

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**MARTINIQUE STOUDEMIRE,**  
(#419426),

Plaintiff,

v.

**MICHIGAN DEPARTMENT OF  
CORRECTIONS, ET AL,**

Defendants.

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**HON. JULIAN ABELE COOK, JR.**

**No. 07-15387**

**HEARING ON MOTIONS**

**Detroit, Michigan -- Tuesday, November 23, 2010**

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I N D E X

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2:38 p.m.

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**THE CLERK:** The court calls case number 07-15387; Martinique Stoudemire versus the Michigan Department of Corrections, et al.

**THE COURT:** Good afternoon.

**MR. RICHTARCIK:** Good afternoon, Your Honor. Brian Richtarcik, appearing on behalf of defendants, Dr. Mustafa and Dr. Thai-Budzinski.

It's the date and time set for, I guess, all Motions for Summary Judgment I brought on behalf of those two individuals.

**THE COURT:** Before we proceed I will, because there are a number of issues involved, I will probably take the motions under advisement and advise the parties of my decision in written order.

Having said that, are there any persons who the parties have agreed should be dismissed from this lawsuit?

**MR. RICHTARCIK:** Not that I'm aware of, Your Honor.

**MS. ALEXANDER:** Yes, Your Honor, in our pleadings there is a list of claims that we are not pursuing and

1 that is in the plaintiff's brief.

2 **THE COURT:** First of all, would you give us your  
3 name, please?

4 **MS. ALEXANDER:** I'm sorry, Your Honor, this is my  
5 first appearance in your courtroom. I'm Elizabeth  
6 Alexander, I'm co-counsel for the plaintiff and it's an  
7 honor to be here.

8 **THE COURT:** Okay. And would you identify the  
9 persons who your client has agreed to dismiss?

10 **MS. ALEXANDER:** Perhaps the quickest way I can  
11 give it to the Court is the remaining defendants in  
12 this case, if that would be acceptable to the Court?

13 **THE COURT:** Well, I want to make certain that your  
14 loyal opposition does not argue or take time from his  
15 or their argument to address issues that are already  
16 resolved.

17 **MS. ALEXANDER:** Okay. Your Honor, as to the ADA  
18 claims we are -- just to clarify, the ADA claims are  
19 not asserted against the three nurses, Adamick, Leech,  
20 and Wintersteen or against Dunagan or against Russell.

21 The search claim is asserted only against Dunagan,  
22 against no other defendant. And the -- and this is  
23 with regard only to the MDOC. I'm just going through  
24 the MDOC list of defendants.

25 And the pendent Michigan abuse claim, under the

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1 Michigan statute, is asserted only against Dunagan and  
2 Davis.

3 As to the clients' representative by Mr.  
4 Richtarcik, those are Dr. Mustafa and Dr.  
5 Thai-Budzinski, and we are asserting against them an  
6 Eighth Amendment Claim.

7 **THE COURT:** All right. Do you understand that?

8 **MR. RICHTARCIK:** I understand correctly there's an  
9 Eighth Amendment Claim against my clients for  
10 deliberate indifference to a serious medical need.

11 **THE COURT:** Do any of the other counsels have  
12 questions?

13 **MR. PIGNOTTI:** Good afternoon, Your Honor.  
14 Anthony Pignotti, on behalf of the defendants, Dr.  
15 Mustafa and Dr. Thai-Budzinski.

16 **MR. SCHNEIDER:** Your Honor, Cliff Schneider, on  
17 behalf of the MDOC defendants. I think I'm made clear.

18 **THE COURT:** All right. Are you clear as to what  
19 Ms. Alexander just said?

20 **MR. SCHNEIDER:** Yes, Your Honor.

21 **MR. PIGNOTTI:** Yes, Your Honor.

22 **THE COURT:** Okay. I have read your briefs and I'm  
23 familiar with the positions the parties have taken.  
24 I'll give to each side a total of 20 minutes to present  
25 their arguments. If my questions to either side

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1 suggest that I have a misunderstanding of the facts,  
2 please feel free to correct me. And no penalty points  
3 for correcting me.

4 Inasmuch as you are the moving party, you may  
5 divided your time as you wish. I suggest that you look  
6 to Ms. Robinson's desk, there is a small rectangular  
7 box which carries the colors associated with traffic  
8 lights, "green", "yellow", and "red".

9 The green means you're free to argue as  
10 persuasively as you can; the yellow means you have  
11 three minutes left, the red means, of course, stop.

12 Do you wish to divided your time? You're not  
13 oblige to do so.

14 **MR. RICHTARCIK:** No, I'll try to reserve three  
15 minutes, that should be sufficient.

16 **MS. ALEXANDER:** Your Honor, could I ask for a  
17 clarification? There are two separate motions, so  
18 there's 20 minutes per side, per motion?

19 **THE COURT:** I'm sorry, I didn't hear you.

20 **MS. ALEXANDER:** My apologies. There are two  
21 separate motions that were filed, so does Your Honor  
22 means that there's 20 minutes per side, per motion?

23 **THE COURT:** That's a legitimate question. No, the  
24 answer is no. I will assume, unless you tell me  
25 otherwise, that your arguments today will be subsumed

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1 into any -- well, let me try it again.

2 I will assume that you're not waiving any  
3 arguments or raising motions in the briefs. So, I've  
4 read those briefs and I'm ready to make a ruling.

5 **MR. RICHTARCIK:** Your Honor, do I get 20 minutes  
6 or are we splitting 20 minutes here?

7 **THE COURT:** You have to divided it. Do you  
8 believe, and let me ask you this question before I  
9 answer, do you believe that your positions are, in any  
10 way, dissimilar?

11 **MR. RICHTARCIK:** Well, they're not dissimilar, but  
12 I guess they're different -- I guess they are, yeah.  
13 Because my claims have to do with deliberate  
14 indifference concerning the medical treatment. The  
15 MDOC defendant's position has to do ADA claims, housing  
16 issues, and other issues.

17 **THE COURT:** Let me change this in terms of  
18 argument time. I will give to each side a total of 30  
19 minutes, not 20. And so the answer is that any  
20 differences that you may have, you get to work the  
21 arrangement out among you.

22 **MR. RICHTARCIK:** I'll stick with my original 15  
23 minutes then, with five minutes reserved. He's going  
24 to take ten.

25 **THE COURT:** So, whatever arrangements you have,



1 but for your side, it's going to be a total of 30  
2 minutes.

3 MR. RICHTARCIK: Okay.

4 THE COURT: Go right ahead.

5 **Motion To Dismiss and/or Motion for Summary Judgment**  
6 **Pursuant to FRCP 12(b)(6) and/or 56(b) on behalf of Dr.**  
7 **Mustafa and Dr. Thai-Budzinski**

8 **ARGUMENT BY MR. RICHTARCIK**

9 MR. RICHTARCIK: Okay. Your Honor, plaintiff has  
10 a claim against my two medical defendants for  
11 deliberate indifference to a serious medical need.

12 So, we're not talking about negligence here, we're  
13 not talking about what these medical people should have  
14 done with respect to the medical conditions that was  
15 presented to them by Ms. Stoudemire.

