IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. DA-24-0215

JACQUELYN M. HUGHES,

Plaintiff and Appellant,

vs.

ERIC L. ANDERSON and MID-CENTURY INSURANCE COMPANY,

Defendants and Appellees.

APPELLANT'S REPLY BRIEF

On Appeal from the Thirteenth Judicial District
Yellowstone County, Montana Cause No. DV 56-2020-635
The Honorable Mary Jane Knisely

Appearances

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REPLY ARGUMENT

Appellee's arguments fail because:

1) Appellee submits no evidence that fibromyalgia is not latent or self-concealing. Further, Appellee's argument that *Nelson* and *Hando* apply when the "mechanism of injury" is self-concealing is not accurate.
2) The cases relied upon by Appellee are irrelevant because the injuries there were not self-concealing and the plaintiffs did not exercise due diligence to discover the cause of their damages.
3) Appellee's policy concerns are unwarranted because this Court has already placed clear restrictions on the discovery rule that ensure the statute of limitations will not be rendered useless.
4) Appellee fails to present any evidence that would render equitable estoppel inapplicable.
5) The Court must reject arguments based on inaccurate statements about evidence in the record.

I. Appellee fails to bring forth evidence that fibromyalgia is not a latent or a self-concealing injury.

Appellee claims that fibromyalgia is not a latent injury and that it developed simultaneously with the April 23, 2014 accident. Appellee has put forth no evidence to support this claim. Nor has Appellee presented evidence that controverts Lasonya Natividad's explanation that the injury develops "over the course of time" after an insult to the nervous system. *Appellant's Opening Br.*, Pg.

5 (hereinafter *"AOB"*). Further, Appellee seeks to limit case law regarding latent injuries to conditions like cancer,[1] but the case law contains no such limitation.

The discovery doctrine is not limited to cancer. Diagnoses in *Nelson vs. Nelson* included arthritis, sleep apnea, Pickwithian syndrome, recurrent blistering, diabetes, upper respiratory problems and systemic autoimmune reactivity. 2002 MT 151. The focus of these cases is not whether the diagnosis is cancer or fibromyalgia. The focus is whether the injury is latent or self-concealing.

Montana law does not define "latent injury" or "self-concealing injury." Mississippi has defined "latent injury" as "one where … **it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act**." *W. World Ins. Grp. v. KC Welding, LLC*, 372 SO. 3d 464, 568. *Nelson* indicates that an injury is self-concealing if a lay person cannot diagnose the condition and lacks the medical knowledge to connect the ailment to the tortious conduct. *Nelson vs. Nelson,* 2002 MT 151, ¶ 18. The testimony of APRN Lasonya Natividad shows fibromyalgia is not immediately apparent to the injured party, develops over the course of time after the initial injury, requires a medical provider to diagnosis and is not an injury for which causation is obvious to a lay person. *AOB.*, 5. Appellee provided no facts contradicting Natividad's testimony.

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[1] See *Answer Brief*, Pgs. 2, 3, (This does not mean she can reap the benefits of the discovery rule, which again is applied to situations where a plaintiff develops cancer…), 8 (she was not diagnosed with a new disease like cancer), 13 (she did not develop a new "latent disease" like cancer…), 29 (she did not develop a disease like cancer), 30 (She did not suddenly develop cancer or another disease), 32 (Hughes did not manifest cancer or some other disease…), 33 (…the discovery rule is applied in cases where individuals develop cancer…).

As explained by Natividad, fibromyalgia results when there is an insult to the nervous system and, **over the course of time**, the system becomes unbalanced. **Over the course of time** the nervous system has an underproduction of some chemicals and an overproduction of other chemicals. **Over the course of time**, once those imbalances have developed, people begin to experience an over-amplification of signals and a misinterpretation of signals. Once the brain begins experiencing inaccurate signals, it becomes overwhelmed and additional symptoms develop. Appellee's disdain for the idea that such a stigmatized diagnosis can be a legitimate injury is palpable, but Natividad's testimony makes it quite clear that fibromyalgia is a legitimate condition and it is, quite obviously, a latent, self-concealing injury. *AOB*, 5. Appellee failed to present any evidence to the contrary.[2]

