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

Dated: July 21, 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 per case being appealed. 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, for which all parties appeared, and issued an opinion 3-10-15 primarily in regard to issues IV and V knowing oral arguments occurring after the dismissal of a case are invalid.

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 approved form MC 315 for Plaintiff to provide her records to Defendants, which has been upheld by the Court of Appeals in two of PL-AT's cases that were dismissed by the lower court, in clearly erroneous Opinions and Orders, in an effort to conceal the issue of allowing Plaintiff's to use MC-315. Under MCR 2.314(C)(1)(d), a party who is served with a request for production of medical information must furnish the requesting party with signed authorizations in the form approved by the state court administrator. In one case, Plaintiff's case was dismissed after she refused to follow an order to sign authorizations of a third party record copy service which allowed the company to copy her private and protected medial information, re-copy the authorizations over and over again, and enter her private medical information into their company's private database to sell and re-disclose to selected customer. In the instant case, Plaintiff case was dismissed after she used SCAO-approved MC 315 forms to provide her records after she was ordered to sign personal, customized medical release authorizations provided by the Defendant that expressly gave the Defendant permission to copy and re-disclose her records he received from her health care providers, but used SCAO form MC 315, after Defendant did not timely provide his forms as ordered by the Court. A ruling upholding the use of MC 315 in a personal injury case would simply clarify that Plaintiffs could use MC 315 without being sanctioned for not signing non-standardized record copy service authorizations forms or personal, customized authorization forms of an attorney to provide their medical records to the Defendants. 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 dismissal 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 clarify the use of SCAO-approved MC 315 under MCR 2.314 (C)(1)(d) by a Plaintiff who is a personal injury or accident victim, so they are not victimized again by practices that allow private medical records to become a commodity with the potential of causing as much, if not greater harm to the future quality of the Plaintiff's life, as the injury/accident itself. 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 as much as possible. 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 to note 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-approved 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 the dismissal of her case could be reversed 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 AND OVERVIEW

Although derived from the same COA Case No. 317972, PL-AT's two MSC Applications are appealing different COA decisions and requesting different remedies. DF-AE Efficient Design Inc. ("EDI") filed nearly identical Answers to both. The only substantial differences are that EDI's 5-12-15 Answer omits discussion of Questions/Arguments II and III, presented in EDI's 3-30-15 answer, and the addition of claims that PL-AT filings contained paranoid analysis and theory. **The instant Application is only in regard to the 3-10-15 Opinion, not the 11-25-14 Order.** This 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 valid final Order, appealed in MSC Case No. 151198. The only logical solution to the COA having upheld dismissal of PL-AT's case for two different reasons, on two different dates, is disposal of the invalid 3-10-15 Opinion so PL-AT can proceed with her appeal of the 11-25-14 Order.

The proper disposal of the 3-10-15 COA Opinion by the MSC, the true issue of the Application, wasn't addressed by the DF-AE, EDI. EDI conceals from the court the fact that EDI received completed interrogatories, copies of signed MC 315 mailed to PL-AT's heath care providers listed in the interrogatories and PL-AT's medical records her providers resulting from the executed MC-315 forms. DF-AE's sophisticated trickery involving falsifying COA events by altering quotations from pleadings, altering dates or omitting important filing dates or wording to change the meaning, required detailed, complete rebuttals. PL-AT prays the MSC will consider the concealments, falsifications, and alterations of Culpert and EDI, and ignore their irrelevant Answers to Circuit Court events designed to detract and confuse the court from the true issue of this Application.

REPLY TO COUNTER-STATEMENT OF FACTS

Exhibits 1 – 7, referenced in EDI's 5-12-15 Answer were not e-filed with the Answer, as evidenced by the corresponding Proof of Service (Ex. Z). The same false misrepresentations written exactly or similarly presented by DF-AE, rebutted by PL-AT several times with hard evidence revealing the truth, appear again in DF-AE's Answer. Contrary to DF-AE's claims, PL-AT *did* follow the cited court rules. For PL-AT to put forth "all" material facts of the entire case from the circuit court level would have been unnecessary and exceeded the 50-page Application limit, as the *relevant* facts only apply to the COA's actions to issue the 3-10-15 Opinion upholding case dismissal for different reasons than the 11-25-14 Order, the only valid final Order that already upheld dismissal of the case by granting Culpert's 10-17-14 Motion to Affirm, using the doctrine of collateral estoppel to justify preventing PL-AT from litigating her claims against Culpert and EDI. EDI's extensive, detailed presentation of circuit court proceedings not only misrepresents the facts, but is irrelevant to the primary question of the instant MSC Application---the proper disposal of the illegitimate 3-10-15 COA Opinion by the MSC, as PL-AT requested in her 4-21-15 Application, so that PL-AT can proceed with her appeal of the valid final order of 11-25-14, Case No. 151198. **DF-AE EDI presents no rebuttals to the issue of disposing of the invalid 3-10-15 Opinion in its 5-12-15 Answer.**

