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 TAMARA FILAS'S MOTION FOR LEAVE TO REPLY TO DEFENDANT-APPELLEE CULPERT'S AND DEFENDANT-APPELLEE EFFICIENT DESIGN'S RESPONSES TO PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION

Dated: October 19, 2015

Now comes Plaintiff-Appellant ("PL-AT"), Tamara Filas, requesting leave to reply to Defendant -Appellee ("DF-AE") Culpert's 10-7-15 and Efficient Design's 10-15-15 Responses to PL-AT's Motion for Reconsideration in MSC Case No. 151463, and hereby states the following:

The DF-AE's responses to PL-AT's 9-30-15 Motion for Reconsideration contain numerous erroneous statements and outright lies that will cause harm to PL-AT if she is not permitted to rebut them. It would be unjust for the DF-AE's statements to be the last words in the case when they are untruths. PL-AT should be permitted to provide the verifiable, objective evidence that proves DF-AEs have falsified the facts of the case. Examples of untruthful statements include, but are not limited to, the following:

1) For Mr. Broaddus, representing DF-AE Culpert, to submit the exact same Responses to both MSC Applications (PL-AT's 3-10-15 Application appealing the 11-25-14 COA final Order upholding dismissal of her case, Case No. 151198; and PL-AT's 4-21-15 Application requesting the disposal of the 3-10-15 COA Opinion since it upheld dismissal for different reasons after the case was already dismissed by the 11-25-14 Order, Case No. 151463), and for Mr. O'Malley, representing Efficient Design Inc. ("EDI"), to only file <u>one</u> Response into Case No. 151198 that lists both case numbers[1], DF-AEs give the appearance that both PL-AT's MSC Applications in Case No. 151198 and 151463 are one and the same, which couldn't be further from the truth, as they are both in regard to *different* decisions made by the COA on different dates, and they request *different* remedies.

[1] Although PL-AT was served with a Proof of Service generated by TrueFiling for Case no. 151463, indicating that a Response was filed into that case, PL-AT only received <u>one</u> filing from Mr. O'Malley via TrueFiling, which was a Response to both the 3-10-15 and the 4-21-15 Applications, that was filed into case no. 151198.

2) DF-AE EDI's first sentence of the Introduction is a lie: "*This case involves a first and third party auto negligence lawsuit that was properly dismissed at the trial court level.*" This case was not combined with PL-AT's separately filed first-party MEEMIC case. The MEEMIC first-party PIP case was separately filed on 12-18-12 and assigned circuit court case no. 12-016693. The Defendants in the case listed on this filing, circuit court case no. 13-000652-NI, filed on 1-14-13, include only third parties Kevin Culpert and Efficient Design, Inc., not the first-party defendant MEEMIC whose case was filed separately in 2012 as case no 12-016693. Just the separately filed Culpert/EDI third party tort case was assigned circuit court case no. 13-000652-NI. The separate first-party MEEMIC case is only relevant to this separate third-party case because in the COA's 11-25-14 Order granting third-party Culpert's 10-17-14 Motion to Affirm, the COA ruled that the doctrine of collateral estoppel prevented PL-AT from litigating her claims against Culpert and EDI, falsely claiming that the issues in the instant case were the same as the separately filed MEEMIC case, even though there was no Protective Order in the Culpert/EDI case, as there was in the MEEMIC case, and the COA had ruled on 10-14-14 in the separate first-party MEEMIC case that the PO in the MEEMIC case was the sole reason PL-AT could not use SCAO-mandated form MC 315 to provide her records to the Defendant. By giving the appearance that the cases were combined, the entire issue of PL-AT's argument that the doctrine of collateral estoppel did not apply would be without merit in the instant case, since the difference between the instant third-party Culpert tort case and the first-party MEEMIC PIP case was that there was no Protective Order in the Culpert case, and thereby the doctrine of collateral estoppel did not apply in the instant case. PL-AT's current legal malpractice case in the circuit court could be adversely affected because Mr. Salibury is being sued for damages related to both the dismissal of the separate first-party MEEMIC case and the dismissal of the separate third-

party Culpert/EDI instant case. By deliberately making the false statement that the first- and third-party cases were combined, which the verifiable, objective evidence clearly does not support, the third-party Defendant's attorney, Mr. Broaddus, is either attempting to deceive and mislead the MSC panel or anyone else whom might read or publish part of this filing from the case file regarding the final decision in COA Case No. 317972, or whom might post a blog in regard to it online or, all of the above, into falsely believing it was a combined case, so that it will appear that PL-AT's Application for leave to appeal to the MSC was frivolous and a waste the Court's resources, which couldn't be further from the truth, but which others would most likely consider as truth because it came from a lawyer whom naïve, lay persons often blindly trust as promoters of truth. Without a major difference in each case, the doctrine of collateral estoppel could have applied in the instant case and the COA's granting of Culpert's motion to affirm could have been correct and it would not have been suitable for Plaintiff to file an application for leave to appeal to the Michigan Supreme Court. However, the cases *were* different and Plaintiff had a legitimate reason to challenge the decision of the COA. This major misrepresentation of the facts and the truth on the part of the third-party defendants is a clear example of how the attorneys for the Defense will not only lie to win the instant case for their client they have been hired to represent, but will also lie to help one of their own, which in this case is the attorney who breached his agreements with Plaintiff, that Plaintiff is currently suing, or to perpetuate lies on the internet that harm Plaintiff's reputation or to discourage other persons who are considering handling their own cases when other honest attorneys will not take cases of PL-AT's, such as Ms. Filas's, with a legitimate malpractice claim because the of stigma attached to one attorney litigating against another attorney which would probably result in destroying the legal career of the attorney defending the Plaintiff in a malpractice lawsuit or all of the above.

