STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
(BUSINESS COURT)

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

Case No. 2025-217725-CB
Hon. Victoria Valentine

v.

SS MITX, LLC, a Delaware limited liability company, LAMAR ADVERTISING OF MICHIGAN, INC., a Michigan corporation, PATRICK DEPA, an individual, ALTIOR LAW, PC, a Michigan professional corporation, and STARK REAGAN, PC, a Michigan professional corporation,

Defendants.

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PLAINTIFF'S MOTION FOR RECONSIDERATION OF OPINION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) AND (C)(8)

Plaintiff, International Outdoor, Inc. ("IO"), by and through its attorneys, Denha & Associates, PLLC and Demorest Law Firm, PLLC, files its Motion for Reconsideration of Opinion and Order on Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8)

("Motion"). For the reasons stated in the Brief in Support of this Motion, this Court's February 12, 2026 Opinion and Order on Defendants' Motion for Summary Disposition ("Opinion and Order") was erroneous.

WHEREFORE, Plaintiff International Outdoor, Inc., asks that this Court grant the following relief:

1. Reverse its Opinion and Order;

2. Deny Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8);

3. In the alternative, reverse its Opinion holding that "...amendment is not justified under MCR 2.116(I)(5)" (Opinion and Order, p 8, fn 8) and permit IO to file an amended complaint; and

4. Award any other legal or equitable relief as may be just under the circumstances, including requiring Defendants to pay IO's reasonable costs and attorney's fees.

Respectfully Submitted,

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Dated: March 5, 2026

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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF OPINION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) AND (C)(8)

Plaintiff, International Outdoor, Inc. ("IO"), by and through its attorneys, Denha & Associates, PLLC and Demorest Law Firm, PLLC, and for its Brief in Support of Motion for

Reconsideration of Opinion and Order On Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8) ("Motion") states as follows:

INTRODUCTION

Plaintiff's Complaint alleges much more than intrinsic fraud. IO alleges that Defendants colluded to implicate IO and its President, Randy Oram, in a false allegation of evidence fabrication and that his computer contained evidence of that fabrication. To hide their roles in the collusion, the Complaint alleges, Defendant law firms Altior and Stark Reagan committed fraud upon the court, breached their duty of candor to the tribunals, and violated the Michigan Rules of Professional Conduct.

Most importantly for the purposes of the instant Motion, Plaintiff's Complaint alleges fraudulent conduct separate and distinct from what has been characterized in Michigan as intrinsic fraud. Whether labeled "extrinsic fraud" or "fraud on the court," the allegations in Plaintiff's Complaint, if proven, show that Defendants improperly manipulated the judicial process itself, denying IO a fair trial in the "Underlying Case"[1] after the first Judgment in favor of IO was improperly set aside.

This Court's February 12, 2026 Opinion and Order on Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8) ("the Opinion and Order") (**EX 1**) found that the allegations could not support an independent action because the Court characterized them as "intrinsic fraud." However, MCR 2.612(C)(3) expressly permits claims based on fraud on the court to be brought in an independent action, regardless of how they are labeled. Otherwise, any type of fraud on the court would have to have been committed in a prior action, and, thus be labeled

[1] Case Nos. 2016-155472-CB and 2016-155489-CB in this Court.

as "intrinsic fraud." The Court's Opinion and Order renders the last sentence of MCR 2.612(C)(3) superfluous. For this reason alone, the Opinion and Order is erroneous and must be reversed.

While submitting false testimony in a prior case have been held to be "intrinsic" fraud, "extrinsic" fraud can be supported where a party or attorney makes material misrepresentations or fails to disclose material information to a court in a prior action. In this regard, this Court refers to the case of *Matley v Matley,* 242 Mich App 100; 617 NW2d 718 (2000) (cited in *Zattlin v Alden State Bank* – unpublished *per curiam* Opinion of the Court of Appeals, issued January 24, 2012, Docket No. 299919) (**EX 2**) for the proposition that when a party makes a misrepresentation to, or withholds material information from, a court this would constitutes "intrinsic," not "extrinsic" fraud. However, *Matley* reached no such decision. Rather, *Matley* reached the unremarkable holding that where information was known to both parties in a prior litigation, it cannot constitute a fraud on the court as a matter of law. *Matley*, 241 Mich App at 102. The Court of Appeals in *Matley* did not address the issue of "intrinsic" versus "extrinsic" fraud – because there was no fraud.