16 We're not talking about the ordinary standard of  
17 care and whether they deviated from that. But rather  
18 we're talking about is whether they consciously was  
19 aware that Ms. Stoudemire had a serious medical need.

20 And I will concede that she definitely had  
21 probably one of the more than one serious medical need  
22 along the way, given the nature of her systemic lupis.

23 But then with that knowledge, did they consciously  
24 disregard? Did they disregard a known treatment that  
25 they believed they were required to provide and should  
provide in the best interest of Ms. Stoudemire and then

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1 disregard that?

2 And I think that when the Court looks at the  
3 evidence, in this case, and the sheer volume of the  
4 evidence, kind of, speaks a lot by itself. It's not  
5 dispositive but it says a lot. There are probably over  
6 10,000 pages of medical records, in this case, with  
7 respect to the incidents in question.

8 All the parties involved went to the ninth degree  
9 to provide good, quality medical care to Ms.  
10 Stoudemire. Right down to over 200 specialty  
11 consultants with the University of Michigan Specialty  
12 Clinic, where she sought nephrology, radiology, and  
13 internal medicine, vascular surgery, to name a few, and  
14 other specialties. And they followed her for a  
15 majority of the course of the dates in question, in  
16 this case.

17 So, it's whether or not my clients, Dr. Thai and  
18 Dr. Mustafa, consciously disregarded a known, serious  
19 medical need that they recognized and made a conscious  
20 decision not to follow.

21 And I don't know how a reasonable juror could ever  
22 find in favor of the plaintiff on that question when  
23 you look at the amount of medical care involved, the  
24 type of medical care involved, the number of  
25 consultations involved.

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1           And if we back up here of how this case starts, it  
2 starts with a complaint that essentially alleges that  
3 Dr. Thai and Dr. Mustafa, who are medical service  
4 providers, both, I believe, are internists, that they  
5 were deliberately indifferent because they didn't  
6 appropriately anticoagulate this patient with Coumadin  
7 therapy and as a result of that, the patient loss her  
8 legs. That's the nuts and bolts of the complaint.  
9 There are other issues in the complaint, but that's the  
10 nuts and bolts of it. That their inadequate medical  
11 care related in leg loss.

12           But if you look at it, they try to blame Dr.  
13 Mustafa for the first leg loss, which was March of 2004  
14 and that was the right below the knee amputation.

15           But when you look at the records, the actual  
16 evidence, in this case, Dr. Mustafa had never even seen  
17 the patient by that time. The patient actually, at  
18 that time, was in the process of several  
19 hospitalizations with the Detroit Medical Center, St.  
20 Josephs Hospital, Duane Waters Hospital, the Foote  
21 Hospital, first receiving the first BKA through no  
22 fault of these defendants. They weren't involved in  
23 her medical care.

24           And that being diagnosed with pain in her left toe  
25 and recommendations early on by surgeons and vascular

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1 surgeons that she may ultimately end up requiring a  
2 left leg amputation or, at the very least, a left toe  
3 amputation some time in the near future.

4 And the whole reason was she's got the systemic  
5 lupis, something she's had chronically her whole life.  
6 She treated with anti-inflammatory medication which is  
7 how you treat lupis because it's a disease process that  
8 causes chronic inflammation in the body.

9 And one of the types of inflammation is the  
10 inflammation of veins and arteries. Which ends up  
11 narrowing the artery so small that blood has -- a  
12 sufficient amount of blood has a hard time passing  
13 through. Hence, Ms. Stoudemire's feet problems and leg  
14 problems, not enough circulation in blood.

15 And early on there's plenty of testimony where --  
16 forget testimony. But medical documentation that  
17 indicates that her treating surgeons found that,  
18 "You're probably going to end up having a leg  
19 amputation." Nobody ever found that anticoagulation  
20 therapy was inadequate. Actually, and this is all in  
21 my brief because there's a plethora of facts here.  
22 It's impossible to recite all of them. But it's real  
23 clear in the actual medical records I cite. And it's  
24 not stuff I'm making up. This is the records and you  
25 can check it out. And it says what it says there.

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1           And it says that they did an arteriogram or a  
2           vein-mapping study early on in 2004 and they determined  
3           that she has insufficient veins for a bypass graft or  
4           steam. And without those veins, once she develops pain  
5           and she can't tolerate anymore and/or certain portions  
6           of her lower limbs turn -- develop legions. If  
7           conservative therapy won't work, then the only option  
8           would be to amputate it.

9           So, plaintiff sets out on this to try to put the  
10          blame on Dr. Mustafa. Like I say, as to the first leg,  
11          that happened before he was ever involved. He doesn't  
12          actually become involved in the medical treatment until  
13          later in May, 2004.

14          After several courses of hospitalizations are done  
15          and when he becomes involved, he initiates  
16          anticoagulation therapy with Coumadin, with the idea of  
17          maintaining the INR rate. INR, it's how you measure  
18          how effective Coumadin is with the anticoagulation  
19          within a therapeutic range. Now, some would say it's  
20          two to three, other say it's 2.5 to 3.5. But the  
21          various experts who have testified, in this case, say  
22          it's somewhere in between two and 3.5, give or take a  
23          little.

24          So, if you look at the chart that was provided as  
25          one of the exhibits, I think it was Exhibit 4 to the

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1 deposition of one of plaintiff's experts, I think it  
2 was Dr. Walsh, he has a list of INR values. And what  
3 percentage of them you could calculate is above  
4 therapeutic range and below the therapeutic range.

5 Plaintiff's fell well below 15 percent in the  
6 therapeutic range. But if you look at the two to 3.5,  
7 give or take a little, actually the majority of them  
8 were within the therapeutic range.

9 But the bigger issue with respect to that and this  
10 is, kind of, a causation issue now, it's almost, like,  
11 who cares about INR? Who cares about anticoagulation?  
12 Because there's absolutely no admissible evidence, in  
13 this case, that the failure to anticoagulate resulted  
14 in the limb loss.

15 Dr. Henke, who is the vascular surgeon that  
16 treated her from the University of Michigan Hospital,  
17 signs an affidavit. And he testifies that -- he's the  
18 fellow that amputated the left big toe and then  
19 ultimately the below the knee amputation in December of  
20 2005.

21 And he'll testify, and it's just not his  
22 affidavit, it was a certification. He testifies in  
23 there that in his opinion the limb loss was due to  
24 longstanding chronic vascular disease, not a  
25 coagulopathy, not a blood clot, not an acute event.

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1 But a longstanding chronic process which caused a  
2 pinpoint lumen resulting from the lupis. And he says  
3 in his certification that, in his opinion, no amount of  
4 anticoagulation therapy would have prevented that  
5 event.

6 So, there you've got it right from the source, the  
7 vascular surgeon who performed the procedure and he  
8 says, "No, there was no causation here." Plaintiff  
9 doesn't have a vascular surgeon. And I think I cite in  
10 my brief several other vascular surgeons or surgeons  
11 who also are consistent with Dr. Henke.

