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STATE OF MICHIGAN

IN THE SUPREME COURT

CANDI OTTGEN and PATRICK OTTGEN,

Plaintiffs-Appellants,

v

DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITUTE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, PLLC, THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER, and KATRANJI INSTITUTE,

Defendants-Appellees.

SC No. 163216
COA No. 350767
LC No. 19-000266-NH
(Ingham Circuit Court)

APPELLEE APPENDIX

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STATE OF MICHIGAN

IN THE SUPREME COURT

CANDI OTTGEN and PATRICK OTTGEN,

Plaintiffs-Appellants,

v

DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITUTE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, PLLC, THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER, and KATRANJI INSTITUTE,

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TABLE OF CONTENTS
TO APPELLEE APPENDIX

DESCRIPTION	PAGE NOS.
5/16/19 Plaintiffs' Amended Brief in Support of Their Emergency Motion to File a Late Affidavit of Merit	001b – 057b
2/19/20 Order Granting Leave to Appeal	058b

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CANDI OTTGEN and
PATRICK OTTGEN,

Plaintiffs,

v

File No. 19-266-NH
HON. Clinton Canady, III

DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE,

Defendants.

James T. Heos (P26210)
Matthew J. Heos (P73786)
THE NICHOLS LAW FIRM
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
(517) 432-9000

Marcy R. Matson (P49758)
Sandra J. Lake (P54288)
HALL MATSON, PLC
Attorneys for Defendants
1550 Watertower Place, Suite 200
East Lansing, MI 48823
517-853-2929

PLAINTIFFS' AMENDED BRIEF IN SUPPORT OF THEIR EMERGENCY MOTION TO FILE LATE AFFIDAVIT OF MERIT

RECEIVED by MSC 3/25/2022 2:38:40 PM

TABLE OF CONENTS

STATEMENT OF FACTS.....5

STANDARD OF REVIEW.....6

LAW AND ARGUMENT.....7

A. ***Scarsella v Pollack*** **was erroneously decided and should be overturned**.....7

B. Plaintiff's complaint is not frivolous for the reasons stated in Dr. Boyer's AOM..10

RECEIVED by MSC 3/25/2022 2:38:40 PM

TABLE OF AUTHORITIES

MCR 2.116(C)(7).....6

MCR 2.116(C)(8).....7

MCR 2.118).....7

MCL 600.1901.....7

MCL 600.5856.....7

MCL 600.2912b.....6

MCL 600.5838.....9

MCL 600.2912d.....9

Petiprem v Jaskowski, 494 Mich 190, 201, 833 NW2d 247, 253 (2013).....6

Maiden v Rozwood, 461 Mich 109, 119 – 120, 597 NW2d 817, 823 (1999).....7

Scarsella v Pollak, 461 Mich 547, 607 NW2d 711 (2000).....7

Castro v Goulet, 501 Mich 844, 901 NW2d 614 (2017).....7

Pittsfield Charter Township v Washtenaw County, 468 Mich 702 712, 664 NW2d 193 (2003)...9

Ligons v Crittenton Hospital, 490 Mich 61, 82, 803 NW2d 271, 284 (2011).....9

RECEIVED by MSC 3/25/2022 2:38:40 PM

INDEX OF EXHIBITS

Exhibit 1 – NOI

Exhibit 2 – Correspondence between counsel

Exhibit 3 – Dr. Boyer's Affidavit of Merit of claims against Dr. Katranji

Exhibit 4 – Complaint and Jury Demand

Exhibit 5 – Affidavit of Kelly A. Thomison

Exhibit 6 – Plaintiffs First Amended Complaint

Exhibit 7 – Opinion of the Court in *Castro v Goulet*, 501 Mich 844, 901 NW2d 614 (2017)

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STATEMENT OF FACTS

Plaintiff Candi Ottgen ("Plaintiff") was a 43-year-old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016. She reported that both the thumb pain and the numbness and tingling started at nearly the same time. Eventually, when Plaintiff could not manage the symptoms at home, she saw a Dr. Kantore at Plant Medical at General Motors. This was in December of 2016. Plaintiff was prescribed splints, therapy and corticosteroids injections in her wrist that did not help the numbness and tingling or thumb pain.

After non-operative management, Plaintiff was sent to McLaren General Health, Pennsylvania Campus and underwent a nerve study conduction test. She reports that she was then referred to Dr. Katranji's office where she saw a physician's assistant who performed and ultrasound evaluation, took radiographs, and was eventually scheduled for surgery. Plaintiff was told by the physician's assistant that she needed a carpal tunnel surgery and a tendon release in her thumb. She did not see Dr. Katranji on that visit.

Plaintiff met Dr. Katranji on May 1, 2017 and reports that he talked to her about thumb surgery. Dr. Katranji indicated that it was not that bad, and he would just trim some osteophytes, and not perform a carpal tunnel release. Plaintiff reports that after surgery Dr. Katranji informed her that he had performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone. Dr. Katranji sent her for physical therapy and then on July 23, 2017 he performed a carpal tunnel release. Following both surgeries, Plaintiff reported that she developed the onset of numbness and tingling in the thumb and index fingers which is constant. Plaintiff currently has a decreased range of motion in her thumb, decreased strength, and has difficulty doing activities of daily living including but not limited to, getting dressed. She cannot do her old job at General

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Motors, which was working on the production line.

Plaintiff served a Notice of Intent ("NOI") on Defendants on or about September 27, 2018. See Exhibit 1 – NOI. Defense counsel informed Plaintiff's counsel that she would provide Plaintiff's medical records and radiographic films. See Exhibit 2 – Correspondence between counsel. Those records were never produced. Plaintiff obtained an Affidavit of Merit relative to this case from Dr. Martin Boyer, M.D. on or about January 30, 2019. See Exhibit 3 – Dr. Boyer's Affidavit of Merit of claims against Dr. Katranji. Plaintiffs' attorneys filed the complaint and jury demand on April 11, 2019. See Exhibit 4 – Complaint and Jury Demand; See Exhibit 5 – Affidavit of Kelly A. Thomison. Dr. Boyer's AOM was not attached to the filed Complaint due to a scrivener's error. Exhibit 5. Defense counsel received the complaint on April 24, 2019. *Id.* Defense counsel did not inform Plaintiff's counsel the AOM did not accompany the complaint but waited until after May 1, 2019 to inform Plaintiff's counsel of that fact with Defendants' motion for summary disposition.

Plaintiffs' attorney obtained a copy of Defendants' motion for summary disposition via the Court Clerk 9:33am. Plaintiffs' counsel filed their First Amended Complaint at approximately 10:15am on May 13, 2019 and served the same via personal service on Defense Counsel. See Exhibit 6 – Plaintiffs First Amended Complaint. Plaintiffs had not been served with Defendants' motion for summary disposition via US mail at approximately 11am on May 13, 2019.

STANDARD OF REVIEW

The Standard for a motion for additional time to file an AOM is contained in MCL 600.2912d(2) which states:

> (2) **Upon motion of a party for good cause shown, the court in which the complaint is filed may grant the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney an additional 28 days in which to file the affidavit required under subsection (1).**

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LAW AND ARGUMENT

A. *Scarsella v Pollack* was erroneously decided and should be overturned.

The Michigan Supreme Court's ruling *Scarsella v Pollak*, 461 Mich 547, 607 NW2d 711 (2000) was erroneously decided, and Defendants' motion for summary disposition should be denied for the reasons stated in Justice Viviano's concurring opinion in *Castro v Goulet*, 501 Mich 844, 901 NW2d 614 (2017) which is incorporated here by reference. See Exhibit 7 – Opinion of the Court in *Castro v Goulet*, 501 Mich 844, 901 NW2d 614 (2017). The procedural history in bringing this case highlights why *Scarcella* decision imposes the most severe sanction denying Plaintiffs with meritorious claims access to justice. Plaintiff's counsel obtained Dr. Boyer's AOM on January 30, 2019 and the same was omitted from Plaintiff's timely filed complaint by a scrivener's error. Plaintiff filed an amended complaint on May 13, 2019 with Dr. Boyer's AOM and served the same on Defendants via personal service by and through their attorneys on the same day pursuant to MCR 2.118(A). That filing relates back to the April 11, 2019 filing of the original Complaint and Jury Demand pursuant to MCR 2.118(D).

