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March 21, 2008

TO: staff@caught.net.com-I have taken it upon myself to reach out to you for help.

Dear staff@caught.net (sir or madam),

I appreciate your consideration of the dreadful situation that my sister, Muna Ahmed has endured in the Rhode Island civil court system. Your website, reaching first place standing even here in Michigan, proves to be truly a godsend to us to be able to send a message of assistance and information to the public at large as to our most unfortunate problem relating to a gross failure of justice that has befallen us within the Rhode Island Superior Court system. My sister filed a wrongful death civil action in Rhode Island but this action was dismissed by a pre-trial motion by defense counsel. In other words, there was never an opportunity to present the claims of the plaintiffs (my sister and her husband estate) before a trial by jury of put peers.

We were deprived of our right to such a trial because Judge Patricia Hurst granted dismissal of this case upon motion filed. The Judge suggested that there was a 'failure to provide discovery' in compliance with the court's order of 8/29/07'. The Judge was grossly mistaken by her actions;

-First of all her order to provide discovery (a report of the plaintiffs medical expert witness) and recited on August 29, 2007 was substantially complied with by the deadline set for 9/12/07 (complied on 9/11/07). On September 19, 2007, the Judge granted final judgment and dismissal of this case by citing reasons and grounds that were never discussed or ordered to be complied with by Judge Hurst on 8/29/07. In other words, Judge Hurst dismissed an otherwise bona fide wrongful death civil action (on her suggestion of a failure to provide discovery) by citing a reason that she never ordered to begin or set forth to be complied with when she had made the original order on 8/29/07. Both transcripts of each proceeding have been readily produced and that they clearly demonstrate that there is no language contained in the 8/29/07 transcript that supports any of the reasons that were suggested by Judge Hurst in support of her decision to dismiss on 9/19/07.

-The underlying reason or explanation for this occurrence is that the insurance defense attorney for St. Josephs Hospital, Paula Kelly, had presented and in fact induced Judge Hurst to sign onto a false court order of the 8/29/07 proceeding. Judge Hurst had improperly relied upon the false court order when she imprudently decided to grant dismissal before trial. Furthermore, the guilty defense attorney compounded her acts of legal misconduct and actual fraud by not sending a 'proposed' copy of the order to plaintiffs counsel before the deadline imposed on 9/12/07. The offending lawyer 'certified' that the order was 'mailed to plaintiff' on 9/5/07-but it never was provided until 9/17/07-two days before the hearing which resulted in dismissal on 9/19/07. The insurance lawyer perpetrated this false act so that the court would be swayed by this order with its false language contained and then dismiss this case based thereon. We, the plaintiffs, our lawyer and the Judge are all victims of this gross abuse of process-but it seems that nothing is ever done to curtail or deter the improper outcome of a case decision based upon a false order presented.

-As I understand, defense (insurance) lawyers are the ones who are appointed by the court within the motion practice to prepare and draft all of the courts orders into a written form to be signed and executed thereafter by the Judge (the court does not have its own personnel to undertake this task). Typically, these same defense (insurance) lawyers appear frequently during the courts motion practice sessions and are appointed to draft the courts orders because of their

familiarity to the Judge. Defense (insurance) lawyers charge their clients (the insurance carriers) by the hour so they can bill excessively and with inflated and duplicitous billing practices so the motion practice is an ideal way for these same insurance law firms to bilk their clients. Plaintiffs lawyers rarely bill their clients for motion practice matters; it's not practical. Moreover defense (insurance) lawyers prepare the written orders ,ordinarily, without the benefit of an actual stenographic transcript. They do it by memory-often with a twisted memory.

-In this instance, the defense (insurance) lawyer, by her own admission, prepared the written order 8 days after the Judge orally declared such from the bench which presents memory concerns right off the bat. The lawyer took the liberty to insert 'lethal' false language onto the order that she was hoping would pass without notice and that the Judge would rely thereupon when considering whether or not to dismiss during the future hearing-9/19/07- to decide whether or not to dismiss. (I understand that virtually ***all*** of the defense (insurance) lawyers who are appointed to draft court order ***try to do*** the same thing-they 'play' with the language of the court orders that they are appointed to draft). This lawyer also failed to send a 'proposal' of same order drafted to our lawyer for his assent before it could be presented for the motion Judge to sign. The defense (insurance) lawyer did not want to 'tip-off' the plaintiffs lawyer as to the falsity of the language inserted. Obviously, our lawyer would have objected to the false language contained therein. He would more likely be able to 'spot' the tainted language of a drafted order before an unsuspecting Judge would be able to before signing the document. That explains why the defense (insurance) lawyer falsely 'certified' that she sent a copy of same order (not a proposed order) on 9/5/07 when she did not. This same lawyer also failed to send the copy of same order until after the 'deadline' of 9/12/07 had passed and even then attached as an exhibit to a memorandum. This illustrates the way defense (insurance) lawyers practice their trade.