In its presentation of circuit court events, DF-AE falsifies the history, and avoids mention of the most important facts, i.e. that 1) PL-AT provided EDI with executed copies of SCAO-approved, MC 315,the only acceptable form to be used in accordance with MCR 2.314(C)(1)(d), the rule which compels PL-AT 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 COA hearing on oral arguments (Ex. A, B, I, J). Rebuttals to the presentation of irrelevant and erroneous circuit court events appearing on pgs. 1-8 of EDI's 5-12-15 Answer are in Items #1 – 24 of Ex. Y.

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. Only a similar statement was made and DF-AE had removed the important wording (pg. 17-18 Ex. AA).
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,)
5) Use of quotations around statements never made by PL-AT (Ex. Y, Item #43).

EDI also attempts to confuse the MSC by presenting many of the same arguments from its 3-30-15 Answer to PL-AT's Application in Case No. 151198, giving the appearance that the two Applications are the same or similar, when the instant Application in Case No. 151463 only seeks <u>disposal</u> of the invalid 3-10-15 Opinion, since a valid final order upholding dismissal of the case for different reasons was already entered on 11-25-14, and that Order is being appealed in MSC Case No. 151198. **DF-AE's arguments supporting the <u>content</u> of the 3-10-15 Opinion are irrelevant, when all that is requested is its <u>disposal</u>, since it is invalid.** The 11-25-14 Order comports with MCR 7.202(6)(a)(i), defining a final order as "*the first judgment or order that disposes of all the claims*," making it the only valid final Order in the case.

Pgs. 8-10 of EDI's 5-12-15 Answer present the same "facts" and arguments as EDI's 3-

30-15 Answer, only relevant to PL-AT's 3-10-15 MSC Application since they only refer to the COA'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. To maintain the proper focus of the instant Application, refer to pgs. 3-8 of Ex. AA, for rebuttals to EDI's "facts" on pgs. 8-10. Instead of rebutting the issue of disposing of the clearly illegitimate 3-10-15 Opinion, the only issue of the instant Application, EDI presents the same discussion about liability presented in its 3-30-15 Answer to PL-AT's 3-10-15 MSC Application. The liability dispute, Issue I of PL-AT's 12-20-13 COA Appeal, collaterally estopped by the COA's 11-25-14 Order, is only relevant to PL-AT's **3-10-15** MSC Application that seeks to appeal the **11-25-14** Order, not the instant Application.

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 were very different. EDI makes the preposterous claim that the denied 12-30-13 Motion 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 the MSC should be ruling on them, when they were already denied by the COA on 2-11-14. This team effort to persuade the MSC to rule upon issues already determined by the COA, not part of this appeal, is highly unethical and fraudulent. **The only issue being considered by the MSC in the instant Application is disposal of the invalid 3-10-15 COA Opinion that upheld case dismissal for different reasons than the 11-25-14 final COA order, the first and only valid Order.** For

details and rebuttals of the misrepresentation of Culpert's Motions to Affirm, relevant only to MSC Case No. 151198 appealing the 11-25-14 Order, refer to pgs. 6-8 of Exhibit AA.

PL-AT prays the MSC listens to the oral arguments session, about 5 minutes long. Nothing on the tape validates DF-AE's argument PL-AT chastised the panel. PL-AT respectfully and appropriately corrected Judge Gleicher's incorrect statement, claiming the 3-3-15 panel was not the same panel that issued the 11-25-14 Order since Judge Fort Hood was on both the 11-25-14 and 3-3-15 panels. 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. Contrary to EDI's claims, 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. 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.*" When DF-AEs spoke 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?*" speaking for itself she alerted Mr. O'Malley not to say anything. Mr. O'Malley then stated his name, confirmed the COA did not have any questions for him, and said, "*thank-you*." Mr. O'Malley did **<u>not</u>** comment he would be resting on his briefs, as claimed. Mr. Wright was present at the 3-3-15 oral arguments

hearing, but did not stand up and identify himself as representing EDI, and did not state his name for the record.

