STATE OF MICHIGAN

SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

-vs-

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

Defendants-Appellees.

/

Supreme Court No. 151463

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

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PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-APPELLEE EFFICIENT DESIGN INC.'S ANSWER TO PLAINTIFF-APPELLANT'S 4-21-15 APPLICATION FOR LEAVE TO APPEAL

Dated: June 23, 2015

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REPLY TO DF-AE'S COUNTER-STATEMENT OF THE BASIS OF JURISDICTION

Defendant-Appellee ("DF-AE") claims Plaintiff-Appellant ("PL-AT") "*petitions this Court for a review of the Court of Appeals' March 10, 2015, Order affirming the dismissal of her case.*" Let it be clear the 3-10-15 COA decision was an Opinion, not simply an Order. The normal practice of the Court of Appeals is to issue only one final order or opinion in a case. The instant case is highly irregular in that the COA issued two different decisions (an 11-25-14 Order, and a 3-10-15 Opinion) that each upheld dismissal of PL-AT's case for different reasons. The COA issued the 11-25-14 Order to dismiss PL-AT's entire case by applying the doctrine of collateral estoppel, including only issues I-III and VI of PL-AT's Brief on Appeal. Due to the inclusion of item III in the ruling, the entire case dismissal was upheld. The COA left issues IV and V from PL-AT's Appeal for oral argument on 3-3-15, even though oral arguments that take place after the dismissal of a case can have no validity. Then the COA issued the 3-10-15 Opinion primarily in regard to issues IV and V.

PL-AT should not have had to pay double to appeal one COA case to the MSC because there should have only been one decision made by the COA to uphold case dismissal. If the COA wanted to issue an Opinion after it already upheld case dismissal with the 11-25-14 Order, the Opinion should have contained a discussion of the reasons behind the entry of the 11-25-14 Order that granted Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel, but it did not. If the Opinion and Order were one and the same, and the Opinion actually reflected the reasoning behind the Order, perhaps it could have been possible to choose either the 11-25-14 Order or the 3-10-15 Opinion to appeal to the MSC, as DF-AE Culpert insisted PL-AT should be required to do. However, since the Order and the Opinion each upheld case dismissal for different reasons, each had to be appealed.

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

PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that PL-AT can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order upholding dismissal of her case. These remedies are therefore completely consistent with one another, and the only logical solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates. DF-AE EDI presents no arguments in regard to whether or not the 3-10-15 Opinion should be disposed of by the MSC, which is the only question presented in this Application.

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

To have to have two MSC Applications pending in relation to the same case, for two different decisions made at two different times, both upholding dismissal of the same case for different reasons is unfounded , unreasonable and in conflict with existing court rule, and needs to be remedied by the MSC. Clearly, only the 11-25-14 order is valid because it is the only one that comports with the definition of a "final order" under MCR 7.202(6)(a)(i), since it was the first order upholding dismissal of PL-AT's entire case. The 3-10-15 Opinion therefore must be disposed of in the proper manner by the MSC, as requested in the instant MSC Application.

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

PL-AT also claims grounds to appeal pursuant to MCR 7.302(B)(3) because PL-AT's case also involves a substantial legal issue in regard to the circuit court's refusal to accept SCAO-mandated form MC 315 for Plaintiffs to provide their records to Defendants, which has been upheld by the Court of Appeals in two of PL-AT's cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR 2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to become part of a records copying services' database for sale to other lawyers and insurance companies. By the COA's use of the tactic of entering the 11-25-14 Order to uphold the dismissal of the case, and including all the issues in regard to MC 315 within this Order, thereby not having to actually state or discuss any reasons in the Order for its granting of the DF-AE's Motion to Affirm based on collateral estoppel, the COA concealed the true nature of the case by then issuing a legally invalid Opinion on 3-10-15 that contains a discussion upholding the case based upon different reasons than the basis of the 11-25-14 Order, avoiding any mention of MC 315 at all.

The Supreme Court hereby has the opportunity to enforce the allowance of the forms approved and/or mandated by the Supreme Court Administrative Office, in this case, Form MC 315. If the MSC truly stands behind the law, it will take this opportunity to correct the injustice being done to this PL-AT and future Plaintiffs who simply want to follow the court rules and protect their rights to privacy of their medical records. This PL-AT should not have to lose both her first- and third-party auto cases for the same reason of wanting to use, and using, respectively, Form MC 315 to provide her medical records to meet her obligation under court rule MCR 2.314(C)(1)(d) to provide discovery information to the DF-AEs in her cases. Clearly,

there is a big problem at both the circuit court and appellate court level in regard to the acceptance of MC 315 and only the MSC can correct this by granting PL-AT's Application for Leave to Appeal to the MSC. Although PL-AT's MSC Application for leave to appeal COA Case No. 316822, dismissing her first party auto case, MSC Docket No. 150510, regarding her wanting to use MC 315 forms instead of those of a Record Copy Service was denied 5-28-15 for the following reason: "*On order of the Court, the application for leave to appeal the October 14, 2014 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court,"* which has been timely motioned to be reconsidered on 6-18-15, PL-AT prays the court will give use of the MC 315 form in providing medical records in an auto injury case a second thought, since the instant case has no encumbrances preventing the use of MC 315, especially since the MC 315 forms were *already executed* and the DF-AEs received PL-AT's records from them, and a MSC ruling in PL-AT's favor will give credence that the SCAO is more than a powerless agency that issues mandates that are not enforced or respected by the legal system.

Since the two decisions of the COA (the 11-25-14 Order and the 3-10-15 Opinion) are different, and PL-AT argues the second decision made 3-10-15 is legally invalid, PL-AT's two appeals are also different, with remedies consistent with each other. Therefore, both Applications should be granted by the MSC, as both must be considered to result in a fair and just outcome.

REPLY TO COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. DF-AE presents the following question:

Plaintiff-Appellant filed suit alleging she has suffered personal injury, thereby placing her physical and mental condition at issue. Defendants-Appellees sought the release of Plaintiff-Appellant's medical and employment records to prepare a defense to the allegations. Plaintiff-Appellant repeatedly refused to obey the Circuit Court orders to sign authorizations, claiming that, due to her privacy concerns, she did not have to produce any records until it was proven that Defendant-Appellee was liable. Even after being ordered to sign authorizations presented by Defendant-Appellee, Plaintiff-Appellant refused to sign claiming that she could create her own authorizations and limit the scope of discovery. Where Plaintiff-Appellant repeatedly refused to sign authorizations as directed by the Circuit Court, and where she obstinately refused to sign the authorizations at a final hearing on whether her case should therefore be dismissed, did the Court of Appeals properly affirm the Circuit Court's dismissal of the Plaintiff-Appellant's case for her ongoing refusal to participate in discovery?

The above is the same Question I presented in DF-AE EDI's 3-30-15 Answer to PL-AT's 3-10-15 MSC Application, which had presented three questions in total, but only the first question is re-presented in this 5-12-15 Answer to PL-AT's 4-21-15 MSC Application. It is even more irrelevant to this 4-21-15 MSC Application than it was to the 3-10-15 MSC Application, as this MSC Application relates only to the four questions presented in PL-AT's 4-21-15 Application for Leave to Appeal to the MSC in regard to the disposal of the 3-10-15 Opinion, which are not even addressed anywhere within DF-AE EDI's 5-12-15 Answer. The Questions Presented in PL-AT's 4-21-15 MSC Application were as follows:

I. **Did the Court of Appeals err by making two separate rulings, each using <u>different</u> reasons as justification, to uphold the dismissal of PL-AT's entire case against both Defendants, Kevin Culpert and Efficient Design, Inc., on two <u>different</u> occasions: (1) in an 11-25-14 Order; and (2) in a 3-10-15 Opinion?**

II. **Did the COA err by issuing the 3-10-15 Opinion that misrepresented the true reason for upholding the dismissal of PL-AT's entire case, which, according to their Order of 11-25-14, was the Doctrine of Collateral**

Estoppel? In other words, shouldn't the Opinion have been constrained to a discussion of the reasons for upholding the dismissal with the 11-25-14 Order granting DF-AE's Motion to Affirm?

III. **Should the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC since upholding case dismissal can only be done once, and was already accomplished by the COA's 11-25-14 Order, and can therefore not be done a second time for different reasons?**

IV. **Should the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC due to the fact it is defamatory to PL-AT, contains numerous misrepresentations, omissions, false statements, and a novel argument not supported by fact?**

Besides being completely irrelevant to the instant Application, there are multiple erroneous claims and misrepresentations within DF-AE's question, which PL-AT will address below in the order they appear in the question.

PL-AT did not place her mental condition at issue, as DF-AE claims. The alleged personal head injury, in itself, does not place a mental condition at issue in the complaint as filed. No legitimate diagnosis of any mental disorders are contained in PL-AT's medical records. Mr. O'Malley's accusations regarding her demeanor and motives are malicious and lack substance.

PL-AT denies that she "*repeatedly refused to obey the Circuit Court orders to sign authorizations, claiming that, due to her privacy concerns, she did not have to produce any records until it was proven that Defendant-Appellee was liable.*" It would have been impossible to "repeatedly" refuse, because there was only one opportunity, given at the 6-21-13 hearing, at which two motions to compel were scheduled to be heard: One dated 4-19-13 filed by Mr. Hassouna, representing Culpert; and one dated 4-30-13, filed by Mr. Wright, representing EDI. Both motions were heard on 6-21-13, which is when PL-AT's objections to providing medical records to Mr. Wright since EDI had denied liability in its Answer to PL-AT's complaint, were

heard. Prior to the start of the 6-21-13 hearing, PL-AT already hand-delivered to Mr. Hassouna, completed interrogatories and copies of MC 315 medical record authorizations with mailing receipts that she brought to the court with her, although the transcript and Culpert's 3-23-15 Answer to PL-AT's Application for Leave to Appeal to the MSC gave the appearance that PL-AT did not provide Culpert anything. Exhibit J, copies of letters from health care providers verifying both Culpert and Wright received PL-AT's medical records, proves this is untrue. Mr. Hassouna did not object to receiving the copies of MC 315 authorizations with cover letters to each health care provider, listing dates of treatment for convenience and ability to check for completeness (Exhibit I, samples of MC 315 and cover letters given to Hassouna). Mr. Wright received the same forms and cover letters as Mr. Hassouna, on the morning of 6-24-13 (Exhibit A, 6-24-13 signed cover letter from Wright's office; Exhibit B, sample of MC 315 and cover letter for Mr. Wright). Therefore, there were no "repeated refusals" from PL-AT, only her initial claim in regard to EDI's denial of liability that was addressed at the hearing on 6-21-13. Secondly, it should be clear that whether PL-AT disagreed with providing records to EDI before establishing liability became a moot point in regard to her agreeing to providing medical authorizations, after the trial court indicated at the 6-21-13 hearing that they "don't wait for liability," and therefore required parties to provide records to any defendants the plaintiff named on the case, regardless of whether that defendant is denying liability in their pleadings, and if she didn't provide them, the court would dismiss her case and she would have "no case." During the 6-21-13 hearing, PL-AT agreed to provide medical release authorizations on EDI's Motion to Compel *before* liability was established. PL-AT delivered copies of executed MC 315 medical release authorizations at 11:24 a.m., on 6-24-13 to Mr. Wright's Office, so she wouldn't have to appear back in Court on 6-24-13 after 2 p.m. It was not a matter of "proving" that the DF-AE

was liable, or that DF-AE didn't "admit" to being liable, which is the way it is presented in DF-AE's filing and the 3-10-15 COA Opinion. DF-AE flat-out denied liability in its 2-5-13 Answer to PL-AT's Complaint, Item #16, claiming that "**Defendant Culpert was not an agent of Efficient Design Inc. and was not in the course and scope of his employment when the alleged accident occurred.**" (Exhibit E, 6-21-13 transcript pg 7; Exhibit F, Relevant page of Mr. Wright's 2-5-13 Answer to Complaint against Efficient Design). It was not until 6-21-13 Mr. Wright affirmed to the Court that EDI had vicarious liability (Exhibit E, 6-21-13 transcript, pg. 9. lines 21-23).

