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STATE OF MICHIGAN
IN THE SUPREME COURT
(On appeal from the Michigan Court of Appeals)

LAWANNA SMITH, Personal Representative of the ESTATE OF JACQUELINE HARRIS

Plaintiff-Appellant/Cross-Appellee

v

BEAUMONT HEALTH,

Defendant-Appellee/Cross-Appellant,

and

TRI COUNTY ORTHOPEDICS, PC and JACK D. LENNOX, D.O.,

Defendants- Appellees.

Supreme Court No. 167716, 167720
Court of Appeals No.: 365062
Oakland CC No.: 2021-187353-NH

***AMICUS CURIAE* BRIEF ON BEHALF OF THE NEGLIGENCE LAW SECTION OF THE STATE BAR OF MICHIGAN**

Respectfully Submitted,

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Dated: January 21, 2026

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INTEREST OF AMICUS CURIAE

NEGLIGENCE LAW SECTION OF THE STATE BAR OF MICHIGAN[1]

The Negligence Law Section of the State Bar of Michigan ("the Section") is composed of over 1,600 attorneys, representing both plaintiffs and defendants at the trial and appellate levels of personal injury litigation. The Section's purpose is rooted in the study of the evolution and effect of settled and proposed procedures, rules, and statutes that embody the law of negligence in order to preserve the jury system and unwaveringly promote the fair and just administration of negligence law in the Michigan trial and appellate courts.

The Section's mission is to provide education, information, and analysis about issues of concern through meetings, seminars, its website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan. Significantly, both plaintiff's counsel and defense counsel alike comprise the membership, along with trial and appellate counsel. Because of its inclusive and well-rounded composition, the Section has a significant role to play and interest in the jurisprudence of the state of Michigan.

Notably, the Section is regularly requested to provide its consensus opinions on pending appellate matters or proposed legislation. By virtue of its mission, the Section has an overriding interest in issues that impact and, ultimately, govern negligence, civil justice, and representation of clients. It is a rare occasion when both sides of the bar, both plaintiff and defense counsel agree, along with both trial and appellate counsel.

[1] In accordance with MCR 7.312(H)(5), neither party's counsel authored this brief in whole or in part, nor contributed money that was intended to fund the preparation or submission of this brief. Further, no person and/or entities have contributed money intended to fund the preparation and submission of this brief. See MCR 7.312(H)(5).

The fair application of the *Dean/Duray* factors, an issue central to this case, is jurisprudentially significant to the members of the Section. Any time a defendant faces a discretionary ruling on a discovery sanction that will directly or ultimately lead to a default, or when a plaintiff faces the same type of decision that will result in a dismissal, the *Dean/Duray* factors should guide the trial court's ruling. Ensuring the evenhandedness of these types of rulings is critical to ensuring the fair and just administration of Michigan law as to all parties, regardless of which side of the "v" they may reside.

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STATEMENT OF QUESTION PRESENTED

IF THIS COURT GRANTS LEAVE, SHOULD IT REQUIRE THE APPLICATION OF THE *DEAN/DURAY* FACTORS WHENEVER A DISCRETIONARY DISCOVERY SANCTION RULING WILL RESULT IN A DISPOSITIVE OUTCOME?

Amicus Curiae answer: "Yes."

Defendant-Appellant answer: "No."

Plaintiff-Appellee answer: "Yes."

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ARGUMENT

I. IF THIS COURT GRANT'S LEAVE, IT SHOULD REQUIRE THE APPLICATION OF THE *DEAN/DURAY* FACTORS WHENEVER A DISCRETIONARY DISCOVERY SANCTION RULING WILL RESULT IN DISPOSITIVE RELIEF.

The Michigan State Bar Negligence Section submits this amicus curiae brief to highlight an important issue associated with the application of the *Dean/Duray* factors, specifically in situations involving discretionary discovery sanctions rulings that directly or ultimately cause a default or dismissal. The Negligence Section takes no position on the merits of the parties' positions in this matter and advocates no specific outcome. Instead, the Section writes to highlight and emphasize one important and fundamental issue of fairness that applies equally to all defendants and plaintiffs.

Dean v. Tucker, 182 Mich.App 27, 32 (1990) is a relatively brief opinion that focuses primarily on the prudent and cautious application of discretionary discovery sanctions. *Dean* stands for the proposition that when a discretionary ruling on a discovery sanction has the direct or ultimate effect of defaulting a defendant or dismissing the plaintiff, a series of eight factors should first be considered:

> (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice.

Id. at 32-33 (footnotes omitted). *Dean* also states that the list of eight factors "should not be considered exhaustive." *Id*.

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Duray Development, LLC v. Perrin, 288 Mich.App 143, 165-166 (2010) echoes the importance of applying the above eight factors. *Duray* further requires a trial court to issue a ruling that specifically reflects consideration of each of the factors. By clearly articulating the analysis in the record as to each of the eight factors, a superior court is afforded the opportunity to review the ruling.

Dean and *Duray* set forth well-settled, bedrock principles of fairness in the context of discretionary discovery sanction rulings. Both cases are ubiquitously cited throughout Michigan's jurisprudence. In fact, a perusal of the 1,000+ cases that cite *Dean* and *Duray* shows that most trial courts already routinely evaluate these factors when issuing discretionary discovery rulings that could result in a dispositive outcome. Should this Court grant leave to address these issues, the Negligence Section advocates affirming the *Dean/Duray* factors as a requirement when ruling on any discretionary discovery sanction that directly or ultimately will result in dismissal or default.

CONCLUSION AND RELIEF REQUESTED

If this Court grants leave, the Negligence Section of the State Bar of Michigan respectfully urges this Court to expressly hold that whenever a discretionary discovery sanction will directly or ultimately lead to a default or a dismissal, the trial court is required to evaluate all of the *Dean* factors.

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CERTIFICATE OF WORD COUNT COMPLIANCE

1. This *Amicus Curiae* Brief of the Negligence Law Section of the State Bar of Michigan complies with the word count limitation of MCR 7.312 and MCR 7.212(G) because:

X This *Amicus Curiae* Brief contains 1,285 words.

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