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[2] Appellee claims that Natividad never advised Hughes that a car accident could trigger fibromyalgia and Hughes' affidavit testimony "is false." *Answer Br.*, 7-8. Anderson was in that appointment with Hughes Aff. Hughes, ¶ 15, *Appx.* 84. Appellee presented no affidavit from Anderson disputing Hughes' testimony. Further, Natividad's deposition testimony indicates that she is of the opinion that fibromyalgia can be triggered by an auto accident:

> **Q. Lasonya, are there recognized triggers for fibromyalgia?**
> A. Yes.
> **Q. What are those triggers?**
> A. Disease processes like COVID. Traumas -- physical or emotional traumas, genetic predisposition, stress, sleep issues, mental health issues, just to name a few.
> **Q. Have you seen cases where an individual has been in a car accident and has developed fibromyalgia?**
> A. Yes.

Depo. Lasonya Natividad, 36:4-36:15 (Oct. 20, 2022), *Supp. Appx.* 3. While the Court cannot rely on evidence outside the record, inaccurate statements of Counsel regarding evidence outside the record should not go unchecked.

Aside from Counsel's representations that the ailments for which Hughes reported to Mayo Clinic in 2019 "are all the same" as she experienced in 2014, 2015 and 2016, there is no evidence that Hughes' conditions developed simultaneously with the accident. Appellee deposed Hughes' for nearly nine hours, from 9:10 a.m. to 6:02 p.m., and is unable to cite any deposition testimony that supports this representation. *AOB, Appx.* 76, ¶ 39. Appellee claims that causation for fibromyalgia was obvious and that all of Hughes' "treatment providers accepted that her injury and symptoms were a product of the accident." *Appellee's Answer Br.*, 11 (hereinafter "*Answer Br.")*. Appellee provides no admissible evidence to support this claim. Further, this representation is contradicted by Appellee's own position regarding causation. On August 26, 2021, Appellee sent Hughes a letter which stated "I have been unable to find any medical documentation linking the hives outbreak with the accident" and "I could not find any statement indicating that a diagnosis of fibromyalgia has been made and that condition was due to the motor vehicle accident." *See AOB*, 7. How, then, can Appellee now advise this Court that, at all times, "treatment providers accepted that her injury and symptoms were a product of the accident?" Appellee fails to offer any factual explanation as to how medical causation should have been obvious to Hughes when it was not obvious to her medical providers.[3] Appellee

[3] Counsel for Appellee advises this Court "Hughes has never received a medical, causal opinion linking her fibromyalgia to the April 2014 car accident." *Answer Br*. 15. Counsel later claims that Hughes may never be able to provide medical testimony on causation. *Answer Br*., 35. These are deeply concerning false representations. Sorena was provided with an affidavit from Andrea Chadwick, a board-certified anesthesiologist with subspecialty certification and

seeks to advise this Court that Hughes was not diagnosed with a "new disease" at Mayo Clinic and, rather, that Hughes learned from Dr. Saadiq that all Hughes' complaints were "summarized" as being "fibromyalgia." This is another inaccurate representation that seeks to mislead the Court regarding the nature of evidence that is not in the record. Dr. Saadiq used the word "summary" twice:

> Q. And do these clinical notes -- do they fairly and accurately depict what your analysis and what your recommendations were for Ms. Hughes?
>
> A. It was my discussion with the patient and we summarized what every other doctor recommended into my notes so it's easy for the local person to follow.
>
> …

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board certification in Pain Medicine from the American Board of Anesthesiology. Therein Dr. Chadwick opined "I have reviewed the medical records for three years leading up to the April 23, 2014 accident, as well as the medical records from April 23, 2014 through September 15, 2019. Based on those records, my interview with Ms. Hughes, and my understanding of the various causes of fibromyalgia, it is my opinion, to a reasonable degree of medical certainty, that Ms. Hughes' fibromyalgia was more probably than not by caused the auto accident that occurred on April 23, 2014." This affidavit was sent to Appellee on May 31, 2024. Aff. J. Hughes, ¶¶ 7-9 (Sept. 26, 2024), *Supp. Appx*. 11-12. Hughes advised Appellee on December 6, 2021 that Dr. Chadwick had been retained and had provided a preliminary causation opinion. *Id.* Counsel's representation that no causation evidence exists, in or out of the record, is taking liberty with what is not in the record to make false arguments about evidence in her possession.