PL-AT included the question of liability in her 12-20-13 Appeal to the COA because she still believes it is legally unfounded for her to have been ordered to provide her private medical information to an entity that may not even be a legitimate party to the case, especially one that has denied that Culpert was even their employee at the time of the accident. PL-AT wanted that important question answered by the COA, because if PL-AT is correct, then her entire case would have to be reinstated because it should never have been dismissed before PL-AT was permitted to send interrogatories to Culpert and EDI, and complete her discovery as to whether or not Culpert was an employee of EDI and if so, whether he was in the course and scope of his employment. However, rather than providing an answer to Question/Issue I as presented in PL-AT's 12-20-13 COA Brief on Appeal, the COA avoided giving an answer by lumping it with the other three issues it claimed PL-AT was prevented from litigating due to the doctrine of collateral estoppel because of their similarity---II, III, and VI, as ruled in the 11-25-14 Order for which PL-AT's 3-10-15 MSC Application pertains[1]. Issue I of PL-AT's 12-20-13 COA Brief on Appeal, in regard to establishment of liability prior to disclosing medical records, certainly was

[1] It is important that the instant application, filed 4-21-15, is only in regard to the 3-10-15 Opinion, not the 11-25-14 Order, which is being appealed separately in PL-AT's 3-10-15 Application (MSC Case No. 151198).

not similar to the MEEMIC case, since there was no question of liability in the MEEMIC case. There was no dispute that MEEMIC was PL-AT's insurer and was therefore the company responsible for paying PL-AT's PIP benefits. PL-AT's discussion in regard to the inapplicability of the doctrine of collateral estoppel to Issue I of PL-AT's 12-20-13 Appeal is contained in Argument III, presented on pgs. 26-31 of PL-AT's 3-10-15 MSC Application for Leave to Appeal the 11-25-14 Order of the COA.

DF-AE's question states, "Even after being ordered to sign authorizations presented by Defendant-Appellee, Plaintiff-Appellant refused to sign claiming that she could create her own authorizations and limit the scope of discovery." This absurd and false statement has no merit. There is nothing in the court records proving PL-AT made said claims. PL-AT was ordered on 6-21-13 to sign Mr. Wright's personal authorization forms after the Court refused to accept the already executed and mailed copies of MC 315 PL-AT mailed to twenty-some health care providers on 6-21-13, 6-24-13, and 6-26-13. Mr. Wright had already been receiving PL-AT's medical records related to these authorizations prior to the 8-9-13 hearing. The only authorization forms PL-AT ever requested to use at any time, during either her first-party or third-party case, were the forms provided by the individual health care providers, or MC 315, neither of which were accepted by the Court, even though the attorney she dismissed agreed to allow her to provide her copies of medical records she had obtained from her health care providers to the Defendants. PL-AT never "created her own" authorizations or stated that she believed she could. She used SCAO-mandated Form MC 315. It would be nonsensical for PL-AT to limit the scope of discovery, as PL-AT wanted to be compensated for all of her injuries and never had any objections to providing medical records to the Defendants. In fact, in addition to requesting any and all records, she even included a cover letter with each copy of MC 315 sent

to each healthcare provider, listing the dates of treatment, so that the Defense attorneys could verify they had received records for each of those dates. PL-AT permitted disclosure of her records all the way back to birth, which is beyond what Mr. Wright asked for in his Request for Production of Documents (Exhibit D, Request for Production; Exhibit B, sample of MC 315 and cover letter for Mr. Wright).

If anyone could manipulate records and selectively decide what records would be received by the Defendants, it would be the Defendant's attorneys themselves; James Wright and Michael O'Malley representing Defendant, Efficient Design; and Mr. Hassouna, representing Defendant Kevin Culpert, because simply receiving signed authorizations from the Plaintiff, Tamara Filas, in the third-party tort case, in no way guarantees Plaintiff that all of the authorizations signed by her would actually be sent to the PL-AT's health care providers by the Defendants, and subsequently, does not guarantee all records would be received by the Defendant's from all health care providers. Plaintiff would have no way of knowing what records Mr. Wright had actually ordered and obtained until they were presented at a settlement conference. Since the Michigan Catastrophic Claims Association is a private, non-profit agency run by insurance companies, that does not deal with the public, there is clearly incentive for the Defendants' insurance companies not to want to document all of a Plaintiff's injuries or to allow Plaintiff to check for inaccuracies in the medical records and address them with the health care providers, not just in first-party no-fault cases, but in third party tort cases as well, not only to reduce the damages paid to Plaintiff in the third-party tort cases often settled by attorneys behind closed doors, but also to limit Plaintiff's ability to make claims and collect benefits for future care from the MCCA, since all auto- related insurance claims affect all insurance companies that sell no-fault auto insurance, the rates they charge and their ability to compete. Although

insurance companies are required to pay into the MCCA fund directly, they often have to charge more for their insurance products to offset the cost or realize less profit. The interest of insurance companies should not be a consideration in the settlement of no-fault auto cases or third-party auto tort cases where a victim's right to lifetime medical benefits is at stake or the amount of settlement is at stake.

DF-AE's question states *"Plaintiff-Appellant repeatedly refused to sign authorizations as directed by the Circuit Court, and where she obstinately refused to sign the authorizations at a final hearing on whether her case should therefore be dismissed."* As stated above in paragraph 3 of this section, there could not have been "repeated refusals" when she was only ordered one time on 6-21-13, and she complied with the Order to provide signed medical authorizations when she executed copies of MC 315 for Mr. Wright. Secondly, the "final hearing" on 8-6-13 was a sham, and was only in regard to PL-AT's objections to a 7-day Order of Dismissal. PL-AT was tricked by the Court and the attorneys into believing could reverse the dismissal of her case by filing said objections, which was untrue, as only a Motion for Reconsideration would have had that capability (See pgs. 16-17 below for details). Standing one's legal ground is ***not*** obstinance.

DF-AE also makes a claim about PL-AT's "*ongoing refusal to participate in discovery*." This claim is without merit. PL-AT provided everything Culpert's attorney requested (interrogatories and signed medical authorizations) prior to Culpert's Motion to Compel being heard on 6-21-13 (and it should not have even been heard by the court for the reason he already received what was being compelled, but Culpert's attorney pretended he hadn't received anything, as evidenced by the 6-21-13 transcript, Exhibit E). PL-AT provided everything she was compelled to provide to EDI, based on EDI's 2-7-13 Request for Production of Documents (Exhibit D), upon which EDI's 4-30-13 Motion to Compel was granted on 6-21-13. It was DF-

AE EDI and the Court that were unwilling to follow the court rules in regard to discovery procedures, by their refusal to accept PL-AT's use of MC 315, which is the only approved form to be used under MCR 2.314(C)(1)(d). The Court was lied to by both Mr. Wright and Ms. McGrath, co-counsel for EDI at the 6-21-23 hearing, claiming the Court had stayed discovery until PL-AT had obtained successor council and therefore, they were unable to depose Kevin Culpert to determine if he was on the phone with his employer at the time of the accident. The fact is, on 5-2-13, the Court stayed only the deposition of PL-AT for 30 days or until successor counsel made an appearance, which ever was sooner, not *all* discovery, as the defendants implied. DF-AEs had plenty of time to depose Kevin Culpert before the 6-21-13 hearing to determine if he was in the scope of his employment and if EDI was liable (Exhibit H, 5-2-13 transcript page 5, lines 11-25; Exhibit E 6-21-13 transcript page 10, lines 31-25, page 11, lines 1-25, page 12, lines 1-5).

The circuit court case was about the trial court's refusal to permit PL-AT's use of form MC 315 to release her medical records, not about Pl-AT's refusal to release her medical records as DF-AE misleads the Court to believe with the question presented. Still, the circuit court's actions are not even in question in regard to this MSC Application because the MSC is only being asked to determine whether or not the 3-10-15 Opinion should be disposed of in the proper manner by the MSC since a final Order was already entered by the COA on 11-25-14 that disposed of the case for different reasons than the 3-10-15 Opinion. The only issue of the instant Application, disposing the 3-10-15 Opinion, is not addressed by DF-AE's Question I, the only question presented in the 5-12-15 Answer.

INTRODUCTION

DF-AE Efficient Design Inc. ("EDI") presents a disturbing, falsified history of circuit court and Court of Appeals events. Important filing dates are altered or omitted. Quotations from pleadings are altered or important wording is omitted to change the meaning. The sophisticated trickery of DF-AE's Answer required a detailed, extensive analysis and comprehensive rebuttals like PL-AT has never encountered before (except in this same DF-AE's 3-30-15 Answer to her 3-10-15 MSC Application, appealing the 11-25-14 Order).

Despite the fact that PL-AT's two MSC Applications are appealing different COA decisions and requesting two different remedies, DF-AE EDI has submitted a nearly identical Answer to the instant Application, as was submitted on 3-30-15 in Answer to PL-AT's 3-10-15 MSC Application, which was only in regard to the 11-25-14 Order. The only substantial difference, besides the additional claims of the DF-AE of paranoid analysis and paranoid theory on the part of PL-AT in her filings, are that EDI's 5-12-15 Answer leaves out the discussion of Questions/Arguments II and III as presented in EDI's 3-30-15 Answer. Let it be clear that the instant Application is only in regard to the 3-10-15 Opinion, not the 11-25-14 Order. Both PL-AT's Applications are different and ask for different remedies. PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that she can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order. These remedies are therefore completely consistent with one another, and the only logical solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates.