Even if this Court finds that under MCR 2.612(C)(3) IO must allege facts outside of intrinsic fraud, there is a second, independent basis for reconsideration. The Opinion and Order erroneously finds that "there is no indication that Plaintiff is in a position to expand on its 289 paragraph Complaint to allege facts amounting to extrinsic fraud." (**EX 1**, p 8, n 8). Facts recently uncovered in the Underlying Case show new ways in which Defendant officers of the court furthered their fraud on the court and committed extrinsic fraud. The recently-unredacted time entries are further support IO's allegations of fraud on this Court. (And the time entries which are likely the most incriminating still remain totally redacted or unproduced.)

For example, IO's Complaint alleges that Defendant law firms breached their duty of candor to the tribunal by failing to disclose that they had listened to an audio recording of the telephone conversation between Depa and Steve Shaya, who Defendants say attempted to intimidate Depa into recanting the statements in his affidavit. (Complaint ¶¶ 54 – 65). Defendants Depa, Altior and Stark Reagan told this Court that this alleged witness intimidation occurred immediately prior to the hearing on July 24, 2019. (Complaint, ¶ 62). However, billing entries that were recently unredacted (**EX 3**)[2] show that Altior and Stark Reagan were discussing and researching witness tampering on June 20, 2019, one month PRIOR to Depa's claim (**EX 5**). Altior conducted legal research on witness tampering this same date, **a full 30 days before Depa claimed in an email that Shaya had attempted to intimidate him**. This evidence shows that Defendant law firms (a) planted the seed of any witness tampering claim ahead of time, (b) made the false claim of witness tampering to this Court, then (c) failed to disclose that they possessed evidence that would contradict the allegation.

Altior claims that it has no time or billing records for the time period from September 30, 2018 through February 1, 2019. Yet, work was being performed by Altior Law for Lamar's appeal to the Court of Appeals from the first Judgment. The Register of Actions for Appeal No. 345784 (**EX 4**) shows that Lamar filed (a) its Claim of Appeal on October 8, 2018, (b) its Docketing Statement on November 5, 2018, and (c) its Appeal Brief on December 10, 2018. Recent testimony demonstrates that Altior attorneys recorded their time contemporaneously with performing this work. The recently unredacted invoices show another level of deception with regard to Defendant Altior's billings submitted to this Court in the Underlying Case. As discussed, new evidence from Lamar's attorneys' invoices shows that Defendant Altior (a) provided false testimony to this Court

[2] These unredacted invoices were provided to IO on January 21, 2026.

as to the time it switched its billing software, and (b) provided false testimony regarding the ability to access data originally entered into the old billing system.

In trying to convince Judge Anderson to allow a forensic examination of IO's computers, Altior Law also misled this Court in presenting J. Stott Matthews ("Matthews") as a neutral, independent export, misrepresenting to this Court that it had never spoken to Matthews (7/24/2019 hearing tr., p. 21; **EX 5**.) In fact, Altior submitted time entries for communications with Matthews and his firm, Spectrum, for years prior to its misrepresentation to this Court.

Today, IO does not ask for a finding that Defendants committed a fraud upon this Court. What IO does request is an opportunity to conduct focused discovery on the allegations in its Complaint and in its proposed Amended Complaint. All facts referenced in this Motion have been uncovered despite Defendants' repeated efforts to block any meaningful discovery. Only with focused discovery will the full extent of Defendants' fraud on this Court be fully known.

STANDARD OF REVIEW

MCR 2.118(F)(3), the Michigan Court Rule governing motions for reconsideration, provides that:

> Generally, and ***without restricting the discretion of the court***, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. (Emphasis provided.)

A court's discretion to grant a motion for reconsideration is an exercise of discretion. This Court is vested with discretion to grant a motion for reconsideration in order to revisit its prior orders to correct mistakes, to preserve judicial economy, and to minimize costs to the parties. *Kokx v Bylenga*, 241 Mich App 655, 658-9; 617 NW2d 368 (2000).