Since this information is not in the record, it cannot be relied upon by the Court in rendering its opinion on this issue. It can, however, and should, serve to put the Court on notice that Counsel is willing to misrepresent facts to this Court and the Court must exercise the utmost discernment in determining whether the statements made in Appellee's brief are supported by **admissible evidence** or simply statements of Counsel, some of which are clearly inaccurate.

Q. So is it a fair statement to say that you took all of the work that everyone else had done and simply summarized it into a final diagnosis that was fibromyalgia?

A. Yes.

Depo. Rayya Saadiq, 11:2-11:8, 18:1-19:5 (Sept. 15, 2022), *Supp. Appx.* 18-19. While the Court cannot consider evidence outside the record, it also cannot consider statements of Counsel misrepresenting the evidence outside the record.

In addition to failing to present any evidence that fibromyalgia developed simultaneously with the April 23, 2014 accident, Appellee focuses on the nature of the tortious conduct to argue that the discovery rule does not apply. Appellee argues that the discovery rule applies when "the mechanism of the injury was gradual and self-concealing." *Answer Br.*, 11. *Nelson* and *Hando* focus on whether the injury is self-concealing – not whether the **mechanism of the injury** is self-concealing. The argument appears to be that since the conduct was obviously tortious, Hughes is saddled with knowing right then that she would later develop a central nervous system processing disorder. The defendant in *Nelson* made exactly the same argument, and this Court rejected it, disregarding the obviously tortious conduct and finding "plaintiff lacked knowledge concerning the ultimate causal link between the ailment and the tortious conduct. *Nelson v. Nelson,* 2002 MT 151, ¶ 18. Appellee's argument fails.

II. The entirety of the case law relied upon by Appellee is inapplicable.

Appellee's reliance on cases where the Court declined to apply the discovery rule is misplaced as these are clearly distinguishable.

In *Kaeding v. W.R. Grace*, Kaeding claimed asbestosis was a new injury in 1994. The Court found that, over a period of thirty-six years, "several doctors who examined Kaeding prior to 1994 were of the opinion that his medical problems were attributable, at least in part, to asbestosis." 1998 MT 160, ¶¶ 6-11, 27. The discovery rule was not applied because medical providers advised Kaeding of his condition and its cause decades before he filed suit. Unlike *Kaeding*, Appellee cannot point to a single medical record wherein any of Hughes' providers suggested her condition was an accident-related injury rather than various illnesses.

Hartford vs. General Motor Corp. is likewise unhelpful and it is not governing case law. There, the issue was not discovery at all. Rather, the plaintiff argued that she should have been allowed to wait to learn the "extent" of her injuries. 2001 Mont. Dist. LEXIS 2505, 5. Hughes isn't arguing that she didn't know the extent of her injury. She is arguing she didn't know that her ailments were an injury caused by the accident. Neither did Anderson, despite that he lived with her, and no provider made any such indication until 2019.

In *Christian vs. Atlantic Richfield Co.* the evidence showed that the plaintiff was on notice that her property had been damaged and the information available to the plaintiff "reasonably would have prompted further inquiry or action." 2015 MT 255, ¶ 66. The plaintiff's argument in *Christian* failed because the plaintiff failed to exercise due diligence once the damage and its cause were suspected. *Christian*, ¶ 71. Appellee has presented no facts indicating that Hughes failed to exercise due diligence. Hughes and Anderson were constantly trying to find out

what was wrong and what was causing it. Appellee never made an argument to the district court that Hughes failed to exercise due diligence.