DF-AE EDI has not addressed the true issue of this Application, which is simply the

disposal of the 3-10-15 COA Opinion in the proper manner by the MSC, since it was issued for different reasons, after a final order had already been issued on 11-25-14, upholding dismissal of the entire case.

In these two nearly identical 3-30-15 and 5-12-15 Answers, DF-AE EDI presents a disturbing, falsified history, concealing the fact that EDI received completed interrogatories, copies of MC 315 that were signed and mailed to PL-AT's health care providers listed in the interrogatories, and records from some of the health care providers that executed the MC 315 forms they were sent. PL-AT never expected both DF-AEs to falsely claim these items were never received.

The COA's issuance of a 3-10-15 Opinion that differs in the reasons for upholding the dismissal of the case from the 11-25-14 Order that actually upheld the dismissal of PL-AT's entire case is clearly erroneous since case dismissal cannot be upheld on two different dates, for different reasons. Only the first order to uphold the dismissal can be considered valid under MCR 7.202(6)(a)(i). The second Order (Opinion) is meaningless and invalid.

Since the 3-10-15 Opinion clearly cannot be considered legitimate, PL-AT requested in her 4-21-15 Application that the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198. Having to have had to file two appeals and to have two appeals pending in relation to the same case, for two different Orders upholding the dismissal of this one case for different reasons, although unfounded and contrary to common sense and court

rule, was necessary to effectuate a disannulment and invalidation of the 3-10-15 Opinion. Clearly, only the 11-25-14 order is valid. The 3-10-15 Opinion must be disposed of in the proper manner by the MSC. This primary issue of the instant Application, disposing the 3-10-15 Opinion, is not even addressed by EDI's Answer. PL-AT prays the MSC will ignore the completely irrelevant Answers submitted in response to the instant Application, by both Culpert and EDI, meant to detract from the true issue of this particular Application, which is in regard only to the disposal of the 3-10-15 Opinion.

Because EDI's 5-12-15 Answer is almost identical to EDI's 3-30-15 Answer, any content that was already rebutted and discussed by PL-AT in her re-submitted 6-10-15 Reply to EDI's 3-30-15 Answer in Case No. 151198, will be referenced rather than re-rebutted and re-discussed, for the reason that arguments in regard to the 11-25-14 Order that were presented in EDI's 3-30-15 Answer to PL-AT's 3-10-15 MSC Application are irrelevant to the consideration of the instant Application, which is only in regard to the MSC disposing of the 3-10-15 COA Opinion, which is not even addressed by DF-AE EDI.

PL-AT sincerely prays the MSC will accept and read her pleadings, examine the exhibits before them, and listen to the 5-minute audio recording of the 3-3-15 oral argument hearing, and be able to separate and acknowledge the truth from the falsehoods presented by both DF-AEs and even the COA, in its 3-10-15 Opinion. Since the two decisions of the COA (the 11-25-14 Order and the 3-10-15 Opinion) are different, and PL-AT argues the second decision made 3-10-15 is legally invalid, PL-AT's two appeals are also different, with remedies consistent with each other. Therefore, PL-AT has requested in the instant Application that the MSC dispose of the 3-10-15 COA Opinion, that is clearly illegitimate, so she can proceed with her 3-10-15 MSC

Application, Case No. 151198, to appeal the 11-25-14 Order, which is the only valid final order under MCR 7.202(6)(a)(i).

REPLY TO COUNTER-STATEMENT OF FACTS

PL-AT has re-butted the same, so-called "facts" presented by the DF-AEs in this case numerous times, providing hard evidence to prove they are untrue, and yet they appear again in this filing, exactly or similar to how they were written in previous filings. Due to the MSC's page restriction, PL-AT has separated out allegations irrelevant to the instant application relating to the circuit court in Exhibit Y. Since EDI presented many arguments that were only relevant to the 3-10-15 MSC Application in Case No. 151198, PL-AT referred to rebuttals contained in her 6-10-15 Resubmitted Reply to EDI's Answer to her MSC Application in Case No. 151198, attached as Exhibit AA.

DF-AE also claims to have filed Exhibits 1 – 7 as referenced in EDI's 5-12-15 Answer, but they were not e-filed with the Answer, as evidenced by the corresponding Proof of Service, which does not list any exhibits having been filed with the Answer (Exhibit Z).

Contrary to DF-AE's claims on pg. 1, ¶1, PL-AT *did* follow the cited court rules. An Application putting forth "all" material facts in regard to the entire case starting from the circuit court level would have required more than the 50-page limit for the Application. PL-AT put forth the relevant facts, which are only in regard to the Court of Appeals' actions to issue the 3-10-15 Opinion after case dismissal was already upheld by the 11-25-14 Order.

According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." The first order that disposed of all the claims was the 11-25-14 Order. Therefore, PL-AT has requested that her 4-21-15 MSC Application is granted so that the 3-10-15 Opinion can be stricken from the record,

discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real final Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198.

With its substantial focus on circuit court events, DF-AE EDI attempts to mislead the MSC to believe the circuit court events are relevant to the instant Application. DF-AE falsifies the history presented, and avoids mention of the most important facts, i.e. that 1) PL-AT provided EDI with executed copies of SCAO-mandated MC 315, the only acceptable form to be used in accordance with MCR 2.314(C)(1)(d), the rule under which PL-AT was compelled to provide her medical information; and 2) that PL-AT's case was already dismissed on 11-25-14, prior to the 3-3-15 hearing on oral arguments held by the COA panel. (Ex. A, B, I, J).

Besides repeated false claims PL-AT did not provide authorizations, when it is evident she provided copies of MC 315 by viewing Exhibits A, B, I and J, there are 5 clear instances of alterations, omissions, false quotes and claims, miscitings and/or blatant lies in DF-AE's Answer:

1) DF-AE falsely refers to the court treating PL-AT's Objections to a 7-day Order of Dismissal as a "Motion to Reinstate the Case" after PL-AT had been tricked into believing these objections could reverse dismissal of her case (Ex. Y, Item #41)
2) Alteration of the 6-21-13 transcript by putting a period where there was none, changing the meaning of the Court's sentence (Ex. Y, Item #14).
3) Use of quotations to falsely claim a statement was from PL-AT's pleading when only a similar statement was made and DF-AE had removed the important wording (pg. 17-18 of Exhibit AA, PL-AT's 6-10-15 Resubmitted Reply to EDI's 3-30-15 Answer

to PL-AT's 3-10-15 MSC Application).

4) Use of points of ellipsis to remove the important argument from heading 6 of PL-AT's 12-20-13 brief to falsely represent the argument (pg. 20-22 of Exhibit AA, PL-AT's 6-10-15 Resubmitted Reply to EDI's 3-30-15 Answer to PL-AT's 3-10-15 MSC Application).

5) Use of quotations around statements never made by PL-AT (Ex. Y, Item #43).

The extensive, detailed presentation provided by the DF-AE of the circuit court proceedings not only misrepresents the facts, but is also irrelevant to the primary question of the instant MSC Application, which is whether or not the 3-10-15 COA Opinion should be disposed of. See Exhibit Y, Items #1 – 24 for rebuttals to said irrelevant circuit court events. Since the 3-10-15 Opinion clearly cannot be considered legitimate, PL-AT requested in her 4-21-15 Application that the 3-10-15 Opinion be stricken from the record, discounted, rejected, disregarded, amended, end-noted or otherwise remedied by the MSC, so that PL-AT can proceed with her appeal of the real Order that truly upheld the dismissal of the case, the 11-25-14 Order to grant DF-AE's Motion to Affirm based on the doctrine of collateral estoppel, for which she has applied for leave to appeal to the MSC in an Application dated 3-10-15, which has been assigned MSC Docket No. 151198. DF-AE EDI presents no rebuttals to this issue in the 5-12-15 Answer.

The presentation of irrelevant and erroneous circuit court events appearing on pgs. 1-8 of EDI's 5-12-15 Answer are rebutted by PL-AT in Items #1 – 24 of Exhibit Y. Next is an irrelevant presentation of Court of Appeals arguments appearing on pgs. 8-10 of EDI's 5-12-15 Answer. Instead of rebutting the issue of disposing of the clearly illegitimate 3-10-15 Opinion, which is the only issue involved in the instant Application, DF-AE EDI presents the same

discussion about liability that it presented in its 3-30-15 Answer to PL-AT's 3-10-15 MSC Application. The dispute about liability (Issue I of PL-AT's 12-20-13 COA Appeal) that was collaterally estopped by the COA's 11-25-14 Order upholding dismissal of PL-AT's case, is only relevant to PL-AT's **3-10-15** MSC Application that seeks to appeal the **11-25-14** Order. Pgs. 8-10 of EDI's 5-12-15 Answer present the same "facts" as EDI's 3-30-15 Answer. These "facts" are only relevant to PL-AT's 3-10-15 MSC Application because they only refer to the Court of Appeal's actions *prior to* the issuance of their 3-10-15 Opinion, most importantly, the 11-25-14 Order upholding dismissal of the entire case, which was appealed in PL-AT's 3-10-15 MSC Application, and assigned Case No. 151198. In an effort to maintain the focus of the instant Application, please refer to pgs. 3-8 of PL-AT's 6-10-15 Reply to EDI's 3-30-15 Answer, attached as Exhibit AA, for PL-AT's prior rebuttals to EDI's "facts" on pgs. 8-10.

On pages 8-9 of the 5-12-15 Answer, just as on these pages of EDI's 3-30-15 Answer, EDI attempts to mislead the MSC into believing that both Motions to Affirm, the one filed on 12-30-13, and the one filed 10-17-14, filed by Culpert's attorney, Mr. Broaddus, were one and the same, when they couldn't have been more different. EDI makes the preposterous claim that this denied motion to affirm was somehow renewed on 10-17-14. Culpert's 3-23-15 Answer to PL-AT's MSC Application used arguments from the old 12-30-13 Motion to Affirm, denied on 2-11-14, regarding issue preservation and PL-AT's failure to cite precedents, and portrayed them to the court as if they were new arguments to mislead the MSC to believe they should be ruling on them, when they were already ruled on by the COA on 2-11-14. This team effort to persuade the MSC to rule upon issues that were already determined by the COA, which are not part of this appeal, is highly unethical and fraudulent. This argument appears again in the facts section of the 5-12-15 Answer, word-for-word from the 3-30-15 Answer. The only issue being considered

by the MSC in the instant Application is whether the 3-10-15 COA Opinion should be disposed of since it was issued for different reasons than the **11-25-14 final COA order that upheld case dismissal**. Therefore, for details and rebuttals in regard to the misrepresentation of Culpert's Motions to Affirm described above, which are related only to the 11-25-14 final order being appealed in MSC Case No. 151198, refer to pgs. 6-8 of PL-AT's 6-10-15 Reply to EDI's 3-30-15 Answer, attached as Exhibit AA.

