
Muci v State Farm: **Plaintiff's bar seeks advantage by obtaining Court Ordered IME Restrictions**

By Audra A. Arndt

January 2007

In response to defense attorneys' request for Independent Medical Exams (IMEs) of plaintiffs, the plaintiff's bar has been relying on the Michigan Court of Appeals' decision in *Muci v State Farm*, 267 Mich App 431 (2005), in support of having an order regarding the IME entered before the IME can take place.

Such orders generally place several conditions on the IME, including who may attend, the scope of the physician's inquiry, whether it can be videotaped, what records the physician may review in advance of the examination, etc. The appellate court rule regarding IMEs, MCR 2.311, only requires an attorney to provide opposing counsel with a copy of the examining physician's report.

When an order compelling an IME is sought, the rule provides that "the order must specify the time, place, manner, conditions and scope of the examination, and the person or persons by whom it is to be made, and may provide that the attorney for the person to be examined may be present at the examination." There are no other court rule requirements or restrictions for an IME, thus, the reliance on the 2005 Muci decision.

While plaintiffs' attorneys have been arguing that Muci held the trial court's decision to allow videotaping of an IME was appropriate, a closer analysis of the appellate court's version of Muci reveals that the panel did not find the trial court properly allowed plaintiff's counsel to be present at the examinations or to videotape the examinations. The panel simply didn't address the issues and determined the defendant had waived the challenges, and the court would not consider them on appeal. The court only examined whether the trial court properly precluded the plaintiff from giving the defendant's examiners an oral account of the accident or her medical history. On appeal, the defendant had only preserved and challenged two requirements in the IME order, namely:

1. That plaintiff will not be required to give any oral history of the accident.
2. That plaintiff will not be required to give any oral medical history not related to the areas of injuries claimed in this lawsuit.

Ultimately, the appellate court determined that:

Contrary to the defendant's argument, there is nothing in the first argued condition that suggests it would preclude inquiries into the plaintiff's mental or physical condition at the time of the accident, how the injuries occurred or such matters as whether the plaintiff suffered a memory loss in conjunction with the closed-head injury.

The second condition does not preclude the plaintiff from giving an oral medical history related to the “areas of injuries” claimed in the lawsuit.

However, *Muci*, 475 Mich 877 (2006), is currently on appeal to the Michigan Supreme Court. The court did not grant the application for leave to appeal, but instead issued an order which stated:

We direct the clerk to schedule oral argument on whether to grant the application or take other peremptory action. MCR 7.302(G)(1). The parties are directed to file supplemental briefs within 56 days of the date of this order addressing the following issues: (1) whether there is a conflict between MCL 500.3151 and MCR 2.311; (2) whether, if there is a conflict, the court rule is controlling; (3) whether a trial court may impose reasonable conditions as part of the examination process; (4) whether a plaintiff must establish misconduct specifically directed at the plaintiff by the examiner before reasonable conditions are imposed; and (5) whether the conditions imposed in this case were reasonable.

The Supreme Court’s instruction that the specific issue of whether a trial court may impose conditions on an IME (and whether the conditions in *Muci* were appropriate) is a strong indication that the court may reverse the appellate court. As of the date of this publication, the Supreme Court has not yet scheduled the matter for oral argument.

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