Chriske vs. State is distinguishable because there was factual evidence that Chriske knew she had a lung condition and knew smoking caused it decades before she filed suit. The plaintiff testified that she knew about the link between smoking and lung disease as early as the 1980s. *Chriske*, ¶ 5. In 1991, a medical provider told Chriske that her condition was caused by smoking. 2001 MT 149, ¶ 4. From the mid- to late-1990s, Chriske regularly discussed her lung problems with her doctor, who told Chriske that her asthma and breathing problems were caused by her smoking habit. *Chriske*, ¶ 6. The Court declined to apply the discovery rule because the undisputed facts showed that Chriske discovered her condition, and its cause, at least twenty years before she filed suit.

While Hughes continuously treated, her providers were unable to determine what was wrong or what was causing her ailments until 2019.

III. Appellee's claims that application of the discovery rule will render the statute of limitations useless are unwarranted.

Appellee argues "Hughes has essentially asked this Court to render the statute of limitations useless and indefinitely extend it for any plaintiff who does not get a doctor to opine about causation in the three years after a violent car accident…" *Answer Br.*, 35. This is not a legitimate concern because the Court has already placed restrictions on the discovery rule:

> This Court has, however, tolled the statute of limitations until a plaintiff discovers the injury, or until he should have discovered the injury with the use of due diligence, if the injury is self-concealing.

Hando v. PPG Industries, 236 Mont. 493, 502.

First, the injury must be ***self-concealing***. Broken bones, gashes and bruises, etc. are not self-concealing. A lay person is capable of recognizing them as injuries and recognizing their accident-relatedness. Diabetes, rheumatoid arthritis, petrochemical sensitivity, auto-immune disorders, cataracts, fibromyalgia. These are injuries that are triggered by tortious conduct but do not develop immediately. A lay person cannot diagnose them and a lay person cannot establish medical causation. *Kostelecky v. Peas in a Pod, LLC*, 2022 MT 195, ¶ 23. The distinction is clear and unless an injury is self-concealing the discovery rule does not apply.

Second, an injured party must use due diligence to discover her condition and investigate causation. In every case where the discovery rule is applied, the injured party consistently sought treatment, consistently sought to get better, followed medical providers advice and asked questions. The injured party simply didn't get answers until after the statute of limitations had run. The "due diligence" requirement establishes that Appellee's concerns are without justification.

IV. Appellee misrepresents the nature of the estoppel argument made by Hughes at the district court level and misrepresents the evidence in Counsel's possession regarding this issue.

The biggest flaw with the district court's analysis is that the district court improperly required a knowing **false** representation as opposed to a knowing representation. Appellee fails to cite a single case requiring that a party seeking to

establish equitable estoppel show that the representation was knowingly false. On that basis, alone, the district court's opinion must be reversed on remanded.

Appellee's claims Hughes' argument at the district court level was limited to a choice of law issue:

> Hughes argument in her Appellant Brief fails to mention that her ***entire*** argument for estoppel was that she and Anderson agreed that North Dakota's six-year statute of limitations applied to her claim. She instead tries to represent to this Court that she and Anderson agreed they would wait an indefinite period of time until she found a medical provider to opine on causation before she sued him. **This is not true**.

Answer Br., 38, emphasis added. The record itself shows Appellee's representation to this Court is inaccurate:

> While they both believed that Plaintiff's condition was caused by the accident, they also knew that none of Plaintiff's providers had connected her symptoms to the accident. They jointly chose to wait until a provider made a causal connection. Pl. SUF, ¶¶ 18-24. **Defendant Anderson knew of the accident, her injuries, her symptoms, and were investigating into whether her symptoms were connected to the accident. Together they were going to make a decision that if a causal connection was made to the accident, then she would make a claim.**

Pl. Br. In. Opp. To Def. Mot. for S.J., Dkt. 46, Pg. 15, *emphasis added*.

While Appellee denies that Anderson ever agreed with Hughes that they should not bring a claim until there was some medical indication Hughes' condition was related and denies that Anderson agreed Hughes had six years to file, the Court must look to the evidence and not simply accept Counsel's representations. Hughes set forth the substance of these agreements in her January 9, 2023 *Affidavit,* which is sworn testimony and uncontroverted admissible

evidence. *Aff. Hughes*, ¶¶ 8-16, *AOB Appx.* 82-84. The Court must not overlook that Appellee was unable to obtain an affidavit from Anderson to refute Hughes' sworn testimony which is quite telling.[4]

Appellee is again taking liberty with what is not in the record to mislead the Court. When Appellee filed *Defendant Anderson's Reply Brief In Support of MSJ*, the document contained the following statements:

> Mr. Anderson did not represent anything regarding legal issues such as substantive law, liability, statute of limitations, or causation to Ms. Hughes.