PL-AT prays the MSC will listen to the approximately 5-minute 3-3-15 Oral Arguments session. There is nothing that can be interpreted as the PL-AT having chastised the panel, as DF-AE claims on pg. 10 ¶3. There was only one part in the dialogue in which PL-AT had to correct the judge's statement in which Judge Gleicher claimed that the 11-25-14 panel was a completely different panel, when in reality, it was not, since Judge Fort Hood was on the 11-25-14 panel as well as the 3-3-15 panel. This is explained with quotations made from the audio file in PL-AT's 4-13-15 Reply to Culpert's Answer on pg. 22. PL-AT was nothing but respectful and polite while before the 3-3-15 COA panel, even while correcting Judge Gleicher's statement.

Contrary to EDI's claims on pg. I0 ¶3, PL-AT did not exclaim "*she didn't know why the parties were there to argue"* at the 3-3-15 COA oral arguments hearing. PL-AT's demeanor was pleasant throughout the hearing, evidenced by the audio recording. PL-AT said the following: "*What I'm basically saying is, <u>that</u> panel dismissed the case. Item III was---involved dismissal of the entire case. So I---I guess I don't really understand the purpose of this hearing since the matter was already decided by the COA's November 24th [meant to say 25th] Order which upheld the dismissal of the entire case, so arguing issues IV and V at this time wouldn't have any impact or purpose whatsoever because even an outcome in my favor is not going to change the November 24th [meant to say 25th] order that already dismissed the entire case under item III.*"

Neither the COA nor the DF-AEs countered PL-AT's claims that her case was already dismissed by the 11-25-14 Order and that the COA could not reverse the dismissal ordered by the 11-25-14 panel based on any arguments presented at the 3-3-15 hearing. It is not true that "*Defendant-Appellees simply relied on their Briefs on Appeal,*" as EDI states on pg. 10. When the DF-AEs were provided an opportunity to speak at the 3-3-15 hearing, Mr. Broaddus for Culpert rested on his briefs after affirming the COA had no questions for him. Judge Gleicher then directed her attention to Mr. O'Malley, and asked the leading "tag" question, "*You don't have anything to say, do you?*" which speaks for itself that she alerted Mr. O'Malley not to say anything. Mr. O'Malley then stated his name, confirmed that the COA did not have any questions for him, and said, "*thank-you*." Mr. O'Malley did **not** comment he would be resting on his briefs, as claimed.

It is not true that the 3-10-15 COA Opinion was only in regard to issues IV and V, as claimed on pg. 10 ¶3 of EDI's 5-12-15 Answer. Technically, the 3-10-15 Opinion shouldn't have referenced anything but issues I-III and VI, the issues included in the 11-25-14 final Order that upheld dismissal of the case, but they are barely mentioned. The words "collateral estoppel" are completely avoided in the Opinion, even though this was the reason PL-AT was not permitted to litigate issues I-III, and VI, in accordance with Culpert's Motion to Affirm that was granted by the 11-25-14 Order. The 3-10-15 Opinion also heavily focuses on a discussion of establishment of liability, which was Issue I of PL-AT's COA Appeal, and was disposed of with the 11-25-14 Order to grant Culpert's 10-17-14 Motion to Affirm based on the doctrine of collateral estoppel.

Pg. 11 of EDI's 5-12-15 Answer, contains a new paragraph that was not repeated from EDI's 3-30-15 Answer, which PL-AT will now address. EDI states, "*The Court of Appeals considered the remaining issues from Plaintiff-Appellant's original [12-20-13 Court of Appeals]*

appeal, Counts IV and V." It has been PL-AT's argument in the instant application that the Court of Appeals had no legal right to consider the remaining issues from PL-AT's 12-20-13 COA appeal, IV, and V, after it had already upheld the dismissal of PL-AT's entire case in its 11-25-14 Order. The only issues that *should* have been mentioned in the Opinion were issues I – III and VI, which were the issues the COA determined that PL-AT was collaterally estopped from litigating due to the MEEMIC Opinion issued on 10-14-14. DF-AE does not address PL-AT's request to dispose of the 3-10-15 Opinion, which is the only issue presented in this MSC Application.

EDI continues on pg. 11, "*The Court of Appeals rejected the argument that the trial court should have required a second motion to compel relating to medical authorizations for providers that had only been revealed on June 21, 2013*." This statement misrepresents PL-AT's Argument/Issue IV from PL-AT's 12-20-13 COA Appeal. In Argument IV, PL-AT argued that a new motion to compel would need to be filed in order to compel the new and different types of records requested by EDI, following the granting of the EDI's 4-30-13 Motion to Compel production of medical records on 6-21-13. The FedEx packet mailed on June 21, 2013 to Plaintiff by EDI's attorney, James Wright, also included additional authorizations for Plaintiff-Appellant to fill out for her academic records, employment records, tax returns, Blue Cross Blue Shield and MEEMIC insurance records, psychotherapy notes[2] and records from Don Massey Cadillac that had <u>not</u> been requested in the 2-7-13 Request for Production upon which the 4-30-13 Motion to Compel was based. It should also be clear that executed copies of MC 315 were provided to attorneys for Culpert and EDI for all the providers revealed in PL-AT's interrogatories given to both DF-AEs on 6-21-13 prior to the start of the hearing. There were no

[2] PL-AT never partook in any psychotherapy for a mental disorder and never received a legitimate diagnosis indicating a mental disorder.

new providers revealed on 6-21-13 for which PL-AT refused to disclose medical information, as DF-AE's statement implies. Refer to Argument IIB of PL-AT's 4-21-15 MSC Application for further details.

EDI continues on pg. 11, "*Plaintiff-Appellant's other argument, that both defendants could not be dismissed because only one attorney for Efficient requested dismissal, was similarly rejected by the Court of Appeals."* This statement is also a misrepresentation of PL-AT's Argument V, and a similar statement appears in the COA's 3-10-15 Opinion on Pg. 4, ¶ 3 that was addressed in Argument II C of PL-AT's 4-21-15 MSC Application. As explained in Argument II C, PL-AT disagrees with the COA's statement that anyone "requested dismissal." **NOTE: PL-AT inadvertently misstated the facts when she stated that EDI "motioned for the case to be dismissed" in Item 5 above as presented in her 12-20-14 Brief on Appeal. To clarify, no Motion to Dismiss was ever filed by Mr. Wright. PL-AT's case was dismissed *sua sponte* by the lower court at a special conference held on 6-24-13 without notice to PL-AT, based on EDI's attorneys' word (no hard evidence) that PL-AT only provided half of the authorizations, which was a lie. Mr. Wright never actually requested any dismissal of the case**. After Mr. Wright's false testimony that he only received half of what he asked for and that the authorizations were altered, the Court stated on pg. 4 of the 6-24-13 Transcript (Ex. M), "*I know. I am going to dismiss the case without prejudice."* Nowhere in the transcript does Mr. Wright actually "request" dismissal of the case. See argument IIIF of PL-AT's 4-21-15 MSC Application for details.

Whether the COA accepted or rejected PL-AT's Arguments IV and V from her 12-20-13 COA Appeal is still irrelevant to the instant MSC Application, in which PL-AT argues that the COA should not have been able to make any kind of consideration of Issues IV and V, as it has

in its 3-10-15 Opinion, once the COA already issued a final order on 11-25-14 upholding dismissal of the entire case, and did not include IV and V in that Order. The case cannot be dismissed a second time, on a different date, for different reasons. The COA already chose to use collateral estoppel, as applied to Issues I – III, and VI of PL-AT's 12-20-13 COA Appeal, when they issued the 11-25-14 final Order. Therefore, the COA's 3-10-15 Opinion cannot be considered valid and must be disposed of in the proper manner by the MSC so that PL-AT can proceed with her MSC Appeal of the Order that actually upheld dismissal of her case, the 11-25-14 Order that is being appealed in the 3-10-15 Application, assigned MSC Case No. 151198. The aforementioned argument has not been addressed by DF-AE in the 5-12-15 Answer.

REPLY TO STANDARDS OF REVIEW

Contrary to DF-AE's claims on pg. 12 of EDI's 5-12-15 Answer, PL-AT *did* provide applicable standards of review in the Grounds for Appeal section on pgs. 3-4 of her 4-21-15 MSC Application.

Pursuant to MCR 7.302(B)(5), the issuance of the COA's 3-10-15 Opinion, declaring different reasons to uphold case dismissal a second time, after the COA already upheld dismissal of the entire case by its 11-25-14 Order using the doctrine of collateral estoppel as justification, is clearly erroneous and will cause PL-AT material injustice if the 3-10-15 Opinion is not stricken from the court record, and PL-AT therefore requests that the MSC grant her Application for Leave to Appeal. DF-AE cites *Herald Co. v E. Mich. Univ. Bd. Of Regents,* 475 Mich 463, 471 (2006), stating that "*Clear error exists only when the appellate court 'is left with the definite and firm conviction that a mistake has been made*.'" It cannot be any clearer that the COA should not have issued two different decisions that each uphold case dismissal, for different reasons, on different dates. According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." The

first order that disposed of all the claims was the 11-25-14 Order, so clearly the 3-10-15 Opinion that followed it, must be disposed of in the proper manner by the MSC so that PL-AT can proceed with her appeal of the only valid final order, the 11-25-14 Order, being appealed in MSC Case No. 151198.

PL-AT also claims grounds to appeal pursuant to MCR 7.302(B)(3) because PL-AT's case also involves a substantial legal issue in regard to the circuit court's refusal to accept SCAO-mandated form MC 315 for Plaintiffs to provide their records to Defendants, which has been upheld by the Court of Appeals in two of PL-AT's cases, in clearly erroneous Opinions and Orders, in an effort to conceal the issue from other Plaintiffs who may decide to stand up for their right under MCR 2.314(C)(1)(a) and (d) to provide copies of their records on their own, or to sign SCAO-mandated MC 315 forms, respectively, and not to allow their records to become part of a records copying services' database for sale to other lawyers and insurance companies. By the COA's use of the tactic of making the 11-25-14 Order to uphold the dismissal of the case, and including all the issues in regard to MC 315 within it, thereby not having to actually state or discuss any reasons in the order for its granting of the DF-AE's Motion to Affirm based on collateral estoppel, it concealed the true nature of the case by then issuing a legally invalid Opinion on 3-10-15 that avoids any mention of MC 315 at all.

The Supreme Court hereby has the opportunity to enforce the allowance of the forms approved and/or mandated by the Supreme Court Administrative Office, in this case, Form MC 315. If the MSC truly stands behind the law, it will take this opportunity to correct the injustice being done to this PL-AT and future Plaintiffs who simply want to follow the court rules and protect their rights to privacy of their medical records. This PL-AT should not have to lose both her first- and third-party auto cases for the same reason of wanting to use, and using,

respectively, Form MC 315 to provide her medical records to the DF-AEs in her cases. Clearly, there is a big problem at both the circuit court and appellate court level in regard to the acceptance of MC 315 and only the MSC can correct this by granting PL-AT's Application for Leave to Appeal to the MSC.