-Even the most recent response of defense counsel suggests an 'evasiveness of responding'; that the plaintiff was ordered on August 29, 2007 to comply with the discovery order"=that is all.. Defendant fails to mention that Judge Hurst never mentioned Interrogatory 24 or any economic matters at any time during her discussion and resulting order on 8/29/07. These matters never entered into any of Judge Hursts consideration during the time. She clearly indicated on same date that she was only referring to the medical report of the plaintiffs medical expert in Michigan which we all relied upon. This was especially true as Judge Hurst never realized on 8/29/07 that this case was a Wrongful Death action. Her last words were-***"Get that person to put together his discovery responses (or write his report")*** **-**which means MEDICAL report not economic. In any event, how could the Michigan medical expert be expected to address economic issues if Judge Hurst's order intended such. ***If either of the defendants attorneys had any questions or concerns relating to any ambiguity resulting from the 8/29/07 order then why did not either ever raise such at the time!?***. The answer is simple-they wanted to take advantage of the ambiguity thereafter so they said nothing rather then give plaintiff the opportunity to answer 'None' to I-24. Clearly deceitful. Now, the fundamental concern at this point would be whether Judge Hurst by granting the extreme remedy of dismissal did so because she was duped and misled by the defense (insurance) lawyer the same way as we had been OR whether there might be some other reason … we are Muslim American US citizens. Likewise, we have the same concerns about this Supreme Court which we now find ourselves embraced in appeal. Will we receive fair and impartial justice. I append our Appellate brief for review.

APPELLANTS STATEMENT OF THE CASE AND SUMMARY OF THE ISSUES

I INTRODUCTION

Plaintiffs brought this Wrongful Death action in January of 2002. September 19, 2007, Judge Hurst dismissed all claims based upon RIRCP 54(b) upon hearing pretrial motion filed by defendants. There was a preceding August 29, 2007 order with a September 12, 2007 discovery deadline imposed for plaintiffs to provide to the defendants the medical report of their expert witness, Dr. Saleh Musleh of Michigan (Ex.).They complied with this order properly and timely. Judge Hurst dismissed the case anyway for an entirely different reason that was never discussed previously and without any notice given to plaintiffs. They filed the timely appeal shortly thereafter and also filed two Evaluation of Mediation Statements (with correlating exhibits) on the mistaken belief that their Pro Hac Vice counsel from Michigan would be admitted to practice before this Court to represent them as their chosen Counsel with this advocate as designated local counsel. It was suggested that local counsel withdraw from any further representation of the plaintiffs-which he attempted to do-but this Court denied the request to admit counsel from Michigan

Pro Hac Vice-which seemed contradictory. Counsel entered as main counsel for the plaintiffs as no RI lawyer has the same temperament to become involved on behalf of Muslim Americans that the Michigan lawyer possesses. Since the evaluation statement was filed with the court *before* the courts denial of the Pro Hac Vice request then counsel appends both statements as exhibits with this legal writing as they reflect his '1st-hand' understanding of pertinent events and facts of this case as they took place throughout 2007 (late 2006) as his actions seem to be the focus of this primary issue on appeal.

Also, any subject matter taking place in this case prior to November 30, 2006 is irrelevant as to the precise issues presented As they successfully did with Judge Hurst in

Superior Court, the defendants may attempt to cloud the issue or create a bias against the plaintiffs by relating to this court that during 2005-6, plaintiffs failed to comply with original discovery requests and stipulated to conditional orders entered into. Defendants misled Judge Hurst to believe that plaintiffs have continuously engaged in same pattern of behavior of failing to comply with discovery orders from the beginning. During 2007, while listening to these very same arguments from the defendants, Judge Hurst apparently became increasingly dispirited towards the plaintiffs and dismissed this case out of anger that was stirred by the defendants false representations. The truth is and the court records show that the plaintiffs have always complied with ***every*** 'bottom-line'[1] discovery order set forth by the Superior Court and they accorded themselves with established civil procedure practice as well[2]. Plaintiffs had always *timely*' responded in 2007 as well but Judge Hurst may have been distracted by the false actions of the defendants who 'blind-sided' both the judge and plaintiffs counsel. With this advance notice, plaintiffs now attempt to thwart a repetition of the same (mis) behavior.