MCL 600.1901 states:

A civil action is commenced by **filing a complaint with the court**.

The Michigan Legislature's intent relative to the filing of a civil complaint was point at which the action begins. MCL 600.5856 states that:

> **The statues of limitations or repose are tolled** in any of the following circumstances:
> (a) **At the time the complaint is filed**, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
> (b) At the time jurisdiction over the defendant is otherwise acquired.
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.

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Here, the Legislature's intent is that the statute of limitations for a medical malpractice claim is tolled upon the filing of the complaint which is consistent with MCL 600.1901.

MCL 600.2912d states:

> (1) Subject to subsection (2), the plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff's attorney **shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169**. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:
> (a) The applicable standard of practice or care.
> (b) The health professional's opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.
> (c) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.
> (d) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.
> (2) **Upon motion of a party for good cause shown, the court in which the complaint is filed may grant the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney an additional 28 days in which to file the affidavit required under subsection (1).**
> (3) If the defendant in an action alleging medical malpractice fails to allow access to medical records within the time period set forth in section 2912b(6), the affidavit required under subsection (1) may be filed within 91 days after the filing of the complaint.

The Legislature's intent relative to the filing a medical malpractice complaint is that an AOM should be filed along with it, however, the statute recognizes and grants the trial court the power to extend the time for filing the AOM pursuant to MCL 600.2912d(2). MCL 600.2912d exemplifies the axiom that "…the expression of one thing suggests the exclusion of all others …." *Castro,* 501 Mich 884, 887 (2017) citing *Pittsfield Charter Township v Washtenaw County,* 468 Mich 702 712, 664 NW2d 193 (2003). MCL 600.2912d(1) treats the complaint and AOM as

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separate documents, and the AOM is not part and parcel of the complaint. *Ligons v Crittenton Hospital*, 490 Mich 61, 82, 803 NW2d 271, 284 (2011).

MCL 600.5838 states:

> (1) Except as otherwise provided in section 5838a or 5838b, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.
>
> (2) Except as otherwise provided in section 5838a or 5838b, **an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later**. The plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim. A malpractice action that is not commenced within the time prescribed by this subsection is barred.

This section provides additional support to the notion that MCL 600.2912d does not control whether the statute of limitations is tolled only upon the filing of an AOM rather than the complaint. §5838 specifically refers to "…sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim…." The Legislature could have included section 2912d in section 5838 but did not and we must adhere to the plain meaning of the statutory language.

The Legislature recognized there would be occasions where a claimant could not file an AOM with the complaint. MCL 600.2912d(2). We must presume the Legislature intended that filing a complaint, and the complaint alone, was the vehicle for tolling the statute of limitations. MCL 600.5856(a). MCL 600.5856 and MCL 600.2912d do not conflict, and therefore, the latter is not nullified if the general tolling rules applied to medical malpractice claims. *Castro* at 886. If the Legislature wanted to tether the statute of limitations to the filing of an AOM it would have

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enacted language to that effect in MCL 600.5856 or MCL 600.2912d. It did not and therefore, the Supreme Court's ruling in *Scarsella* was erroneously decided and should be overturned. Plaintiff filed an AOM albeit 30 days after the complaint was filed due to a scrivener's error – but filed it in conformance with MCL 600.2912d, nonetheless. Exhibit 4. Accordingly, Plaintiff's motion to file a late AOM should be granted.

B. Plaintiff's complaint is not frivolous for the reasons stated in Dr. Boyer's AOM.

Defendants' claim that Plaintiff's complaint is frivolous is without merit. As stated above, the AOM existed and would have been filed along with the complaint on April 11, 2019 but for a scrivener's error. Exhibit 4. Dr. Boyer's has opined that Dr. Katranji et al committed medical malpractice on May 1, 2017 and July 23, 2017 relative to surgeries on Plaintiff's right hand. Exhibit 5. Therefore, Plaintiff's claims against Defendants are meritorious and her motion to file late AOM should be granted.

WHEREFORE, Plaintiffs, by and through their attorneys, The Nichols Law Firm, PLLC, respectfully request the Honorable Court to grant Plaintiffs' motion to file late AOM for the reasons stated above.

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Respectfully submitted,

Dated: May 16, 2019

By:

James T. Heos (P26210)
Matthew J. Heos (P73786)
THE NICHOLS LAW FIRM
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
(517) 432-9000

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EXHIBIT 1

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CLAIMANT'S NOTICE OF INTENT TO FILE CLAIM UNDER MCL 600.2912(b)

TO: Dr. Abdalmajid Katranji
KRSI, Katranji Reconstructive Surgical Institute
Katranji Reconstructive Surgery Institute, P.L.L.C.
The Katranji Family Foundation
Katranji Hand Center
Katranji Institute

This Notice is intended to apply to the above health care professionals, entities, and/or facilities as well as their employees or agents, actual or ostensible, thereof, who were involved in the treatment of the patient Candi Ottgen.

A. **FACTUAL BASIS FOR CLAIM:**

Candi Ottgen ("Claimant") was a 43 year old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016. She reported that both the thumb pain and the numbness and tingling started at nearly the same time. Eventually, when she could not manage the symptoms at home she saw a Dr. Kantore at Plant Medical at General Motors. This was in December of 2016. She was prescribed splints, therapy and corticosteroids injections in her wrist that did not help the numbness and tingling or thumb pain.

After a non-operative management, she was sent to McLaren General Health, Pennsylvania Campus and underwent a nerve study conduction test. She reports that she was then referred to Dr. Katranji's office where she saw a physician's assistant who performed and ultrasound evaluation, took radiographs, and was eventually scheduled for surgery. She was told by the physician's assistant that she needed a carpal tunnel surgery and a tendon release in her thumb. She did not see Dr. Katranji on that visit.

She met Dr. Katranji on May 1, 2017 and reports that he talked to her about thumb surgery. He indicated that it was not that bad and he would just trim some osteophytes, and not perform a carpal tunnel release. She reports that after surgery he informed her that he had performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone. He sent her for physical therapy and then on July 23, 2017 he performed a carpal tunnel release. Following both surgeries she reports she developed the onset of numbness and tingling in the thumb and index fingers which is constant. She currently has a decreased range of motion in her thumb, decreased strength, and has difficulty doing activities of daily living including but not limited to, getting dressed. She cannot do her old job at General Motors, which was working on the production line.

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B. **THE APPLICABLE STANDARD OF CARE OR PRACTICE ALLEGED:**

1. Dr. Abdalmajid Katranji had a duty to inform the right had dominant patient, Candi Ottgen, that when he performed the arthroplasty on her right thumb and removed the trapezium that this would affect her ability to lead a normal life, including but not limited to continuing her job at General Motors.

2. That Dr. Katranji had an obligation to ascertain whether she worked and what her work entailed.

3. That given her symptoms, and age, doing an arthroplasty and removing the trapezium was not within the standard of practice.

4. That KRSI, Katranji Reconstructive Surgical Institute is vicariously liable for the acts of their principals, and employees.

C. **THE MANNER THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED:**

1. That Abdalmajid Katranji did not procure the requisite informed consent required of him as a hand surgeon by not notifying his patient that her life would be drastically affected by the surgical procedure that caused him to remove her trapezium.