12 Right from the onset in January, 2004, Robert  
13 Kline, the vascular surgeon from Detroit Medical  
14 Center, an associate of Dr. Andersen, plaintiffs  
15 expert, hematology, he predicted right away that there  
16 are no useable veins and therefore the only thing they  
17 can offer is amputation for ischemic tissue loss. So,  
18 he's predicting that right away.

19 And then later on at Foote Hospital, Dr. David  
20 Prough, a general surgeon who was involved with some  
21 grafting issues, he says the same thing. He says  
22 "There's really nothing else to surgically offer other  
23 than pain control and sometimes amputation is probably  
24 unavoidable."

25 And then as early as October 29th, 2004, after the

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1 first BKA, the right BKA, Dr. Henke, again, at  
2 University Hospital, is predicting, "You're probably  
3 going to lose your left toe and then ultimately your  
4 left leg as well."

5 Again, these physicians, all these specialists,  
6 especially the ones at the U of M Hospital, the 200 so  
7 referrals, they're aware of the anticoagulation.  
8 There's opinions in there she's been properly  
9 anticoagulated.

10 So, to say that -- well, let's say the range is  
11 2.5 to 3.5. First of all, the high values above that,  
12 above the 3.5, aren't an issue, really, because that's  
13 when your blood is overthin and it's too thin. And the  
14 threat there is you could bleed out, that's how you  
15 would be harmed. That doesn't happen, in this case.  
16 So, it's really, kind of, a non-issue. And the  
17 treatment for that is you withdraw the Coumadin.

18 So, the bigger issue would be the low INR's, the  
19 ones below the 2.5, because your blood is a little too  
20 thick and that could lead in a blood clot or  
21 coagulopathy that would prevent the blood flowing.

22 But if you see the expert testimony, in this case,  
23 that's not what happened. And the only evidence  
24 offered by plaintiff is a hematologist, I think an  
25 internist, and rheumatologist. All of whom aren't



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1 vascular surgeons. They don't perform these surgeries.  
2 They don't read these test results and they differ in  
3 the opinion of Dr. Henke. They differ from Dr. Kline.

4 In fact, I think it's Dr. Andersen, plaintiff's  
5 expert in hematology, who was also, I believe, a  
6 treater, at some point in time. She says she disagrees  
7 with Dr. Kline. And she disagrees with most of what  
8 the individuals did. And perhaps if they don't think  
9 anticoagulation was an issue, then they've reached the  
10 standard of care as well.

11 I mean, what we have here is classic difference of  
12 medical opinion. And we know from Estelle versus  
13 Gamble, that differences of a medical opinion don't  
14 establish a claim for deliberate indifference to a  
15 serious medical need. It's negligence.

16 And I'm not saying there's negligence here, but  
17 I'm just saying the evidence isn't sufficient to show  
18 that my doctors intentionally disregarded a known,  
19 serious medical need.

20 **THE COURT:** On the basis of what you've argue thus  
21 far, do you believe that there are no genuine issues of  
22 material fact as relates to your clients?

23 **MR. RICHTARCIK:** That's exactly what I would  
24 argue, Your Honor, there are none. Number one, there's  
25 no evidence that my doctors consciously disregarded a

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1 known, serious medical need.

2 The record is replete with all kinds of INR  
3 values, Coumadin adjustments. And if one wants to be  
4 critical, "Well, this one took too long. This one  
5 wasn't enough of an adjustment", those are differences  
6 of medical opinion.

7 I have expert testimony from Dr. Bonema, an  
8 internist, Dr. Ognenovski, the treating rheumatologist,  
9 which is the specialty that treats lupis, all  
10 indicating that they've reviewed the record and they  
11 don't believe there's anything inappropriate with the  
12 anticoagulation therapy that was offered and that's  
13 your difference of medical opinion.

14 There's no genuine issue of material fact there  
15 with respect to deliberate indifference. There's a  
16 difference in medical opinion. And the record, kind  
17 of, speaks for itself in that regard.

18 **THE COURT:** Is your argument that there's a  
19 difference of amount between your clients, who are  
20 presumably very well qualified, as opposed to the  
21 plaintiff's medical experts, who are, by comparison,  
22 less qualified?

23 **MR. RICHTARCIK:** No, I'm not saying that because  
24 plaintiffs medical experts, well, at least some of them  
25 anyways, one is a rheumatologist. That's the same as

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1 Dr. Ognenovski, he's not my client.

2 And then Dr. Andersen is a hematologist, it's a  
3 different specialty that wasn't conducted by my clients  
4 or anybody at the University of Michigan Hospital, in  
5 this case because they didn't feel it was necessary.  
6 So, I would just say that it's different.

7 I mean, my guys are internists. The standard of  
8 care, if this were a medical malpractice case, would be  
9 that of an internist.

10 Now, what would the reasonable internist do  
11 nationwide under the same or similar circumstances?  
12 Dr. Andersen isn't really qualified to give that  
13 opinion, she's a hematologist. Dr. Gruggenheim, their  
14 rheumatologist, really isn't either.

15 But given that this is a deliberate indifference  
16 case, they get a little bit of leeway there and we  
17 don't hold them to that. But there's just a plethora  
18 -- I mean, everybody at the University of Michigan  
19 Clinic did what they thought was appropriate. My  
20 doctors did.

21 There's no evidence that shows my doctors  
22 understood that they should have adjusted the Coumadin  
23 another milligram or less or that they should have  
24 taken INR's from her frequently and they consciously  
25 decided not to do this, to be deliberately indifferent

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1 to this patient, to somehow punish the patient.

2 There's no evidence to that.

3 At most, there's evidence that maybe they didn't  
4 comply with the standard of care. Maybe they didn't do  
5 as much as they could have done. But there's no  
6 evidence that demonstrates that subjectively,  
7 consciously, they were of the belief that they should  
8 do more and they didn't. And that's really the test  
9 here. And I think there's nothing but a difference in  
10 medical opinion.

11 With respect Dr. Thai-Budzinski. Plaintiff tries  
12 to say she was responsible for the limb loss. Well,  
13 the limb loss had already occurred before she ever saw  
14 the patient, so how is that a possibility?

15 And then hence, if I were to move along quickly  
16 plaintiff, kind of, I don't know if they're trying to  
17 save the case now or what. But all of a sudden, now in  
18 response to my motion, there's all these other claims  
19 that aren't in the complaint. And I list them all. I  
20 really don't have time to go through them. But I refer  
21 the Court to page two of my reply, two to three. But  
22 the claims are nowhere found in the complaint.

23 And in order to state a claim, the factual  
24 allegations in the complaint need to be sufficient to  
25 give notice to the defendant as to what claims are

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1           alleged and the plaintiff must plead sufficient,  
2           factual matter to render the legal claim plausible.  
3           So, they've got alleged facts.

4           So, for instance, if you're going to say that one  
5           of my doctors was deliberately indifferent because he  
6           didn't taper the patient off of Prednisone, which is  
7           one of the claims, I believe, you've got to allege  
8           those facts in the complaint so we know what we're  
9           defending against. That's not in the complaint. Then,  
10          there's other examples of that. I'm not going to go  
11          through each one of them.

