's dismissal and termination of services letter attorney Daryle Salisbury has prepared and submitted the proposed stipulation and order shown by Attachment "A" to this Motion.

3. That the plaintiff has not yet entered the proposed Stipulation or submitted the proposed Order for Substitution to the Court.
4. That plaintiff's dismissal of Daryle Salisbury as plaintiff's attorney and plaintiff's termination of Daryle Salisbury's services requires the plaintiff, or some attorney, be substituted in this matter as noted in the cases submitted in the attached supporting brief.
5. That this Motion to enter the proposed Order for Substitution of Attorney by In Pro Per Plaintiff be considered and entered by the Court.

Respectfully Submitted By,

/S/DARYLE SALISBURY P19852
Former Attorney for Plaintiff

DATED: April 27, 2013

PROOF OF SERVICE: On this date Daryle Salisbury efiled a copy of this document with the Court Clerk along with ECF service/notification to counsel of record and mailed a copy to the Plaintiff.

STATE OF MICHIGAN

WAYNE COUNTY CIRCUIT COURT

TAMARA FILAS,

Plaintiff,

vs.

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

Defendants.

Case No: 13-000652-NI

Hon. Susan D. Borman

/

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/

BRIEF IN SUPPORT OF
MOTION TO ENTER PROPOSED
SUBSTITUTION OF ATTORNEY ORDER

Daryle Salisbury, whom plaintiff has dismissed as her attorney and terminated his services, submits the following case citations provide direction to

the parties and the Court regarding the attached Motion to Enter the Proposed Substitution of Attorney Order, to wit: *Mitchell v Dougherty, 249 Mich App 668, 644 NW2d 391 (2002)* at Page 683 notes, when an attorney is retained to represent a client, that representation continues until the attorney is relieved of the obligation by the client or the court. *cf. Stroud v Ward, 169 Mich App 1, 6; 425 NW2d 490 (1988).*

Also as noted at Page 684 of *Mitchell, supra*, "This Court has also held that a client terminated his attorney's representation by sending a letter stating that the attorney did not have authority to act on his behalf. *Hooper v Hill Lewis, 191 Mich App 312, 315; 477 NW2d 114 (1991).* See also *Basic Food Industries, Inc v Travis, Warren, Nayer & Burgoyne, 60 Mich App 492, 497; 231 NW2d 466 (1975).*"

So, as now Michigan Supreme Court Justice Zahra has agreed and adopted in the *Mitchell* case, "*representation continues until the attorney is relieved of the obligation by the client* or the court." (emphasis supplied).

Since attorney Daryle Salisbury's representation has been terminated and his obligation to represent the client relieved by the client the attorney may not withdraw, but only seek entry of an Order for Substitution of Attorney.

Respectfully Submitted By,

/S/DARYLE SALISBURY P19852
Former Attorney for Plaintiff

DATED: April 27, 2013

PROOF OF SERVICE: On this date Daryle Salisbury efiled a copy of this document with the Court Clerk along with ECF service/notification to counsel of record and mailed a copy to the Plaintiff.

Exhibit Y

Exhibit Y

Rebuttals of Irrelevant and Erroneous Arguments and Allegations

Discharge of Plaintiff-Appellant's Attorney

1. DF-AE's Statement of Facts contains a separate section to discuss "*Discharge of Plaintiff-Appellant's Attorney"* on pgs. 1-2. This section has no relevance to the issues in this appeal. DF-AE's inclusion of this issue seems to be an attempt to defame and discredit PL-AT by portraying PL-AT as person who does not work well with others and/or tried to stall the case, when just the opposite was true. Plaintiff dismissed her attorney because her attorney failed to honor specific hiring agreements. It was the Defendants who were uncooperative and refused to communicate with PL-AT unless she agreed to substitute herself, which she refused to do, instead of accepting her pro per status, that delayed the case. On pg. 2, DF-AE states, "*After the inception of the case, and after initial discovery requests were served upon attorney Salisbury, Plaintiff-Appellant discharged her attorney and filed an appearance on March 11, 2013*." Details surrounding PL-AT's attorney's breach of his hiring agreement, subsequent dismissal by PL-AT, and details of the Defense attorneys pressuring PL-AT to substitute herself and refusing to speak to her until she did, are provided on pg. 9 of PL-AT's 4-13-15 Reply to Culpert's Answer to PL-AT's MSC Application.

2. DF-AE claims on pg. 2 that because in her 3-8-13 letter discharging Salisbury, PL-AT referenced the return of two binders, one with MEEMIC records, and one with medical records, "*evidencing that Plaintiff-Appellant was in possession of a significant amount of medical records."* This argument is without merit---binders come in different sizes. One "binder" of medical records could be a few, or a lot of records. Most importantly, the reason Mr. Salisbury had PL-AT's medical records in the first place was because when he was hired by PL-AT, he

agreed that she could provide her own records to DF-AEs without using records copying service forms, an agreement that was breached when he refused to stand up for PL-AT's right to do so. The fact that Salisbury already had copies of PL-AT medical records, albeit not all records had been reviewed for accuracy by PL-AT before disclosure to DF-AEs, lends further support that PL-AT always intended to comply with discovery, and that she had always intended to provide her medical records to DF-AEs.

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

Motion to Compel

4. DF-AE claims on pg. 2 that *"Included in the discovery [the 2-7-13 Request for Production] was a request for Plaintiff-Appellant to sign medical authorizations. (See Motion to Compel Discovery from Plaintiff-Appellant at* ***Exhibit A,*** *Interrogatory No. 49)."* Interrogatory 49 was not a "request" for PL-AT to sign authorizations. It was only a question. It is presented

below along with PL-AT's answer contained in the completed, notarized interrogatories hand-delivered to Mr. Wright on 6-21-13 prior to the hearing on the Motion to Compel.