II **FACTS**

1. The 9/19/07 hearing (transcript appended)-confirms that the only reason why J. Hurst dismissed was because she believed plaintiffs failed to respond to interrog. 24

On 9/19/07, Judge Hurst rendered her decision to dismiss this action. Both

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1 They provided '*timely*'(before C.O. deadline) answers to interrogatories and request/production to each defendant-over 35 pages of discovery given (January 2006); they '*timely*' executed any and all patients authorization forms for defendants attorneys to acquire the decedents past medical history or they provided all requested medical reports directly to the defendants and they provided a '*timely*' response to the 11/30/06 stipulation/order to compel plaintiffs to provide St. Josephs Health Services Inc. more responsive answers to (3) interrogatories which they did in December of 2006 (Ex.)

2 Customary motion practice usually permits litigants with discovery obligations 'extended time' before outright dismissal. Litigants who fail to comply with initial discovery orders received upon motion to compel often receive 'extended time' by virtue of a further conditional order before there shall be a 'bottom-line' outright dismissal of the action.-unless the circumstances warrant an 'extreme remedy'. Plaintiffs needed the 'extra time' to find a doctor and a lawyer (for ***five years they have tried in Rhode Island).*** They thought they had both when McKinnon held the case for 1 year but he bowed out-2007-and left them hanging. They expended great effort and time-covering 9 states-before finding such in Michigan.

defendants had requested final judgment based upon RIRCP 54(b) after filing motion to dismiss based upon failure to provide discovery (Ex.). Note, this pleading certifies that defendants counsel "has conferred or attempted to confer with opposing counsel"-which is not true. In fact, both attorneys avoided any discussion with plaintiffs counsel after his many attempts to confer with them (by letter, telephone, fax and email). Defendants avoided him entirely because they did not want to alert him about interrogatory 24 and the economic matters.

During the 9/19/07 hearing, defendants raised three (3) grounds in support of the motion to dismiss; the supplemental answers to interrogatories were signed by Kevin McBurney, the medical report of Dr. Saleh Musleh, (submitted in timely fashion before the 9/12/07 deadline), was inadequate and a completely different issue that was interjected into these proceedings for the first time in 2007-'Interrogatory 24 and the economic issues (damages and expert). Tr

Judge Hurst decided on the first matter that the plaintiff-Muna Ahmed shall sign answers within five (5) days-which she did-9/21/07 (Ex.)-resolved in favor of plaintiffs. As to the second matter, Judge Hurst vacillated and conducted a lengthy 'back and forth' discussion as to the adequacy of the medical report of Dr. Musleh. Ultimately, she stated very clearly-*I'm satisfied that there is enough there"-Tr. Pg. 28*-resolved in favor of plaintiffs.

Judge Hurst considered the remaining ground pertaining to Interrogatory 24 and the discovery issues relating to economic experts and damages and eventually granted dismissal. Casting aside her colorful colloguy about an "across the board failure to comply "needing to babysit" and "placing a gun to your head", logically, the only possible basis that can be argued in support of Judge Hurst's decision to dismiss relates to interrogatory 24 and the economic discovery issues-everything else was resolved in plaintiffs favor. It was improper to even discuss in this proceeding I-24 and the discovery issues (economic

expert and damages) in the first place[3].

2. The 8/29/07 hearing (transcript appended)-confirms that compliance w/I-24 or any of the discovery issues (economic) was never ordered by J. Hurst to be answered by the 9/12/07 deadline imposed.

On August 29, 2007, a hearing was convened relative to the 'identification' of plaintiffs expert witness by way of compliance with the 4/5/07 scheduling order (which only required an "identification' and not a disclosure report beyond merely naming the expert). Plaintiff also supplemented her answers-interrogatories with same identification by her own accord (as opposed to being ordered to do so) The defendants presented their objections and dispositive motions resulting therefrom as the medical report of plaintiffs expert was not furnished by this time. The only discussion conducted during the proceeding focused strictly upon the medical expert witness of the plaintiff in support of a medical malpractice claim. There is NOT one bit of discussion by Judge Hurst about Interrogatory 24 or any perceived discovery issue relative to issues of economic expert and damages. At this juncture, Judge Hurst never understood that this case was a wrongful death action and not a medical malpractice case so there would be no need to discuss these issues.

