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PLAINTIFFS' COUNSEL IS PERMITTED TO ATTEND AND VIDEOTAPE INDEPENDENT MEDICAL EXAMINATIONS

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A recent appeals court ruling has cleared the way for plaintiffs' counsel to impose conditions on their clients' Independent Medical Examination (IME) which may limit the effectiveness of IME's to the defense.

The Michigan Court of Appeals in the published opinion *Anila Muci vs. State Farm Mutual Insurance Company*, __ Mich App __ (2005) upheld a trial court's ruling that it had the discretion to order a plaintiff's independent medical examination and allow the plaintiff's attorney to attend and videotape the session. In addition, the appellate court ruled that the trial court was correct in precluding the examiner from obtaining an oral medical history not related to the accident, as well as an oral history of the accident.

In *Muci*, the plaintiff, as a result from a motor vehicle accident, received Personal Injury Protection (PIP) benefits from the defendant. However, the plaintiff filed suit when the defendant stopped making payments.

The defendant filed a motion to compel an independent medical examination pursuant to MCL 500.3151 of the Michigan No-Fault Act and the insurance contract, arguing that it had a substantive right to examine the claimant, and that a trial court did not have authority to impose conditions on the medical examination.

Specifically, the defendant objected to the trial court's order allowing the plaintiff's counsel to attend the examination and videotape it but not allow the medical examiner to obtain from the plaintiff an

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oral history of the accident or an oral medical history of injuries not related to those claimed in the case.

In affirming the trial court's ruling, the appellate court held that MCL 500.3151 did not create a substantive right to have the claimant examined by a physician of her choice. The appellate court found that MCL 500.3151 authorizes the insurer to include in its policy "reasonable provisions" for a medical examination of persons claiming PIP benefits. Therefore, the appellate court rejected the defendant's argument that the statute alone was controlling and ruled that the defendant's motion was a discovery issue. Accordingly, the trial court did not abuse its discretion by placing conditions on the defendant's request for an independent medical examination.

For a complete copy of the Michigan Court of Appeals opinion on *Anila Muci vs. State Farm Mutual Insurance Company*, [click here](#).

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