Contrary to claims on pg. 12 ¶3 of EDI's 5-12-15 Answer, PL-AT's 4-21-15 MSC Application does not invoke a review of the COA decision *"regarding the Circuit Court's dismissal of the lawsuit as a sanction for intentional and repeated discovery violations*." This same irrelevant statement also appeared in EDI's 3-30-15 Answer, in response to PL-AT's 3-10-15 MSC Application. DF-AEs continue to misrepresent the basis of the case, and the reasons it was dismissed. DF-AEs and the circuit court violated discovery rules, not PL-AT, when they refused to accept PL-AT's use of SCAO-mandated Form MC 315 in accordance with MCR 2.314(C)(1)(d), even though the attorneys had already received records and were still receiving records from these executed and mailed copies of MC 315 that went out to all of PL-AT's health care providers (Ex. A, B). PL-AT's 4-21-15 Application involves only a determination of whether the 3-10-15 COA Opinion must be disposed of in the proper manner by the MSC, since it was issued *after* a final order already upheld dismissal of the case on 11-25-14 for different reasons that those presented in the 3-10-15 Opinion. Pgs. 12-13 of EDI's 3-30-15 Answer erroneously portray the basis of PL-AT's Application. First, PL-AT did explain in her 12-20-13 COA Appeal that it was an abuse of discretion to dismiss her case when she clearly met her discovery obligations by providing her medical records using MC 315 under MCR 2.314(C)(1)(d) and therefore should not have received the discovery sanction of case dismissal. Secondly, the question before this Court in this appeal is not whether the COA erred in concluding the Circuit court did not abuse its discretion, because the COA never actually

determined this, since the 11-25-14 Order relied on the Opinion in the MEEMIC case, which also never examined the true issues of the case, and ruled the sanction of dismissal was appropriate due to a protective order (PO) in the MEEMIC case. The instant case had no PO. The real question before this Court in this application, is only the disposal of the 3-10-15 Opinion, since a valid final order was already issued, upholding case dismissal for different reasons, on 11-25-14, and a case cannot be dismissed twice, on two different dates, for different reasons.

REPLY TO LAW AND ARGUMENT

PL-AT has presented valid questions that should be reviewed by this court, that involve legal principles of major significance, and the COA's decision to issue the 3-10-15 Opinion, upholding case dismissal for different reasons than the final order it already issued on 11-25-14 upholding case dismissal using the doctrine of collateral estoppel as its justification, is clearly erroneous, and will cause material injustice if the 3-10-15 Opinion is not invalidated and disposed of by the MSC in the proper manner, as this 4-21-15 MSC Application requests.

Contrary to EDI's claims on pg. 14 ¶2, PL-AT is not of the opinion that "*she should be permitted to dictate the course of litigation, she may ignore established discovery procedures, and she can defy the Circuit Court's numerous orders without repercussion.*" PL-AT has only tried to have court rules enforced which are authoritatively written and designed to dictate the course of litigation, specifically MCR 2.314(C)(1)(d), which requires that the form to be used to disclose medical records to another party in the case is MC 315, which PL-AT used to disclose her records to Culpert's attorney, with no complaints from him, and again, to EDI's attorney, who refused to accept them and was responsible for the dismissal of PL-AT's case by persuading the Court to dismiss PL-AT's case *sua sponte* without a motion from him, by appearing at the

court on 6-24-13 for what the Register of Actions refers to as a special conference, and falsely claiming he did not receive all of the authorizations from PL-AT and that they were altered, which was false. It is DF-AEs, not PL-AT, who have not only ignored, but *refused* to follow the established discovery procedures as outlined by court rule. It is the DF-AE who defied the Court's 6-21-13 Order when Mr. Wright did not provide copies of his personal authorizations by the end of the business day. PL-AT complied with her discovery obligations by providing copes of fully executed and mailed authorizations that provided her medical records to both DF-AEs (Ex. A, B, I, J).

On pg. 14 ¶2, EDI continues, "*in her most recent filing [the 4-21-15 MSC Application], Plaintiff-Appellant makes the bold statement that the Court of Appeals opinion of March 10, 2015, "clearly cannot be considered legitimate."* PL-AT still stands by this argument. It is not possible for a court to issue two different decisions on different dates that each uphold dismissal of the case for different reasons. One of the decisions must be invalid. PL-AT argues that the first final decision made on 11-25-14 would need a valid decision since it is the only one that comports with the definition of a "final order" under MCR 7.202(6)(a)(i), since it was the first order upholding dismissal of PL-AT's entire case. To have two MSC Applications pending in relation to the same case, for two different decisions, both upholding dismissal for different reasons, is illegitimate, unreasonable and unjust. Clearly, the 3-10-15 Opinion cannot be considered legitimate, and must be disposed of by the MSC in the proper manner.

On pg. 14 ¶2, EDI continues, "*rather than cogent analysis, this Court is supplied with nothing more than rhetoric, paranoia, and bald allegations of misconduct on the part of all counsel and even the esteemed members of the Michigan Court of Appeals*." Mr. O'Malley is entitled to his opinion. PL-AT does not ascribe herself to have the characteristics he describes

and makes no apologies for her style, statements or the contents of her filings which she deems to be relevant and substantively with merit.

The footnote on pg. 14 states that PL-AT accused every attorney involved in this litigation of engaging in false or fraudulent conduct. This is the truth, and was supported by court rules that were correctly cited by PL-AT to fix the deliberate erroneous citations by DF-AE EDI, and other misrepresentations of factual events taking place at both the circuit court and COA levels. Therefore, PL-AT's accusations were truthful and supported by substantial evidence.

The footnote on pg. 14 also brings up the fact that PL-AT accused the COA of having "questionable intent" and cites pg. 9 of PL-AT's 4-21-15 MSC Application. On pg. 8 and 9 of PL-AT's 4-21-15 Application, the referenced paragraph reads as follows, with the wording quoted by DF-AE in bold:

> *Since the issue presented in Item III was disposed of by the 11-25-14, and it did not refer to a specific defendant having been dismissed, (i.e. Issue V pertained to PL-AT's argument that Culpert and the other attorney for a different insurance company should not have been dismissed along with the insurance company Mr. Wright was representing), the 11-25-14 Order therefore upheld dismissal of the entire case. Therefore, the COA erroneously issued rulings on issues IV and V in the 3-10-15 Opinion, because the case was already dismissed on 11-25-14 by the inclusion of Issue III. PL-AT could not receive a legitimate hearing on oral arguments for Issues IV and V since the COA could no longer consider them on 3-3-15. The COA cannot come up with a different reason to dismiss the same case at a later date. PL-AT has filed for Leave to Appeal to the MSC in regard to the 11-25-14 Order (MSC Case No. 151198). Even if the COA had ruled in PL-AT's favor on Issues IV and V in the 3-10-15 Opinion, the Opinion could still not cancel out or overturn their 11-25-14 Order that already dismissed the case in its entirety due to its inclusion of Issue III. Thereby, for the COA to willfully issue an Opinion that has no legal validity, is an unnecessary act, with* ***questionable intent****.*

PL-AT still asserts that the COA's intent *was* questionable when it willfully issued an Opinion having no legal validity, as explained in detail in PL-AT's 4-21-15 MSC Application. PL-AT therefore did not make any unsupported claims that could be considered rhetoric, paranoia, and

bald allegations of misconduct on the part of all counsel and the COA, as DF-AE claims on pg. 14 of the 5-12-15 Answer.

The footnote on pg. 14 also brings up the fact that PL-AT accused the COA of misrepresentation and cites pg. 9 of PL-AT's 4-21-15 MSC Application. The referenced paragraph reads as follows, with the wording quoted by DF-AE in bold:

> *Instead of writing an honest Opinion that included only the relevant issues, I-III, and VI, as they were the only issues included in the 11-25-14 Order that upheld the dismissal of the entire case, an Order of dismissal that Judge Gleicher claimed "evaded" the 3-3-15 COA panel of Judges,* ***the COA instead provided an inaccurate and falsified history of events so that it could still affirm the trial court's dismissal*** *of PL-AT's entire case based on Issues IV and V, and presented a distorted history in regard to item I to justify its inclusion with the other items that were deemed to be similar to the MEEMIC case for which the Doctrine of Collateral Estoppel was being applied, Items II, III, and VI.*
>
> *As explained in item I above, a case cannot be dismissed at a later date (3-10-15) for different reasons after it has already been dismissed on an earlier date (11-25-14). Issues IV and V should therefore not have even been part of the 3-10-15 Opinion since the 11-25-14 Order to uphold the dismissal was only based on issues I-III, and VI. To coincide with the truth, the Opinion issued 3-10-15 should have addressed the situation of the oral arguments being moot on issues IV and V, instead of providing a discussion justifying upholding the dismissal of the case based on issues IV and V. However, the Opinion did the opposite---it concealed that the case was already dismissed on 11-25-14, and with the exception of Item I, completely avoided a discussion of issues II, III, and VI, in its 3-10-15 Opinion (The 11-25-14 Order included Issues I-III, and VI. Therefore, a discussion of these four issues should have been contained in the 3-10-15 Opinion, but only Issues I, IV and V were discussed in the Opinion, avoiding II, III, and VI).*

PL-AT still asserts the above. PL-AT provided a detailed analysis of the COA Opinion in her 4-21-15 MSC Application. The COA *did* clearly misrepresent the facts of the case and ignored PL-AT's pleadings and evidence.

The argument on pg. 14 ¶3 that PL-AT "*provides no legal basis in support of her claims, and she has left it up to the Circuit Court, the Court of Appeals*" has appeared in so many of the DF-AEs filings, it has become ridiculous. PL-AT's legal support couldn't be any clearer that MCR 2.314(C)(1)(d) gave her the right to use SCAO-mandated form MC 315 to provide her

records to the DF-AEs, and that she therefore fully complied with discovery when she executed and mailed copies of MC 315 to all of her healthcare providers and disclosed her medical records in their entirety to DF-AEs, and should therefore not have suffered case dismissal due to her refusal to repeat the process of medical records disclosure using Mr. Wright's personal authorization forms containing clauses above and beyond what is requested in MC 315. PL-AT has never left anything to the court to determine. Her arguments have always been in regard to the clear and unambiguous court rule, MCR 2.314(C)(1)(d). Still, it should be understood that although PL-AT has had to discuss some of the issues pertaining to the circuit court's actions involved in her 12-20-13 COA appeal, due to the fact that DF-AE has brought them up in EDI's 5-12-15 Answer, she has separated most of them into Exhibit Y, as these issues are not what is being appealed in the 4-21-15 Application to the MSC (or even the 3-10-15 Application to the MSC, for that matter). PL-AT's 4-21-15 Application for Leave to Appeal the COA's 3-10-15 Opinion requests that the MSC dispose of the legally invalid 3-10-15 Opinion since it was issued after case dismissal was already upheld by the 11-25-14 Order, so that PL-AT can proceed with her 3-10-15 Application for Leave to Appeal the COA's 11-25-14 Order, which is the only valid final order upholding dismissal of her case. These remedies are therefore completely consistent with one another, and the only logical solution to this problem of the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates. DF-AE EDI presents no arguments in regard to whether or not the 3-10-15 Opinion should be disposed of by the MSC, which is the only question presented in this Application.