By conditional order, Judge Hurst set a deadline of September 12, 2007 by which the plaintiff shall produce summary of the experts medical report for the defendants (complied). Nothing can be gleaned from anything that she ordered on 8/29/07 that could suggest that she intended plaintiff to answer I-24 or respond to economic discovery issues(expert, damage) as well

Judge Hurst's last admonition to the plaintiff was "get that person (the medical doctor in Michigan) to write his report (medical)" (Tr pg. 28) -which clearly indicates the direction of her order. Hence plaintiff was not expected to respond to economic discovery issues by the 9/12/07 deadline, only medical. In any event, how does any of this translate into 'bad faith', 'defiance' or '

3 9/19/07 was a scheduling order date set not a discovery matter. Also, Rhode Island Hospital never filed a motion to dismiss based upon Interrogatory 24 and the economic discovery issues yet they were granted dismissal on 9/19/07 as well. Their motion should have been denied based upon proper procedural practice.

persistent refusal 'by Kevin McBurney given these facts. See below.

3. The 8/29/07 drafted court order is replete with false language and was not provided to counsel as a proposed order until after the 9/12/07 deadline (Ex.).

After the 8/29/07 hearing, by direction of the court, Attorney Paula Kelly was ordered to to draft and prepare the order of the court relative to the Judges order. When the written order was finally prepared and filed with the court on 9/5/07, it contained a number of falsehoods and inaccuracies. However, neither plaintiff nor her counsel were ever provided a copy of the order as a proposed document for approval at that time even though Paula Kelly 'certifies' that she mailed a copy of same order to plaintiffs counsel at his disclosed address on 9/5/07[4]. The order was not received before 9/12/07. It may have been filed with the court but it was not given to counsel.

Mainly, however, the 8/29/07 order contains the false language relative to Interrogatory 24. Judge Hurst never made any reference to I-24 to be incorporated with the 8/29/07 order**.** There is no reference contained in the 8/29/07 transcript and attributed to Judge Hurst that reads that interrogatory 24 should be incorporated as part of the 8/29/07 order and deadline imposed.

4. On 4/5/07 the scheduling order was implemented over the plaintiffs objection and changed the entire complexion of the case (Ex.). Furthermore, it seemed that all discovery matters were rendered-'moot'. There was never any discussion about economic matters as pertaining to the scheduling order- only medical. No discovery issues were ever discussed.

The defendants were the ones who requested by motion for a scheduling order.

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4 This 'He said, She said' (one persons word against another) kind of problem has happened to Kevin McBurney before. Lawyers keep 'challenging' him with false representations and outright 'lying' in one on one situations because they think they can get away with it because 'Judges despise Kevin MCBurney. Paula Kelly will lie again by insisting that the order was mailed to plaintiffs counsel as certified. However, it was not received by mail until 9/17/07 (after the deadline of 9/12/07). Even then as an exhibit to a memorandum. Muna Ahmed corroborates. If it was received when Kelly certified or before the deadline then Kevin McBurney would have objected and jumped all over it. There is no way anybody can get inside Ms. Kellys head to show why she lied-she wanted to sneak the order by McBurneys notice until after the 9/12/07 deadline because it contained false language that Judge Hurst would rely upon were she to dismiss the case on 9/19/07. It makes sense, doesn't it?! How come Ms. Kelly has never shown any cover letter to indicate that the 8/29/07 'proposed' order is set forth for approval before it is executed?! Although, Ms. Kelly, true to form, will probably prepare such documents upon reading this suggestion and then back-date them. If you think that this suggestion is unrealistic then 'think again'. It's the nature of this business today. People like Ms. Kelly think they can 'screw with' Kevin MCBurney and his clients because the courts and David Curtin will let them get away with it. Are they correct. The same kind of problem might be encountered upon anticipation of defendants response to plaintiffs answer to the 11/30/06 stipulation/order to respond.

