

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SEXTURE W. RAGLAND,

Plaintiff,

Case No.: 09-009412 NI

Hon. Michael F. Sapala

VS

MICHAEL S. MLECZKO, and
CITY OF DETROIT,
A Municipal Corporation,

Defendants.

Proof of Service

The undersigned certifies that the instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as disclosed on the pleadings by First Class Mail on July 26, 2010.

/s/ Robin E. Keine

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**PLAINTIFF'S MOTION TO COMPEL SURVEILLANCE MATERIAL FROM
DEFENDANT MLECZKO**

NOW COMES Plaintiff, Sexture Ragland, by and through his attorneys, GURSTEN, KOLTONOW, GURSTEN, CHRISTENSEN & RAITT, P.C., and for his Motion to Compel Surveillance Material from Defendant Mleczeko, states as follows:

1. This action arises out of a collision between a City of Detroit Bus and Defendant Mleczeko's vehicle on October 18, 2006.

2. Plaintiff was a passenger on the City of Detroit bus at the time of the collision, and sustained serious injuries.

3. On or about April 23, 2009, Plaintiff served his First Interrogatories and Request for Production of Documents on Defendant Mleczo.

4. Interrogatory number 19 requests information regarding whether any surveillance had been conducted on Plaintiff, and requests a copy of all documents or tangible evidence obtained or produced as a result of said surveillance.

5. Defendant Mleczo initially answered "Not at this time" in response to Interrogatory 19.

6. On or about July 9, 2010, Plaintiff received Defendant Mleczo's Second Supplemental Answers to Plaintiff's First Interrogatories and Request for Production of Documents, in which Defendant Mleczo supplemented his answer to Interrogatory 19 to indicate that surveillance was conducted on Plaintiff in June of 2010.

7. Defendant Mleczo objected to Plaintiff's request to produce any documents or tangible evidence obtained as a result of the surveillance on the basis of work product.

8. Defendant Mleczo should be compelled to produce any tapes, reports, or other documentation of the surveillance conducted on Plaintiff, as surveillance is not protected by any privileges or work product.

9. In the alternative, Plaintiff requests a ruling from this Court barring Defendant Mleczo from introducing any evidence of surveillance at trial, as Plaintiff would be severely prejudiced if Defendant Mleczo was allowed to wait until trial to de-cloak this discoverable surveillance.

WHEREFORE, for the aforementioned reasons, Plaintiff respectfully requests this Honorable Court to grant his Motion to Compel Surveillance Materials from Defendant Mleczko.

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

By: _____

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Dated: July 23, 2010

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL SURVEILLANCE
MATERIAL FROM DEFENDANT MLECZKO**

Defendant Mleczo is attempting to have his cake and eat it too. Currently, Defendant Mleczo claims that his recent surveillance of Plaintiff is "work product," and not subject to discovery. At trial, however, Defendant Mleczo's tune is going to change, and he will seek to introduce surveillance tapes and/or reports to challenge

Plaintiff's credibility and/or injuries and restrictions. Defendant Mleczko should not be permitted to manipulate the work product rule in this manner.

Plaintiff assumes that Defendant Mleczko has obtained surveillance information which includes videotapes, audio recordings, and/or photographs. The surveillance tapes, audio recordings, and/or photographs are not work-product. Rather, they are evidence which is relevant to the issue of Plaintiff's injuries and damages. The surveillance tapes are relevant evidence just as an X-ray or MRI of plaintiff's brain would be relevant evidence to injury and damage issues. Whether the surveillance tapes or X-rays are taken by a defense private investigator or a defense medical examiner, respectively, they are still evidence. As relevant evidence, the surveillance tapes should be produced, and no work-product privilege should attach.

If this Court is inclined to view the surveillance materials as work product, then Plaintiff requests the court to hold Defendant Mleczko to his claim of privilege, and enter an order barring introduction of Defendant Mleczko's surveillance material at trial. Under MCR 2.306(D)(5), "[a] party who claims a privilege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition." While this rule applies to deposition testimony, it should be equally applicable to answers to interrogatories or any other discovery responses where privilege is invoked. Defendant Mleczko should not be permitted to cry privilege until trial, only to decide to waive this so-called privilege once Plaintiff is on the witness stand.

For these reasons, Plaintiff respectfully requests this Honorable Court to either (1) enter an order compelling Defendant Mleczko to produce the requested materials sought by Interrogatory 19, or (2) enter an order prohibiting Defendant Mleczko from using any surveillance materials at trial.

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

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