And

> Mr. Anderson did not represent to her that a six-year statute of limitations applied to her case

Id. Pg. 11. These representations were made despite that Anderson still maintains that he agreed Hughes had six years to file and *Anderson conveyed that position to his attorneys*. Hughes was not self-represented at the time of that filing so M.R.Prof. Cond. 4.2 does not apply. Hughes contacted her co-parent about these representations and Anderson agreed to put his position in writing. Hughes asked:

[4] On October 31, 2022, Appellee stated "However, since the claim at issue in this case arose in North Dakota and is based upon the substantive law of North Dakota acknowledged by Hughes in her Complaint (9), she is fortunate that the statute of limitations for North Dakota applies." *Def. Anderson's Br. Op. MSJ. Liability* (Oct. 31, 2022), Pgs. 2-3, 5. Given Appellee's pre-deposition concession that the claim was timely filed, there was no need to address the timeliness of the filing in Anderson's deposition.

> Can you confirm that the sentence "At all times prior to April 23, 2020, Eric and I agreed that I had six years to file" is an accurate representation of your position?

Anderson responded "Yes, that statement is an accurate representation of my position." Aff. J. Hughes, ¶ 5 (Sept. 25, 2024), *Supp. Appx*. 6, 9.

When Hughes became self-represented, these emails were provided to Counsel. Aff. J. Hughes, ¶ 8 (Sept. 25, 2024), *Supp. Appx*. 14. Nonetheless, Appellee still advised this Court, without making any effort to cite to evidence in the record "Anderson did not represent to her that North Dakota's six-year statute of limitations would apply to her case." App. Br., 40. Appellee makes similar false representations regarding the parties' agreement that they should wait to file suit until a medical provider indicated the mysterious conditions were somehow related to the accident, advising the Court "There was never any such agreement." *Answer Br.* 5. Appellee was not able to obtain an affidavit from Anderson to support this representation. While Anderson's emails cannot be used as evidence upon which the Court can decide this case, they are not needed for that purpose. Hughes' January 9, 2023 *Affidavit* remains uncontroverted. The email is presented for the purpose of underscoring the importance of verifying whether Counsel's representations are supported by admissible evidence because quite often, they are not.

The only evidence in the record regarding Hughes' and Anderson's agreement is Hughes' January 9, 2023 *Affidavit*, stating:

> We discussed the six-year statute of limitations in North Dakota and agreed that given the six-year statute, we would wait until a medical provider connected the conditions to the accident.

AOB Appx., 83. Counsel's denial of the truthfulness of this statement does not create a disputed fact.

This Court has held for over a century that "the legislature has made it entirely optional whether the party against whom a cause of action is alleged to avail himself of the protection of the statute or to forbear it." *Parchen v. Chessman* (1914), 49 Mont. 326. The Court goes on to hold that a party may waive the benefit of the statute of limitations by agreement with the adverse party and that if a party waives that protection, the Court will enforce the agreement. *Parchen*, 49 Mont. At 15-16. Regardless of whether it was because the parties thought North Dakota law applied, were unaware from 2014 to 2020 that the Court would decide *Buckles* on November 24, 2020, or because the parties both recognized that the medical community was treating Hughes' injuries as illnesses, the fact is that the parties, at all times prior to April 23, 2020, agreed that Hughes had until April 23, 2020 to file her lawsuit. This evidence is undisputed.

It is also undisputed that Hughes and Anderson discussed their claim numerous times and discussed that, regardless of their suspicions, medical providers were telling them it was something other than the accident. Obviously, no claim would have arisen if strep throat, iron deficiency or idiopathic hypersomnia were accurate diagnoses because those are not accident-related ailments. The parties agreed to continue seeking answers for Hughes' dramatically changed health and not to file a claim until there was some medical indication that what was wrong was accident related.