Pg. 11 of EDI's 5-12-15 Answer 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.*" PL-AT argued in the instant Application the COA had no legal right to consider the remaining issues IV and V from PL-AT's 12-20-13 COA Appeal, after it already upheld the dismissal of PL-AT's entire case by its 11-25-14 Order. The only issues that *should* have been mentioned in the Opinion were issues I – III and VI, those included in the 11-25-14 final Order, the COA determined that PL-AT was collaterally estopped from litigating due to the 10-14-14 MEEMIC Opinion and the granting of Culpert's Motion to Affirm. However, these issues are barely mentioned, with the exception of Issue I. The words "collateral estoppel" are completely avoided in the 3-10-15 Opinion, even though this was the reason PL-AT was not permitted to litigate issues I-III, and VI. EDI falsely claims on pg. 10 ¶3 that the 3-10-15 Opinion was only in regard to issues IV and V. The 3-10-15 Opinion also heavily focuses on a discussion of establishment of liability, Issue I of PL-AT's COA Appeal, disposed of with the 11-25-14 Order.

On pg. 11, EDI misrepresents PL-AT's Arguments IV and V from her 12-20-13 COA Appeal in its discussion of the COA's rejections of said arguments in its 3-10-15 Opinion (See Items 1-2 of Ex. BB for clarification). Whether the COA accepted or rejected said arguments in its 3-10-15 Opinion is irrelevant to the instant MSC Application, since the COA did not include IV and V in the 11-25-14 final order upholding dismissal of the entire case. The case cannot be dismissed a second time, on a different date, for different reasons. In its 11-25-14 Order, the COA already used collateral estoppel, as applied to Issues I – III, and VI of PL-AT's 12-20-13 COA Appeal, upholding dismissal of the entire case by its inclusion of Issue III. The COA's

invalid 3-10-15 Opinion must be disposed of by the MSC so PL-AT can proceed with her appeal of the valid 11-25-14 final Order that actually upheld dismissal of her case, Case No. 151198.

DF-AE does not address disposal of the 3-10-15 Opinion in its 5-12-15 Answer.

REPLY TO STANDARDS OF REVIEW

Contrary to EDI's claims, PL-AT *did* provide applicable standards of review in the Grounds for Appeal section on pgs. 3-4 of her 4-21-15 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, is clearly erroneous and will cause PL-AT material injustice if the 3-10-15 Opinion is not stricken from the court record. 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.*'" Clearly, the COA should not have issued two different decisions that each upheld 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 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 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-approved form MC 315 for Plaintiffs to provide medical records to Defendants in accordance with MCR 2.314(C)(1)(d), and the COA's concealment of the issue from other Plaintiffs by its tactic of entering the 11-25-14 Order to uphold dismissal of the case by granting DF-AE's Motion to Affirm based on collateral estoppel, and including all the issues in regard to MC 315 within that Order, thereby not having to actually state or discuss any reasons in the

Order, then issuing a legally invalid Opinion on 3-10-15 that avoided any mention of MC 315.

Contrary to EDI's claims, 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*." DF-AEs continue to misrepresent the basis of the case, and the reasons it was dismissed[2]. Still, the circuit court's actions are completely irrelevant to this Application. PL-AT's 4-21-15 Application involves only the consideration 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 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, nor did the COA even make said conclusion.[3] The real question before this Court in this Application, is only the disposal of the 3-10-15 Opinion since a case cannot be dismissed twice, on two different dates, for different reasons. The 11-25-14 Order is the valid final order.

REPLY TO LAW AND ARGUMENT

PL-AT *has* presented valid questions that should be reviewed by this court, involving legal principles of major significance. The COA's decision to issue the 3-10-15 Opinion,

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[2] DF-AEs and the circuit court violated discovery rules, not PL-AT, when they refused to accept PL-AT's use of SCAO-approved 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, I, J).

[3] The COA never actually determined if the circuit court abused its discretion by dismissing PL-AT's case after execution of MC 315 in accordance with MCR 2.314(C)(1)(d) 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.

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.

EDI's irrelevant, erroneous claims on pg. 14 ¶2 in regard to the circuit court's orders are addressed in Item 3 of Ex. BB. EDI states, "*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 impossible for a court to issue two different valid decisions on different dates, each upholding dismissal of the case for different reasons. Logic and court rules dictate only one of the decisions can be valid, the 11-25-14 Order, since it is the only one that comports with the definition of a "final order" under MCR 7.202(6)(a)(i), being the first order upholding dismissal of the 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. The illegitimate 3-10-15 Opinion must be properly disposed of by the MSC.