LAW AND ARGUMENT

A. Reconsideration Is Warranted Because The Court Misapplied MCR 2.612(C)(3)

The Court's Opinion and Order violated MCR 2.612(C)(3). In granting Lamar's Motion to Dismiss under MCR 2.116(C)(8), this Court determined that "Plaintiff fails to allege grounds for an independent action to set aside the Judgment under MCR 2.612(C)(3) (**EX 1**, p. 7) This analysis misses the mark. MCR 2.612(C)(3) expressly provides that an independent action can be based on fraud on the court, regardless whether it is labeled as intrinsic or extrinsic fraud. The rule provides:

> [t]his subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); **or to set aside a judgment for fraud on the court.**

MCR 2.612(C)(3) (emphasis added). This subrule acts as a list of three specific types of independent actions, separated by semicolons, that this Court is explicitly allowed to entertain pursuant to MCR 2.612(C).

Since any type of fraud on the court would necessarily be "intrinsic fraud", this Court's Opinion and Order would render the last sentence of MCR 2.612(C)(3) nugatory.[3] The rules of statutory interpretation apply to the interpretation of the court rules. *In re Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 290–91; 698 NW2d 879 (2005) (citing *In re KH,* 469 Mich 621, 628; 677 NW2d 800 (2004)). The primary goal of

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[3] Fraud on the court has been defined as "[a] fraud [that] is perpetrated on the court when some material fact is concealed from the court or some material misrepresentation is made to the court." *Valentino v Oakland Co. Sheriff*, 134 Mich App 197, 207, 351 NW2d 271 (1984), *aff'd. in part and rev'd in part* 424 Mich 310, 381 NW2d 397 (1986) (internal citations omitted). Thus because a fraud on the court requires conduct made toward the court in a prior action, it by definition would need to be labeled "intrinsic" pursuant to case law adopted prior to the enactment of the rule because it would be committed within a prior action.

judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. And the statutory language is the best indicator of the Legislature's intent. *Neal v Wilkes,* 470 Mich 661, 665; 685 NW2d 648 (2004). Importantly, statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v City of Ann Arbor,* 247 Mich App 410, 415 (2001). "[C]ourts must interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, 507 Mich 498, 508-09; 968 NW2d 482 (2021) (quoting *O'Connell v Dir of Elections*, 316 Mich App 91, 98; 891 NW2d 240 (2016)).

The drafters of the Court Rules specifically provided that MCR 2.612(C), the very subrule providing for a motion for relief from judgment, "does not limit the power of a court to entertain an independent action … **to set aside a judgment for fraud on the court.**" MCR 2.116(C)(3) (emphasis added). Understanding that longstanding precedent derives the intrinsic vs. extrinsic fraud delineation and concomitant rule that such relief may only be granted by motion in the original action,[4] it is clear from the language of MCR 2.612(C), which was promulgated after these precedents developed, that the drafters intended to abrogate the common law distinction between intrinsic and extrinsic fraud in the context of an independent action to set aside a judgment for fraud on the court. A different reading would render the above language of MCR 2.116(C)(3) mere surplusage. To give effect to the subrule's separate distinction of an independent action to set aside a judgment for fraud on the court, this Court must reconsider its order granting dismissal on the basis of the distinction between intrinsic and extrinsic fraud.

[4] *Rogoski v City Of Muskegon*, 107 Mich App 730, 737-38; 309 NW2d 718 (1981) (citing, among other precedents, *Fawcett v Atherton*, 298 Mich 362, 365; 299 NW 108 (1941) and *Beatty v Brooking*, 9 Mich App 579, 584; 157 NW2d 793 (1968)).

To the extent that current Michigan precedent precludes the Court from giving MCR 2.612(C)(3) its clear meaning, IO argues for a change in the case law in the interests of justice and due process.

B. Reconsideration Is Warranted Because IO's Complaint Properly Alleges A Fraud On The Court

Even assuming that MCR 2.612(C)(3) requires an independent action to be predicated on "extrinsic" fraud, IO's Complaint satisfies that requirement. In its Opinion and Order, this Court stated found that all the misconduct alleged in the Complaint "are actions which allegedly occurred within the case and are also properly classified as intrinsic fraud." (**EX 1**, p. 7). This ruling is incorrect for several reasons.