2. That Abdalmajid Katraji had a duty to inform his patient, Candi Ottgen, of the catastrophic economic loss she would sustain as a result of the arthroplasty he performed on her on May 1, 2017.

3. That given Candi Ottgen's age, work, and household responsibilities, Dr. Abdalmajid Katranji breached the standard of practice required of him as a hand surgeon by performing an arthroplasty removing her right trapezium.

D. **THE ACTION THAT SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE STANDARD OF PRACTICE OR CARE:**

1. That Dr. Abdalmajid Katraji should have educated his patient, Candi Ottgen on what she could expect from her condition if he were to perform an arthroplasty removing her trapezium.

2. That he should never have removed her trapezium and performed an arthroplasty given her age, work and household responsibilities.

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E. **THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF THE INJURY CLAIMED IN THE NOTICE:**

1. That the surgeries performed on Candi Ottgen on May 1, 2017 and July 23, 2017 have caused her pain and suffering in the past, present and future and affected her ability to use her right hand and earn a living at General Motors.

F. **THE NAMES OF OTHER HEALTH PROFESSIONALS, ENTITIES AND FACILITIES NOTIFIED:**

Dr. Abdalmajid Katranji
KRSI, Katranji Reconstructive Surgical Institute
Katranji Reconstructive Surgery Institute, P.L.L.C.
The Katranji Family Foundation
Katranji Hand Center
Katranji Institute

TO THOSE RECEIVING NOTICE: YOU SHOULD FURNISH THIS NOTICE TO ANY PERSON, ENTITY OR FACILITY, NOT SPECIFICALLY NAMED HEREIN, THAT YOU REASONABLY BELIEVE MIGHT BE ENCOMPASSED IN THIS CLAIM.

THE NICHOLS LAW FIRM, PLLC

By_____

JAMES T. HEOS (P26210)
Attorneys for Claimant
3452 E. Lake Lansing Rd.
East Lansing, Michigan 48823
Telephone: (517) 432-9000

JTH/kat

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EXHIBIT 2

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NICHOLS LAW FIRM

Attorneys At Law

March 8, 2019

Ms. Marcy Matson
HALL MATSON, PLC
1550 Watertower Place, Ste 200
East Lansing, MI 48823

RE: Ottgen v Katranji

Dear Ms. Matson:

I am in receipt of your correspondence dated February 25, 2019. Please note, there were no authorizations attached to the letter as indicated. Please forward the authorization and I will forward same to my client for signature.

Please allow this correspondence to serve as a formal request for a copy of Ms. Ottgen's pre-operative films.

If you should have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,

THE NICHOLS LAW FIRM

James T. Heos

JTH/kat

P:\Personal Injury\Ottgen, Candi\Correspondence\Letter to Marcy Matson.doc

East Lansing office: 3452 E. Lake Lansing Road, East Lansing, MI 48823
(517) 432-9000 ♦ (800) 550-5892 ♦ FAX (517) 203-4448 ♦ www.nicholslawyers.com

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HALL MATSON, PLC Attorneys & Counselors

Thomas R. Hall
Marcy R. Matson
Sandra J. Lake
Evelyn Waldman**
Susan A. Garver
Horia R. Neagos
Ann M. Garant

East Lansing Office
1550 Watertower Place, Ste. 200
East Lansing, MI 48823
P: 517/853-2929
F: 517/853-8062

West Michigan Office
25 Division Ave., South, Ste. 525
Grand Rapids, MI 49503
P: 616/236-1409

** Of Counsel

February 25, 2019

Mr. James T. Heos
3452 East Lake Lansing Road
Lansing, Michigan 48823

Re: *Notice of Intent Dr. Katranji, M.D.; Katranji Reconstructive Surgery Institute, PLLC; Katranji Family Foundation; Katranji Hand Center; and Katranji Institute*

Dear Mr. Heos:

Please be advised that I have been retained to represent the interests of Dr. Abdalmajid Katranji, M.D. and the named entities with respect to the above Notice of Intent. Please let me know if you have already obtained a complete copy of Dr. Katranji's chart for Ms. Candi Ottgen. Alternatively, let me know if you have not received these records, and I will be happy to forward to you the same.

Finally, I have enclosed a release authorizing my office to obtain records regarding Ms. Ottgen. Please provide a list of Ms. Ottgen's treaters, including physicians, institutions, care providers or medical examiners that rendered services, diagnoses or opinions relative to Ms. Ottgen, together with signed authorizations allowing my office to obtain same.

I look forward to working with you. Please do not hesitate to call with any questions or concerns you may have.

Very truly yours,

Hall Matson PLC

Marcy R. Matson

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NICHOLS LAW FIRM
MAR 04 2019
0188
By

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MRM/sjl

cc: Abdalmajid Katranji, M.D.
Jeff Wesley

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HALL MATSON, PLC Attorneys & Counselors

Thomas R. Hall
Marcy R. Matson
Sandra J. Lake
Evelyn Waldman**
Susan A. Garver
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West Michigan Office
25 Division Ave., South, Ste. 525
Grand Rapids, MI 49503
P: 616/236-1409

** Of Counsel

March 20, 2019

Mr. James T. Heos
The Nichols Law Firm
3452 East Lake Lansing Road
East Lansing, Michigan 48823

Re: *Notice of Intent Dr. Katranji, M.D.; Katranji Reconstructive Surgery Institute, PLLC; Katranji Family Foundation; Katranji Hand Center; and Katranji Institute*

Dear Mr. Heos:

Thank you for your letter of March 8, 2019. Enclosed is a medical authorization for your client's signature.

Very truly yours,

Hall Matson PLC

Sandra J. Lake

Sandra J. Lake

Encl.

RECEIVED
NICHOLS LAW FIRM
MAR 25 2019
By

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NICHOLS LAW FIRM

Attorneys At Law

March 26, 2019

Ms. Marcy Matson
HALL MATSON, PLC
1550 Watertower Place, Ste 200
East Lansing, MI 48823

RE: Ottgen v Katranji

Dear Ms. Matson:

Please provide my office with the informed consent letter for Ms. Candi Ottgen.

If you should have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,

THE NICHOLS LAW FIRM

/s/

James T. Heos

JTH/kat

P:\Personal Injury\Ottgen, Candi\Correspondence\Letter to Marcy Matson re consent.doc

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Kelly Thomison

From: James Heos
Sent: Tuesday, April 23, 2019 1:51 PM
To: Kelly Thomison
Subject: FW: Candi Ottgen
Attachments: Consent forms.pdf

Print and file.

From: Sandra Lake <Slake@hallmatson.law>
Sent: Tuesday, April 23, 2019 12:24 PM
To: James Heos <jheos@nicholslaw.net>
Subject: RE: Candi Ottgen

Jim,

Attached are the signed consent forms and Stephen Ereg's 4/7/17 office note, which speaks to the issue of consent at length. These should have been in the records from Dr. Katrianji's office. If, for some reason, these records were not, let me know and I can make sure you get a complete set.

Sandra J. Lake (P54288)
Hall Matson, PLC
1550 Watertower Place, Suite 200
East Lansing, MI 48823
Telephone: (517) 853-2929, Ext. 111
Fax: (517) 853-8062
slake@hallmatson.law

From: James Heos [mailto:jheos@nicholslaw.net]
Sent: Monday, April 22, 2019 10:38 AM
To: Sandra Lake <Slake@hallmatson.law>
Subject: RE: Candi Ottgen

Sandra, The Dr. was personally served by my PI. I need the consent for surgery. Jim

From: Sandra Lake <Slake@hallmatson.law>
Sent: Monday, April 22, 2019 9:38 AM
To: James Heos <jheos@nicholslaw.net>
Cc: Darla Arnold <Darnold@hallmatson.law>; Marcy Matson <MMatson@hallmatson.law>
Subject: Candi Ottgen

Jim,

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It is my understanding that you attempted to serve Dr. Katranji last week by emailing the Complaint to Marcy and her assistant, Marcia. I am not sure if Marcy agreed to accept service. If she did, we obviously will honor that. And, I don't see that as being a problem. But, I cannot ask Marcy or Marcia because as luck would have it, they are both on vacation this week.