By Defendant including a false statement stating that both the first- and third-party case were combined, Plaintiff's entire argument that the doctrine of collateral estoppel did not apply would be an argument without merit if the cases were combined and the PO applied to both the first-party defendant MEEMIC *and* the third-party Defendant's Culpert and Efficient Design, Inc., since PL-AT's argument was the doctrine of collateral estoppel did not apply because the separate MEEMIC case differed from the instant, separate third-party case because a Protective Order was filed in the separately-filed first-party MEEMIC case, which was the basis of the COA's ruling upholding the dismissal of the MEEMIC case in the lower court, and the third-party tort case separately filed in the lower court did not have a Protective Order which would have been necessary to uphold the dismissal of the third party case based on the doctrine of collateral estoppel. The malpractice case filed by PL-AT currently in the Wayne County Circuit court, Case no. 15-002158-NM, against PL-AT's former attorney, Daryle Salisbury (whom PL-AT dismissed on in a letter dated March 8, 2013, mailed March 9, 2013, and whom re-filed the first party PIP no-fault case against DF-AE MEEMIC in December 2012, separately from the third-party tort case against Kevin Culpert, re-filed by Mr. Salisbury in January of 2013 in the lower court), is dependent upon the decisions of the MSC in MSC Case No. 151198 and 151463 related to circuit court case no. 13-000652-NI, which will directly affect the amount and extent of Mr. Salisbury's liability in the dismissal of both PL-AT's first-party case against DF-AE, MEEMIC in the first party no-fault case, and the separately re-filed third-party tort case against DF-AE Kevin Culpert and his employer Efficient Design. PL-AT is seeking damages related to each separate case. PL-AT's claims certainly would be harmed if she could not claim damages in the separate third party case. Mr. Salisbury was dismissed by PL-AT for breaching his promise to enter a new and different Protective Order ("PO") in the MEEMIC case no. 12-016693-NF in

the circuit court that Plaintiff had been working on and sharing with Mr. Salisbury to replace the defective PO in a previous 2011 case that had been dismissed without prejudice July 20, 2012.

3) EDI claims on pg. 2, that "*Filas's Motion for Reconsideration simply restates arguments that she made in the lower courts and in her Application for Leave to Appeal*," and that her motion should therefore be denied. This is not true. PL-AT presented a completely new justification for her Motion, which was the fact that the MSC prematurely ruled on her Culpert/EDI MSC Applications in cases 151198 and 151463 since it hadn't yet made a final ruling on PL-AT's Motion for Reconsideration in the MEEMIC case, Case No. 150510. The MEEMIC case would have to be finalized prior to issuing any decisions on the Culpert/EDI case since the doctrine of collateral estoppel can not be applied unless there is a final decision in the case upon which the doctrine will be based. Instead of addressing this new issue, DF-AE EDI has accused PL-AT of not having mentioned it. Even more reprehensible, DF-AE Culpert claims that this issue is moot since the MSC denied PL-AT's MEEMIC reconsideration on September 29, 2015, but he fails to mention that the MSC denied PL-AT's two separate Culpert/EDI Applications *prior to* September 29, 2015, on September **9**, 2015, which definitely made the MSC's Culpert/EDI decisions premature, and provided a valid reason for the MSC to reconsider the 9-9-15 denials.

4) EDI attorney, James Wright's involvement in the instant case has always been questionable, as explained by PL-AT in other filings, as Mr. Wright has never made any filings in the case, and did not even state his name for the record at the 3-3-15 Oral Arguments hearing. Both DF-AE's Responses contain the wrong e-mail address for Mr. Wright, preventing anyone interested in this case from contacting him easily via e-mail, and preventing him from actually receiving any messages in regard to this case by anyone who doesn't already know his real e-

mail address, which is jwright@zkac.com, not jwright@zkact.com, as Mr. O'Malley has continued to erroneously supply on the cover page of filings, and not jtight@zkac.com, as Mr. Broaddus has supplied on his 10-7-15 Response.