I. DF-AE's Argument I, presented on pg. 15-16 of the 5-12-15 Answer is completely irrelevant to PL-AT's 4-21-15 Application. PL-AT has not asked the MSC to review the Circuit Court's decisions to dismiss PL-AT's case, but instead to dispose of the clearly illegitimate 3-10-15 Opinion, upholding case dismissal for different reasons than the legitimate 11-25-14 final order that already upheld case dismissal, so PL-AT can proceed with her MSC Application in regard to the 11-25-14 Order, MSC Case No. 151198.

In response to pg. 15 ¶1 of Argument I, PL-AT's primary argument in "the case" is that the trial court refused to accept MC 315 as provided for under MCR 2.314(C)(1)(d). PL-AT's arguments in the 4-21-15 "Application" are different than the arguments comprising the substance of the case. Again, the instant Application is only in regard to the disposal of the clearly illegitimate 3-10-15 COA Opinion. **DF-AE's Argument I misleads the court to believe the issue is ruling in regard to a "battle of the forms," when the issue of forms is not even before the MSC in this 4-21-15 Application for leave to appeal, nor the 3-10-15 Application for leave to appeal to the MSC**. DF-AE purposely conceals mention of MC 315 by name, just as the 3-10-15 COA Opinion did, and refers to MC 315, the form PL-AT used to disclose her medical records to the DF-AEs as "Plaintiff-Appellant's 'releases'" or "*a SCAO form.*" There is only one SCAO form to release medical information---it is MC 315. Plaintiff-Appellant's 'releases' were copies of SCAO-mandated MC 315.

EDI's 5-12-15 Reply to Law and Argument section I discusses irrelevant and erroneous circuit court events that are therefore addressed in PL-AT's Exhibit Y, Items 25-27. Pgs. 15-16 contain other falsehoods/misrepresentations already addressed elsewhere in this filing.

In response to DF-AE's conclusory statement on pg. 16, stating, "*The Application merely presents Plaintiff-Appellant's argument that she should not be required to abide by the Circuit Court's orders; orders that were based on authority vested in Circuit Court by this Court*

through the Michigan Court Rules." This is the same conclusory statement used to describe PL-AT's 3-10-15 Application as well, although neither of PL-AT's MSC Applications present any such arguments, especially because neither Application is even in regard to the decisions made by the *Circuit Court*---they are only in regard to decisions made by the *Court of Appeals.* The instant Application only requests that the MSC examine the fact that two different decisions to uphold case dismissal were made by the COA, on two different dates and remedy the situation in the most logical manner, which would be disposal of the second decision. According to MCR 7.202(6)(a)(i), in a civil case, a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." Clearly only the 11-25-14 Order meets the definition of a "final order" under MCR 7.202(6)(a)(i), since it was the first order upholding dismissal of PL-AT's entire case. To have two MSC Applications pending in relation to the same case, for two different decisions, both upholding dismissal for different reasons, is unreasonable and in conflict with MCR 7.202(6)(a)(i) and needs to be remedied and disposed of by the MSC in the proper manner by the MSC. Clearly, another dismissal, following a final Order of dismissal is not legitimate, and the 3-10-15 Opinion dismissing the case a second time, must be disposed of by the MSC in the proper manner.

EDI presented the exact same discussion contained in Argument I of EDI's 3-30-15 Answer to PL-AT's 3-10-15 MSC Application, where it was also irrelevant. DF-AE focuses on the circuit court proceedings to detract from the real issues that occurred at the Court of Appeals level that are the basis of both PL-AT's Applications to the MSC. This 4-21-15 Application does not involve the MSC making any determination about the proceedings at the Circuit Court level, only those made at the Court of Appeals level. The instant Application only pertains to the disposal of the 3-10-15 illegitimate Opinion, so that PL-AT can proceed with her appeal of the

valid final order made on 11-25-14, that upheld dismissal of her case using the doctrine of collateral estoppel as justification, MSC Case No. 151198.

A. DF-AE again attempts to confuse the MSC by giving the appearance the MSC is to be deciding the question of whether liability must be established prior to disclosing records to the opposing party, Issue I of PL-AT's 12-20-13 COA Appeal; and whether PL-AT should have to agree to language above and beyond the requirements of MC 315, Issue VI of PL-AT's COA Appeal; and thus, a determination of whether the circuit court erred. This Application is only in regard to the disposal of the illegitimate 3-10-15 Opinion, issued for different reasons than the 11-25-14 final order that already upheld dismissal of the case.

DF-AE's Argument IA is nearly identical to Argument IA presented in the 3-30-15 Answer to PL-AT's 3-10-15 MSC Application. PL-AT addressed EDI's erroneous statements about circuit court events from Argument IA in items 25-27 of Exhibit Y. PL-AT addressed EDI's irrelevant discussion about liability, that contained many erroneous claims, on pgs. 16-23 of her re-submitted 6-10-15 Reply to EDI's 3-30-15 Answer in Case No. 151198, and therefore, will not re-include it here, to maintain the proper focus of this Application, which is only in regard to disposal of the illegitimate 3-10-15 COA Opinion that was issued after a legitimate 11-25-14 final order already upheld dismissal of the case for different reasons, which is clearly erroneous and will result in a material injustice.

DF-AE's claim on pg. 18 ¶2 that PL-AT "*had no intention of allowing a full and complete release of her records for purposes of discovery"* is meritless. The record clearly shows that PL-AT did allow a full release of her medical records using MC 315.

DF-AE claims on pg. 18 ¶2 that PL-AT "*betrays her motive with the irrational claim that the Court of Appeals is attempting to 'conceal' from litigants their right to provide their own records and the paranoid theory that the courts prohibiting litigants to 'not to allow their records to become part of a records copying services' database for sale to other lawyers and*

insurance companies." DF-AE misconstrued PL-AT's statement from her 4-21-15 Application on pg. 4, cited in the quoted statement, which stated the following:

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

PL-AT never stated that the court was "prohibiting litigants to not to allow their records to become part of a records copying services' database." PL-AT stated that by not mentioning MC 315 or the controlling court rule, MCR 2.314(C)(1)(d) anywhere in its 3-10-15 Opinion, and by disposing of all issues pertaining to MC 315 in its 11-25-14 Order, it is logical to argue that the COA is purposefully concealing the fact that a plaintiff did not have to allow their records to become part of the database and that they could instead sign copies of MC 315 forms in accordance with MCR 2.314(C)(1)(d) or provide their own records under MCR 2.314(C)(1)(a).

In the footnote on pg. 18 of EDI's 5-12-15 Answer, DF-AE states, "*it should be noted, consistent with plaintiff-appellant's pattern, that elements of her exhibits are redacted. Plaintiff-appellant's exhibit J also show her attention to redact information as it suits her needs."* Elements redacted from Exhibit J of PL-AT's 4-21-15 MSC Application were parts of personal letters to healthcare providers, and lists of other entities who have received PL-AT's records, which were of no relevance to the instant case, and therefore PL-AT had no legal obligation to provide an un-redacted exhibit to prove that the DF-AE's did indeed receive medical records

from those health care providers, as all the necessary information was provided. DF-AE also mentions that it was "*confirmed by her redaction of relevant information in her appellate filings, that Plaintiff-Appellant intended to make every effort to preclude discovery of medical and employment information.*" DF-AE cites no specific items that were redacted that were relevant and this argument is without merit and included only to portray PL-AT in a negative light. In PL-AT's exhibits, where necessary, PL-AT redacted information such as her social security number, date of birth, and names of doctors and other health care practitioners she had seen, which were not required to be in the public court record. PL-AT's whole circuit court and COA case revolved around her right to protect her privacy by using MC 315 instead of a records copy service to disclose her medical records, so it would only be logical that PL-AT would also protect from public inspection, private and sensitive information subject to identity theft or other abuse in the court filings, since its redaction did not affect the validity of the exhibit used to justify PL-AT's argumcnts.

DF-AE has made multiple claims in other filings like the one on pg. 18-19, claiming that PL-AT didn't cite anything to support her arguments in the circuit court case, when PL-AT clearly stated that MCR 2.314(C)(1)(d) and MC 315 were the applicable authorities. Again, by the DF-AE's even arguing this issue of the circuit court's dismissal at all in this filing, DF-AE is misleading the MSC to believe it is supposed to be examining the actions of the circuit court, and determining whether or not PL-AT should have been able to use MC 315, and that is <u>not</u> the basis of PL-AT's Application at all. PL-AT's 4-21-15 Application is not about the MSC determining whether or not the actions of the <u>Circuit Court</u> were erroneous. It is about the MSC determining whether or not the <u>Court of Appeal's</u> actions were erroneous when it issued the 3-10-15 Opinion, upholding dismissal of PL-AT's case, for different reasons than the final order it

already issued on 11-25-14, thereby leaving the PL-AT with two different decisions upholding the dismissal of her case, and having to appeal both of them in order to have the second, illegitimate decision, disposed of by the MSC. Clearly, a court is only supposed to issue one decision, on one date, to uphold the dismissal of a case for specific reasons. DF-AE provides no arguments to counter PL-AT's arguments that the 3-10-15 Opinion should be disposed of by the MSC.

B. DF-AE again attempts to confuse the MSC by providing an irrelevant description of events from the circuit court in order to justify the sanction of dismissal of PL-AT's case, while this application is only in regard to the actions of the Court of Appeals in its decision to issue the 3-10-15 Opinion to uphold case dismissal for different reasons than the 11-25-14 final order that already upheld case dismissal.

DF-AE's Argument IB is completely irrelevant to the PL-AT's Application. DF-AE's argument IB is, "*The Circuit Court Properly Dismissed Plaintiff-Appellant's Complaint for Her Willful Refusal to Comply with Discovery and the Orders of the Court.*" Not only is that not the reason PL-AT's case was dismissed by the Circuit Court, but the arguments presented to the MSC by the PL-AT in the instant Application are only in regard to the disposal of the 3-10-15 Opinion, which is clearly illegitimate since a court cannot issue two different decisions on two different dates, that each uphold case dismissal for different reasons. Only the first one can be the legitimate final order, which is the 11-25-14 Order.