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, 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, duplicated in item #4 of Ex. BB for convenience. PL-AT still asserts that the COA's intent *was* questionable when it willfully issued an Opinion having no legal validity. 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. 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 Application, duplicated in item #5 of Ex. BB for convenience. PL-AT still asserts this and 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 false statement 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. By next claiming that the lower courts "*denied Plaintiff's demands*," EDI gives the appearance that the MSC is supposed to be examining the issues presented in PL-AT's COA Appeal. Those issues are <u>not</u> what are being appealed in this 4-21-15 Application to the MSC (or even the 3-10-15 Application to the MSC), which only requests that the MSC dispose of the legally invalid 3-10-15 Opinion, issued after case dismissal was already upheld by the valid 11-25-14 final Order, so that PL-AT can proceed with the appeal of the 11-25-14 Order in Case No. 151198. The legal basis is the definition of a final order under MCR 7.202(6)(a)(i), and simple common sense that a court cannot uphold dismissal of a case for different reasons, on two different dates. The only logical solution to this problem is disposal of

the invalid, 3-10-15 Opinion, issued *after* the valid, final Order of 11-25-14. **EDI presents no arguments to the only issue of this Application, the disposal of the invalid 3-10-15 Opinion.**

I. DF-AE's Argument I 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 her case, but instead to dispose of the clearly illegitimate 3-10-15 Opinion, that upheld 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, Case No. 151198.

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." **DF-AE's Argument I misleads the court to believe the main issue is in regard to a "battle of the forms," when the issue of forms[4] is not even before the MSC in either Application**. EDI presented the exact same irrelevant discussion of circuit court events as 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, to detract from the real issues that occurred at the *COA level* that are the basis of both PL-AT's MSC Applications. 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 disposal of the 3-10-15 illegitimate Opinion**. Irrelevant and erroneous circuit court events from EDI's Argument I are addressed in Ex. Y, Items 25-27. Other falsehoods/misrepresentations on pgs. 15-16 are addressed elsewhere in this Reply. Refer to Exhibit BB, item 6, for full quote and rebuttal of DF-AE's irrelevant conclusory statement.

[4] It is important to note that DF-AE purposely conceals mention of MC 315 by name, just as the 3-10-15 COA Opinion did, and instead 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-approved MC 315.

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 case dismissal, and thus, a determination of whether the Court of Appeals erred.

DF-AE's Argument IA contains erroneous statements about circuit court events, addressed by PL-AT 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 Exhibit AA. The proper focus of this Application is only in regard to disposal of the illegitimate 3-10-15 COA Opinion, 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 if not corrected.

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 already *did* allow a full release of her medical records using MC 315 (Ex. A, B, I, J). 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 the COA 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 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 purposely concealed 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).

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 Ex. 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-AEs 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. 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 SS#, DOB, 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 exhibits used to justify PL-AT's arguments.

DF-AE has made multiple claims in other filings like the one on pg. 18-19, claiming PL-AT didn't cite anything to support her arguments in the circuit court case, when PL-AT clearly stated MCR 2.314(C)(1)(d) and MC 315 were the applicable authorities. By EDI even arguing the issue of the circuit court's dismissal at all in its Answer, EDI misleads 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, which is only about the disposal of the invalid 3-10-15 Opinion. 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 for or against the disposal of the invalid 3-10-15 Opinion.**

B. DF-AE attempts to confuse the MSC by providing an irrelevant description of <u>circuit court</u> events 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 <u>Court of Appeals</u> 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.

EDI's Argument IB, "*The Circuit Court Properly Dismissed Plaintiff-Appellant's Complaint for Her Willful Refusal to Comply with Discovery and the Orders of the Court,*" is completely irrelevant to PL-AT's Application. Not only is that <u>not</u> the reason PL-AT's case was dismissed by the Circuit Court, but the arguments PL-AT presented in the instant Application are only in regard to disposal of the invalid 3-10-15 Opinion, so she can proceed with her appeal of the 11-25-14 valid final Order upholding case dismissal, Case No. 151198. PL-AT's responses

to the irrelevant and erroneous circuit court events are in Ex. Y, Items 28-50. Other statements in Argument IB only 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, which PL-AT was collaterally estopped from litigating due to the 11-25-14 Order, which is being appealed in the 3-10-15 Application, not this one), are rebutted by PL-AT on pgs. 23-27 of Ex. AA.

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 attempts 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, but 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's 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 are without merit. The invalid 3-10-15 COA Opinion did provide new, different reasons for dismissing PL-AT's case with regard to Issues I, IV and V as presented in PL-AT's 12- 20-13 COA Brief on Appeal, but the true reason for the COA upholding the dismissal was the doctrine of collateral estoppel, as ruled in the valid 11-25-14 Order, and

therefore the COA never actually "affirmed" any of the circuit court's actions, as DF-AE claims, because PL-AT was prevented from litigating the issues[5]. The words "collateral estoppel" did not even appear in the 3-10-15 Opinion, concealing the true reason for upholding dismissal.