Plaintiffs objected because they still were without an expert witness at the time and their lawyer had recently abandoned them. They needed time to regroup. Judge Hurst overruled the objection and she also denied plaintiffs request for an extension of time[5]. Aside from the 4/5/07 hearing, this case came before Judge Hurst for further hearing on the same issue(s) on an number of occasions thereafter but before August 29, 2007 (June 14, 2007 and June 21, 2007). Each and every time the matter was heard before Judge Hurst, there was never any discussion about any discovery issues outstanding, Interrogatory 24 or any economic discovery matters. All discussions relating to the plaintiffs obtaining an expert focused only upon them finding a 'Medical' expert. During 2007, all issues and matters of discovery were 'brushed aside' or forgotten-or so it seemed

5. When the plaintiff 'identified' their medical expert witness in July of 2007, the defendants objected. However, neither would ever state the nature of their objection nor would either ever discuss, contact or inform of the nature of their objection. As early as July defendants intended upon 'keeping it a secret' about economic discovery matters and I-24

Plaintiffs 'identified' their medical expert witness on July 21, 2007 in presumed compliance with the scheduling order. Only Rhode Island Hospital expressed their objection in writing (Ex.) but never bothered to follow through to 'confer' or explain even though frequently requested. Neither defendant would ever communicate with plaintiff about the nature of their objection as motion practice requires. The opportunity for telephone, fax, letter and email communication with plaintiff was always available but defendants avoided such. Plaintiffs counsel tried to communicate with defendants to resolve discovery issues but they refused him.

6. Plaintiffs complied with 11/30/06 discovery order (St. Josephs-motion for responsive answers). Defendant failed to object/act on discovery matters until later in 2007. (THE REAL SOURCE OF THE PROBLEM)

On November 30, 2006, plaintiff and St. Josephs entered into a stipulation agreement

5 Plaintiffs consulted with nearly 30 doctors and lawyers in the RI area- all without success. Then later the same thing in 9 other states to find same. Time consuming and exhausting work. Even though it was Judge Hurst's prerogative to deny the plaintiffs motion, it still demonstrated insensitivity to this very real problem they were having and it may have increased her hostility towards the plaintiffs throughout May-August of07 and may have caused her react against plaintiff on 9/19/07-'across the board failure, babysit and gun to head.

that the defendants motion to compel more responsive answers would be answered within 6o Days (Ex.). The stipulation was not a conditional order. Plaintiff had no objection to answering the three (3) interrogatories that St. Josephs required a more responsive answer to. The plaintiffs problem concerned the fact that they did not have the medical expert at the time (or whether there were 'learned treatises') and their lawyer, McKinnon, would address the issue of economic damages with I- 24[6]. Plaintiffs responded timely anyway(Ex.)[7].

After the stipulation was filed and the plaintiffs response was provided to the defendants thereafter, no discovery issues were ever discussed at any time during 2007 until September of 2007 (too late). The 'scheduling order' had already taken control over everything preceding it.

When Paula Kelly raised this new issue on 9/19/07, plaintiff was dumbfounded as he had forgotten all about it. Plaintiffs focus during 2007 was about the medical expert (doctor) and his summary report as always discussed in court. He was caught 'off-guard' and stumbled with his response (he was also reeling from the abusive treatment he received from Judge Hurst) and failed to raise the response given(Ex.)[8] but Judge Hurst was 'hit' as well! Defendant (St. Josephs) never gave any indication during 2007 about any issue relating to the 11/30/06 discovery order and the plaintiffs, admittedly, feeble response (Ex.). On 9/19/07, Ms. Kelly tried to intertwine the

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6 There was discussion at the time that economic/pecuniary damages should be waived to accept the minimum recovery under the statute. Since Malek Ahmed had very little pecuniary damages then it made sense to probably sign a waiver rather than create a problem if the damages can not be proven. Plaintiffs let McKinnon handle the problem so they responded, **timely,** with a 'non-answer' reservation of rights response.

7Plaintiffs would not stipulate unless they intended to give the defendants a response because the answer the plaintiffs gave was a 'non-answer'-***but it still was an answer that required the St. Josephs to do something in a timely manner-confer, write a letter, object ,motion to compel, complain- something and not do nothing as they did; the defendants waited nearly a year before doing something-too long!.***

8After the 9/19/07 hearing, plaintiff did the research to remember the events and circumstances surrounding the response provided to St. Josephs counsel for their motion for more responsive answers and his agreed upon stipulation entered into. In December of 2006, plaintiff 'trusted' the defendants and likely never filed his response to discovery with the court clerk with a date and time stamp. Court procedure does not require parties to file discovery responses with the court that are given to the party requesting discovery. Now, of course, 'Everything' is hand-delivered, signed and date and time stamped with the court as well as the receiving party. ***If defendant shall lie again by saying that she never received Ex. ___ then she will have ot explain why she never filed for conditional order or reacted in any way after the discovery deadline expired-January 30, 2007.*** It is unknown what she will do but be ready because this is how you 'smoke out the liars' in our business. I am good at 'smoking them out' > I have had a lot of experience catching them- (Babcock, Delbonis, Richard James, McKenna, Roszkowski (Walsh) & Co., Herb Chambers &Co., Christene (her brother), Rioles, Beecher and the Family Court people of the 90's and so many others.).

