

**Dear PIP Claimant: Cooperate Fully or Suffer the Consequences**

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The plaintiff (a claimant seeking Personal Injury Protection (PIP)) submitted an application for PIP benefits to the defendant insurer, Commerce Insurance Company ("Commerce"), as a result of a motor vehicle accident that occurred on July 14, 2006. Commerce requested that the plaintiff submit to an Examination Under Oath (EUO) in order to verify the facts of the accident and the details of the plaintiff's post-accident medical treatment. For the convenience of the plaintiff, the EUO was scheduled at their counsel's office in Worcester, Massachusetts. However, prior to the conclusion of the EUO, and without prior notice, the plaintiff's counsel announced that he had a prior commitment, and asked the EUO be continued at another time. The defendant's counsel agreed, and suspended the EUO.

Thereafter, the defendant's counsel made numerous written requests to complete the plaintiff's EUO. The defendant's counsel specifically advised the plaintiff's counsel that as he did not have an opportunity to question the plaintiff regarding her post-accident medical treatment, the scope of questions would be limited to the plaintiff's damages. Nevertheless, the plaintiff refused to appear for the completion of her EUO. Thereafter, the defendant denied the plaintiff's PIP claim based on her breach of the cooperation clause of the Standard Massachusetts Automobile policy ("Policy").

Following the denial, the plaintiff filed suit Gary v. Commerce Ins. Co., Worcester District Court, C.A. No. 0762CV1638), contending that the defendant violated Mass. Gen. Laws ch. 90, §93A by failing to pay PIP benefits. The defendant subsequently filed a motion for summary judgment, arguing that the plaintiff's refusal to complete her EUO and permit questioning regarding her post-accident medical treatment constituted non-cooperation, and a material breach of the Policy. The defendant further argued that the plaintiff's submission to a partial and incomplete EUO was tantamount to failure to submit to an EUO. Accordingly, the plaintiff's failure to submit to an EUO, which is a condition precedent to her recovery under the Policy, precluded her recovery of PIP benefits.

The Court ultimately found that the defendant acted properly in light of the plaintiff's refusal to submit to an EUO, and that plaintiff's failure to complete her EUO was unreasonable and unexcused. As a matter of law, the plaintiff's conduct was a material breach of the Policy, and the defendant was entitled to deny PIP benefits. The Court awarded judgment to the defendant.

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If you have any questions, please contact Shahan J. Kapitanyan, Esquire at (617) 770-2214 or [skapitanyanr@smithbrink.com](mailto:skapitanyanr@smithbrink.com).