Anyway, since I do not have access to Marcia or Marcy's email, can you please forward the Summons and Complaint to me. I'm handling things while Marcy is out.

Also, just so you know, I am working on getting you films if there are any. I'll provide them as soon as I can. Is there anything else that you have requested that we have not provided? Let me know and I will work on it.

I will be working with Marcy on this one, so feel free to contact me as well.

Thanks!

Sandy

Sandra J. Lake (P54288)
Hall Matson, PLC
1550 Watertower Place, Suite 200
East Lansing, MI 48823
Telephone: (517) 853-2929, Ext. 111
Fax: (517) 853-8062
slake@hallmatson.law

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EXHIBIT 3

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Re: Candi Ottgen

AFFIDAVIT OF MERITORIOUS CLAIM OF MARTIN I. BOYER, M.D.

STATE OF MISSOURI)
)ss.
COUNTY OF ST. LOUIS)

I, Martin I. Boyer, M.D., by this Affidavit, state that during the relevant time period at issue in this matter, I was a licensed and practicing physician specializing in, and devoting a majority of my professional time for the preceding year to, the clinical practice of orthopedic surgery, specializing in hand surgery, and I attest to the following:

1. I have read the Notice of Intent to file a claim in this action.

2. I have reviewed all of the medical records provided to me by Plaintiff's counsel.

3. I understand the basic facts to be:

   A. That Candi Ottgen, Plaintiff was a 43 year old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016. She reported that both the thumb and the numbness and tingling started at nearly the same time. Eventually when she could not manage the symptoms at home she saw a Dr. Cantore at Plant Medical at General Motors where she worked. This was in December of 2016. She was prescribed splints, therapy and corticosteroid injections in her wrist that did not help the numbness and tingling or the thumb pain.
   B. After a non-operative management she was sent to McLaren General Health, Penn Campus, and underwent a nerve study conduction test. She reports she was referred to Defendant Dr. Katranji's office where she saw a physician's assistant who performed an ultrasound, took radiographs, and was eventually scheduled for surgery. She was told by the physician's assistant that she needed a carpal tunnel surgery and a tendon release in her thumb. She did not see Dr. Katranji on that visit.
   C. She met Dr. Katranji on May 1, 2017 and reports he talked to her about the thumb surgery. He indicated that it was not that bad and he could just trim some osteophytes, and perform a carpal tunnel release. She reports after surgery he informed her that he had performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone. He sent her for physical therapy and then on July 23, 2017 he performed a carpal tunnel release. Following both surgeries she reports she developed the onset of numbness, tingling in the thumb and index fingers which is constant to today's date. She currently has decreased range of motion in her thumb, decreased strength and has difficulty doing activities of daily living including

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but not limited to getting dressed. She cannot do her job at General Motors which was working on the production line.

4. Abdalmajid Katranji, M.D., a licensed and practicing physician specializing in hand surgery, and an agent, and/or employee of KRSI, Katranji Reconstructive Surgical Institute, PLLC, the Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, when presented with a patient exhibiting the history, signs and symptoms, such as those presented by Candi Ottgen had a duty to timely and properly:

   A. Take a thorough history and perform a thorough physical examination;
   B. Appreciate the significance of Candi Ottgen's radiographic and neurological findings and appreciate what she did for a living;
   C. Formulate a differential diagnosis which includes arthritis as a cause of Ms. Ottgen's presentation;
   D. Appreciate that when he performed the arthroplasty on her right thumb and removed the trapezium that this would affect her ability to lead a normal life, including but not limited to continuing her job at General Motors;
   E. Appreciate that Candi Ottgen worked and that Dr. Katranji had an obligation to ascertain what her work entailed;
   F. Appreciate that given her symptoms, and age, doing an arthroplasty and removing the trapezium was not within the standard of practice given her physical and radiographic presentation;
   G. That KRSI, Katranjri Reconstructive Surgical Institute, PLLC, the Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, are vicariously liable for the acts of their principals and/or employees.

5. As a direct and proximate result of the joint and severally negligence and breaches of the standard of practice of those Defendants listed including but not limited to Dr. Abdalmajid Katranji, Candi Ottgen has sustained injuries and damages compensable under Michigan Law included but not limited to economic damages (e.g. lost wages and lost earnings, lost earning capacity, medical expenses, physical/occupational therapy expenses and prescription expenses) as well as non-economic damages (e.g. pain and suffering, disability, loss of consortium, loss of social pleasure and enjoyment, anxiety and depression).

6. This opinion is based upon a review of the information to date and may or may not change upon review of additional materials.

FURTHER AFFIANT SAYETH

Date: Jan 30/19

Dr. Martin I. Boyer

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STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

Subscribed and sworn to before me this 30th day of January, 2019.

Carrie Anne Heineman

Notary Public, St. Louis County
Acting in _____ County, _____
My Commission Expires: 2/25/2022



Prepared by:
James T. Heos (P26210)
THE NICHOLS LAW FIRM, PLLC
3452 E. Lake Lansing Road
East Lansing, Michigan 48823
(517) 432-9000

JTH/kat

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EXHIBIT 4

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Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN 30th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 19- 2666 -NH

Court address
313 W. Kalamazoo St., Lansing, MI 48933

Court telephone no.
JUDGE JAMES S. JAMO 517-483-6500

Plaintiff's name(s), address(es), and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s).
Candi Ottgen and Patrick Ottgen		DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE, et al Resident Agent: Adil Daudi 4121 Okemos Rd., Ste. 10 Okemos, MI 48864
Plaintiff's attorney, bar no., address, and telephone no. James T. Heos (P26210) The Nichols Law Firm, P.L.L.C. 3452 E. Lake Lansing Rd. East Lansing, MI 48823 (517) 432-9000		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date APR 11 2019	Expiration date* JUL 11 2019	Court clerk BRANDY RIESELBACH

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

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SUMMONS

Case No. 19- -NI

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ OFFICER CERTIFICATE	OR	☐ AFFIDAVIT OF PROCESS SERVER
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)		Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint.

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____
List all documents served with the summons and complaint

_____

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
$		$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
$		$	$

_____
Signature

_____
Name (type or print)

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

_____ on _____ (Day, date, time)

_____ on behalf of _____
Signature

~~030b~~

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CANDI OTTGEN and
PATRICK OTTEGEN,

Plaintiffs,

v

DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE,

Defendants.

COMPLAINT AND JURY DEMAND

File No. 19-2660-NH
HON.
JUDGE JAMES S. JAMO

James T. Heos (P26210)
THE NICHOLS LAW FIRM
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
(517) 432-9000

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE TRANSACTION OR OCCURRENCE ALLEGED IN THE COMPLAINT

GENERAL ALLEGATIONS

NOW COMES Plaintiffs, CANDI OTTGEN and PATRICK OTTGEN, by and through their attorneys, THE NICHOLS LAW FIRM, PLLC, by James T. Heos, and states as follows:

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COUNT I – MEDICAL MALPRACTICE AGAINST DR. KATRANJI

1. That Candi Ottgen is a resident of County of Ionia, State of Michigan and lives there with her husband, Patrick Ottgen.

2. That Dr. Abdalmajid Katranji is a principal and/or employee of KRSI, Katranji Reconstructive Surgical Institute Katranji Reconstructive Surgery Institute, PLLC, The Katranji Family Foundation, Katranji Hand Center, and Katranji Institute.