12          So, I think this case really comes down to  
13          deliberate indifference with respect to anticoagulation  
14          of a lupis patient, whom nobody was able to remain  
15          therapeutic.

16          And just in closing, I'll leave you with the last  
17          acquired evidence that I had, which was, the medical  
18          chart from the Karmanos Cancer Institute involving  
19          Dr. Andersen. And at least it involved medical  
20          treatment after this patient was paroled, after  
21          mid-2007.

22          And it demonstrated a list of INR values and  
23          Coumadin adjustments that were almost entirely  
24          non-therapeutic. I mean, the range that they  
25          established, only 19 percent of those values were

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1 therapeutic.

2 So, the DMC couldn't maintain this patient  
3 therapeutically, Karmanos couldn't do it --

4 (Loud Interruption)

5 **THE COURT:** Excuse me, I apologize, we've got a  
6 telephone system we're learning. So, there's still  
7 some things to be done. So, I apologize for that.

8 **MR. RICHTARCIK:** Am I at my time? So, just to  
9 wind up.

10 So, if the Court looks at that alone you can see  
11 to say we should have maintained this patient and we  
12 didn't and we were deliberately indifferent, there's no  
13 evidence to support or there's insufficient evidence to  
14 support that allegation.

15 **THE COURT:** Okay. Thank you.

16 **MR. SCHNEIDER:** Thank you, Your Honor.

17 **THE COURT:** Hopefully it doesn't buzz again. But  
18 I can't give you no assurance that it won't.

19 **RESPONSE BY MR. SCHNEIDER**

20 **MR. SCHNEIDER:** Thank you. Cliff Schneider, for  
21 the Michigan Department of Corrections defendants.

22 Your Honor, as I understand it, remaining as to my  
23 defendants there's an Americans with Disability Acts  
24 Claim as to Michigan Department of Corrections, its  
25 director, Patricia Caruso, retired Chief Medical

1 Officer, George Pramstaller, and retired Warden, Susan  
2 Davis. There's a strip search claim as to Dunagan and  
3 a State Law claim as to Dunagan and Warden Davis. So,  
4 I'll begin with the ADA Claim.

5 Your Honor, looking through the complaint, in this  
6 case, I think the complaint is defective and fails to  
7 state a complaint as to the ADA, especially as to these  
8 defendants, MDOC Caruso, Pramstaller, and Davis.

9 There's just no factual allegations in the  
10 complaint that would allow the Court or a jury to find  
11 that they violated the ADA.

12 **THE COURT:** What issues or elements do you believe  
13 are missing?

14 **MR. SCHNEIDER:** Well, Your Honor, factual  
15 allegations, anything in the complaint that says,  
16 "Defendants' acts did such and such act which violated  
17 my rights."

18 I mean, there are general allegations. I'm  
19 looking at the second amended complaint, Docket 56.  
20 The plaintiff alleges generally that she was excluded  
21 from services, programs, activities, and barrier-free  
22 housing. You know, there's no dates. There's no  
23 allegations as to what programs or services she was  
24 excluded from, how she was excluded.

25 You know, the library, for instance, library books

1 are brought into the infirmary to allow the prisoners  
2 to read them. You know, that's one activity, that I  
3 can think of, in prison. I'm not sure what activities  
4 Ms. Stoudemire is referring to. It's just  
5 insufficient, factual allegations in the complaint to  
6 allow a sufficient defense in this claim. And I think  
7 the claim is defective, for that reason, and simply  
8 fails to state a claim.

9 As to the strip search claim with Ms. Dunagan. I  
10 think the law is clear, it's been established here --

11 (Loud Interruption)

12 **THE COURT:** I'm sorry, this is certainly  
13 disruptive to you. Why don't we just dispense with  
14 this for a moment and we'll try to keep it to the old  
15 fashion way, the clock.

16 **MR. SCHNEIDER:** Thank you, Your Honor.

17 The law cited in my brief I think is clear,  
18 prisoners don't have a right to privacy. The  
19 allegation here is that Ms. Dunagan improperly strip  
20 searched the plaintiff, took her to her cell, which was  
21 an improper place to do the strip search and the claim  
22 is based on the possibility of someone in the hallway  
23 seeing Ms. Stoudemire naked. In this case, it was in  
24 the infirmary.

25 There's no allegation that a person of the



1 opposite sex ever saw her naked. And there's no  
2 allegation that anybody saw Ms. Stoudemire in that  
3 state of undress.

4 If you look at the plaintiff's declaration, which  
5 is attached to the Plaintiff's response to the  
6 Defendant's Motion, she merely states that there was a  
7 possibility, she could hear voices in the hallway. And  
8 there's a possibility someone could have seen her in  
9 the state of unless through this window.

10 This is a prisoner. This is a prisoner situation.  
11 And prison guards have to have the ability to search  
12 prisoners for dangerous contrabands and for other  
13 reasons necessary to security concerns.

14 In this particular case, Dunagan did find  
15 cigarette matches on the plaintiff and confiscated  
16 those items. Ms. Stoudemire was in infirmary, where  
17 smoking was dangerous because of the use of oxygen and  
18 because it's otherwise prohibited by prison rules.

19 I'd also like to point out the plaintiff in their  
20 response brief refer to the prison strip search policy.  
21 Well, what the plaintiff says is that the prison policy  
22 requires that during the strip search the officer  
23 search one piece of clothes and to give it back to the  
24 prisoner.

25 If you read that document that the plaintiff

1 cited, that's not accurate. What the policy says is  
2 that the guard is to take all of the prisoner's  
3 clothing, as she searches each individual item, she  
4 could have those items back.

5 And the reason for that is, if the guard is to  
6 take one piece and give it back, any contraband can  
7 then be re-concealed in that piece of clothing while  
8 the next piece of clothing was being handed over.

9 Finally --

10 **THE COURT:** Any evidence that Ms. Stoudemire made  
11 any verbal complaints about her requirement to be  
12 completely undress in the presence or in the proximity  
13 of other persons?

14 **MR. SCHNEIDER:** After the strip search, Your  
15 Honor, she filed a grievance on the issue. So, she  
16 made a complaint to the prison staff, to supervisors.

17 **THE COURT:** Was that grievance ever addressed?

18 **MR. SCHNEIDER:** It was addressed and it was denied  
19 and then it resulted in an investigation within the  
20 prison. And my client, Ms. Dunagan, was given a verbal  
21 reprimand for conducting the search in the cell as  
22 opposed to a bathroom or somewhere else in the unit.

23 **THE COURT:** In your judgment, was Ms. Stoudemire's  
24 interpretation of that prison policy meritless?

25 **MR. SCHNEIDER:** Well, no, Your Honor, I don't

1 think the prison policy is an issue here. I think  
2 we're talking about a constitutional claim.

3 Ms. Dunagan did, apparently, violate a prison  
4 policy when she conducted the strip search in the cell.  
5 And the reason for that is there's a window in the door  
6 of the cell and what they found at the reprimand  
7 hearing was that it was possible someone could have  
8 seen through that window. So, Ms. Dunagan was informed  
9 not to do those strip searches in the cells any more.