5) On the cover page of its 10-15-15 Response, EDI again erroneously refers to James Wright as co-counsel, when he is actually a co-defendant. Pg. 4, ¶6 of the 3-10-15 Opinion states, "*plaintiff argues that her 'case involves three separate insurance companies and three separate insurance policies---one for Kevin Culpert and two for Efficient Design."* PL-AT does not simply "argue" this. It is the truth of the situation. On pg. 9 of the 5-2-13 Transcript, Mr. O'Malley refers to himself as "*co-defense counsel*" and explains that "*there's two of us representing Efficient Design's under two different policies*." (Exhibit L, 5-2-13 Transcript). Mr. O'Malley and Mr. Wright are co-defendants for Efficient Design, representing two different policies. However, in filings by the DF-AEs, they have been referred to as co-counsel, which is improper, because co-counsel could only be representing the same insurance company. Mr. O'Malley represents Hastings Mutual, and Mr. Wright represents a different policy for which he has never disclosed the name of the insurance company. Culpert's policy was with Progressive Insurance Company. Since these attorneys are acting on behalf of the interests of the insurance companies who hired them to protect the interests of the insurance companies while also defending the policyholders, Culpert and EDI, the insurance companies can also be considered defendants in the case. PL-AT clearly stated there were 3 insurance companies involved at the 3-3-15 hearing and none of the attorneys present 3-3-15 for oral argument, Mr. Wright, Mr. Broaddus or Mr. O'Malley rebutted her statement, as is evidenced on the digital audio recording of the 3-3-15 hearing.

6) Both DF-AEs again falsely portray the case as having to deal with *circuit court* events,

which is completely untrue since only the *Court of Appeals* events and decisions are being considered in PL-AT's two MSC Applications. PL-AT's 3-10-15 MSC Application in case no. 151198 is in regard to the COA's decision to uphold dismissal of PL-AT's case for different reasons than the circuit court dismissal, by applying the doctrine of collateral estoppel in its 11-24-15 Order, an argument that was not raised in the circuit court. PL-AT's 4-21-15 MSC Application in case no. 151463 is in regard to the COA's decision to hold oral arguments after it had already dismissed the case, and issue a 3-10-15 Opinion that upheld dismissal for different reasons, on a different date, than the first and only valid dismissal of the case on 11-25-14.

7) The cover page of Mr. O'Malley's 10-15-15 Response on behalf of EDI now lists a new attorney, Matthew P. Salgat, who has never made an appearance in this case. Mr. Salgat was also served a copy of Mr. O'Malley's filing by mail, as indicated on the TrueFiling Proof of Service. This attorney should not appear on the cover page.

8) Both DF-AEs EDI and Culpert have purposely neglected to include PL-AT's contact information on the cover pages of their filings. Mr. O'Malley's response lists only PL-AT's mailing address, not her phone number or e-mail address. Mr. Broaddus's response lists only PL-AT's mailing address and phone number, not her e-mail address. PL-AT's phone number and e-mail address have appeared on every one of her filings to the Court of Appeals and the Michigan Supreme Court. It is reasonable to argue that DF-AEs purposefully left this information off so it would be more difficult to contact PL-AT.

9) For reasons unknown to PL-AT, Mr. Broaddus's 10-17-15 Responses list the wrong panel of judges at the top, misleading the MSC to believe that different people had participated in the COA's decision of this case than actually did. The correct panel, as can be verified by the 3-10-15 Opinion, was Elizabeth L. Gleicher, Mark J. Cavanagh, and Karen M. Fort Hood. Contrary to

Mr. Broaddus's responses, Michael J. Riordan and Christopher M. Murray were not on the panel that held oral arguments for this case on 3-3-15.

10) Contrary to Mr. O'Malley's assertions, PL-AT *did* provide grounds for review of her MSC Applications under MCR 7.305(B)(3) and (5) in both the 3-10-15 and 4-21-15 MSC Applications. They were contained in the Jurisdictional Statement of each Application.

Because of the impact of the decision to uphold dismissal of PL-AT's third-party auto case, and the fact that DF-AEs have lied in their Responses, it is of utmost importance that PL-AT is allowed to reply to both DF-AE's responses to PL-AT's Motion for Reconsideration.

Plaintiff also believes it is important for the MSC to grant her motion for leave to reply because she believes she should not be held accountable for the acts of Mr. Salisbury, an attorney she dismissed because of his breaches in the agreements he made with her, and that the MSC should accept her leave to appeal. It is also important for PL-AT's motion for leave to reply to be granted so that she can show she has done everything in her power to mitigate Mr. Salisbury's damages to convince the Court that it is unjust for the COA to uphold dismissal of PL-AT's case based on the doctrine of collateral estoppel (MSC Case No. 151198), or for the COA to hold oral arguments and issue an opinion different than the original11-25-14 Order that already dismissed the case (MSC Case No. 151463).

WHEREFORE, Plaintiff-Appellant, Tamara Filas prays the Court will grant her leave to reply to Defendant –Appellees Culpert's and Efficient Design Inc.'s Responses to Plaintiff – Appellant's Motion for Reconsideration. PL-AT further requests 28 days to respond to DF-AE's responses if the MSC grants leave to reply.

Dated: October 19, 2015

Respectfully submitted,

signature redacted

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