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

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

sought blanket medical releases." The request for production of records did not seek blanket medical releases, just "copies of any and all medical records related to injuries received as a result of the subject accident." Again, EDI's discovery requests did not include requests for medical releases. The 2-7-13 Request for Production only requested that PL-AT provide copies of her medical records.

May 2, 2013 Status Conference

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

> *She's not going to sign the authorizations. You're going to end up having this case dismissed too because, ma'am, you have to sign the authorizations. You can't bring a lawsuit – claiming damages for injuries of whatever kind without giving them authorizations to your medical records. If you're going to continue doing that, or put restrictions on that that the law doesn't allow, your case will end up being dismissed just like your other case.*

The discussion between the Court and PL-AT on pg. 6 of the 5-2-13 transcript from which the above quote was taken, was about PL-AT's first-party auto case against MEEMIC, which was dismissed on 4-26-13 not for PL-AT's refusal to sign records release authorizations, but for the court's refusal not to accept either the health care providers' forms, MC 315, or a modified Records Copy Service form as the authorization form(s) to be used to provide PL-AT's medical records to defendant MEEMIC. PL-AT only refused to sign unmodified, third-party records copying service forms in the MEEMIC case, as she was ordered to do by the court. The "restrictions" PL-AT included on the RDS form were that the records were to be released only to the Defendant (Exhibit G, modified form from MEEMIC case). PL-AT only limited future disclosures of her records by the records service, a private company that doesn't even allow PL-AT to view her own records that the service obtains. The 5-2-13 transcript shows PL-AT as having been cut off when she tried to explain the "restrictions," but PL-AT believes she was able

to speak a few more words and finished that sentence, stating "*The only restriction that I put on it was that only the attorneys [received the records.]"* This is further exemplified by PL-AT's statement on pg. 7 of the 5-2-13 transcript, stating that she "*just wanted to clarify that it was just going to the one attorney"* and that she "*just wanted to make sure it just went to that attorney though and it didn't say Records Deposition who it was even being disclosed to. Basically the way the form is written it allowed them --"* Before she was cut off, PL-AT was trying to explain that the RDS form had no indication to whom the records were being released, and that the way it was written, RDS could make further disclosures (Exhibit G, 5-2-13 Transcript).

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

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

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

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

June 21, 2013 Hearing

10. On pg. 4 of EDI's 3-30-15 Answer, it is stated, "*Numerous times during the June 21, 2013, motion hearing, the Circuit Court ordered, Plaintiff-Appellant to sign Efficient's medical authorizations and warned her that the case would be dismissed if she failed to do so. (Hearing*

transcript of June 21,2013, at pp. 6, 7, 8, 14, 17).” What DF-AE leaves out, is that following each statement of the Court on the cited pages that can be interpreted as an “order,” is either a valid objection, or an agreement that PL-AT would provide authorizations. Below are the Court’s statements referenced by DF-AE, with Plaintiff’s responses to each statement. Page 14 has been omitted because there is nothing on page 14 that would constitute an “order.”

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

THE COURT: Right, and you know you have to do that, Ms. Filas. So you know you're going to leave the Court no alternative but to dismiss this case too.

MS. FILAS: Well, in my motion though I asked that I could have time to investigate whether or not they're even liable because right now they're not even admitting that Mr. Culpert -- that they are the employer of Mr. Culpert.

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

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

Pg. 7 of 6-21-13 transcript:

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

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

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

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

THE COURT: Do it or no case.

MS. FILAS: Okay.

Pg. 8 of 6-21-13 transcript:

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

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

Pg. 17 of 6-21-13 transcript:

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

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

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

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

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

12. On pg. 4 of EDI's 3-30-15 Answer, it is stated, *"At the hearing, counsel for Efficient requested that the Circuit Court direct Plaintiff-Appellant to sign authorizations, provided by Efficient, for all of the medical providers identified in her discovery response. (Id). The Circuit Court stated: "We're going to give her the authorizations. She's going to sign them,"* referencing the Hearing transcript of June 21, 2013, at p.14, ln 9-12. What EDI fails to mention here[1] is that Mr. Wright did not even have <u>any</u> authorizations with him at the court for the 6-21-13 hearing, as pg. 17 of the 6-21-13 transcript verifies (Exhibit E, 6-21-13 Transcript): THE COURT: All right, okay. I think that takes care of everything. I'll see you Monday, hopefully not. How come you didn't just bring authorizations with you today knowing that --

> MR. WRIGHT: Your Honor, I didn't know who her treaters were until I got the interrogatories this morning.
>
> THE COURT: Okay.
>
> MR. WRIGHT: So that's why I didn't.

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

June 24, 2013 Hearing

14. On pg. 5, in DF-AE's explanation of why PL-AT should have known about the 6-24-13 special conference, it is very unsettling that DF-AE provided only a partial quote by the Judge

[1] DF-AE tells the story out of order in order to give the appearance that PL-AT did not want to sign authorizations on 6-21-13. DF-AE finally includes the fact that Mr. Wright didn't have the authorizations with him that day at the bottom of pg. 6, but still is untruthful, when it is stated that "*Counsel for Efficient explained during the June 21 hearing that authorizations were not available for all providers because Plaintiff-Appellant had only identified her, approximately 27 providers earlier in the morning on June 21.*" **It is not true that Mr. Wright didn't have authorizations for "all" providers. He didn't have "any" authorizations with him, period.**