10 The other part of the policy that I was arguing  
11 was with respect to the actual method of the strip  
12 search, which is either removing all the prisoner's  
13 clothes and then giving the pieces back or removing one  
14 at a time and giving that one piece of clothing back as  
15 the strip search progresses.

16 Prison policy requires that all clothing be taken.  
17 And then after all the clothing is searched, the items  
18 can be given back to the prisoner. In this case, Ms.  
19 Stoudemire was not even asked to remove her panties.

20 The strip search policy normally would require a  
21 visual inspection of the anus and the vaginal cavity.  
22 In this case, that wasn't done. Her panties remained  
23 on during the search.

24 And I'm sorry, I'm going over in time here.

25 **THE COURT:** Excuse me. I understand you've asked

1 for five minutes rebuttal?

2 **MR. SCHNEIDER:** Yes, Your Honor.

3 **THE COURT:** Apparently that's your time for  
4 presenting the argument. Do you want to go into your  
5 rebuttal time?

6 **MR. SCHNEIDER:** Yes, Your Honor, I'd like to point  
7 one case out to the Court.

8 **THE COURT:** Go ahead.

9 **MR. SCHNEIDER:** And this is as to the State Law  
10 Claims, in this case, its abuse of a prisoner or a  
11 person receiving mental health treatment under MCL  
12 330.1722, Your Honor.

13 I argue in my brief that the MDOC defendants are  
14 entitled to state law immunity and also the Court  
15 should decline to exercise pendent jurisdiction over  
16 these claims.

17 I'd like the Court also just to view a case I  
18 found this morning, Cullari de Sanchez v  
19 Genoves-Andrews, 179 Mich App 661, it's a Michigan  
20 Court of Appeals case from 1989.

21 Let me read what the Court says here, "It's been  
22 consistently held that MCL 330.1722, does not provide a  
23 statutory exception to governmental immunity for  
24 alleged abuse of mental health patients."

25 And I think that case applies here, Your Honor and

1 the Court should dismiss the State Law claims under  
2 that statute as well.

3 **THE COURT:** All right. Thank you.

4 **RESPONSE BY MS. ALEXANDER**

5 **MS. ALEXANDER:** Thank you, Your Honor.

6 Before I go to my general argument, could I ask  
7 defendant's counsel what year the Michigan Appellate  
8 case, I missed the date of that?

9 **MR. SCHNEIDER:** 1989.

10 **MS. ALEXANDER:** Your Honor, that was before the  
11 amendments of the statute because the Michigan  
12 Appellate case that I cited in the supplemental  
13 authority, the notice of supplemental authority was  
14 about the amendments in this century that, I can't  
15 remember the exact year, that changed how the immunity  
16 statute reads. So, this case would be irrelevant.

17 Now, what I'd like --

18 **THE COURT:** "This case", meaning?

19 **MS. ALEXANDER:** The case that the MDOC cited, that  
20 Mr. Schneider cited just at the end of his argument.

21 **THE COURT:** Go ahead.

22 **MS. ALEXANDER:** What I'd like to do first is to go  
23 back to the deliberate indifference point.

24 Now, while this case is complex factually, the  
25 Eighth Amendment argument really isn't complex but it's

1 a bit more complex than defendants made it appear to  
2 be.

3 Under Farmer, there are four parts of what one  
4 looks at to establish whether or not there's deliberate  
5 indifference.

6 The first is in the context of a medical care  
7 case. Does the plaintiff have a serious medical need?  
8 The next is, did the failure to treat that need  
9 appropriately pose a substantial or excessive risk or  
10 harm? And the third is, did defendants know of that  
11 risk or risks. And the fourth is, did they respond  
12 reasonably to that risk?

13 Now, the point of this is that it's easy to  
14 misunderstand what it means when the defendants talk  
15 about consciously disregard. What was rejected in  
16 Farmer was the notion of the Seventh Circuit that it's  
17 actually a knowledge that harm will result and knowing  
18 that, failing to act, is required, that's not right.

19 The final question in Farmer is, "Knowing of the  
20 unreasonable risk and did the defendant respond  
21 reasonably?" And that's where the problem is here.

22 And it appears from everything that defendants  
23 have said that really all they challenged is whether or  
24 not they responded reasonably. They don't claim they  
25 didn't know about the risk. They admitted in court

1 today that her serious medical needs were obvious.

2 So, we're really down to --

3 **THE COURT:** Were obvious?

4 **MS. ALEXANDER:** Well, that they knew -- that they  
5 knew the risk and that she had serious medical needs,  
6 I'm sorry, I misquote.

7 And so let's look at what the record actually  
8 shows about those. Obviously, I don't have time to go  
9 through all of the things that the brief goes through  
10 of various sorts of deliberate indifference. But let's  
11 go to what was alleged in paragraph 34A of the  
12 complaint. The pain and mental distress in February of  
13 2005.

14 At that point -- one other point I really need to  
15 make. I think that the CMS defendants seem to be  
16 looking at the wrong complaint because whenever they  
17 talk about a complaint or allegations, the actual cites  
18 in their brief don't match the actual Seventh Amendment  
19 complaint. And so I think they must have been looking  
20 at an earlier one.

21 But in any event, in the second amended complaint,  
22 during February, 2005, what the record shows is that in  
23 February, '05, that she had an INR of 10.6, which is a  
24 panic value, meaning, it's a value that you have to do  
25 something about. And her lab report showed the kidney

1 failure and pretty obviously related to profound  
2 dehydration.

3 Dr. Mustafa recognized, in the record, that she  
4 was in kidney failure; and yet, he did nothing to treat  
5 it and did nothing to reverse the panic level Coumadin  
6 value.

7 Ms. Stoudemire, in fact, would have gone  
8 untreated, except for the fact that outside, the  
9 regional director was prompted to intervene. When Ms.  
10 Stoudemire was hospitalized, she needed to stay two  
11 weeks.

12 As a result of this outside intervention, Ms.  
13 Stoudemire's dehydration was addressed but this is  
14 simply a long series of episodes of nausea, vomiting,  
15 followed by dehydration, followed by the INR going  
16 through the roof, that was ignored by the staff.

17 In fact, the first time that Dr. Mustafa paid any  
18 attention after that February, 2005 episode, even  
19 though there were multiple episodes of this cycle, was  
20 October 26, 2005. And at that point, she had lost  
21 almost 30 pounds. She had had weeks of  
22 hospitalization. He ordered a stool test and suggested  
23 that she cut down on fatty foods.

24 Although nurses recorded in Dr. Mustafa's  
25 appointment book that her temperature and pulse were



1 increasing when he saw her on November 21st, as the  
2 symptoms continued, he did not take vital signs. Two  
3 days later, November 23rd, she has a blood pressure of  
4 65 over 23, a blood pressure that would indicate that  
5 she was going into shock.

6 Dr. Mustafa, by the way, did not even adjust the  
7 blood pressure medication she was taken. The next day  
8 she had an extremely high pulse. Dr. Mustafa did not  
9 see her until December 5th, almost two weeks later.

10 Dr. Mustafa, at that point, noted that her oral  
11 mucosa was very dry but did nothing for her obvious  
12 dehydration. And the only treatment was Mylanta.