3. That Dr. Abdalmajid Katranji and KRSI, Katranji Reconstructive Surgical Institute, Katranji Reconstructive Surgery Institute, PLLC, The Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, all entities hereinafter referred as "Katranji Hand Center", do business in the County of Ingham, State of Michigan.

4. That Plaintiff Candi Ottgen was a 43 year old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016.

5. Candi Ottgen reported that both the thumb pain and the numbness and tingling started at nearly the same time.

6. Eventually when Candi Ottgen could not manage the symptoms at home she saw a Dr. Kantore in December 2016 at Plant Medical, General Motors.

7. Candi Ottgen was prescribed splints, therapy and corticosteroid injections in her wrist that did not help the numbness and tingling or thumb pain.

8. Candi Ottgen was then sent to McLaren General Health, Pennsylvania Campus, and underwent a nerve study conduction test.

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9. Candi Ottgen was subsequently referred to Defendant Dr. Abdalmajid Katranji.

10. When Candi Ottgen appeared for her initial consultation she saw a physician's assistant who performed an ultrasound evaluation, took radiographs, and was eventually scheduled for surgery.

11. Candi Ottgen was told by the physician's assistant that she needed a carpal tunnel release and a tendon release in her thumb but did not see Dr. Abdalmajid Katranji.

12. Candi Ottgen met Dr. Abdalmajid Katranji on May 1, 2017 and reports that he talked to her about thumb surgery and indicated that it was not that bad and he would just trim some osteophytes and perform a carpal tunnel release.

13. In fact Dr. Abdalmajid Katranji informed Candi Ottgen post-surgery that he performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone.

14. Dr. Abdalmajid Katranji sent Candi Ottgen to physical therapy and then on July 23, 2017 he performed a carpel tunnel release.

15. Following both surgeries Candi Ottgen reports she developed the onset of numbness and tingling in the thumb and index finger which is constant with decreased range of motion in her thumb, decreased strength, and had difficulty doing activities of daily living including but not limited to getting dressed.

16. Candi Ottgen cannot do her old job at General Motors, which was working on the production Line.

COUNT II – MEDICAL MALPRACICE AGAINST KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE

18. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

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19. Dr. Abdalmajid Katranji, and Katranji Hand Center had a duty to inform Candi Ottgen, the right-hand dominant patient, that when he performed the arthroplasty on her right thumb and removed the trapezium that this would affect her ability to lead a normal life, including but not limited to continuing her job at General Motors.

20. Dr. Abdalmajid Katranji and Katranji Hand Center had an obligation to ascertain whether she worked and what her work entailed.

21. Given Candi Ottgen's symptoms, age and the results of her diagnostic testing removing the trapezium was not within the standard of practice.

22. Katranji Hand Center and Dr. Abdalmajid Katranji are vicariously liable and actively liable for the acts of their principals and employees.

23. Dr. Abdalmajid Katranji did not procure the requisite informed consent required of him as a hand surgeon by not notifying his patient Candi Ottgen that her life would be drastically effected by the surgical procedure that caused him to remove her trapezium.

24. Dr. Abdalmajid Katranji had a duty to inform his patient, Candi Ottgen, of the catastrophic economic loss she would sustain as a result of the arthroplasty he performed on her on May 1, 2017.

25. Given Candi Ottgen's age, work and household responsibilities, Dr. Abdalmajid Katranji breached the standard of practice required of him as a hand surgeon by performing an arthroplasty, removing her right trapezium given the radiographic results and the economic loss.

26. Dr. Abdalmajid Katranji should have educated his patient Candi Ottgen on what she could expect from her condition if he were to perform an arthroplasty removing her trapezium.

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27. Dr. Abdalmajid Katranji should never had removed Candi Ottgen's trapezium and performed an arthroplasty given her age, work and household responsibilities given her presentation.

28. Katranji Hand Center is vicariously liable for the acts of their principals and employees.

29. Surgeries performed on Candi Ottgen on May 1, 2017 and July 23, 2017 caused her pain and suffering in the past, present and future and affected her ability to use her right hand and earn a living at General Motors. That the above noted surgeries aggravated and/or activated any pre-existing conditions.

COUNT III – LOSS OF CONSORTIUM

30. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

31. As a direct and proximate result of Plaintiff's injuries; Plaintiff Patrick Ottgen has suffered the following injuries:

A. An interference with the husband/wife relationship, including her right of marital conjugal fellowship which existed prior to the date of Plaintiff's collision;

B. An interference with the love, affection and society which existed prior to the date of Plaintiff's collision;

C. An interference with the enjoyment of Plaintiff's company and companionship in and about the household, including the loss of pleasurable enjoyment of recreational activities outside the household;

D. An interference with Plaintiff's services and financial support, and Plaintiff is fearful that these losses have and will affect their household and standard of living.

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E. Severe emotional distress, mental anguish and anxiety in the past, present and into the unknown future and permanently.

32. Plaintiff's injuries occurred in the past, present and continue into the unknown future and permanently.

WHEREFORE Plaintiffs **CANDI OTTGEN and PATRICK OTTGEN** makes claim for all non-economic losses and any economic losses in excess of No-Fault benefits, and the amount in controversy exceeds the sum of Twenty-five Thousand ($25,000) Dollars. Further, Plaintiffs **CANDI OTTGEN and PATRICK OTTGEN** makes claim for any amount that they may be entitled to, plus costs and interest and for whatever amount this Honorable Court may deem just and proper and the nature of this case may allow.

THE NICHOLS LAW FIRM

Dated: March 27, 2018

By_____

James T. Heos (P26210)
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
Telephone: (517) 432-9000

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JURY DEMAND

NOW COMES the Plaintiffs, **CANDI OTTGEN and PATRICK OTTGEN,** by and through their attorneys, **JAMES T. HEOS** of **THE NICHOLS LAW FIRM**, and demands trial by jury in reference to the above-entitled matter.

Respectfully submitted,

THE NICHOLS LAW FIRM, PLLC

BY: _____

JAMES T. HEOS (P26210)
Attorney for Plaintiff
3452 East Lake Lansing Road
East Lansing, Michigan 48823
(517) 432-9000

Dated: April 5, 2019

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EXHIBIT 5

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AFFIDAVIT OF KELLY THOMISON

STATE OF MICHIGAN
}ss
COUNTY OF INGHAM

Affiant Kelly Thomison, first being duly sworn, states as follows:

1. I am Kelly Thomison and I make this Affidavit with personal knowledge.
2. On or about September 27, 2018 I sent out the Notice of Intent to Dr. Katranji, KRSI, Katranji Reconstructive Surgery Institute, Katranji Hand Center, The Katranji Family Foundation and the Katranji Institute via certified mail.
3. On or about January 30, 2019 Dr. Boyer signed the Affidavit of Merit in front of a notary public in St. Louis, Missouri.
4. On or about February 4, 2019 the executed Affidavit of Merit was received by our office via first class mail.
5. On or about February 25, 2019, Marcy Matson sent correspondence acknowledging the Notice of Intent. Ms. Matson asked for authorizations to be signed by our client and indicated she would provide medical records if needed.
6. On or about March 12, 2019 James Heos dictated a letter to Marcy Matson asking for the pre-operative films and indicated that Ms. Matson did not provide any authorizations in her previous correspondence.
7. On or about March 20, 2019 Ms. Matson sent medical authorizations to be signed by our client.
8. On or about March 26, 2019 correspondence was sent to Ms. Matson asking for the informed consents signed by our client.

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9. On or about April 9, 2019 the executed authorization was returned to Ms. Matson's office.

10. On or about April 11, 2019 I prepared the Complaint for filing. When making copies of the Complaint for the Court, I believed the executed Affidavit of Merit was attached to the back of the Complaint. The Complaint was filed with the Court.