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

15. On pg. 5 of EDI's 3-30-15 Answer, it is stated, *"In a related motion, heard the same day [as DF-AEs' Motions to Compel, 6-21-13], Plaintiff-Appellant agreed to accept return of prior discovery from a prior lawsuit via e-mail."* First, PL-AT is not sure why this statement even appears in EDI's Brief as it has no relevance to the issues of this appeal. The motion DF-AE is referring to is PL-AT's 6-14-13 "Motion to Compel Defendant to Return Inadvertently Produced Discovery Materials" which relates to Culpert's attorney, Mr. Hassouna, who received unsigned interrogatories from PL-AT's prior attorney that he never should have received. He refused to return them after receiving PL-AT's written requests for them, and she was forced to file the Motion to Compel. This motion did not relate to EDI in any way. The only way it can be considered "related" to the DF-AEs' Motions to Compel, as EDI claims, is that it was also a motion to compel, like theirs were. In PL-AT's 6-14-13 Motion to Compel, PL-AT requested on pgs. 6-7 that the Court would "*enter an Order to Compel Mr. Hassouna to 1) disclose to whom the unsigned interrogatories were distributed; 2) make arrangements to retrieve the 2012 unsigned interrogatories from any persons or entities named in #1, and to return all copies of*

said interrogatories given to other parties, to Plaintiff upon their receipt by Mr. Hassouna; and 3) return Mr. Hassouna's personal copy(ies) of said interrogatories to Plaintiff within 7 days of this hearing." Even though PL-AT's motion was supposedly "granted" by the Court, as evidenced by the Register of Actions (Exhibit K, Register of Actions dated 6-24-13, Register of Actions dated 3-10-15). Mr. Hassouna only complied with #3 above. It is also important to understand that pg. 16-17 of the 6-21-13 transcript erroneously refer to Mr. Wright having made the statements below, when it was actually Mr. Hassouna: THE COURT: These [the interrogatories] are useless. You didn't sign them and they're drafts, so they don't even have anything.

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

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

MR. WRIGIIT [**MR IIASSOUNA**]: In electronic format, yeah, I'll send them back.

THE COURT: Just send them back to her.

MR. WRIGHT [**MR HASSOUNA**]: Via e-mail?

THE COURT: Do you have e-mail?

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

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

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

THE COURT: This is useless.

MS. FILAS: I've never seen them. My attorney gave them out without my permission.

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

17. On pg. 5 of EDI's 3-30-15 Answer, in reference to the 6-24-13 Order of Dismissal, that the court *"directed that the order be submitted electronically and that it shall not be effective until July 1, 2013, to allow Plaintiff-Appellant time to file objections."* A 7-day Order was filed by Efficient Design's attorney, Mr. Wright, that did not include the notice required under MCR 2.602(B)(3). Both the Court and DF-AE tricked PL-AT into believing that by filing objections to the 7-day Order, she could reverse case dismissal, when in reality, she could only correct any inaccuracies to the Order involving the 6-24-13 dismissal in accordance with MCR 2.602(B)(3). The final dismissal of the PL-AT's case in the trial court was 6-24-14, when the case was dismissed *sua sponte*, not 8-9-13, when her Objections to the 7-day Order were heard, and when DF-AEs and the COA have misled the Court to believe. It should also be noted that by dismissing the case *sua sponte* on 6-24-13, the Court went against its own word because previously, on 5-2-13, the Court told EDI that a motion would be required to dismiss PL-AT's case. On pg. 8 of the 5-2-13 transcript (Exhibit H), the following dialogue appears: MR.

O'MALLEY: With respect to the 30 days, can we have a self-executing order that if we don't receive the answers to the interrogatories sworn under oath and the executed authorizations --

THE COURT: No.

MR. O'MALLEY: -- that the case is dismissed without prejudice?

THE COURT: No. You'll bring a motion. No. N-O. So I'm going to instruct my judicial attorney to make out a scheduling order now. You don't even have to come back. But you'll sit down and she's going to give it to you. And instead of the usual 120 days that we give, we'll be giving 150 days, okay.

18. On pg. 6 of EDI's 3-30-15 Answer, it is stated, *"It is indisputable that no specific time was directed by the Court or discussed on the record."* The only thing that is truly indisputable is that no specific time is shown to have been discussed on the record according to the 6-21-13 transcript. However, PL-AT does remember a conversation in which it was understood that DF-AE would provide the authorizations by the end of the business day. Whether or not this occurred on the record, PL-AT cannot be certain. However, it would be unreasonable to expect that PL-AT would have to wait until the weekend to receive the authorizations (as 6-21-13 was a Friday) that were supposed to be completed and provided to Mr. Wright prior to 2 p.m. on 6-24-13. DF-AE continues, "*Plaintiff-Appellant argued that she did not have to sign the authorizations provided by counsel because she had not received them in her e-mail inbox by 5:00 pm on June 21, 2013."* As stated, it was understood DF-AE would provide the authorizations by the end of the business day. DF-AE continues, "*At that time, Plaintiff-Appellant "decided it would be foolish to count on [counsel] to provide the forms necessary" and decided to obtain and prepare her own authorizations*," and references ¶¶ 11-12 of PL-AT 7-2-13 Objections to the 7-day Order, which are stated in their entirety below:

> *11. Given Mr. Wright's uncooperative attitude he has displayed in dealing with her to date, and his failure to provide the medical authorization forms to Plaintiff by the close of business on June 21,2013, as ordered by the court. Plaintiff decided it would be foolish to*

count on Mr. Wright to provide the forms necessary for her to meet the deadline of getting them filled out, signed and returned to Mr. Wright before 2:00 PM June 24,2013 as ordered by the Court.

12. Thereby, Plaintiff decided to fill out and provide the same SCAO medical authorization forms she provided to Mr. Hassouna, for Mr. Wright. Since these forms were acceptable to Mr. Hassouna, Plaintiff reasoned they would also be acceptable to Mr. Wright.

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

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

21. DF-AE states on pg. 6, that in PL-AT's 8-7-13 Reply to Plaintiff's Objections to the 7-day order, "*Plaintiff-Appellant admitted that she used her own authorizations and 'tried to*

include every record that the Defendant was entitled to under the no-fault law" referencing PL-AT's statement on pg. 8, ¶17. Below is PL-AT's statement from ¶17 in its entirety:

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

22. Again, PL-AT did not use her "own" authorizations---she used SCAO-mandated Form MC 315. In her objections, she had to make the distinction that she provided said forms because Mr. Wright had lied to the court on 6-24-13, when it is shown on pg. 3 of the transcript that he stated that the authorization forms PL-AT provided were "altered." (Exhibit M, 6-24-13 Transcript). PL-AT could not have "altered" forms she hadn't received, as she has explained in many previous filings.