13 When she was sent to the hospital the next day,  
14 the staff noted a history of five weeks of progressive  
15 weakness and fatigue. Naturally her kidney function  
16 had deteriorated and equally predictably her INR was  
17 way out of range.

18 As Dr. Walden notes in his declaration, the  
19 repeated episodes of dehydration had a resulted strain  
20 on Ms. Stoudemire's damaged kidneys, increased the  
21 probability that sooner, rather than later, Ms.  
22 Stoudemire's kidneys were failing and she'll require  
23 dialysis.

24 Now, I'll go very briefly to the MRSA pneumonia  
25 episode with Dr. Thai-Budzinski. On May 8th Dr.

1 Thai-Budzinski knew that Ms. Stoudemire had a  
2 relatively recent history of MRSA, that she had serious  
3 kidney problems, that she had chronic anemia and, of  
4 course, that she had major circulatory problems.

5 Despite knowledge of these and knowing that she  
6 was coughing up bloody film, as well as having a very  
7 elevated pulse at 119, a running temperature of almost  
8 102, despite the fact that she was on Tylenol, her only  
9 response was to order medication, a restricted diet,  
10 and a 24-hour lay in.

11 Five and a half hours later, Ms. Stoudemire had to  
12 be sent by ambulance. By the way, there's absolutely  
13 nothing in the record that supports the defendant's  
14 claim in their reply brief that Dr. Thai-Budzinski saw  
15 her again. They don't cite anything. And there's  
16 nothing in her medical records. So, it's not  
17 appropriately in the record.

18 Dr. Walden's declaration, filed in connection with  
19 Plaintiff's Summary Judgment response indicates that  
20 coughing, bloody film and a patient on Coumadin, should  
21 itself, trigger an emergency hospitalization because of  
22 the possibility of Coumadin-related internal bleeding.

23 Dr. Walden further states that the need for  
24 hospitalizations should have been obvious to any  
25 physician. In addition, the abnormal vital signs

1 indicated that Ms. Stoudemire was medically unstable.  
2 And given her complex medical history, it indicated the  
3 risk of several possible medical emergencies, including  
4 a pulmonary embolism, pneumonia, or a blood vessel  
5 rupture. Each of these conditions has a significant  
6 mortality and the actual cause of her systems, MRSA and  
7 pneumonia, has a mortality rate, a general mortality  
8 rate of 35 to 50 percent.

9 Now, I want to address very quickly the point  
10 about the vascular surgeon. All of plaintiffs medical  
11 experts have far more experience monitoring Coumadin  
12 than a vascular surgeon would be expected to have.

13 Plaintiff is the only hematologist on either side  
14 and anticoagulation, of course, is the actual  
15 specialist that deals with anticoagulation or  
16 hematologist.

17 Plaintiffs experts are supported by two pathology  
18 reports that were done after the last two amputations,  
19 neither of which showed evidence of vasculitis.

20 Now, here's the dispute between the party's  
21 expert. Nobody disputes that plaintiff, at one point,  
22 had vasculitis, which damaged her circulation.

23 None of defendant's experts argued that, at the  
24 time of the last two amputations, she still had active  
25 vasculitis. The entire "if" disputes boils down to the

1 known effects of anticoagulation on vessels damaged by  
2 vasculitis.

3 The one expert, whose entire field of expertise is  
4 anticoagulation, is plaintiff's expert and treating  
5 physician Dr. Andersen. And Dr. Andersen said that  
6 while she couldn't be certain of what the actual cause  
7 of the last amputation was, she could be certain that  
8 it wasn't vasculitis. And that it would have been  
9 prevented by appropriate anticoagulation because anti  
10 -- yes, these vessels were very much narrowed but they  
11 were still viable. And appropriate anticoagulation  
12 would have maintained them.

13 Further, defendants point to Dr. Henke. Well, Dr.  
14 Henke, the surgeon who defendants rely on, signed off  
15 in March, 2005, on a resident report that said  
16 plaintiff actually has reasonable flow to her feet,  
17 including a signal to her dorsal pedis and posterior  
18 tibial arties so that she, quote, "Would only be a  
19 candidate for an amputation--", unquote, "--If  
20 osteomyelitis or other complications ensued." That's  
21 Defendant's Exhibit "A", at 2115.

22 He also wrote in February of 2005 when he saw her  
23 that they were consciously optimistic that the toe  
24 would heal, Exhibit "A", 2230. These comments  
25 certainly put them in context and at a minimum showed

1 these are simply not Summary Judgment issues.

2 As to the actual Coumadin management. While  
3 defendant's experts said, in a general sense, "Yes, the  
4 management by Dr. Mustafa and Dr. Thai-Budzinski was  
5 okay", but they also said in their depositions, when  
6 they were confronted with the actual decision points in  
7 the chart, they said they could not explain why the  
8 doctors would have done what they did, given everything  
9 that was relevant to make those decisions.

10 So, certainly for Summary Judgment, this is just  
11 not a Summary Judgment case. Every physician knows how  
12 dangerous Coumadin is. Every physician knows it has to  
13 be monitored carefully. This record does not show  
14 anything like that monitoring.

15 And by the way, the difference between  
16 Dr. Thai-Budzinski and Dr. Mustafa's monitoring of the  
17 record and the outside hospitals is not only that in  
18 the outside hospitals, much of the time they either  
19 were taking in the patient with Coumadin levels that  
20 were based on the medication she'd been given in the  
21 prison, since there's always a delay on the effects of  
22 the medication on the INR's.

23 But also for much of the time, in the outside  
24 hospital, she was on other anticoagulants. And so you  
25 just can't translate the INR's for someone who is on

1 other anticoagulants.

2 Third thing, much of the time she was awaiting  
3 possible surgery. And you have to take people  
4 completely off Coumadin before you can give them  
5 surgery. So, the outside evidence of -- also just  
6 isn't comparable to the evidence in the institution.

7 Now, as to, very briefly, as to the claims that  
8 not every factual detail was in the complaint. Well,  
9 how could it have been? The defendants had a remedy if  
10 they thought they needed more factual details in the  
11 complaint. I note the MDOC defendants did not identify  
12 a missing legal element on the ADA Claim. And so,  
13 again, the remedy was a more definite statement.

14 As to the Dunagan case -- the Dunagan situation.  
15 What you have here is a classical case of competing of  
16 factual statements.

17 Ms. Stoudemire's declaration states, under oath,  
18 Officer Dunagan did not attempt to conduct a pat down  
19 search before ordering a strip search. That Ms.  
20 Stoudemire did not attempt to evade the search and flee  
21 to her room. That Officer Dunagan smirked during the  
22 search and seemed to enjoy Ms. Stoudemire's discomfort  
23 during the search. That Officer Dunagan,  
24 unnecessarily, extended the time that Ms. Stoudemire  
25 was required to remain uncovered in apparent violation

1 of policy. That Officer Dunagan did not block the  
2 window so other staff and prisoners could see into the  
3 cell, which was in a major traffic area.