discovery process with the scheduling order in order to skip and by-pass some very important steps to be carried out in the discovery process before she could ask for final dismissal[9]. It is stated with certainty that Paula Kelly had 'blindsided' both McBurney and J. Hurst with this 'dirty trick'/illicit tactic. Rules of Practice say 'foul' but it takes this appeal to straighten things out.

7 . Wrongful Death permits minimum recovery. There is no dismissal if no economic damages are proven or no discovery given (can't introduce at trial)-. Also, scheduling orders per Ad Order 05-20 are not proper in wrongful death cases

The last sentence of the RI Wrongful Death Act Section 10-7-2 says that there shall be a minimum recovery (at present $250,000) for those whose 'wrongful death' was caused by another. Section 10-7-1.1 sets forth the process whereby pecuniary damages may be recovered in addition to the minimum recovery allowed. So, by definition of the statute, if there is no pecuniary loss then there still is recovery for the minimum amount[10]. Discovery failings, if any, relating to pecuniary or economic issues would not affect the minimum recovery.

III ISSUES

The **precise** issue relates to whether or not Kevin McBurney acted with *persistent refusal, defiance and bad faith* upon a perceived failure to provide discovery in a timely manner which would properly result in the dismissal of a case (but not this one). The answer is 'No' and this Court need only to review the transcripts of the August 29, 2007 hearing and (compared with) the September 19, 2007 hearing with the reasons for dismissal given in order to make that determination. There are certain correlating circumstances and events that had taken place in 2007, most notably, the acts of

9 Since the 11/30/06 stipulation was by agreement and not conditional and there was a response given, then Ms. Kelly was required to '***promptly'*** file a motion for conditional order to compel a more responsive response than what was provided before she could even try to dismiss outright. The same arguments relating to 'trying to find a lawyer and doctor' would be re-hashed as the parties would argue over the response given in December of 2006. The Judge should permit some lee-way… if this was a discovery argument.

10 If an elderly person dies instantly because of a wrongful act as defined by the statute the deceased still recovers the minimum amount even without any pecuniary loss (no pain and suffering, loss of earnings, etc.

misconduct and fraud carried out by the defendants attorneys during this time which precipitated and ultimately caused Judge Hurst to dismiss this action-discussed below.

There also are other **secondary** issues 'at play' here that this Court might consider upon its review. These issues do not directly affect the precise issue involved but are part of the 'storyline' of this case and this court might address them. Also, there is really 'no solid law on the books' relative to these issues so that this appellate court might address same for guidance purposes. The issues that fall into this category are:

1)***-the adequacy of the plaintiffs medical expert witness disclosure in pretrial matters of discovery (how much is needed at this stage of the game-before depositions are undertaken. On 9/19/07, Judge Hurst said, "I'm satisfied there's enough here"-Tr. pg.__); Hence, it is not a direct issue in this appeal.***

2)***-the inter-relationship of 'Scheduling Order's and 'Discovery Orders' when they are obviously in conflict with each other with clear contradiction of deadlines imposed;***

3)***-the ambiguity with conflicting deadlines involved with the discovery order (interrogatory 24) being 'mixed' with the scheduling order requirement pertaining to the 'identity' of the expert. Is the word 'expert' to be interpreted to mean every conceivable kind of expert when Judge Hurst was only talking about the medical expert in Michigan all throughout her discussions on this point. Are litigants bound by scheduling orders supposed to 'guess' the meaning and interpretation of words set forth in a scheduling order when there clearly is NO ambiguity relating to the meaning of the word as there was only one understanding of the word ever discussed previously in court which was complied with. The dismissal was based upon another completely different meaning of the word never discussed previously. Do lawyers need to be "babysat" over the meaning of words in this context.***

4)***-would a discovery order become moot/superceded upon a subsequent scheduling order imposed;***

5)***-should the defendant be estopped or precluded from raising any 'discovery order' issue arising from the 11/30/06 order when the defendant failed to properly object or contest the response given by the Plaintiff at the appropriate time (which would be shortly after January 30, 2007). Because of which it then resulted in prejudicial delay and harm to the plaintiff during the 'scheduling order' when the defendant improperly 'snuck' this discovery issue before the court during a scheduling order hearing on 9/19/07 in an attempt to mute the distinction between the two discovery concepts;***