This Application is not in regard to any of the issues in regard to the actions of the circuit court, only those of the COA. Thus, this entire section should be stricken from DF-AE's Answer. PL-AT's responses to the irrelevant and erroneous circuit court events discussed by PL-AT are in PL-AT's Exhibit Y, Items 28-50. A few of DF-AE's statements were relevant to the 3-10-15 MSC Application, such as those involving the discussion of liability, which related to

Issue I of PL-AT's 12-20-13 COA Appeal, and clearly should not have been collaterally estopped since there was no question of liability in the MEEMIC case. However, this 4-21-15 MSC Application is only in regard to the disposal of the 3-10-15 Opinion, not whether the doctrine of collateral estoppel was applicable, which is the content of PL-AT's 3-10-15 MSC Application. For PL-AT's rebuttals to the statements relevant to the 3-10-15 Application, refer to pgs. 23-27 of PL-AT's re-submitted 6-10-15 Reply to EDI's 3-30-15 Answer in Case No. 151198.

DF-AE states on pg. 25, ¶1, *"No lesser sanction would be sufficient in this case. The dismissal was appropriate. On March 10, 2015, the Court of Appeals agreed with the Circuit Court and affirmed its ruling."* Throughout this entire section of Argument IB, by discussing only the issues pertaining to the circuit court's actions, DF-AE has attempted to confuse the MSC into believing it is to be determining whether or not the sanction of dismissal was appropriate in the Circuit Court case, and that the MSC is to be examining the merits of PL-AT's questions/issues I - VI presented in her 12-20-13 COA Appeal. This could not be more incorrect. PL-AT's 4-21-15 Application is not about the MSC determining whether or not the actions of the Circuit Court were erroneous. It is about the MSC determining whether or not the Court of Appeal's actions were erroneous when it issued the 3-10-15 Opinion, upholding dismissal of PL-AT's case, for different reasons than the final order it already issued on 11-25-14, thereby leaving the PL-AT with two different decisions upholding the dismissal of her case, and having to appeal both of them in order to have the second, illegitimate decision, disposed of by the MSC.

The DF-AE claims that the COA agreed with the Circuit Court and affirmed the circuit court's ruling regarding the dismissal in its 3-10-15 Opinion. Even though the 3-10-15 COA Opinion did provide new, different reasons for dismissing PL-AT's case with regard to Issues I,

IV and V is presented in PL-AT's 12- 20-13 COA Brief on Appeal[3], the true reason for the COA upholding the dismissal was the doctrine of collateral estoppel, as ruled in their 11-25-14 Order, but the words "collateral estoppel" did not even appear in the 3-10-15 Opinion. Therefore, the COA never actually "affirmed" any of the circuit court's actions, as DF-AE claims.

CONCLUSION/RELIEF REQUESTED

On pg. 26, ¶1 of the Conclusion of EDI's 5-12-15 Answer, DF-AE claims "*this Court should deny Plaintiff-Appellant's Application for Leave to Appeal because she has not provided this Court with a question that warrants this Court's review.*" PL-AT presented more than one question that warranted this Court's review. Below are the 3 questions from PL-AT's 4-21-15 MSC Application, which definitely warrant the court's review for the reasons provided in PL-AT's Statement of Jurisdiction:

I. The Court of Appeals erred by making <u>two</u> separate rulings, each using <u>different</u> reasons as justification, to uphold the dismissal of PL-AT's entire case against both Defendants, Kevin Culpert and Efficient Design, Inc., on two <u>different</u> occasions: (1) in an 11-25-14 Order; and (2) in a 3-10-15 Opinion. Because the COA had already upheld the dismissal of the entire case in its 11-25-14 Order to grant DF-AE's Motion to Affirm, in part, for Issues I-III and VI of PL-AT's Brief on Appeal, the 3-10-15 Opinion should never have been issued and would have no legal validity. Once a case is dismissed for specific reasons, the Court cannot dismiss the same case again on a later date for different reasons.

[3] It would not be necessary for PL-AT to appeal the 3-10-15 Opinion separately from the 11-25-14 Order if the content were the same. The 3-10-15 Opinion should have been a reflection of the 11-25-14 Order, and should have contained a discussion of the upholding of dismissal due to collateral estoppel, but it contained completely different reasons for upholding the dismissal of PL-AT's case. Therefore the 3-10-15 COA Opinion required a separate appeal to the MSC, which is the content of the instant 4-21-15 Application.

II. The COA erred when it issued the 3-10-15 Opinion that (1) misrepresented the true reason for upholding the dismissal of PL-AT's entire case, which, according to their Order of 11-25-14, was the Doctrine of Collateral Estoppel; (2) provided reasons for upholding case dismissal related to Issues IV and V; and (3) makes false statements in regard to facts of the case and to PL-AT's claims in order to justify the clearly erroneous inclusion of Issue I in the 11-25-14 Order, which was about establishing liability of a party prior to providing them with medical records.

III. The 3-10-15 Opinion is defamatory to PL-AT, contains numerous misrepresentations, omissions, false statements, and a novel argument not supported by fact. It is a fraud against the court and should be stricken from the record and removed from the internet to protect PL-AT from harm.

On pg. 26, ¶1 of the Conclusion, DF-AE states, Mr. O'Malley states on page 26: "*Plaintiff-Appellant claims that the Court of Appeals colludes with counsel and insurance companies to allow the disclosure and use of a litigant's private information.*" He fails to cite exactly what PL-AT said and in what document it can be found. PL-AT denies ever making the cited claim. There is no merit to Mr. O'Malley's statement as written. The records speak for themselves and prove it is absolutely false and nonsensical for Mr. O'Malley to state that Plaintiff claimed collusion of the COA, counsel and insurance companies to allow disclosure and use of private medical information, when a court rule, MCR 2.314 (C)(1)(d), requires the disclosure of both private information and protected information (Note: This form violates Federal HIPPA law, which supersedes Michigan law, but is still permissible if a Plaintiff agrees to sign it because it discloses what kind of records can be obtained, which is to be provided to the requesting party (the insurance companies directly involved in the litigation) for use in evaluating the Plaintiff injury claims. However, on the RDS forms, a Plaintiff can unwittingly be allowing this protected information to go into databases all over the country because Plaintiff never sees the attached subpoenas and does not know protected information is being copied. Plaintiff signed the SCAO form knowing she had only one psychological examination record and

had not psychiatric records or legitimate psychotherapy records or any of the other records from the protected list.

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) of MCR 2.314(C)(1) 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. PL-AT clearly acknowledged, followed and met her discovery obligations under this court rule. Thereby, Mr. O'Malley's statement is not only unsubstantiated in fact, but is also a malicious attack on PL-AT's sensibility. Mr. O'Malley used the words "paranoia" and "paranoid theory" in describing PL-AT's filings on pages 14 and 18 of EDI's 5-12-15 Answer, which can be reasonably argued to be inferences or innuendo that PL-AT's filings show excessive or baseless distrust of others or that she has mental disorder characterized by hostile intentions. PL-AT denies there was any "paranoia" or "paranoid theory" in any of her filings. Mr. O'Malley, as an attorney, and not a psychiatrist, is not qualified to portray or discredit PL-AT's filing in this way when he has provided no evidence that she is paranoid and no there is no other intrinsic evidence that suggests that she is. PL-AT has never had a patient encounter with a psychiatrist. Utilization of multi-intelligences in the analytic process, resulting in a high level of awareness, is not mental disorder, but rather the normal outcome of intelligent thought. Any distrust PL-AT has of the attorneys, courts, insurance companies, health care providers, governmental agencies and other business or business-like entities she has had to deal with resulting from her auto accident, is not delusional or excessive, but based upon systematic patterns she has observed over 5 years from her actual experiences with bureaucratic entities and others who work by fixed routine without

exercising intelligent judgment. PL-AT's evidence is both empirical and/or factual. Many businesses are involved in insurance schemes to reduce risk and/or financial loss.

Mr. O'Malley also states on page 26 of his answer: "*Plaintiff maliciously accuses all of the attorneys involved in this case, even the members of the Court of Appeals, of lies and fraudulent conduct. Yet, Plaintiff-Appellant fails to identify one single fact, or any evidence, or any legal support for her claim."* Mr. O'Malley fails to cite the specific lies or fraudulent conduct that are the basis of his claim that PL-AT made malicious, unsupported accusations. PL-AT provided clear evidence and legal support to support that her facts were indeed truthful. PL-AT denies her filings were malicious. Pointing out clear examples of errors, clearly willful misrepresentations and the appearance of impropriety based upon fact or personal analysis of any of the persons Mr. O'Malley mentions, does not in and of itself constitute malice in the course of litigation.

On pg. 26, ¶2 of the Conclusion, DF-AE states, *"The Application for Leave to Appeal presents nothing more than Plaintiff-Appellant's final effort to continue her fruitless litigation."* PL-AT's litigation has only been "fruitless" because the COA did not want to rule on the issue of MC 315. In the MEEMIC case before the COA, the 10-14-14 Opinion used the excuse that a protective order was the reason PL-AT could not use MC 315 and had to use RDS forms instead, which was an argument that was never raised, preserved or presented by MEEMIC in any filings. In the instant case, the COA erroneously applied the doctrine of collateral estoppel, using the MEEMIC case to block PL-AT from litigating her issues in regards to her use of MC 315, and avoided making a decision as to whether or not plaintiffs could use MC 315 to provide medical records to defendants in the absence of a protective order. Then, the COA issued a clearly illegitimate Opinion, avoiding mention of MC 315 or the court rule upon which it is the

mandated form to be used, MCR 2.314(C)(1)(d) by including all the issues pertaining to MC 315 in its 11-25-14 order that uphold dismissal of the entire case. PL-AT sincerely hopes that the MSC will grant PL-AT's applications for leave to appeal so PL-AT can continue her pursuit of justice to eventually obtain a ruling by the COA or the Michigan Supreme Court to uphold MCR 2.314(C)(1)(d) without further stalling by DF-AEs and the refusal by the COA to address this court rule in their Opinions, and the refusal of the lower court to follow this rule that it is mandated to follow when a Plaintiff in a personal injury case exercises their right to choose to provide discovery of their medical records using SCAO-mandated Form MC 315, so that PL-AT's cases can be reinstated and she can be fairly compensated for her injuries sustained in the auto accident.