4 And by the way, a couple things. We do not agree  
5 that the record shows that this was not a complete  
6 strip search. And supporting Ms. Stoudemire's account,  
7 Officer Dunagan received a written reprimand for  
8 violating MDOC policy.

9 Also according to the memo and contradicting  
10 Officer Dunagan's deposition. Officer Dunagan admitted  
11 during the disciplinary hearing that other prisoners  
12 could have seen Ms. Stoudemire during the search,  
13 contrary to MDOC policy.

14 And I'm not quite certain why defendants argued  
15 that it doesn't matter that the officer -- that it has  
16 to be some third party saw Ms. Stoudemire.

17 The invasion of Ms. Stoudemire's constitutional  
18 privacy occurred when Officer Dunagan conducted, what  
19 this case will establish, was an unconstitutional  
20 invasion of her privacy. There's no requirement in the  
21 law that some third person be able to observe it.

22 One wouldn't have expected, if it were true that  
23 contraband had been found, there would have been a  
24 disciplinary proceeding because possession of  
25 cigarettes is a major offense in the MDC disciplinary

1 program. There was no disciplinary hearing conducted  
2 for her.

3 A reasonable Fact Finder, accepting Ms.  
4 Stoudemires's evidence, will certainly be entitled to  
5 conclude that there was no genuine security reason for  
6 the strip search of Ms. Stoudemire, rather, it was  
7 motivated by a decision to inflict punishment by way of  
8 humiliating Ms. Stoudemire outside of the legitimate  
9 disciplinary system or for some other improper motive.

10 **THE COURT:** Was she ever disciplined for having  
11 contraband?

12 **MS. ALEXANDER:** No, she was not, Your Honor. And  
13 that's a very important factor here.

14 As plaintiff demonstrates in pages 15 to 18 of our  
15 brief, there's overwhelming precedent in a federal  
16 court that, "Invasive personal searches of a prisoner,  
17 for the purpose of harassment or some other purpose  
18 unrelated to a legitimate penological purpose violates  
19 law because personal searches have to have a  
20 penological justification."

21 And defendants in their brief also claimed that  
22 there has to be -- someone of the opposite sex has to  
23 view these strip searches for there to be a  
24 constitutional claim.

25 Well, among the cases that plaintiffs cites, that



1 don't involve that element are again, Bell, in the U.S.  
2 Supreme Court and Hudson v Palmer, in which the Supreme  
3 Court said in the context of a property search of a  
4 prisoner's belongings that prisoners retain  
5 Constitutional Rights against, quote, "Calculated  
6 harassment unrelated to prison needs." As well as a  
7 number of other cases that we cite in our brief.

8 And Your Honor, if there is some particular issue  
9 that would be helpful for me to address for the Court,  
10 that I may have not addressed for the Court, rather  
11 than going on with this, I would prefer to make certain  
12 I've answered all of the Court's questions.

13 **THE COURT:** I'm satisfied with your arguments thus  
14 far.

15 **MS. ALEXANDER:** Thank you.

16 I do want -- I just want to point out very briefly  
17 that the evidence before the Court with regard to the  
18 pendent claim against Warden Davis and Officer Dunagan,  
19 meet the standard of the Michigan Abuse Statute, which  
20 is essentially either -- the negligence -- the gross  
21 negligent standard, under the Michigan Statute, is  
22 either the same as a deliberate indifferent standard or  
23 less -- or a lower standard than that.

24 And given that the search was abusive and given  
25 the facts about the placement of a woman who had just

1 had her second leg newly amputated, who had a MRSA  
2 infection, placing that woman, before her physical  
3 therapy, before any sort of recovery from the  
4 amputation of her second leg, in a place where she had  
5 no way to transfer from the bed to the toilet or from  
6 the bed to the showers, in a filthy, segregation  
7 environment, where she had no call button to contact  
8 staff when she needed them, resulting in her having to  
9 defecate on herself. Being responsible for that  
10 decision certainly is a classic.

11 There are many cases in which that sort of  
12 event -- including, consistent with that, U.S. v  
13 Georgia recently, that made clear that that's an Eighth  
14 Amendment violation.

15 So, it's --

16 **THE COURT:** Your time is up.

17 **MS. ALEXANDER:** Thank you, Your Honor.

18 **MR. RICHTARCIK:** Do I have any time, Your Honor?

19 **THE COURT:** Yes, you have four minutes.

20 **RESPONSE BY MR. RICHTARCIK**

21 **MR. RICHTARCIK:** Okay. Your Honor. Thank you.

22 I think all we really know, I mean, this case  
23 started out as an anticoagulation case. A lady who  
24 lost two legs due to systemic lupis and allegedly it  
25 was because she wasn't anticoagulated.

1           And all we really know is no one was ever able to  
2 maintain her therapeutically. Nobody. Not one  
3 hospital that treated her. Not one specialist that  
4 treated her. Not during her incarceration. Not after  
5 her incarceration. And that's the evidence and it's  
6 cited in the briefs.

7           **THE COURT:** Why did defense not file a motion for  
8 a more definite statement?

9           **MR. RICHTARCIK:** On the issue of what? Sorry,  
10 Your Honor.

11           **THE COURT:** On any of the issues because I got the  
12 impression a lack of clarity or a lack of legitimate  
13 claim.

14           **MR. RICHTARCIK:** I don't have a copy of the first  
15 amended complaint here today, and I sure wish I did. I  
16 don't have it with me. Maybe counsel has it and will  
17 share it with me. I have the second amended complaint.

18           And I'll acknowledge that, you know, after the  
19 reports were due and done in February of 2010,  
20 discovery was over, pretty much, in 2010, except  
21 plaintiff had identified Officer Dunagan, who they  
22 claimed they didn't know about before and they had to  
23 identify him through discovery, is a move to amend the  
24 complaint. And the purpose of that amendment was only  
25 to add Officer Dunagan, period, not to add any claims

1 or anything.

2 And then I see this now, and it appears it does  
3 state some different claims than was in the first  
4 amended complaint. I don't know that one hundred  
5 percent as I stand here today because I don't have the  
6 first amended complaint.

7 Should I have picked up on that sooner? You're  
8 darn certain I should have picked up on it sooner and I  
9 didn't, unfortunately, for me today.

10 But I move to strike anything that's in the second  
11 amended complaint that in any way changes any  
12 allegations against my clients that wasn't in the first  
13 amended complaint. Because I didn't object to the  
14 second amended complaint for the simple reason that it  
15 was represented that the only amendment was going to be  
16 adding Officer Dunagan, a claim against Officer  
17 Dunagan. So, I sure hope I'm right on that one.

18 But suffice it to say, with respect to paragraph  
19 34, what they argued about. 34B, they claimed that  
20 there was treatment that wasn't provided appropriately  
21 and it led to a cardiac arrest. I addressed that in my  
22 motion and there was no cardiac arrest. It's not in  
23 the record anywhere. And the record speaks as to the  
24 treatment that was offered in that event.

25 With respect to the cold in paragraph 34C. I'll

1 stand by my brief on that one.