This Court's ruling that conduct alleged in the Complaint constitutes only "intrinsic fraud" misinterprets the allegations and the law. IO acknowledges that the distinction between "intrinsic" and "extrinsic" fraud is often a murky and confusing area of the law, largely formulated only by caselaw spanning numerous decades, which may require clarification by the Court of Appeals. As a *Vanderbilt Law Review* article noted 75 years ago: "... the distinction between 'intrinsic' and 'extrinsic' fraud still troubles the courts...[i]ts validity is doubtful." Harold C. Dedman, *Intrinsic and Extrinsic Fraud and Relief Against Judgments*, 4 Vanderbilt Law Review 338 (1951) (internal footnote omitted).[5] The problem has not been solved in the 75 years since the article was published.

While cases from the Michigan Court of Appeals and Supreme Court state that false testimony or submitting a false affidavit constitute "intrinsic" fraud, "extrinsic" fraud exists where a party or an attorney deliberately withhold or misrepresent facts to this Court. *Michigan Pleading*

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[5] https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4616&context=vlr

and Practice § 45:14. Said another way, conduct which is "extrinsic" is fraud that "actually prevents the losing party from having an adversary trial on a significant issue." *Stallworth v Hazel*, 167 Mich App 345, 355; 421 NW2d 685 (1988) (citing to *Rogoski v Muskegon*, 107 Mich App 730, 736). Here, the conduct asserted by IO prevented IO from having an opportunity to a meaningful and fair trial because the Defendants failed to disclose material information and misrepresented facts to the court in the Underlying Case.

However, this Court glossed over all the factual allegations in the Complaint, and construed all these allegations as merely "drafting and obtaining a false affidavit" (**EX 1**, p. 7). But IO's Complaint asserted additional conduct that this Court did not address.

For example, this Court also did not consider all of the allegations in the Complaint, focusing only on the allegations relating to the perjurious affidavit and testimony. The other factual allegations in the Complaint establish extrinsic fraud and fraud on the court. Moreover, this Court also did not discuss the conduct of the attorneys for Lamar and SS MITX. As discussed, the actions of these attorneys requires that this case be analyzed as fraud on the court by an officer of the court. This separate category of fraud does not require this Court to make a distinction between intrinsic and extrinsic fraud.

In its Opinion and Order, this Court also referenced that the case of *Matley v Matley*, 242 Mich App 100 stands for the proposition of a law that when a party makes a false statement or withholds material information from a court constitutes "intrinsic" fraud (**EX 1**, pp. 7-8). However, that is not what the *Matley* court held. Rather, the holding of *Matley* dealt with information that, while not known to the court in that case, was known to the parties. *Matley*, 242 Mich App at 103-104. The Court of Appeals found there to be no fraud on the court, holding that "fraud on the court cannot be committed in an adversary proceeding with respect to facts not known by the court, **but known by both parties.**" *Id.* at 102 (emphasis added). Further, "fraud on the court cannot exist where both parties are aware of the relevant information." *Id.* So, regardless of how the fraud was labeled (extrinsic or intrinsic), the Court of Appeals found that because the information was known to both parties, it could not constitute a fraud on the court. *Id.* Here, the information withheld by the Defendants was unknown to IO and to the court, and prevented IO from having a fair trial.

The case cited by this Court, *Zattlin v Alden State Bank*, unpublished per curium opinion of the Court of Appeals, issued January 24, 2012 (Docket No. 299919), likewise only dealt with allegations that attorneys prepared and presented affidavits that they knew were false. *Zattlin* does not involve any other facts similar to the present case, such as where attorneys make misrepresentations to the court and commit fraud on the court, so anything beyond that is mere dictum. The *Zattlin* case does not provide any guidance whatsoever on what constitutes extrinsic fraud.

Defendants argue, and the Court agreed, that there was no extrinsic fraud because IO actually had a second trial and everything occurred during the litigation, but there was not a fair or legitimate trial due to Defendants' misconduct and the improper rulings of this Court's predecessor that were the result of that misconduct.