23. DF-AE seems to think it makes a difference that "*Plaintiff-Appellant does not deny that the requested authorizations were sent; only that she did not check her e-mail after 5:00 pm on June 21, 2013*." Of course she didn't deny the authorizations were sent---PL-AT was disputing these very additional authorization forms that were sent that requested records beyond

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

24. DF-AE also claims PL-AT had "*more opportunities to provide the requested authorizations*," referring to the "opportunity" provided at the 8-9-13 hearing on PL-AT's Objections to the 7-day Order of Dismissal. Objections to a 7-day order can only clarify or correct inaccuracies in what was already ordered by the court, in this case, a *sua sponte* dismissal on 6-24-13. Therefore, this "opportunity" was not a valid one, since only a Motion for Reconsideration could have reversed the dismissal of PL-AT's case, not PL-AT agreeing to signing the additional authorization forms, or re-doing the entire process of disclosing medical records from her health care providers using Mr. Wright's personal authorization forms. On pg. 8 of the 3-30-15 Answer, in reference to the 8-9-13 hearing on PL-AT's Objections to the 7-day order, EDI claims, "*Based upon Plaintiff-Appellant's refusal to comply with the Circuit Court's orders, the court refused to rescind the dismissal and this appeal followed*." The circuit court could not have legally "rescinded" or "reversed" the dismissal of PL-AT's case by simply hearing objections to a 7-day Order.

Reply to Law and Argument Section I

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

26. On pg. 14 ¶1 of EDI's 3-30-15 Answer, it is stated, "*Plaintiff-Appellant continually attempted to obstruct the discovery process throughout the case. From the outset, Plaintiff-Appellant refused to provide open access to her medical, employment, and insurance records based upon her perception that she is entitled to 'privacy'.*" PL-AT could not have been considered to have obstructed discovery when she provided the requested records to both DF-AEs (Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI). It is not clear what DF-AE means by "open access," to her records. PL-AT only refused sign authorizations for a third-party records copying service for storage within a database that other insurance companies and attorneys can pay for and obtain the records, and Mr. Wright's forms, which had language that could be interpreted as allowing re-disclosure of PL-AT's records. PL-AT is entitled to privacy in the sense that she should be able to disclose her records only to liable parties in the case with the understanding they would not be able to legally re-disclose her records after having received them, and not have to put her records in a database which would allow "open access" to anyone who paid to view them.

27. On pg. 14 ¶1 of EDI's 3-30-15 Answer, it is stated, "*As the record reveals, Plaintiff-Appellant continually disregarded the Circuit Court's directive based upon her misguided*

attempts to control the course of discovery." This is not what the record reveals. Viewing the records in the first- and/or third-party case will reveal that PL-AT's only attempts to "control the course of discovery" involved her requests to use the health care providers' authorization forms, a modified Records Deposition Services form, and/or MC 315, as permitted under MCR 2.314(C)(1)(a) and (d). It is the DF-AEs and the Court who disregarded the Court Rules.

Reply to Law and Argument Section IB

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

29. DF-AE states on pg. 18, ¶1, "*Contrary to Plaintiff-Appellant's hypertechnical argument on appeal that she is not obliged to sign additional authorizations because Defendant-Appellee Efficient originally asked for fewer providers."* This statement is an outright lie. From the beginning, within EDI's 2-7-13 Request for Production of Documents, EDI has requested *"copies of any and all medical records relating to injuries received as a result of the subject accident."* The argument has never been about how many providers were requested by EDI. The argument is about what types of records were requested by EDI. The only types of records

DF-AE requested prior to the Motion to Compel hearing were copies of medical records. Before granting DF-AE's Motion to Compel on 6-21-13, the Court substituted, without any further input or motion from DF-AE, the DF-AE's request for medical records, to a request for medical authorization release forms provided by Mr. Wright. Upon granting Mr. Wright's Motion to Compel, the Court did not order PL-AT to provide any medical records as requested by Mr. Wright, instead she was only ordered only provide medical authorization release forms. It was after the Motion to Compel was granted, that Mr. Wright sent authorization release forms to PL-AT to release records other than medical records that he never previously requested from Plaintiff. PL-AT's Argument IV of her 12-20-13 COA Brief on Appeal explains this argument in detail. Again, arguments in regard to the substance of Argument IV should not have appeared in DF-AE's 3-30-15 Answer because the MSC is not being asked to determine the merits of PL-AT's argument IV from her COA appeal. The MSC is being asked to determine whether or not argument IV was the same as another argument presented in the MEEMIC case, and if so, whether it was litigated and whether or not the appeal process must be exhausted before collateral estoppel can be applied, arguments for which PL-AT has provided support in her 3-10-15 MSC Application that the doctrine of collateral estoppel could not be applied.

30. DF-AE states on pg. 18, ¶2, "*It became clear as the case progressed, evidenced by Plaintiff-Appellant's filings and statements during oral arguments, that Plaintiff-Appellant intended to make every effort to preclude discovery of medical and employment information.*" This statement is untrue. The filings and PL-AT's statements during oral arguments indicate that PL-AT had no objections to providing her medical information, but that she did not want to use a records copy service's or Mr. Wright's forms, which contains language that could be interpreted that Mr. Wright could re-disclose PL-AT's records. PL-AT's employment was that of a public

school teacher. Those records are public record and do not require her to sign an authorization for anyone to review them. The only reason Mr. Wright would have needed PL-AT to sign his authorization form for those records would be if he wanted permission to copy and re-disclose her employment information for purposes not revealed to PL-AT.