2 And with respect to 34A. You know, it says -- it  
3 refers to "staff", not Dr. Mustafa. And with respect  
4 to that, all we hear here today is plaintiff's argument  
5 of how he didn't care that she was in distress and they  
6 thought she was faking and they did nothing. They  
7 don't cite the evidence. Where's the evidence?

8 Dr. Mustafa's dep was taken long before that was  
9 added to the complaint, I believe, and he was never  
10 questioned on that. How do you know what his  
11 subjective belief was or the subjective element of the  
12 deliberate indifference claim against him?

13 If he didn't even ask him, he didn't even pry into  
14 his mind to find out what he was thinking. My experts  
15 would have had no opportunity to respond to that  
16 because quite frankly their reports were in and filed  
17 and I think the deps after that time.

18 But the point is I feel a little blindsided here.  
19 This case definitely started as an anticoagulation  
20 case. That she lost her legs because my clients were  
21 deliberately indifferent. And it has morphed into  
22 something else to try to save the case.

23 It's, kind of, like, hindsight is 20/20, let's  
24 look back and find something they did wrong because it's  
25 easy to dispute the medical care. But that's a medical

1 malpractice claim, regardless of any of this.

2 Where are the damages resulting from this? This  
3 is a difference in medical opinion. All kinds of  
4 medicine. Their expert says one thing, my expert says  
5 another thing. My experts have, you know, expert  
6 reports that they reviewed the file and they found  
7 nothing inappropriate with the medical care. So,  
8 that's a difference of medical opinion.

9 This case is about the plaintiff's leg loss  
10 because of lupis, a long-standing chronic condition  
11 well documented since age ten, through beyond her  
12 incarceration. And nobody ever maintained her  
13 therapeutically on any coagulation therapy during or  
14 after her incarceration. Can't really speak to before  
15 because the records don't really indicate they were. I  
16 hear lots of representations that she was by counsel,  
17 but I don't see the evidence.

18 So, I'll rest on that, except, 34A, if that's not  
19 in the first amended complaint, the Court shouldn't  
20 consider it. And all the other claims that I mentioned  
21 in my reply, I don't think they're probably in the  
22 first amended complaint as well.

23 **THE COURT:** You have an obligation, if you believe  
24 something was place on the record that shouldn't be  
25 there, you have an obligation to address it in terms of

1 formal pleadings.

2 **MR. RICHTARCIK:** I understand that, Your Honor.

3 **THE COURT:** Okay. Thank you, very much.

4 You have five minutes.

5 **RESPONSE BY MR. SCHNEIDER**

6 **MR. SCHNEIDER:** Thank you, Your Honor.

7 Your Honor, with respect to the ADA stuff, Your  
8 Honor, I still don't think the plaintiff has stated a  
9 claim as to any defendants, the Department of  
10 Corrections, Davis, Caruso, and Pramstaller.

11 You know, she talked a little bit about  
12 segregation and not being taught how to use the  
13 transfer from her wheelchair to the toilet. You know,  
14 there's still no allegation that any particular nurse  
15 failed to teach her that or failed to help her out with  
16 those tasks, the defendants here, the director, the  
17 chief medical officer, the warden, people who had no  
18 direct contact with the plaintiff herself.

19 Getting back to the Dunagan things. I just wanted  
20 to point out that a smoking ticket is not a major  
21 misconduct in prison, it is a minor misconduct.

22 Also, Defendant Dunagan did make a contemporaneous  
23 record of the cigarette matches that she confiscated.  
24 There was a log book, this is February 10th, between  
25 1855 and 1800, she wrote a note here, "Performed strip

1 search on Stoudemire 41926 and confiscated a cigarette  
2 and matches."

3 This was a contemporaneous record and it was  
4 recorded at the time and this can be found at document  
5 106-2. I believe it was attached to the defendant's  
6 reply brief, to defendant's response to the plaintiff's  
7 notice of supplemental authority that was filed.

8 As to the state law claims. The plaintiff, once  
9 again, said the claims here meet the technical  
10 requirements of the abuse of a mental health patient.

11 What we still have though is governmental  
12 immunity. The defendants are entitled to that under  
13 state law. The law of intentional torts is still not  
14 affected under Michigan State Law. And I think  
15 defendants are still entitled to immunity.

16 **THE COURT:** All right. Thank you.

17 Thank you for your arguments and I will render a  
18 decision shortly which will reflect my opinion with  
19 regard to the claims that have been raised. At this  
20 point, I have nothing further to ask of any counsel.

21 On a different issue, do you believe, and I speak  
22 to all counsel, do you believe that there's a  
23 possibility or probability of any settlement? Have  
24 there been any discussions between the parties with  
25 regard to settlement? If the answer is, yes, I don't



1 want any details.

2 **MS. STREETER:** There have been no discussions, at  
3 this point, Your Honor. Excuse me, for the record,  
4 Patricia Streeter, for the plaintiff.

5 **THE COURT:** Does that represent any view of your  
6 client's position or it just hasn't happened?

7 **MS. STREETER:** Just hasn't happened. Does not  
8 reflect the plaintiff's view.

9 **THE COURT:** Are you hoping to settle the case?

10 **MS. STREETER:** Well, I would think at some point  
11 we should be at least discussing the subject with  
12 opposing counsel.

13 **THE COURT:** All right.

14 **MR. RICHTARCIK:** Your Honor, if I may. I guess  
15 what would be most helpful for my client would be the  
16 decisions on these motions and until that happens --  
17 and I think a large factor is going to be as well what  
18 happens with respect to the claims related to the  
19 amputations, I mean, with respect to damages to my  
20 clients. That's probably the bulk of damages, so that  
21 would all be a factor.

22 **THE COURT:** Someone raised the issue of settlement  
23 but I suppose any time there's a meeting of counsel, I  
24 don't want to pass up the opportunity.

25 **MR. RICHTARCIK:** The other thing I would say too,

1 Your Honor, I think -- is the trial scheduled  
2 mid-January, January 18th? I think it is. I am filing  
3 a notice of trial conflict and I have three trials  
4 scheduled all for the same week. So, I'm trying to  
5 decipher -- and I know this one wasn't first. We have  
6 one in Wayne County Circuit Court, medical malpractice  
7 case that's been scheduled for quite a while, it's  
8 about a seven-year-old case.

9 **THE COURT:** Have you talked to your opposing  
10 counsel about the potential conflict in scheduling?

11 **MR. RICHTARCIK:** No, I haven't yet, Your Honor.  
12 But I promise I'll call you tomorrow and discuss it  
13 with you, if there's alternative dates and let you know  
14 what my times are and whether you're opposed to it or  
15 not.

16 These notices have been flying and everyone wants  
17 to try everything after Christmas. So, Happy  
18 Christmas, Merry Christmas.

19 **THE COURT:** Well, thank you very much, everybody.  
20 I hope you'll have a happy holiday.

21 **MR. SCHNEIDER:** You too, Your Honor.

22 **MS. ALEXANDER:** You too.

23 (Whereupon proceedings concluded at 4:18 p.m.)

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**C E R T I F I C A T I O N**

I, Nefertiti A. Matthews, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

Date: May 18, 2010

s:/Nefertiti A. Matthews  
Nefertiti A. Matthews,  
Official Court Reporter

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