The Michigan Supreme Court made no distinction between intrinsic and extrinsic fraud in *Allen v Allen*, 341 Mich 543, 551; 67 NW2d 805 (1954). In a divorce case, the plaintiff concealed that she engaged in adultery and became pregnant by another man. The Supreme Court held: "[w]e hold that the plaintiff did perpetrate a fraud upon the court by withholding the fact, notwithstanding the defendant's impotence, of her pregnancy by another man." *Allen*, 341 Mich at 551. In other words, even though the husband knew or should have known that he could not have possibly been the father of the child, and agreed to a settlement of the case, the judgment of divorce must still be set aside because the false information from the plaintiff defrauded the court. As the Supreme Court said: "[i]n any event, the question here for decision is whether a fraud has been perpetrated on the court by the plaintiff in obtaining the divorce; not whether a fraud was perpetrated on the defendant by the property settlement." *Id.* Based on *Allen*, the concealment of relevant evidence by Defendants is grounds to set aside the Judgment in favor of Lamar. See also the discussion of *Valentino v Oakland County Sheriff*, below.

Because Michigan cases do not provide much guidance on what types of actions constitute extrinsic fraud, it is also helpful for look for other authority, which shows that conduct that prevents a fair trial is extrinsic fraud. As a Comment in the *Duke Law Review* previously explained, "[f]raud is extrinsic where a party is prevented by trick, artifice or other fraudulent conduct from fairly presenting his claim or defenses or introducing relevant and material evidence," *Judgments: Fraud As A Basis for Relief in Federal Courts From Final State Court Judgment*, 109 Duke Law Journal, 109, 111 (1964)[6], citing 7 Moore, Federal Practice, ¶60.37[1] and n.17.

For example, the Court of Appeals of South Carolina has addressed what constitutes "extrinsic" fraud that would qualify as such. For example, "[e]xtrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Samonsky v BellSouth Telecomms*, published Opinion of the Court of Appeals of South Carolina at *4, entered April 13, 2011 (2011 SC App Unpub LEXIS 161) (internal quotations and citations omitted) (**EX 6**). One example that would fall under this definition is "[t]he subordination of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which

[6] https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1896&context=dlj

constitute extrinsic fraud." *Samonsky*, at *4, entered (internal quotations and citations omitted) (*Id*).

Various scholarly articles have also opined about the definition and bounds of extrinsic fraud. For example, one such article from the *Vanderbilt Law Review* states "'[e]xtrinsic fraud is often referred to as 'fraud in the procurement.'" Harold C. Dedman, *Intrinsic and Extrinsic Fraud and Relief Against Judgments*, 4 Vanderbilt Law Review 338, 338 fn2 (1951). The author further expanded upon this to state, in the case of extrinsic fraud, "[r]elief is granted on the theory that through fraud extrinsic and collateral to the actual proceedings before the court, the unsuccessful party has been prevented from fully presenting his case, and hence that there has never been a real contest before the court on the subject matter of the suit." *Id* at 338. Surely this is the exact situation presently before this Court.

The cases cited by this Court in its Opinion and Order are distinguishable, because none of those cases involved knowledge of, or active involvement by, the attorneys in the fraudulent activity. The allegations that the attorneys were actively involved in the scheme puts the present case in a different category of fraud.

In *Valentino v Oakland County Sheriff*, 134 Mich App 197; 351 NW2d 271 (1984), the attorney for the sheriff made a false statement about whether the sheriff had personal knowledge of certain facts. This representation by counsel was relied upon the plaintiff and the court. Without making any distinction between intrinsic and extrinsic fraud, the Court of Appeals stated:

> However, a trial court does have equitable power to relieve a party from a stipulation where there is evidence of mistake, fraud or equitable advantage taken by one party over the other. ... A fraud is perpetrated upon the court when some material fact is concealed from the court or some material misrepresentation is made to the court.

Valentino, 134 Mich App at 206-207. Notably, this case was reversed strictly on other grounds by the Michigan Supreme Court, *Valentino v Oakland County Sheriff*, 424 Mich 310; 381 NW2d 397 (1986), and its holdings and analysis related to fraud remain intact.