31. DF-AE states on pg. 18, ¶2, "*At the outset of the case, counsel for both Defendants-Appellees served **various** discovery requests. Shortly thereafter, Plaintiff-Appellant discharged her attorney and Plaintiff-Appellant undertook the prosecution of her own case. At that time, Plaintiff-Appellant began to assert her continuing objections to the production of medical **records**.*" Let it be clear there were not "various" discovery requests from both DF-AEs. There was one request from Culpert dated 2-20-13 but not received until 3-8-13 from PL-AT's attorney; and one request from EDI dated 2-7-13 but not received until 2-21-13 from PL-AT's attorney (Exhibit Q, 2-21-13 and 3-8-13 e-mails from Salisbury to Filas). More importantly, PL-AT fully responded to both DF-AEs' discovery requests by providing completed interrogatories and executed and mailed copies of MC 315 to all of her health care providers. Let it be clear that PL-AT discharged her attorney because he breached his hiring agreement. One of those breaches was his agreement to allow PL-AT to provide her own medical records to DF-AEs without the use of a records copying service. Let it be clear that PL-AT has never objected to providing medical records in either her first-party or third-party auto cases. PL-AT has only objected to the use of specific authorization forms to copy and release her records, and to the court's refusal to allow her to provide her own copies of medical records, use a modified Records Deposition Services form, the health care provider's own forms, or MC 315.

32. DF-AE states on pg. 18, ¶2, "*Again, the issue in this case is not the format of the medical authorizations, but the fact that Plaintiff-Appellant continually refused to produce open*

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

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

34. DF-AE states on pg. 19, ¶1, "*It became clear to all involved that Plaintiff-Appellant's motivation was to manipulate the process; and to potentially "cherry-pick" the records.* If anyone wanted to cherry-pick the records, it was DF-AEs. Otherwise, why would EDI have complaints that PL-AT sent the copies of MC 315 directly to her health care providers, unless it was their intent to only submit certain authorization forms of the 20-some they received? PL-AT

clearly disclosed "any and all" medical records from all health care providers, and even included dates of treatment as a courtesy (Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

35. DF-AE states on pg. 19, ¶1, "*The clear attempts by Plaintiff-Appellant to avoid the production of records is why Efficient's attorneys asked that the Circuit Court order her to sign their authorizations with "no amendments".*" This is untrue. The reason EDI asked the circuit court for "no amendments" was because in PL-AT's first-party MEEMIC case, PL-AT modified the Records Deposition Services Inc. authorization forms provided to Mr. Orlowski, MEEMIC's attorney. The reason for this request for "no amendments" was not because of any attempts by PL-AT to avoid production of records, as DF-AE claims.

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

37. DF-AE states on pg. 19, ¶3, "*Despite the Circuit Court's clear directive, Plaintiff-Appellant refused to sign the authorizations and, instead, provided her own and sent them directly to her healthcare providers."* PL-AT did not refuse to sign Mr. Wright's authorizations as she had not even seen them when she filled out copies of MC 315 on 6-21-13. Mr. Wright's authorizations were not timely provided (Exhibit R, 6-24-13 FedEx time/date stamped envelope, stamped 3:00 PM). PL-AT did not use "her own" authorizations. She used the SCAO-mandated form MC 315 in accordance with MCR 2.314(C)(1)(d), which is required to be accepted by the court (Exhibit C, 6-23-11 memorandum from Chad C. Schmucker, State Court Administrator).

38. DF-AE states on pg. 19, ¶3, "*The content of Plaintiff-Appellant's amended (and incomplete) authorizations indicates that she clearly intended to 1) hide certain records as she did not request authorizations for all treatment providers, and 2) the authorizations imply that providers should include only certain dates of treatment and could mislead providers into producing the records to Plaintiff-Appellant and not Defendants-Appellees."* It is a lic that PL-AT's authorizations were amended and/or incomplete. They were fully-completed copies of MC 315, with nothing crossed out, and nothing written in except the required information (Exhibit B, sample of MC 315 and cover letter for Mr. Wright). DF-AE was provided a list of PL-AT's health care providers with her completed interrogatories. DF-AE claims PL-AT did not request authorizations for all treatment providers. This statement is illogical. PL-AT only needed to request that *records* were sent out from her providers through the *use* of authorizations---she wouldn't be requesting *authorizations* from the providers themselves---she would be requesting *records*. PL-AT sent copies of authorization form MC 315 to what she believed were all of her health care providers on 6-21-13. PL-AT inadvertently missed 3 providers and mailed out authorizations for them on 6-24-13 and 6-26-13 for both EDI and Culpert. Therefore, she did

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

39. DF-AE states on pg. 20, ¶1, "*In response to the [6-24-13] dismissal, and continuing on appeal, Plaintiff-Appellant argues that she did not receive the authorizations from Defendant-*

Appellee Efficient's attorneys and was 'forced' to handle things on her own. This argument is simply not true. In fact, Plaintiff-Appellant admits that she received the authorizations; only after the June 24 hearing." DF-AE's argument is fallacious. The circuit court's order was for PL-AT to sign Mr. Wright's authorizations prior to 2:00 p.m. on 6-24-13 or her case would be dismissed. The whole reason for PL-AT providing MC 315 was because she did not timely receive Mr. Wright's authorizations and did not want her case to be dismissed. Receiving the authorizations *after* the June 24th hearing, at 3:00 p.m. made it impossible to complete them before 2:00 p.m. that day, and PL-AT's case would have been dismissed. PL-AT tried to prevent the dismissal by using MC 315 since she didn't know when she would receive Mr. Wright's forms after they didn't arrive by the end of the business day on 6-21-13.