Appellee claims Hughes could have filed her Complaint earlier to toll the statute of limitations. Such a decision would have been fraught with problems. Mid-Century Insurance could have waived service and forced Hughes to proceed with litigation at a time when the diagnosis was iron deficiency. Mid Century would have claimed, as it does now, that there is no evidence of causation. At that time, Hughes would not have been able to overcome that defense. The summary judgment argument in this situation is quite predictable: "There simply is no evidence that an auto accident causes strep throat or iron deficiency and therefore, Plaintiff's claims fail for lack of causation." Filing a complaint two years before Hughes had a medical explanation for her condition is not a viable solution for a self-concealing injury.

Appellee claims Hughes cannot establish elements five and six of equitable estoppel. Element five is reliance on a representation of the opposing party. The reason Hughes did not file before she and Anderson went to Mayo Clinic was that Anderson agreed with her that she should not pursue a claim unless Hughes' ailments were, in fact, accident related. Hughes relied on her discussion with Anderson to delay filing until a medical provider indicated Hughes' condition could have been triggered by the accident. Element five of estoppel is satisfied. *Degel v. Great Falls* (1991), 250 Mont. At 234-235.

Element six is that the party asserting estoppel must act on the representation in such a manner as to change her position for the worse. Obviously, Hughes reliance was to her detriment because, if Appellee is allowed to impose the shorter statute of limitations, Hughes will receive no compensation for her injuries.

The undisputed facts in the record show that Anderson is estopped from asserting a statute of limitations defense. At the very least, the district court improperly resolved a question of fact.

V. Appellee's Brief contains numerous statements for which there is no admissible evidence and arguments based on these statements must fail.

A summary judgment ruling must be based on *admissible evidence*. *Depositors Ins. Co. v. Sandidge*, 2022 MT 33, ¶ 18, 407 Mont. 385, 504 P.3d 477. "Unsupported arguments of counsel are not evidence and do not establish the existence of the matters that are argued." *McKenzie v. Scheeler* (1997), 285 Mont. 500, 508, 949 P.2d 1168, 1173. Numerous "factual" statements are made by Appellee that are nothing more than representations of Counsel and the Court must disregard them.

Appellee claims Hughes unequivocally admitted her claim would be time barred if the Montana statute of limitations applied. *Answer Br.*, 4, 9, 11, 20. This is not an accurate representation. In Hughes' deposition, Appellee asked:

> Q. And you would agree with me if Montana law was applicable to your case, you would be time-barred?
>
> A. I don't know that I agree with that.

Aff. Sorena, (Dec. 9, 2022), Depo. Hughes, 50:17-50:20, *Appellee's Appx*. 43. This is hardly an unequivocal admission.

Appellee claims, without factual support, that Hughes had the same injuries immediately after the accident as she had in 2019. *Answer Br*., Pgs. 1, 8, 13, 30, 34. Appellee cites Attorney Sorena's Affidavit as support for the statement

> For the three years after the accident, Hughes treated with numerous medical professionals for pain throughout her entire body, hives/vasculitis, anxiety, infections, hypersomnia, grogginess, mental fog, depression, asthma/shortness of breath, changes in energy, stomach changes, bowel release changes, stress, digestion changes, discomfort, mood changes, exhaustion, weight changes and other issues.

Answer. Br., Pgs. 6-7, citation to Aff. Sorena, ¶ 9, *Appellee's Appx*. 23. Not even the most tortured interpretation of Sorena's *Affidavit* could render a conclusion that it says anything about Hughes' symptoms or dates of treatment, or is limited to "the three years after the accident." Sorena's Affidavit contains nothing more than a list of medical providers Hughes saw over the "last eight years."