The federal courts -- from which Michigan's court rules were developed -- have written extensively on the issue of fraud on the court. This is a specific variety of fraud that involves conduct by an officer of the court in a scheme to disrupt the judicial process. As the United States Court of Appeals for the Sixth Circuit established, the elements of fraud on the court:

> The elements of a fraud upon the court are (1) **conduct by an officer of the court** (2) **directed towards the judicial machinery itself** that is (3) intentionally false, willfully blind to the truth or is in reckless disregard for the truth and (4) a positive averment or concealment, when one is under a duty to disclose, and that (5) deceives the court. 'Fraud upon the court' has been narrowly defined to embrace: only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases. **It generally involves a deliberately planned and carefully executed scheme designed to subvert the integrity of the judicial process.**

Buell v Anderson, 48 Fed Appx 491, 499 (6^{th} Cir 2002) (internal citations and quotation marks omitted) (emphasis added) (citing *True v Comm'r*, 999 F2d 540 (6th Cir 1993)).[7]

In Demjanjuk v Petrovsky, 10 F3d 338, 352 (6th Cir 1993), the Sixth Circuit explained that an attorney's duty of candor to the court outweighs loyalty to the court:

> While an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he act dishonestly of fraudulently on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates fraud upon a court.

[7] In *Buell*, the allegation that a state court judge withheld information from a federal court in a habeas corpus proceeding was not sufficient to establish fraud on the court, because the state court judge was not an officer of the federal court.

Vining v Charles J. Taunt & Associates, P.C., unpublished Opinion of the United States Court of Appeals for the Sixth Circuit, issued January 14, 2026 (Case No. 24-1979) (**EX 7**) was decided by the Sixth Circuit only a few weeks ago. The case involved a bankruptcy trustee's failure to disclose a conflict of interest involving Comerica Bank, a major creditor. *Id.* at *2. The main issue in the appeal was whether Comerica could be held liable for the trustee's conduct, it having been previously determined that the trustees and his attorneys (Plunkett Cooney) had committed fraud on the court by failing to disclose a fee agreement with Comerica and then obtaining orders from the bankruptcy court that benefitted Comerica. *Id.* The Sixth Circuit reaffirmed the earlier rulings of the Court in *Buell* and *Demjanjuk.* *Id.* at *12. The Sixth Circuit did not disturb the ruling that the trustee and his attorneys were liable for fraud on the court, but held that Comerica could not be liable because it was not an officer of the court. *Id.* at *18.

The Ninth Circuit made a similar ruling in *In re Intermagnetics America, Inc*. 926 F2d 912, 916 (1991), where officers of the court withheld material information to obtain approval of a plan of reorganization:

> 'Fraud upon the court' … embraces only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

In *Official Committee of Unsecured Creditors v Michelson*, 141 BR 715, 726; (Bankr ED Cal 1992), the Court further explained the *Intermagnetics* decision:

> … (1) there is a distinction between garden-variety fraud and fraud on the court; (2) more than injury to a single litigant is usually involved; and (3) participation by an officer of the court will elevate garden-variety fraud to fraud on the court.

In *Hazel-Atlas Glass Co. v Hartford Empire Co.*, 322 US 238, 246 (1944), the Supreme Court explained that the fraud on the court injures the integrity of the Court, not just the party to the case:

> [t]ampering with the administration of justice in the matter indisputably shown here involved far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. … The public welfare demands that the agencies of public justice be not so impotent.

The duties of an attorney to the Court were also examined in Stephan Van Doren, *More Than Fraud: Proving Fraud on the Court,* 10 St. John's Bankr. Research Libr. No. 2014 (2018):[8]

> An attorney, as an officer of the court, has a duty of honesty towards the court. Where an attorney neglects that duty and obtains a judgment based on conduct that actively defrauds the court, such judgment may be attacked, and subsequently overturned, as fraud on the court.

Based on this authority, Defendants' motion for summary disposition should have been denied.

Because the allegations in the Complaint, combined with the additional facts that have been revealed since the Complaint was filed, state all the facts necessary to establish (1) extrinsic fraud and (2) fraud upon the court, this Court should reconsider its earlier ruling and deny Defendants' motion for summary disposition on Count I of the Complaint.