40. DF-AE states on pg. 20, ¶1, "*Moreover, Plaintiff-Appellant overlooks the fact that Defendant-Appellee Efficient's attorney did, in fact, e-mail all of the requested authorizations to Plaintiff-Appellant on June 21. She cites no rule that there was a specific timeframe within which counsel was obliged to provide the releases or that she is not obliged to check her email beyond 5:00 pm. She cites no valid reason why she could not check her e-mail over the weekend or even on Monday, June 24, after the start of business hours. She provides no excuse as to why she could not have called counsel later in the afternoon to check on the status of the releases; if she truly was worried about complying with the Circuit Court."* Despite the court record's absence of any statements indicating that the DF-ΛE was to provide the authorizations by the end of the business day, that was the understanding, whether discussed on the record or off. DF-AE's statement that PL-AT didn't cite a court rule providing for a specific timeframe is nonsensical, since there are no court rules providing for when authorizations must be sent to a party---it was something that was agreed upon in open court on June 21, 2013, and was specific

to the parties in this case. The court rule that applies to service of documents via e-mail is MCR 2.107(C)(4)(f), which states in pertinent part, "*An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday.*" Therefore, DF-AE's e-mailing of the authorizations shortly after 5:00 p.m. on 6-21-13 would have deemed them to have been served the following Monday, 6-24-13, and DF-AE could not have been considered to have served the authorizations on 6-21-13. DF-AE's argument that PL-AT should have called to check on the status of the releases later that afternoon is unreasonable because she didn't know she wouldn't receive them until the close of the business day, after the attorneys would have left the office, so it wouldn't make sense to call after 5:00 p.m. to check on the authorizations. PL-AT solved the problem of not receiving timely releases by filling out MC 315, which is mandated under MCR 2.314(C)(1)(d) and is a form that is required to be accepted by the courts, because she truly was worried about complying with the Circuit Court's order to complete medical authorizations for Mr. Wright by 2:00 p.m. on 6-24-13.

41. DF-AE states on pg. 20, ¶1, "*Similarly, Plaintiff-Appellant gives no valid reason why she did not sign the proffered authorizations between the receipt on June 24, 2013, and the hearing on her 'objections' to the dismissal order, which the trial court treated as a motion to reinstate the case on August 9, 2013.*" It would be without basis for PL-AT to sign the authorization forms during this time period, while she was awaiting the 8-9-13 hearing, which she was misled to believe could reverse the dismissal of her case. PL-AT had already completed MC 315 for all of her providers between 6-19-13 and 6-26-13 and both DF-AEs were receiving her medical records from their execution. PL-AT didn't sign Mr. Wright's releases prior to the 8-9-13 hearing because PL-AT never fathomed that on 8-9-13, Judge Borman would order her to

re-do the process of disclosing medical records using Mr. Wright's personal forms after he already received and was still receiving records from the MC 315 forms. Let it be clear that there is no indication that the court treated PL-AT's Objections to the Dismissal as a "Motion to Reinstate the Case," as DF-AE claims. PL-AT filed 7-2-13 Objections to Mr. Wright's "proposed" 7-day Order of Dismissal. With more knowledge of the court procedures, PL-AT now understands she should have filed a Motion for Reconsideration of the 6-24-13 dismissal if she wanted the dismissal overturned/reversed, but she was led to believe by the Court and the attorneys that objecting to a 7-day order could reverse the dismissal, due to the fact that Mr. Wright left out the required notice under MCR 2.602(B)(3) that explains that one is only allowed to make objections regarding accuracy and completeness, and PL-AT could not have had any objections to the fact that her case was dismissed since that *is* what happened on 6-24-13. It is disturbing that since PL-AT brought up this trickery in her 3-10-15 MSC Appeal for the first time in any pleadings, DF-AE is now lying to give the appearance that PL-AT did file a motion to reinstate her case, when all she actually did was file objections to a 7-day order, which did not have the ability to reverse the dismissal (Exhibit K, Register of Actions dated 6-24-13, Register of Actions dated 3-10-15; Exhibit S, EDI's 6-25-13 Notice of Submission of Seven-Day Order 7-day order).

42. DF-AE states on pg. 20, ¶2, "*At its core, Plaintiff-Appellant's argument is, 'I provided discovery in the manner that I decided I want and you cannot throw my case out'. However, from the inception, Plaintiff-Appellant has refused to allow open discovery and, instead, attempted to manipulate the process. Plaintiff-Appellant's filings and her actions show that she has intended to avoid producing medical records until she was satisfied that they were relevant"* and claims this is why the circuit court dismissed PL-AT's case. It is true that PL-AT

is supposed to be able to choose the manner in which to provide her medical records to the DF-AEs, as outlined in MCR 2.314(C)(1), which states: *"[a] party who is served with a request for production of medical information under MCR 2.310 must either:"* Item (d) states, "*furnish the requesting party with signed authorizations* ***in the form approved by the State Court Administrator*** *sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.*" Under MCR 2.314(C)(1)(d), it is mandated that the authorization form to be used is MC 315. The PDF of the list of court-mandated forms, located at http://courts.mi.gov/Administration/SCAO/Forms/Documents/Mandatory%20Use%20List/mandatory_use_lists.pdf, indicates that MC forms are for circuit court use. MC 315 would therefore be used in the circuit court. (See Exhibit T, List of SCAO-mandated forms; and Exhibit U, SCAO-mandated form MC 315). PL-AT's actions show the opposite of DF-AE's claims---she provided any and all records, whether or not they were relevant to the subject accident, even though in its 2-7-13 Request for Production, EDI only requested *"copies of any and all medical records relating to injuries received as a result of the subject accident."* (Exhibit D). DF-AE's claims that PL-AT wouldn't provide records until she was satisfied they were relevant is without merit. PL-AT cannot be accused of manipulating the process when she has only ever wanted to abide by the court rules, specifically MCR 2.314(C)(1)(d), that allows her to use MC 315. It is DF-AEs who want to manipulate the process by using records copying service forms or their own forms that allow them to freely re-disclose records, and referring to it as "open access," which is not permitted under any law or court rule without PL-AT's consent.