CONCLUSION AND RELIEF REQUESTED

Contrary to DF-AE's claim that PL-AT did not provide the Court with a question that warrants this Court's review, PL-AT presented three questions, justified for the reasons provided in her Grounds for Appeal section. For convenience, they are duplicated in item 7 of Ex. BB.

There is no merit to Mr. O'Malley's statement on pg. 26, ¶1 of the Conclusion: "*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 making the cited claim. The records speak for themselves, proving it is absolutely false and nonsensical for Mr. O'Malley to make the quoted statement, when a court rule, MCR 2.314 (C)(1)(d), *requires* the use of SCAO-approved form MC 315 that releases both private and protected medical information.

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), the approved 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. On pgs. 14 and 18 of EDI's 5-12-15 Answer, Mr. O'Malley used

[5] It would not have been 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.

the words "paranoia" and "paranoid theory" in describing PL-AT's filings, 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 fails to cite the specific lies or fraudulent conduct that are the basis of his claim on pg. 26 that PL-AT made malicious, unsupported accusations against the attorneys in this case and the COA. 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, 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 avoided ruling on the issue of MC 315. In the MEEMIC case, the COA's 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, 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 Opinion 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 MCR 2.314(C)(1)(d), the court rule mandating its use, by disposing of all the issues pertaining to MC 315 with its 11-25-14 Order that upheld 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 MSC to uphold MCR 2.314(C)(1)(d), requiring the circuit court to follow this rule requiring the use of MC 315 by the Plaintiff when a Plaintiff is served with a request for production of records, so PL-AT's cases can be reinstated and she can be fairly compensated for her injuries sustained in the auto accident.

Contrary to EDI's statements on pg. 26, ¶2, **this 4-21-15 Application requests disposal of the COA's invalid 3-10-15 Opinion, <u>not</u> a remand of all issues to the COA, the 3-10-15 Application's requested remedy.** DF-AE discusses the signing of medical authorizations, which is also irrelevant. See items 8-9 of Ex. B for PL-AT's rebuttal to these statements.

Pgs. 26-27 contain a discussion of irrelevant, falsified circuit court events, misleading the Court to believe they need consideration, when **this 4-21-15 Application only requests disposal**

of the invalid 3-10-15 Opinion, so PL-AT can proceed with her Application to appeal the only valid final order of 11-25-14 upholding case dismissal. See items 10-15 of Ex. BB.

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 deviates from the purpose of this Application, which is PL-AT's request have the 3-10-15 Opinion of the COA nullified. PL-AT's arguments regarding disclosure was not fabricated and did not hamper DF-AE's ability to obtain any medical records in DF-AE's 2-7-13 Request for Production of Documents (Ex.D), the basis of Mr. Wright's Motion to Compel heard 6-21-13. When the lower a court refuses to abide by a court rule such as MCR 2.314(C)(1)(d), it is important for the MSC to uphold the court rule to maintain the integrity of the court and legal system. PL-AT had no problem using standardized medical authorizations that complied with and were compatible with Federal HIPAA laws, or the MC 315 Form. But she did have a problem with the non-standardized, personal, *customized* forms Mr. Wright wanted PL-AT to sign that gave him expressed permission to copy and re-disclose her records. To reiterate, Mr. O'Malley's arguments concerning standardized forms are a red herring designed to distract the MSC from the true issue of PL-AT's Application in the instant Case No. 151463, which is PL-AT's request to have the invalid 3-10-15 Opinion disposed of by the MSC so she can proceed with her appeal of the valid, final, 11-25-14 Order upholding dismissal of her entire case, being appealed in MSC Case No. 151198.

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.

PL-AT requested in this 4-21-15 Application that the invalid 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 only valid final order under MCR 7.202(6)(a)(i), the 11-25-14 Order that truly upheld the dismissal of the case, 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 decisions 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. This primary issue of the instant Application is not even addressed by EDI at all. PL-AT prays the MSC will accept and read her pleadings, examine her exhibits, listen to the 5-minute 3-3-15 oral arguments 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. The MSC has the opportunity to finally correct the injustice done to PL-AT, and should grant her 4-21-15 Application.

Exhibits attached:

A – J: 84 pages; K - X: 101 pages; Y - BB: 127 pages.

Total pages of exhibits filed: 312 pages

signature redacted

7-21-15
Date

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