C. There Is No Bar To An Independent Action Based On The COA Opinion In The Underlying Action

This Court stated in footnote 1 of its Opinion that "Plaintiff does not cite, and this Court is not aware of any authority, which permits this Court to set aside a civil judgment affirmed by the

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8 https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1098&context=bankruptcy_research_library

Court of Appeals." MCR 2.612 provides this authority. There is no exemption in that Court Rule stating that only judgments that have not been appealed may be set aside.

IO did cite in its response to the Motion an exception to *res judicata* recognized by the Michigan Supreme Court in *Hackley v Hackley*, which adopted the Restatement of Judgments, 2d, § 28(5)(c):

> Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances...(5) **[t]here is a clear and convincing need for a new determination of the issue...(c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.**

Hackley v Hackley, 426 Mich 582, 591-592; 395 NW2d 906 (1986) (citing *Restatement Judgments, 2d*, § 28(5)(c), pp 273-274). Again, there is no exception in *Hackley* for cases that have been to the Court of Appeals.

Furthermore, the law of the case doctrine does not prevent this Court from considering new evidence that was not before the Court of Appeals when it affirmed the Judgment from the second trial. In *South Macomb Disposal Authority v American Insurance Company*, 243 Mich App 647; 625 NW2d 647, 655 (2000), the Court of Appeals stated:

> [t]he law of the case does not apply here because the facts did not remain materially the same. Plaintiff set forth new facts to demonstrate that there exists a material question of fact ... [t]he circuit court did not err in failing to apply the law of the case doctrine.

The Court of Appeals in *South Macomb Disposal Authority* then went on to say that the Circuit Court did not err in denying relief from the judgment because it did not show that "it would not been able to produce the newly discovered evidence at an earlier time." *Id.* at 655. That obviously does not apply here because, for example, IO did not have access to the unredacted time entries until this Court ordered Lamar and Altior Law to produce them a few weeks ago.

D. Reconsideration Is Warranted Because An Amended Complaint Is Justified

Even if this Court does not find error in its analysis of the extrinsic fraud and fraud on the court, there is a second, independent basis for reconsideration. As this Court notes in its Opinion and Order, the Court Rules provide that before granting a motion for summary disposition pursuant to MCR 2.116(C)(8), the court must provide an opportunity for IO to amend its complaint as provided by 2.118 unless "the evidence then before the court shows that the amendment would not be justified." MCR 2.116(I)(5) (**EX 1**, p. 8, n 8). Here, an amendment is indeed justified. Newly uncovered facts from show new instances of fraud on the court.

To evaluate whether an amendment "would not be justified" under MCR 2.116(I)(5), courts utilize the same standards it uses to determine whether an amendment should be granted under MCR 2.118. *Long v Liquor Control Comm'n*, 322 Mich App 60, 67; 910 NW2d 674 (2017). In *Long v Liquor Control Comm'n*, the Court of Appeals noted that the circuit court " did not abuse its discretion by denying plaintiff's motion to amend his complaint because any amendment would have been futile." *Id.* at 66. See also, *Richard v Schneiderman & Sherman, PC*, 297 Mich App 271, 275; 824 NW2d 573 (2012) (also utilizing the futility standard).

Under MCR 2.118(A)(2), a court must freely grant leave to amend a complaint **when justice so requires.** *Fyke & Sons v Gunter Co,* 390 Mich 649, 655; 213 NW2d 134 (1973). Amendments should only be denied for particular reasons, including undue delay, bad faith, or futility. Amendment in this case would not be futile here.

Here, IO must be permitted an opportunity to amend its Complaint because amendment would not be futile. Newly discovered evidence shows several further instances that conduct by

Altior and Stark Reagan would constitute fraud on the court.