43. DF-AE states on pg. 22, ¶2, "*At the hearing on June 21, 2014, the Circuit Court required Plaintiff-Appellant to sign the authorizations provided by Efficient."* Let it be clear,

the circuit court "ordered" PL-AT to sign the authorizations that "would be provided" by DF-AE. Mr. Wright did not have any authorizations with him at the court as pg. 17 of the 6-21-13 transcript indicates (Exhibit E). DF-AE continues on pg. 22, ¶2, *"The Circuit Court specifically said, "no games." Almost immediately, Plaintiff-Appellant began 'playing games' with "I didn't check my e-mail" or "I don't have to sign those releases, I'll sign my own."* These are outright lies. Note that there is no reference to a page number or line number in the transcript by DF-AE, as most of DF-AE's quoted statements contain. That is because PL-AT never said such things at the 6-21-13 hearing or any time for that matter. It is disturbing DF-AE would claim PL-AT made statements about checking her e-mail at the 6-21-13 hearing when nothing was even ordered to be e-mailed by Mr. Wright to PL-AT until that very hearing, so there was no e-mail to check at that point in time. It is equally disturbing for DF-AE to claim that at the 6-21-13 hearing, PL-AT said she would sign "her own" authorizations, which she never said on that date or any other time. At the 6-21-13 hearing, she had agreed to sign Mr. Wright's authorizations, and he had agreed to e-mail them to her by the end of the business day. DF-AE has re-written history and falsified quotations to avoid the most important facts---that EDI received records from the MC 315 forms that were executed and it was ludicrous for PL-AT's case to be dismissed for refusing to repeat the process with Mr. Wright's personal forms, that Mr. Wright, by failing to provide notice to her explaining what she could and could not object to in a 7-day order, deceived PL-AT to believe she could reverse the *sua sponte* dismissal of her case on June 24, 2013, by filing an objection to the 7-day order of dismissal and appearing for the motion hearing on 8-9-13, whereby she was actually ordered to re-do the authorizations again using Mr. Wright's forms after the case had already been dismissed and the DF-AE had already received records as a result of the MC-315 authorizations she mailed out.

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

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

as PL-AT argued, she should not have to agree to language beyond the requirements under court rules.

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

47. DF-AE states on pg. 22, ¶3, *"Even after the dismissal, Plaintiff-Appellant had over 4 weeks to sign the provided authorizations and have her case reinstated. With ample time, Plaintiff-Appellant still refused any attempt to cure the defect."* First, the case could not have been reinstated by PL-AT filing objections to the 7-day order, as PL-AT was misled to believe. Second, it would not make sense for PL-AT to fill out Mr. Wright's forms after her copies of MC 315 were already being executed by her healthcare providers, and she was awaiting the 8-9-13 hearing on her objections.

48. DF-AE states on pg. 22, ¶3, *"At the Eleventh Hour, after the dismissal, Plaintiff-Appellant defiantly rejected the Circuit Court's one last opportunity*

THE COURT: . . . sit down today and sign the authorizations.

MS. FILAS: Not for some of the things that they're asking."

The quoted statements above by the Court and Ms. Filas are from the 8-9-13 hearing PL-AT

scheduled to have her objections to the 7-day order heard. On pg. 3 of the 8-9-13 transcript, the court states: *"Okay, is this your motion?,"* Mr. Wright immediately says *"Yes, for authorizations to be signed."* There were no motions heard on 8-9-13. The hearing was supposed to be held in regard to PL-AT's 7-2-13 Objections to Mr. Wright's 7-day Order of Dismissal of the case on 6-24-13. Mr. Wright filed only one Request for Production on 2-7-13 and only one Motion to Compel heard on 6-21-13 that was heard and granted on 6-21-13. The court requested PL-AT not only to re-do all of the MC 315 medical authorizations she already executed and gave copies of to the Defendants before the Court dismissed PL-AT's case 6-24-13, but to also sign authorizations beyond those for medical records that were not requested in DF-AE's 2-7-13 Request for Production that would have required a new motion by the DF-AEs which DF-AEs could not file after the case was dismissed *sua sponte* by the Court on 6-24-13. There was no "11th hour" opportunity for PL-AT to have the dismissal of the case reversed based upon her objections to the 7-day order of dismissal because PL-AT never filed a Motion for Reconsideration, so the Court could not reverse the 6-24-13 dismissal on 8-9-13 based on her objections to the 7-day order to dismiss. Exercising her legal right not to produce authorizations that she was not ordered to produce prior to the dismissal, and for which Mr. Wright never requested or filed a motion to compel before the dismissal, or refusing to re-do the process of completing authorizations to disclose medical records using Mr. Wright's personal forms after her case was already dismissed 6-24-14, are not acts of defiance, but instead acts of exercising her legal rights. This is Issue IV of PL-AT's 12-20-13 COA Brief on Appeal, and PL-AT had a valid reason backed by court rules and procedures to object to the production of the additional records. It was the Court and/or Mr. Wright who was/were making a last ditch attempt to get PL-AT to sign Mr. Wright's authorizations by tricking PL-AT into believing the dismissal could

be reversed by PL-AT filing Objections to the 7-day Order.