11. On or about April 18, 2019 process server Dan Duncan served the Complaint on the entities via the resident agent.

12. On or about April 22, 2019 I received an email from Sandra Lake asking for the Complaint to be emailed to her. Ms. Lake indicated in the email she was working on getting the requested films and asked if there were any other documents not provided to us.

13. On or about April 22, 2019 an email was sent to Ms. Lake again asking for the informed consents signed by our client.

14. On or about April 23, 2019 our office received the informed consents via email.

15. On or about April 24, 2019 process server Dan Duncan received permission to serve Dr. Katranji via attorney Sandra Lake. The Complaint was served on Sandra Lake.

16. On or about April 25, 2019 a disc with films were received by Legal Copy Services. These films were forwarded to our expert, Dr. Boyer.

17. On or about May 7, 2019 an email was received from our expert indicated the disc with the films were of breast imaging not of client's hand.

18. On or about May 13, 2019 it came to my attention that the Affidavit of Merit was not attached to the original Complaint filed with the Ingham County Circuit Court.

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19. On or about May 13, 2019 an Amended Complaint with the Affidavit of Merit was filed with the Ingham County Circuit Court.

20. On or about May 13, 2019 Process Server Dan Duncan served the Amended Complaint on Sandra Lake.

21. Further your affiant sayeth not.

Kelly Thomison, Affiant

Subscribed and sworn to before me this 15th day of May, 2019

Notary Public, Oakland County
Acting in Ingham County, Michigan
My Commission Expires: 7/19/2022

AARON MARTINEZ
Notary Public, State of Michigan
County Of Oakland
My Commission Expires 07-19-2022
Acting in the County of Ingham

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EXHIBIT 6

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

RECEIVED
MAY 13 2019
30th Circuit Court

CANDI OTTGEN and
PATRICK OTTEGEN,

Plaintiffs,

v

File No. 19-266-NH
HON.

DR. ABDALMAIJID KATRANJI, KRSI, KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE,

Defendants.

James T. Heos (P26210)
THE NICHOLS LAW FIRM
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
(517) 432-9000

FIRST AMENDED COMPLAINT AND JURY DEMAND

GENERAL ALLEGATIONS

NOW COMES Plaintiffs, CANDI OTTGEN and PATRICK OTTGEN, by and through their attorneys, THE NICHOLS LAW FIRM, PLLC, by James T. Heos, and states as follows:

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COUNT I – MEDICAL MALPRACTICE AGAINST DR. KATRANJI

1. That Candi Ottgen is a resident of County of Ionia, State of Michigan and lives there with her husband, Patrick Ottgen.

2. That Dr. Abdalmajid Katranji is a principal and/or employee of KRSI, Katranji Reconstructive Surgical Institute Katranji Reconstructive Surgery Institute, PLLC, The Katranji Family Foundation, Katranji Hand Center, and Katranji Institute.

3. That Dr. Abdalmajid Katranji and KRSI, Katranji Reconstructive Surgical Institute, Katranji Reconstructive Surgery Institute, PLLC, The Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, all entities hereinafter referred as "Katranji Hand Center", do business in the County of Ingham, State of Michigan.

4. That Plaintiff Candi Ottgen was a 43 year old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016.

5. Candi Ottgen reported that both the thumb pain and the numbness and tingling started at nearly the same time.

6. Eventually when Candi Ottgen could not manage the symptoms at home she saw a Dr. Kantore in December 2016 at Plant Medical, General Motors.

7. Candi Ottgen was prescribed splints, therapy and corticosteroid injections in her wrist that did not help the numbness and tingling or thumb pain.

8. Candi Ottgen was then sent to McLaren General Health, Pennsylvania Campus, and underwent a nerve study conduction test.

9. Candi Ottgen was subsequently referred to Defendant Dr. Abdalmajid Katranji.

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10. When Candi Ottgen appeared for her initial consultation she saw a physician's assistant who performed an ultrasound evaluation, took radiographs, and was eventually scheduled for surgery.

11. Candi Ottgen was told by the physician's assistant that she needed a carpal tunnel release and a tendon release in her thumb but did not see Dr. Abdalmajid Katranji.

12. Candi Ottgen met Dr. Abdalmajid Katranji on May 1, 2017 and reports that he talked to her about thumb surgery and indicated that it was not that bad and he would just trim some osteophytes and perform a carpal tunnel release.

13. In fact Dr. Abdalmajid Katranji informed Candi Ottgen post-surgery that he performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone.

14. Dr. Abdalmajid Katranji sent Candi Ottgen to physical therapy and then on July 23, 2017 he performed a carpel tunnel release.

15. Following both surgeries Candi Ottgen reports she developed the onset of numbness and tingling in the thumb and index finger which is constant with decreased range of motion in her thumb, decreased strength, and had difficulty doing activities of daily living including but not limited to getting dressed.

16. Candi Ottgen cannot do her old job at General Motors, which was working on the production Line.

COUNT II – MEDICAL MALPRACICE AGAINST KATRANJI RECONSTRUCTIVE SURGICAL INSTITURE, KATRANJI RECONSTRUCTIVE SURGERY INSTITUTE, P.L.L.C., THE KATRANJI FAMILY FOUNDATION, KATRANJI HAND CENTER and KATRANJI INSTITUTE

18. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

19. Dr. Abdalmajid Katranji, and Katranji Hand Center had a duty to inform Candi

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Ottgen, the right-hand dominant patient, that when he performed the arthroplasty on her right thumb and removed the trapezium that this would affect her ability to lead a normal life, including but not limited to continuing her job at General Motors.

20. Dr. Abdalmajid Katranji and Katranji Hand Center had an obligation to ascertain whether she worked and what her work entailed.

21. Given Candi Ottgen's symptoms, age and the results of her diagnostic testing removing the trapezium was not within the standard of practice.

22. Katranji Hand Center and Dr. Abdalmajid Katranji are vicariously liable and actively liable for the acts of their principals and employees.

23. Dr. Abdalmajid Katranji did not procure the requisite informed consent required of him as a hand surgeon by not notifying his patient Candi Ottgen that her life would be drastically effected by the surgical procedure that caused him to remove her trapezium.

24. Dr. Abdalmajid Katranji had a duty to inform his patient, Candi Ottgen, of the catastrophic economic loss she would sustain as a result of the arthroplasty he performed on her on May 1, 2017.

25. Given Candi Ottgen's age, work and household responsibilities, Dr. Abdalmajid Katranji breached the standard of practice required of him as a hand surgeon by performing an arthroplasty, removing her right trapezium given the radiographic results and the economic loss.

26. Dr. Abdalmajid Katranji should have educated his patient Candi Ottgen on what she could expect from her condition if he were to perform an arthroplasty removing her trapezium.

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27. Dr. Abdalmajid Katranji should never had removed Candi Ottgen's trapezium and performed an arthroplasty given her age, work and household responsibilities given her presentation.

28. Katranji Hand Center is vicariously liable for the acts of their principals and employees.

29. Surgeries performed on Candi Ottgen on May 1, 2017 and July 23, 2017 caused her pain and suffering in the past, present and future and affected her ability to use her right hand and earn a living at General Motors. That the above noted surgeries aggravated and/or activated any pre-existing conditions.

COUNT III – LOSS OF CONSORTIUM

30. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

31. As a direct and proximate result of Plaintiff's injuries; Plaintiff Patrick Ottgen has suffered the following injuries:

A. An interference with the husband/wife relationship, including her right of marital conjugal fellowship which existed prior to the date of Plaintiff's collision;

B. An interference with the love, affection and society which existed prior to the date of Plaintiff's collision;

C. An interference with the enjoyment of Plaintiff's company and companionship in and about the household, including the loss of pleasurable enjoyment of recreational activities outside the household;

D. An interference with Plaintiff's services and financial support, and Plaintiff is fearful that these losses have and will affect their household and standard of living.