Altior recently submitted unredacted invoices the Underlying Case pursuant to Court order (**EX 3**). These unredacted invoices show new evidence of the fraud on the court perpetrated by Defendants in connection with the alleged witness intimidation. In the Underlying Case, Defendants produced to the court an email from Depa dated July 21, 2019, in which he claims that Steve Shaya attempted to intimidate Depa into recanting his affidavit (Complaint, ¶¶ 54-65). The unredacted invoices show that Defendants Altior and Stark Regan discussed "witness tampering" on June 20, 2019, one month PRIOR to Depa's claim that Shaya had attempted to intimidate him. (**EX 3**, Bates No. 000419). Also on June 20, 2019, Altior conducted research on "witness tampering." *Id.* This work on "witness tampering" was conducted **a full 30 days before Depa claimed that Shaya had attempted to intimidate him.** If permitted to amend its Complaint to add these facts, IO would be able to more fully allege that Defendants committed fraud on the court with respect to the claimed Shaya witness intimidation.

In addition, the unredacted invoices show that Defendant Altior committed a fraud on the court when it misrepresented to the court that it had never spoken to J. Stott Matthews, of Spectrum -- the experts it was proposing to use to make a copy of all of the data on IO's computer server and on Mr. Oram's computer. Altior stated: "We – I have no like prior relationship with them. I've never spoken with Stott Matthews in my life. He has no connection to Lamar Advertising. He's as good as a court-appointed expert as we could possibly hope to find." (**EX 5**, p. 21).

However, Altior's invoices show that they began speaking with May 22, 2017 (**EX 3**, Bates No. 000380). On July 18, 2019, **five days before Altior made its representation on the record**, Altior billed for "communication with Stott Matthews..." (*Id*, Bates No. 000423). Indeed, a review of the billing records reveals that Altior spent a total of 32.4 hours on computer forensics and communications with Mr. Matthews prior to that false representation. IO should be permitted to amend its Complaint to add this allegation.

These unredacted invoices also show that Altior provided false testimony to this Court in the Underlying Case regarding the time it switched billing software and how its new system, Clio, did not have access to prior billing data. The documents that Altior provided to this Court contradict the testimony of the attorneys that "because we switched software systems, I didn't have access to the records from the time billed between October ... 2018 through I think January 2019, I didn't – I didn't even have access to the record..., so I – I didn't include any of that time, because I didn't know – I didn't have available to me to include." (1/29/26 hearing tr., p. 72; **EX 8**). Also, Altior stated, "... and I believe around the same or similar time [2019] we switched to Clio and the invoices thereafter are generated through that software." (**EX 8**, p. 43).

When comparing the two packets of invoices this Court has seen, there are clear inconsistencies between the 2025 packet and the 2026 packet. One such area of inconsistency is reflected in the invoices regarding when Altior switched to using the Clio program. A review of the 2025 packet shows that invoices change format to the Clio format, starting with invoice #2323, which is dated September 1, 2021 (**EX 9**). The invoices submitted to this Court on January 21, 2026 change to the Clio format with invoice #322 dated May 13, 2019 (**EX 10**, Bates No. 000415). The 2025 packet shows that Altior switched billing software in September 2021, while the 2026 packet appears to suggest it changed in 2019. These inconsistencies are unexplained.

The invoices printed by Clio must have accessed data entered and stored in the old software. Altior's Clio software needed to access data that was previously in its old software for the period June 1, 2019 through September 30, 2021. Altior's statement that it "didn't even have access to the record" for the period October 1, 2018 through January 2019 is belied by the two sets of invoices that Altior submitted in January 2025 and January 2026 (**EX 8**, p. 77). Altior's Clio software did have access to the record for the period February 1, 2019 through September 30, 2021, as evidenced by Bates Nos. 000415-000508 (excerpts included in **EX 2**).

IO must be permitted to amend its Complaint to allege facts in connection with this fraud on the court.

CONCLUSION

WHEREFORE, IO asks that this Court grant its Motion for Reconsideration of Opinion and Order Granting Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8) and:

1. Reverse its Opinion and Order;
2. Deny Defendants' Motion for Summary Disposition Under MCR 2.116(C)(7) and (C)(8);
3. In the alternative, reverse its Opinion holding that "…amendment is not justified under MCR 2.116(I)(5)" (Opinion and Order, p 8, fn 8) and permit IO to file an amended complaint; and
4. Award any other legal or equitable relief as may be just under the circumstances, including requiring Defendants to pay IO's reasonable costs and attorney's fees.

Respectfully Submitted,

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