

BOONE AND YOU

By: Patrick Conran, Esquire
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The Massachusetts Supreme Judicial Court recently rendered a decision in the matter of Boone v. Commerce Ins. Co. which enables Massachusetts Automobile Insurers to continue using Independent Medical Examinations as a cost-effective investigative tool.

In 2007, the Massachusetts Appeals Court rendered a decision holding that Independent Medical Evaluations (hereinafter "IME") were subject to the same restrictions as independent medical record reviews, namely, that such evaluations must be conducted by a medical professional who is licensed under the same section as the medical provider whose treatment is at issue. Boone v. Commerce Ins. Co., 68 Mass. App. Ct. 354 (2007). Essentially, the finding altered how insurers could utilize IME's in their investigation of motor vehicle accident injuries. If the Boone finding was to become the law, servicing carriers could be required to obtain multiple examinations in order to cut-off even one provider's treatment. Specifically, Smith & Brink, P.C. was concerned that the Appeals Court had misinterpreted the applicable statute, Mass. Gen. Laws c. 90, § 34M (hereinafter the "PIP Statute"). Moreover, Smith & Brink, P.C. did not believe that the Boone Court addressed whether the decision applied retroactively; if the ruling were to be applied retroactively, carriers would be forced to reopen and/or settle thousands of cases, and spend millions of dollars in doing so. Lastly, the Appeals Court provided no guidance to servicing carriers about how they should handle pending and future claims in light of the decision.

Smith & Brink, P.C. was so concerned about the foregoing issues that it filed an amicus curiae brief on behalf of Amica Insurance Company, Hanover Insurance Company and Premier Insurance Company to support Commerce Insurance Company in its appeal. Aside from helping the courts in deciding the appeal, the amicus brief provided Smith & Brink, P.C. clients with an opportunity to present arguments to address such issues as (1) the practical claims-handling and financial impact of the possible ruling on the market, (2) the Legislature's intent in enacting the PIP Statute, and (3) the effect on current

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regulations and guidelines, including those promulgated by the Commonwealth Automobile Reinsurers and Automobile Insurers Bureau.

On April 27, 2008, the Supreme Judicial Court (hereinafter “SJC”) rendered a decision on the Boone appeal, reversing the Appeals Court decision, finding that the “language and legislative history of [the PIP Statute] support the conclusion that a PIP insurer may refuse to pay for medical bills, based on a physical examination of the claimant by a medical practitioner licensed under a medical specialty different from the treating or billing practitioner.” Id at 193. The SJC scrutinized the PIP Statute and concluded that although one paragraph of the PIP Statute did contain language requiring that a medical record review be conducted by a provider from the same profession as the treating provider, that language did not apply to the paragraph pertaining to IMEs. Id at 196. The Justices of the SJC determined that when the PIP Statute was amended in 1989, the paragraph addressing medical record reviews included the word, “solely,” while the IME paragraph did not. Id. That one word was significant as the SJC concluded that if the Legislature intended to apply the “same profession” requirement for IMEs then it would not have used the word “solely” in the paragraph addressing record reviews. Id. In fact, in an earlier version of the amendment, there was “same profession” language regarding IMEs, but that language was never incorporated into the PIP Statute. Id at 199.

The Boone decision is an important victory for Massachusetts Automobile insurers as it keeps a key tool in the Special Investigation Unit’s belt allowing insurers to continue the use of IMEs as a cost effective procedure to evaluate claimant’s injuries.

If you have any questions, please contact Patrick Conran, Esquire at (617) 770-2214 or pconran@smithbrink.com.

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