E. Severe emotional distress, mental anguish and anxiety in the past, present and into the unknown future and permanently.

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32. Plaintiff's injuries occurred in the past, present and continue into the unknown future and permanently.

WHEREFORE Plaintiffs **CANDI OTTGEN and PATRICK OTTGEN** makes claim for all non-economic losses and any economic losses in excess of No-Fault benefits, and the amount in controversy exceeds the sum of Twenty-five Thousand ($25,000) Dollars. Further, Plaintiffs **CANDI OTTGEN and PATRICK OTTGEN** makes claim for any amount that they may be entitled to, plus costs and interest and for whatever amount this Honorable Court may deem just and proper and the nature of this case may allow.

THE NICHOLS LAW FIRM

Dated: May 13, 2018

By_____

James T. Heos (P26210)
Attorney for Plaintiff
3452 E. Lake Lansing Rd.
East Lansing, MI 48823
Telephone: (517) 432-9000

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JURY DEMAND

NOW COMES the Plaintiffs, **CANDI OTTGEN and PATRICK OTTGEN,** by and through their attorneys, **JAMES T. HEOS** of **THE NICHOLS LAW FIRM,** and demands trial by jury in reference to the above-entitled matter.

Respectfully submitted,

THE NICHOLS LAW FIRM, PLLC

BY: _____

JAMES T. HEOS (P26210)
Attorney for Plaintiff
3452 East Lake Lansing Road
East Lansing, Michigan 48823
(517) 432-9000

Dated: May 13, 2019

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Re: Candi Ottgen

AFFIDAVIT OF MERITORIOUS CLAIM OF MARTIN I. BOYER, M.D.

STATE OF MISSOURI)
)ss.
COUNTY OF ST. LOUIS)

I, Martin I. Boyer, M.D., by this Affidavit, state that during the relevant time period at issue in this matter, I was a licensed and practicing physician specializing in, and devoting a majority of my professional time for the preceding year to, the clinical practice of orthopedic surgery, specializing in hand surgery, and I attest to the following:

1. I have read the Notice of Intent to file a claim in this action.

2. I have reviewed all of the medical records provided to me by Plaintiff's counsel.

3. I understand the basic facts to be:

   A. That Candi Ottgen, Plaintiff was a 43 year old right hand dominant female who reported the onset of bilateral thumb pain as well as numbness and tingling in her fingers in mid-2016. She reported that both the thumb and the numbness and tingling started at nearly the same time. Eventually when she could not manage the symptoms at home she saw a Dr. Cantore at Plant Medical at General Motors where she worked. This was in December of 2016. She was prescribed splints, therapy and corticosteroid injections in her wrist that did not help the numbness and tingling or the thumb pain.
   B. After a non-operative management she was sent to McLaren General Health, Penn Campus, and underwent a nerve study conduction test. She reports she was referred to Defendant Dr. Katranji's office where she saw a physician's assistant who performed an ultrasound, took radiographs, and was eventually scheduled for surgery. She was told by the physician's assistant that she needed a carpal tunnel surgery and a tendon release in her thumb. She did not see Dr. Katranji on that visit.
   C. She met Dr. Katranji on May 1, 2017 and reports he talked to her about the thumb surgery. He indicated that it was not that bad and he could just trim some osteophytes, and perform a carpal tunnel release. She reports after surgery he informed her that he had performed an arthroplasty and was splinted in a routine fashion removing her trapezium bone. He sent her for physical therapy and then on July 23, 2017 he performed a carpal tunnel release. Following both surgeries she reports she developed the onset of numbness, tingling in the thumb and index fingers which is constant to today's date. She currently has decreased range of motion in her thumb, decreased strength and has difficulty doing activities of daily living including

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but not limited to getting dressed. She cannot do her job at General Motors which was working on the production line.

4. Abdalmajid Katranji, M.D., a licensed and practicing physician specializing in hand surgery, and an agent, and/or employee of KRSI, Katranji Reconstructive Surgical Institute, PLLC, the Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, when presented with a patient exhibiting the history, signs and symptoms, such as those presented by Candi Ottgen had a duty to timely and properly:

   A. Take a thorough history and perform a thorough physical examination;
   B. Appreciate the significance of Candi Ottgen's radiographic and neurological findings and appreciate what she did for a living;
   C. Formulate a differential diagnosis which includes arthritis as a cause of Ms. Ottgen's presentation;
   D. Appreciate that when he performed the arthroplasty on her right thumb and removed the trapezium that this would affect her ability to lead a normal life, including but not limited to continuing her job at General Motors;
   E. Appreciate that Candi Ottgen worked and that Dr. Katranji had an obligation to ascertain what her work entailed;
   F. Appreciate that given her symptoms, and age, doing an arthroplasty and removing the trapezium was not within the standard of practice given her physical and radiographic presentation;
   G. That KRSI, Katranjri Reconstructive Surgical Institute, PLLC, the Katranji Family Foundation, Katranji Hand Center, and Katranji Institute, are vicariously liable for the acts of their principals and/or employees.

5. As a direct and proximate result of the joint and severally negligence and breaches of the standard of practice of those Defendants listed including but not limited to Dr. Abdalmajid Katranji, Candi Ottgen has sustained injuries and damages compensable under Michigan Law included but not limited to economic damages (e.g. lost wages and lost earnings, lost earning capacity, medical expenses, physical/occupational therapy expenses and prescription expenses) as well as non-economic damages (e.g. pain and suffering, disability, loss of consortium, loss of social pleasure and enjoyment, anxiety and depression).

6. This opinion is based upon a review of the information to date and may or may not change upon review of additional materials.

FURTHER AFFIANT SAYETH

Date: Jan 20/19

Dr. Martin I. Boyer

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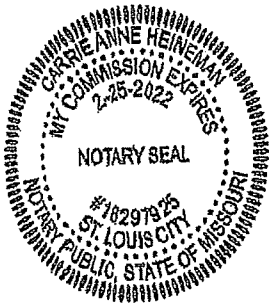
STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

Subscribed and sworn to before me this 30th day of January, 2019.

Carrie Anne Heineman

Notary Public, St. Louis County
Acting in _____ County, _____
My Commission Expires: 2/25/2022



Prepared by:
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JTH/kat

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EXHIBIT 7

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STATE OF MICHIGAN

COURT OF APPEALS

RUBEN CASTRO and CHRISTY CASTRO,

Plaintiffs- Appellants,

V

JAMES ALAN GOULET, MD and JAMES ALAN GOULET MD, PC,

Defendants-Appellees,

and

STEPHEN R. TOLHURST,

Defendant.

FOR PUBLICATION
August 20, 2015

No. 316639
Washtenaw Circuit Court
LC No. 13-000138-NH

Before: RONAYNE KRAUSE, P.J., and WILDER and STEPHENS, JJ.

Wilder, J. (*dissenting*).

I respectfully dissent.

In *Tyra v Organ Procurement Agency of Mich*, ___ Mich ___, ___; ___ NW2d ___ (2015) (Docket Nos. 148079, 148087, 149344); slip op at 21, our Supreme Court reiterated that:

> Although a civil action is generally commenced by filing a complaint, a medical malpractice action can only be commenced by filing a timely NOI and then filing a complaint and an affidavit of merit after the applicable notice period has expired, but *before* the period of limitations has expired. [Emphasis added.]

This holding by the Supreme Court reflects the rule of law, established in *Scarsella v Pollak*, 461 Mich 547, 549-550; 607 NW2d 711 (2000), that "for statute of limitations purposes in a medical malpractice action case, the mere tendering of a complaint without the required affidavit of merit [("AOM")] is insufficient to commence the lawsuit."