6)***-are 'scheduling orders' supposed to be utilized in wrongful death cases per Ad Order-05-20 (regardless whether or not the underlying negligent act causing death is based upon medical malpractice);***

7)***-whether or not Wrongful Death cases could ever be dismissed outright based upon a perceived failure to provide economic damage evidence per any discovery order because a plaintiff is entitled to a minimum recovery ($250,000) even if there are no economic damages proven so long as the wrongful death as caused by the defendant is demonstrated. The appropriate sanction under such circumstances, if there is a failure to comply with discovery, should always be to preclude the introduction of such evidence at trial.***

There is **another concern** that plaintiff raises at this time and this advocate is reluctant to discuss it but he must discuss it now because it's been very bothersome for a very long time. This advocate has developed an 'independent' style of advocacy throughout the years (suing judges, lawyers, taking a very independent approach to this business in Rhode Island like helping Muslim American citizens, etc.) -he has been told that Judges will screw him every chance they get with any case he has. Furthermore, it has also been related that lawyers opposing this advocate in many cases will take the chance of 'bending the rules', 'playing with the system', 'breaking the law' or to otherwise engage in professional misconduct because judges will always side with the offending lawyer to oppose this advocate. The reason this concern is voiced is simple:

Paula Kelly is the lawyer for the defendant who has been accused of professional misconduct and fraud (to a lesser extent the other lawyer). This advocate has leveled accusation that Ms. Kelly: intentionally failed to 'confer' with plaintiffs counsel pertaining to discovery issues-even falsely represented in her pleadings that she had so conferred when she had not; drafted a false court order of the 8/29/07 hearing and failed to send it to plaintiffs counsel as a proposal for his assent until after the September 12, 2007 deadline imposed. She did not want to give plaintiffs time to react to interrogatory 24 and the economic issues (damages or an expert, if needed) by objecting, 'crying foul' (with only two days notice plaintiffs counsel was surprised by an interjection of a new issue not addressed previously) or merely responding-"None".

There is no doubt that Paula Kelly coaxed the Judge into dismissing with 'Foul play'- but will this all be deemed to be 'acceptable discovery practice' that goes with the territory … or for that matter will all the 'legal authorities' merely 'let things slide because it is Kevin MCBurney doing the complaining so the attorney can get away with misconduct to

cheat *him*[11]. Ms. Kelly could have inquired about I-24 but she held back to keep it secret.

Also, the plaintiffs have their own 'inner reservations' as to whether they shall receive fair and unbiased consideration by this court in Rhode Island because of some past 'questionable' decisions against them with their previous cases[12]. How do you console to assuage these fine Muslim US citizens as their counsel/friend when you hear 'legitimate concerns' they have been expressing for a very long time that they have been discriminated

Kevin MCBurney has his own separate 'legitimate concerns' that have been 'burning' for so many years as he has 'held back' in silence. Many years ago, plaintiffs counsel had his own 'life shattered' by his own siblings who plundered the family business, destroyed the family name and killed the aspirations of John F. McBurney, (who made it happen) and 20 capable McBurney grandchildren. As Kevin McBurney 'fought back' against the injustice, he lost because the 'unsavory' side of 'RI politics' surfaced to help his siblings defeat him[13]. His own siblings conspired against him during his divorce case of 1993 to assist his ex-wives divorce lawyer, ***Brenda Rioles,*** without the ex-wives knowledge. Once she found out the truth as to the 'fraud transpiring during the family court divorce proceedings '[14] (that everyone knows

11 'Just like what David Curtin has done with 'Atty. ***George E. Babcock and all the people (7 women who have disciplinary complaints against him) he stole money from-2004-5.*** Curtin thinks McBurney has coerced the women to complain (as if they are mindless) so he disregards them and the women suffer.

12 A certain jurist was the former lawyer for an adversary of Malek Ahmeds in Superior court cases during the 80's and 90's as there was a very bitter dispute whereby Ahmed accused the adversary of attorney misconduct and fraud (PC C.A. No. 92-6826, 93- 7026, 95-5521,Sup. Ct. 96-191 &96-243 and Fed. Ct. 95-95 and 1st Cir. 96-1145. Also, another certain jurist vacated a Default Judgment that the plaintiffs received against GMAC Mortgage Corp. in a loan fraud case (MP 00-4264). The DJ was vacated with the defendant, GMAC, merely suffering a $500 fine in order to remove the default. Plaintiffs suffered not only loss of a proof of claim judgment (valued at $300,000) but they also had to pay another $300,000 to GMAC Corp. Plaintiffs are bitter.