49. DF-AE states on pg. 23, ¶1, *"The record is clear: Plaintiff-Appellant has flagrantly and defiantly ignored the directive of the Circuit Court to provide medical authorizations."* This is a blatant lie. The truth is: PL-AT provided copies of MC 315 medical authorizations prior to 2:00 p.m. on 6-24-13 to both DF-AEs in this case, rendering it unnecessary for her to come back to court on 6-24-13 (Exhibit E, 6-21-13 transcript page 8, p. 17, lines 2-6). The case was dismissed 6-24-13 *sua sponte* by the Court based upon Mr. Wright's false allegations he made at the 6-24-13 special conference, claiming PL-AT had altered the authorizations she delivered to his office on 6-24-13 at 11:24 a.m. and that he received only about half of what he requested (Exhibit M, 6-24-13 transcript). No legitimate attempt to contact PL-AT was made to inform PL-AT about the resumption for the 6-21-13 hearing on 6-24-13 until after the case was already dismissed as explained in PL-AT's 4-13-15 Reply to Culpert's Answer on pg. 16 with supporting exhibits. It is important to note that the 6-24-14 transcript, Exhibit M, is conspicuously missing the times when the hearing proceeding recessed and resumed or when it concluded and contains asterisks where the time normally appears on the other transcripts in PL-AT's case, indicating the court was concealing the time the special conference concluded because it may indicate PL-AT was not called before or during the conference, but only after it ended. With the case already dismissed, the Court had no authoritative basis upon which to require PL-AT to re-do the discovery process and fill out Mr. Wright's medical authorization forms after she already executed MC 315 medical authorization forms and gave them to Mr. Wright that met her discovery obligations under MCR 2.314 (C)(1)(d), or to fill out authorization forms for discovery information not requested on 2-7-13. PL-AT's refusal to fill out authorization forms at the 8-9-13 hearing was legally justified. Afterwards, she appealed the COA.

50. DF-AE states on pg. 23, ¶1, *"Discovery is open. Plaintiff-Appellant has refused to provide discovery; instead, demanding that she get her discovery on liability before she disclosed her records. Plaintiff-Appellant made every effort to forestall discovery. She invented excuses and reasons why she should not have to comply with the rules. She ignored the directives of the Circuit Court, which gave her ample opportunity to conform to the Court Rules and put her case back on track. Despite every effort of the Circuit Court in this case, and in her PIP case, Plaintiff-Appellant willfully ignored the directives of the court, she made no effort to cure the defects, and she defiantly refused to provide the discovery"* PL-AT does not agree discovery is "open" because DF-AEs cannot simply request any type of information they want---it has to be related to the case. Again, these claims in the quotation in regard to PL-AT are untrue. Although PL-AT argued the liability issue in her 12-20-13 COA Appeal, PL-AT agreed to fill out authorizations on 6-21-13 without the establishment EDI's liability (Exhibit E, 6-21-13 transcript, pg.7. lincs 4-25, pg. 8 lincs 1-4). It was DF-AE's or PL-AT's attorncy, or both, who stalled discovery by not deposing Kevin Culpert or obtaining Mr. Culpert's phone records for 1-15-10, the date of the accident, to ascertain liability after the case was filed on 1-12-2013, and Mr. Wright's lie to the Court on 6-21-13 that the Court had stayed proceedings from 5-3-2013 to 6-21-2013, instead of only for 30 days, as a further excuse not to determine if Culpert was in the scope of his employment, as well as refusing to speak with PL-AT after she dismissed her attorney on March 3, 2013 unless she substituted herself for the attorney she dismissed (Exhibit E, 6-21-13 transcript pgs. 8-11). DF-AE continues to argue PL-AT kept arguing liability after the 6-21-2013 hearing. For DF-AE to continue repeating these lies about the liability issue and its relationship to Plaintiff providing authorizations in the circuit court ad nauseum, claiming throughout this Answer, that PL-AT " refused to provide discovery" when she truly did provide

it, is a despicable, deceptive effort to manipulate the facts and hoodwink the Court on the part of Mr. O'Malley to misguide the Court and divert their attention from the main issue, which is the 11-25-14 dismissal of Plaintiff's case by the COA based upon the Doctrine of Collateral Estoppel (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright; Exhibit J, letters from health care providers verifying records were sent to attorneys for Culpert and EDI).

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

52. DF-AE claims on pg. 6, "*Implicit in the statements made by Plaintiff-Appellant is the continuation of her prior arguments that Efficient is not entitled to every record requested due to a failure to establish liability.*" This is completely untrue, as establishment of liability became a

moot point since she already *did* provide medical authorizations on 6-24-13, regardless of whether EDI was actually liable. The word "liability" only appears two times in PL-AT's 8-7-13 Reply to Plaintiff's Objections, on pg. 2-3, ¶4, as quoted below:

> *Plaintiff was only reluctant to provide records to Efficient Design due to the fact that Efficient Design had not admitted any* ***liability*** *and they denied that Kevin Culpert was in the scope of his employment or that he was even an agent of Efficient Design (Exhibit H, 2-5-13 Answer to Plaintiffs Complaint, item #16). Plaintiff still contends she should not have to release personal information to Efficient Design until they have admitted* ***liability****, but to avoid having her case dismissed, she followed the Judge's order to provide medical records to Mr. Wright, as explained below.*

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

> *Plaintiff contends she should not have to provide records beyond the medical records ordered to be provided at the 6-21-13 hearing, until it has been determined whether or not Kevin Culpert was in the scope of his employment, and that Efficient Design would therefore be* ***liable*** *for damages to the Plaintiff.*

These occurrences of "liability" and "liable" were simply claims that PL-AT disagreed with providing DF-AE with the additional records requested when they were not part of the Motion to Compel granted on 6-21-13. These claims did not change the fact that she already did provide EDI with medical authorizations even though liability was not established.

53. DF-AE's portrayal of PL-AT's Issue V is also incorrect, when it is stated on pg. 10 ¶2, *"Issue V—whether the Circuit Court erred by dismissing the lawsuit as to both Defendant-Appellees when only one Defendant-Appellee's written Motion to Compel had been filed."*

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

> Question V from the instant case:
>
> ***Did the circuit court err when it dismissed Plaintiff-Appellant's entire case against both Defendant-Appellees, Kevin Culpert and Efficient Design, Inc., when only Defendant-Appellee Efficient Design motioned for the case to be dismissed on the basis that Plaintiff-Appellant used SCAO-approved Form MC 315 to provide her medical records, instead of his personal authorization forms?***

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