On pg. 26, ¶2 of the Conclusion, DF-AE states, *"Even if this Court were to remand all issues to the Court of Appeals, the Court of Appeals has already made it clear that the Circuit Court did not abuse its discretion when it dismissed the lawsuit."* This is untrue. The COA has not actually affirmed any of the circuit court's actions. As explained in the previous paragraph, in the MEEMIC case, the COA used the protective order to avoid ruling on whether or not PL-AT should have been able to use MC 315. Then, the COA used the doctrine of collateral estoppel to again avoid ruling on the issue of MC 315. Therefore, the COA never actually affirmed the circuit court's refusal to accept already executed copies of MC 315 and its sanction of dismissal for PL-AT's refusal to redo the process using Mr. Wright's personal authorization forms. The COA avoided making such an affirmation that "the Circuit Court did not abuse its discretion when it dismissed the lawsuit," as DF-AE claims it did, by upholding the dismissal of the case due to the doctrine of collateral estoppel in its 11-25-14 Order, which did not justify any of the circuit court's actions---it just prevented PL-AT from litigating them. The COA cannot

uphold the dismissal of PL-AT's case on two different dates, for two different reasons. The 3-10-15 COA Opinion discusses different reasons for upholding case dismissal than the 11-25-14 order, which is the reason all six arguments need to be presented for oral argument before the COA, so that a legitimate opinion can be issued, that encompasses all six issues presented to the COA, in one consistent Opinion, which is the relief requested in PL-AT's 3-10-15 MSC Application, unless the MSC accepts PL-AT'S leave to appeal MSC Docket # 151198 and decides to reverse COA Order affirming dismissal and remands her case back to the Circuit Court allowing her use of form MC 315 instead. Let it be clear that the instant Application only requests that the MSC properly dispose of the 3-10-15 Opinion, so PL-AT can proceed with her Appeal of the only valid final order that upheld dismissal of her case, the 11-25-14 Order, that is being appealed in MSC Case No. 151198.

On pg. 26, ¶2 of the Conclusion, DF-AE states, *"If the Court of Appeals were to remand the matter to the Circuit Court, it is clear from Plaintiff-Appellant's conduct that she will never sign the authorizations provided by the Defendant-Appellees."* DF-AE infers PL-AT's conduct would be an undesirable outcome. If exercising her rights under the law by not signing forms the law does not require PL-AT to sign in order to provide the medial records necessary to litigate her case, then it is the DF-AE, an officer of the court, who should be chastised for suggesting exercising legal rights is a negative action. The basis of PL-AT's case is that she should be allowed to use MC 315 instead of the authorizations provided by the DF-AEs. If the MSC remanded this case back to the COA, the COA would have to hear all the issues of the case. If the Court of Appeals were to then remand the matter to the Circuit Court, part of their Opinion would be in regard to whether or not PL-AT is permitted to use MC 315. If the COA ruled that she could not use MC 315, the case would not even be remanded since the COA would be

agreeing with the circuit court that case dismissal was appropriate. Therefore, the only way the case could even be remanded back to the circuit court would be if the COA agreed with PL-AT that her executed copies of MC 315 should have been accepted by the circuit court. Upon remand, there would be no more dispute over signing the DF-AE's authorizations because the COA would have ruled that MC 315 was an acceptable form to use.

On pg. 26, ¶3 of the Conclusion, DF-AE states, *"It is clear from her obstreperous behavior throughout the proceedings that Plaintiff-Appellant had no intention of participating in the judicial process; at least not according to the rules."* To the contrary, PL-AT has *only* wanted to follow the rules, but the DF-AEs and courts will not allow her to follow MCR 2.314(C)(1)(d), the rule which mandates the use of SCAO Form MC 315 to provide medical records to the DF-AEs. PL-AT would have provided copies of her medical records, but neither her own attorney who had agreed to allow her to provide her own copies of her medical records for discovery when she hired him, the Court or the DF-AEs would accept her own copies of her medical records, even though all Mr. Wright asked for in his 2-7-13 Request for Production, were copies of medical records, not authorization forms, which leads PL-AT to believe there is more to this than just PL-AT's right to use MC 315 forms. PL-AT strongly believes a main motive behind Defendants wanting her case dismissed is so she will never be privy to what actually transpires at a settlement conference, compared to what she was told by her first attorney takes place at a settlement conference.

On pg. 26, ¶3 of the Conclusion, DF-AE states, *"Despite the clear edict of the Circuit Court that the Defendants were to have free access to her medical records, Plaintiff-Appellant insisted that she must be in control and that she would be the ultimate arbiter of what would be divulged and when."* There is no court rule that permits "free" or "open" access to medical

records, nor has DF-AE cited one. The only court rule pertaining to divulgence of medical information is MCR 2.314, the rule PL-AT has been trying to get the courts to uphold, so that her use of MC 315 to provide her medical information to DF-AEs is considered to have completed her obligation to produce the requested discovery. PL-AT provided any and all records, back to birth, from all health care providers (Exhibits A, B, I, J). DF-AEs who request medical records beyond medical records pertaining to physical injuries that are "protected," such as psychological, psychiatric or alcohol or drug abuse records must prove legitimate reasons for requesting those kinds of records. PL-AT denies she acted as the ultimate arbiter. Clear Court rules, such as MCR 2.314(C)(1)(d), should not even have to be arbitrated. Mr. O'Malley does not give PL-AT the respect worthy of an ultimate arbiter. His lying, name-calling and innuendo, from PL-AT's experience, is the typical legal bullying to be expected of an attorney that has a lack of laws or rules to cite to back up his arguments.

On pgs. 26-27 of the Conclusion, DF-AE states, *"While she would attempt to divert the Court's attention to the "form" of the releases provided, the "substance" of this dispute (which was well known to the Circuit Court) was that the Plaintiff-Appellant would not divulge the discoverable information freely. She took every opportunity to obstruct the process."* DF-AE's claim PL-AT would not divulge discoverable information freely, and that the substance of the dispute was that PL-AT obstructed the process is unfounded and unsubstantiated. PL-AT freely provided both of her attorneys with medical records and was willing to provide that information freely to the other parties involved in the litigation of her case who needed the information, as long as it was protected from re-disclosure. However, PL-AT's second attorney, instead of working with her on a PO with a binding agreement that would accomplish this, behind her back, entered into a stipulated PO with no binding agreement with MEEMIC that was basically the

same, ineffective PO filed for entry by her prior attorney, Terry Cochran. Because of the difficulty PL-AT was having with her second attorney, and his acceptance of his dismissal by PL-AT after she discovered he had entered the ineffective PO, and had refused to defend her right to provide her own medical records, as agreed upon earlier, coupled with the refusal of the DF-AEs to acknowledge PL-AT as a pro per litigant, PL-AT was not able to get an effective PO written and entered before the Motion to Compel hearing on 6-21-13. Thus, although there was no Protective Order in the instant case, PL-AT nonetheless demonstrated her willingness to freely allow the release of her medical records by fully executing the SCAO MC 315 authorization forms on 6-19-13 and 6-21-13, to Culpert and EDI, respectively (Ex. A, B, I, J).

On pg. 27, ¶1 of the Conclusion, DF-AE states, *"Eventually, the Circuit Court gave her a last chance: sign the releases that are presented to you or I dismiss your case."* This so-called "last chance" was given at the 8-9-13 hearing on PL-AT's objections to Mr. Wright's seven-day order of dismissal, whereby PL-AT was misled by the court and the attorneys to believe the Court could reverse the dismissal of her case, when it could not, since MCR 2.602(B)(3) only permitted "objections to the accuracy and completeness of the order," and Mr. Wright left that required notice that off the Order to deceive PL-AT. This "last chance" was also *after* the case was dismissed 6-24-14, and PL-AT had already executed and mailed copies of MC 315 to twenty-some health care providers, from which Mr. Wright had already been receiving PL-AT's medical records for over 6 weeks, and the Court still tried to ordered PL-AT to re-do the process using Mr. Wright's personal forms.

On pg. 27, ¶1 of the Conclusion, DF-AE states, *"Despite the ultimatum, Plaintiff-Appellant took one last stab at maintaining control, herself."* DF-AE makes a point that PL-AT is pro per, which should not make any difference. It should be understood that PL-AT did argue

on 8-9-13 that her executed MC 315 forms should have been acceptable to the court, and she should have had such "control," since it was already a "given" that court rule, MCR 2.314(C)(1)(d) that mandated the use of MC 315, was PL-AT's choice to exercise. PL-AT had to handle this issue on her own because her attorney, Mr. Salisbury, breached his hiring agreement by refusing to stand up for her right to provide her own copies of records to the DF-AEs, which was one reason why she discharged him in a certified letter dated 3-8-13.

On pg. 27, ¶1 of the Conclusion, DF-AE states, *"She has now paid the price for her willful violation of the discovery rules and the orders of the Circuit Court."* It is DF-AEs and the circuit court that willfully violated discovery rules when they refused to accept the already executed copies of MC 315 that were mailed to all of PL-AT's healthcare providers, and the DF-AE who violated the circuit court's 6-21-13 order to provide PL-AT with Mr. Wright's authorization forms by the end of the business day on 6-21-13.

On pg. 27, ¶2 of the Conclusion, DF-AE states, *"Contrary to her fabricated arguments that the ability to control the disclosure of one's protected information is of significant legal merit to litigants; the issue is important only to her. The Court is reminded that litigants across this state have been engaging in discovery, successfully, through the use of standardized medical authorizations for decades. This Court should deny the Application for Leave to Appeal and provide an end to this litigation."* Again, Mr. O'Malley is deviating from the purpose of this application for leave to appeal to the MSC which is PL-AT's request have the 3-10-15 Opinion of the COA nullified. PL-AT's arguments regarding disclosure were not fabricated and did not hamper the DF-AE's ability to obtain any protected medical information requested in the DF-AE's Request for Production of Documents dated 2-7-13 (Exhibit D) which was the basis of EDI's Attorney Mr. Wright's Motion to Compel heard 6-21-13. DF-AE's request for production

of records pursuant to MCR 2.314(C)(1)(d) did not specifically request protected medical records. Any time a litigant is denied a legal right, it is of importance for the MSC to uphold it, whether it is a right not to provide protected medical information as mandated by SCAO MC-315, or to provide MC 315 allowing protected medical information to be provided as PL-AT did, or whether or not they want to sign or not sign a form allowing a third-party record copy service to copy and place their records in a database for re-disclosure to others but not them. PL-AT had no problem with using standardized medical authorizations that complied with and were compatible with Federal HIPPA laws such as those from Michigan health care providers which follow Federal HIPPA laws, to be sent to the Defendant's attorneys to litigate the case, but do not allow the records obtained to be legitimately re-disclosed by those attorneys. PL-AT *did* have a problem with providing medical authorization forms to third parties to copy and obtain subpoenas for records, not knowing what records were being ordered, and that allow the records to be placed in a database for re-disclosure in perpetuity, and had a problem with the personal forms of Mr. Wright which also gave permission for re-copying and re-disclosure. RDS forms are not standardized medical authorization forms in the sense that there is no guarantee protected information will be not released since the Plaintiff signing them never sees the subpoena filed and usually isn't even aware what kinds of protected records are being copied for re-disclosure.

This court has the opportunity to finally correct the injustice that has been done to PL-AT, and should grant PL-AT's 4-21-15 Application.

Exhibits attached:

A – J: 84 pages
K - X: 101 pages
Y - AA: 115 pages

Total pages of exhibits filed: 300 pages

signature redacted

6-23-15
Date

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