Appellee also claims "Hughes has made it clear that her problems 'developed nearly immediately after the accident'" and claims "She has unequivocally stated that within three years after the incident, she believed these complaints were the result of the accident." *Answer Br*., Pgs. 6-7. The citation Appellee points to is *Plaintiff's Statement of Undisputed Facts,* ¶ 9, which cites to Anderson's testimony that he had a head injury from the accident. The paragraph also states both parties had concussions and aches and pains. *Plaintiff's Statement of Undisputed Facts,* ¶ 9. Hughes does not contest that she had some minor injuries after the accident for which she chose not to make a claim. The claim at

issue is fibromyalgia. In discovery, Hughes explained her fibromyalgia symptoms as "hives, fatigue, generalized aches and pains, fibro-flu, fibro-fog, lightheadedness, sensations that my hands and feet are falling asleep, unusual swelling, vision changes and itchy skin." *Aff. Sorena*, ¶ 5, *Pl. Resp. to Def. Disc. Resp.*, Interrog. No. 4 (Feb. 4, 2022), *Appellee's Appx.* 83. Appellee cannot point to admissible evidence that Hughes treated for the "same symptoms" in 2019 that she treated for "immediately after the accident" or that at all times, Hughes and her providers recognized these symptoms as accident related. Statements in this regard throughout *Appellee's Brief* must be disregarded for lack of admissible evidence.

CONCLUSION

The discovery rule tolls the statute of limitations when the injury is self-concealing or latent. The medical evidence indicates that the accident triggered a condition that developed "over the course of time" thereafter. There is no evidence that a medical provider linked hives, fatigue, generalized aches and pains, fibro-flu, fibro-fog, lightheadedness, numbing sensations in the hands and feet, unusual swelling, vision changes and itchy skin to the accident or that Hughes, a lay person, had the requisite medical expertise to make a causal connection. Appellee cited no evidence that the injury was not latent and self-concealing. Appellee cited no evidence, including from Anderson himself, that any provider verified their suspicions of causation until 2019.

Equitable estoppel does not require a knowingly ***false*** representation. It requires a knowing representation. In the six years before this Court issued *Buckles*, both parties believed a six-year statute of limitations applied and that Hughes should not bring a claim until a medical provider verified that Hughes' condition could be attributed to the accident. Appellee cannot now, after the statute has run, change this position.

The district court erred when it failed to apply the discovery rule. The district court erred when it required Hughes to establish a false representation. Hughes' claim for fibromyalgia was timely filed. The district court's decision must be reversed and remanded.

As a final matter, regardless of how the Court decides this appeal, the Court cannot look the other way on the numerous intentional misrepresentations made by Attorney Sorena in *Appellee's Brief*. Sorena claims that fibromyalgia is not a diagnosis and that Hughes was told it was a "summary" of symptoms. She claimed a list of medical providers spanning eight years was actually some kind of admissible evidence involving a compilation of physical symptoms spanning three years. Sorena claimed that Hughes has no evidence of causation and may never be able to obtain evidence of causation when the Affidavit of Dr. Chadwick was provided to Sorena on May 31, 2024. Counsel also advised the Court that Anderson never made any representations in discussions with Hughes about how

long Hughes had to file her complaint when Anderson still maintains he'd made that agreement and put it in writing. Sorena represented that Anderson never had discussions with Hughes about waiting to file until a medical provider indicated the ailments were accident related, brazenly claiming "there was never any such agreement" when she has no evidence to support this representation. When unable to obtain an affidavit from Anderson that supported her position, Sorena simply made the representations she desired on his behalf. Counsel cannot be allowed to mislead the Court about the evidence in the record or make false representations about the nature of the evidence outside the record. These representations cross the line of aggressive advocacy into brazen deceit. Sorena clearly believes there will be no consequences for this conduct. The Court must address this conduct or attorneys will continue to disregard their duty to make accurate representations, negatively impacting the integrity of the justice system.

Dated this 26th Day of September 2024.

HUGHES LAW, P.L.L.C.

/s/ Jacquelyn M. Hughes
Appellant

APPELLANT'S CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with Rule 11 of the Montana Rules of Appellate Procedure. In accordance with Rule 11(a), the required portions are double spaced and printed in Times New Roman, proportionately spaced, fourteen-point typeface, with a total word count of 4,997 as calculated by this party's word processing system.

/s/ Jacquelyn M. Hughes

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CERTIFICATE OF SERVICE

I, Jacquelyn Marjorie Hughes, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 09-26-2024:

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