Muna Ahmed upon explanation by Saif Abdulkarim

13 During the 90's/ early 2000's, plaintiffs counsel suffered many set-backs because his adversaries 'played the political card 'very well. There was a gross appearance of impropriety with certain jurists who decided against him (even writing decision against) with many cases whereby the jurist (or the relative) held a close association with his adversaries. It just was not right or fair during the Rule 10(g) fiasco a few years ago.

14 In FC 93-899 and occurring throughout 1993, many instances of fraud/misconduct were revealed.These offenders in Family Court were caught 'red-handed' by Kevin MCBurney who filed civil lawsuits based upon same claims (PC 96-3245, PC 97-4799) but unfortunately no one came to assist with his quest for justice-no media, no legal (Superior and Supreme court) and no public (his father or trusted relatives) support so the lawsuits were all dismissed (this court labeling them "frivolous"). Now, even this court ridicules family court thereby proving him correct-but 15 years too late.

takes place) and involving the divorce lawyers and a certain family court jurist[15], she disassociated herself from all of it and she/Kevin McBurney 'divorced themselves'-December of 1993. They have been good friends and devoted to their children ever since.

Will this Court recognize that plaintiffs counsel has been able to 'catch dirty lawyers' when they break the law (just like now) as he is usually the intended victim[16]. Ms. Kelly is just 'another one' just like the rest except this time she caused a good wrongful death case to be dismissed and she also opened a 'pandoras box' and some 'old wounds'.

IV ARGUMENT

Rule 37(b)(2) of RIRCP is the rule upon which Judge Hurst dismissed on 9/19/07. The Supreme Court has decided on this issue that in order to overturn such a dismissal then there must be shown an 'Abuse of Discretion'.*Flanagan vs. Blair,* 882 A.2d 569, 573 (2005). In order to support a finding of an 'Abuse of Discretion' to reverse the dismissal based upon Rule 37 (b)(2) there must be a showing that there was NO '*persistent refusal, defiance or bad faith* failure to provide discovery requested. Flanagan, at pg. ___. Begets a question-.Where's the 'bad faith'…

During the 9/19/07 hearing, Judge Hurst never referenced this case or discussed the drastic remedy or principle of law pertaining to pretrial dismissals of cases because of a perceived refusal to provide discovery in support of her decision. She never specified

15. Would a certain jurist on this court take umbrage because a lawsuit was filed against a former colleague in the Superior Court and thereafter appealed to the United States Supreme Court (99-743). McBurney and hisex-wife fell victim to some very nasty things that took place in 1993 during the divorce case that resulted in his undertaking a direct attack against the family court methods and practice. The jurist was not even a member of the family court at the time. The harm that plaintiffs counsel, his spouse and his children suffered was very real harmful damage but it is recognized that the jurist was not involved. Would this have an impact 16 Babcock, Delbonis, McKenna, Roszkowski-Walsh, et als ('Shirley Bergeron' fiasco), ***Richard James,*** Beecher, Rioles et als and of course, CLM et als to name just a few. ***Query: if Christene was not assisted to cheat, lie and steal her way to plunder/destroy the McBurney business and family name then Kevin McBurney would have left RI a very long time ago-and he would never have met the plaintiffs and none of the matters discussed above would have ever taken place! Instead, Kevin MCBurney was forced to stay to fight back-just as he is now. Think of the irony involved.***

what she meant by her statements-"overall failure to comply" (Tr pg. 32) and "an across the board failure to respond"(Tr pg.33) to correlate it to anything Kevin McBurney did wrong. Nor did she even bother to explain what she believed that Kevin MCBurney needed to be "babysat" for (Tr Pg. __). She never 'crosschecked transcripts' of her decisions (reasons) to dismiss on 9/19/07 with what she ordered on 8/29/07 (not the false order as there was nothing recorded to correlate to I-24).Since there is no way to determine what exactly she was talking about-9/19/07 then there is no way to understand the factual basis to support her decision. She just 'fired away' ("gun pointed") to 'kill the case'.

V CONCLUSION

For these and all of the above reasons, the plaintiffs/appellants request that the judgment for final dismissal be reversed and that the case be remanded for further trial

For the plaintiffs

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