In the instant case, when plaintiffs filed their complaint on February 4, 2013, they did not file an AOM. Thus, the action against defendants did not commence on February 4, 2013. However, plaintiffs filed a motion to extend the time for filing the requisite AOM pursuant to MCL 600.2912d(2). The trial court granted that motion on March 8, 2013, and the majority concludes that the granting of that motion operated retroactively to toll the running of the statute

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of limitations, such that "plaintiffs acted properly pursuant to both statute and case law," and plaintiffs' complaint is deemed timely filed. I respectfully disagree.

The period of limitations for an action charging malpractice is two years. MCL 600.5805(6). Plaintiffs allege that malpractice by the defendants occurred on February 9, 2011. Thus, the statute of limitations for defendants' alleged malpractice, absent tolling, was scheduled to expire on February 9, 2013. This means that plaintiffs were required to commence their action against defendants by February 9, 2013, unless the running of the limitations period was tolled by virtue of some action taken by plaintiffs. There is no dispute that plaintiffs' action was not commenced by February 9, 2013. There is also no dispute that, as of February 9, 2013, the running of the statute of limitations had not been tolled. Thus, as in *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 709; 620 NW2d 319 (2003), plaintiffs' efforts to remedy their failure to file their AOM with the complaint—in this case, the filing and ultimate granting of a motion to extend the time for filing an AOM pursuant to MCL 600.2912d(2)—were, unfortunately, insufficient because their efforts culminated *beyond* the limitations period.

The majority concludes that this application of *Scarsella* and its progeny renders MCL 600.2912d(2) nugatory. I disagree. As statutes sharing a common purpose, MCL 600.2912d(2) and MCL 600.5805(6) must be read together as one and construed in a way that produces a harmonious whole. *Basic Prop Ins Ass'n v OFIR*, 288 Mich App 552, 559-560; 808 NW2d 456 (2010) ("When construing statutes, the terms of statutory provisions with a common purpose should be read *in pari materia*. . . . Conflicting provisions of a statute must be read together to produce an harmonious whole and to reconcile any inconsistencies wherever possible." [Quotation marks and citations omitted.]); *Ross v Modern Mirror & Glass Co*, 268 Mich App 558, 563; 710 NW2d 59 (2005) ("Statutes that relate to the same subject must be read together as one, even if they contain no reference to one another."). In my judgment, construing MCL 600.2912d(2) in a manner which requires a plaintiff to obtain a court order granting the extension to file the AOM *before* the statute of limitations expires, such that the cause of action against a defendant is *commenced before* the statute of limitations expires, gives meaning to both statutes.

The defining principle of law is that an action must be commenced before the period of limitations for that cause of action expires. See MCL 600.5805(1) ("A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is *commenced* within the periods of time prescribed by this section." [Emphasis added.]); *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 40; 709 NW2d 589 (2006); *Gladych v New Family Homes, Inc*, 468 Mich 594, 598; 664 NW2d 705 (2003), superseded by statute on other grounds. Operating together, it is clear that the statutes underlying medical malpractice claims respect that defining principle of law. Under MCL 600.5856(c), the filing of a notice of intent to file suit tolls the running of the statute of limitations. *Tyra*, ___ Mich at ___; slip op at 7. Upon expiration of the notice period, the period of limitations begins running anew, cf. *Gladych*, 468

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Mich at 603-604,[1] and the filing of a complaint and affidavit of merit, MCL 600.2912d(1), or the granting of a motion for an extension of time to file the AOM, MCL 600.2912d(2), once again operate to toll the running of the statute of limitations. *Tyra*, ___ Mich at ___; slip op at 7; *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 229; 561 NW2d 843 (1997). However, each effort to toll the running of the statute of limitations, as well as the commencement of plaintiffs' cause of action, must occur before the statute of limitations expires.[2]

The majority holds that construing MCL 600.2912d(2) to mean something other than that "the 28-day period must run from the date the complaint is filed, irrespective of when the motion is granted," would "make a plaintiff's rights turn not on the substance of the case or the plaintiff's compliance with the procedures established by the Legislature, but rather purely on the vagaries of when the trial court, or more likely not even the court but rather a docketing clerk, chooses to hear or docket the motion." Again, I respectfully disagree. It is apparent from this record that plaintiffs did not use the means that they had available to them, which, if used, could have prevented the expiration of the statute of limitations before their motion to extend was granted. Pursuant to MCR 2.119(C), a trial court may adjust the time for service and filing of motions and responses "for good cause." Notably, plaintiffs did not request an expedited hearing of their motion to extend the time for filing the AOM, and they failed to emphasize on the cover page of their motion pleading that there was an urgency in hearing the pending motion because the statute of limitations would expire on February 9, 2013.[3] Rather than a vagary, it is not an onerous expectation that a plaintiff in this circumstance would make more than a modicum of effort to seek an expedited hearing date from a trial court and

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[1] Rather than as precedent binding in the instant case, I cite to *Gladych* merely to illustrate, by analogy, that the statute of limitations begins running anew after previously being properly tolled for some period of time.

[2] Moreover, although in *Pryber v Marriott Corp*, 98 Mich App 50, 56-57; 296 NW2d 597 (1980), this Court concluded that the Legislature, through the enactment of a retroactive law, may revive a cause of action which has already been barred by the application of a previously existing statute of limitations, I am unable to find any case law, and the majority cites to none, which supports the proposition that a cause of action barred by the application of an expired statute of limitations, because that action was not timely commenced, may be subsequently revived by action of a court of law.

[3] Not only did the cover page of plaintiffs' motion not contain any information that would have alerted the trial court or the docketing clerk that the motion required urgent attention, the contents of the motion stated only the following with regard to the urgency attendant to the filing of the motion: On page three of the motion, plaintiffs stated that "it appears that the [AOM] shall not be prepared until after February 8, 2013," due to the expert's busy schedule. Also on page three, plaintiffs explained that, "[a]lthough it may appear [that] the filing of this medical malpractice action was held to the last possible time," they waited to file their claim because plaintiff Ruben Castro had been informed that his symptoms would cease some number of weeks or months after the surgery, and he still suffered from the condition "just short of two [2] years from the date of surgery on February 9, 2011." While plaintiffs hint at a statute of limitations problem, plaintiffs' pleading did not expressly identify this impending problem for the trial court.

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docketing clerk, neither of which can be reasonably expected, without prompting by the moving party, to read through every pleading filed in the trial court in order to recognize that a particular matter requires urgent attention. Thus, contrary to the majority, I would find that plaintiffs failed to make reasonable efforts to request that the trial court suspend the normal time limits imposed under MCR 2.119(C) due to the impending expiration of the statute of limitations, and that the facts of this case do not warrant holding either the trial court or the docketing clerk responsible for plaintiffs' failure to commence their cause of action against defendants in a timely manner.

Contrary to the majority's findings, I would find that: 1) because plaintiffs did not file the AOM with the complaint on February 4, 2013, the lawsuit was not commenced under *Scarsella*; 2) under *Ligons* and *Barlett*, the filing of the motion to extend time for filing the AOM had no tolling effect; and 3) because the statute of limitations expired on February 9, 2013, before it granted the motion to extend, the trial court properly found that its March 8, 2013 order had no tolling effect.

I would affirm.

/s/ Kurtis T. Wilder

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Court of Appeals, State of Michigan

ORDER

Candi Ottgen v Abdalmaijid Katranji MD

Docket No. 350767

LC No. 19-000266-NH

Stephen L. Borrello
Presiding Judge

Patrick M. Meter

Michael J. Kelly
Judges

The Court orders that the application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

The motion to file a late reply is GRANTED, and the reply filed on November 11, 2019 is accepted.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

FEB 19 2020
Date

Chief Clerk