

**AMERICAN ARBITRATION ASSOCIATION  
NO-FAULT/ ACCIDENT CLAIMS**

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In the Matter of the Arbitration between

(Claimant)

v.  
Encompass Insurance Co.  
(Respondent)

AAA CASE NO.: 18 Z 600 22670 03  
INS. CO. CLAIMS NO.: 08132913  
DRP NAME: Patrick W. Foley  
NATURE OF DISPUTE: Failure to  
Cooperate

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**DISPOSITION OF APPLICATION FOR DISMISSAL**

**I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP)**, designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey “Automobile Insurance Cost Reduction Act” as governed by *N.J.S.A. 39:6A-5, et. seq.*, having been duly sworn, and the attorney for Respondent having requested that this matter be dismissed, and the attorney for Claimant having submitted no response to same, and after having considered the contentions of the Parties, do hereby **DETERMINE** as follows:

Injured Person(s) hereinafter referred to as: assignor.

A. The above captioned matter is hereby **DISMISSED** without prejudice.

B. Finding of Facts and Conclusions of Law:

This arbitration arises as a result of an accident that occurred on February 10, 2003. The assignor of the claimant in the within matter alleges to be eligible for benefits from the respondent based upon a policy of insurance issued by it to the assignor. The claimant provided durable medical equipment to the assignor to treat injuries allegedly sustained in the accident. The respondent has denied payment because the assignor of the claimant has failed to cooperate with respondent in determining facts surrounding his claim for benefits under the policy of insurance issued by the respondent.

Specifically, the respondent alleges that the assignor has failed to cooperate with the respondent as required by the policy of insurance under which the claimant attempts to collect PIP benefits in that he has failed to appear for an Examination Under Oath. The respondent has attempted to schedule this EUO on several occasions without success. The assignor’s personal attorney never cooperated by producing the assignor despite

being given numerous opportunities to do so. The respondent has shown that the EUO was scheduled on at least three occasions.

This failure to cooperate is especially important in light of the fact that the respondent has shown that legitimate questions concerning this accident exist. The EUO was not scheduled as knee jerk reaction to the filing of the Demand in that the EUO was actually requested prior to the filing of the Demand. While the undersigned is mindful of Appellate Division rulings that have limited the sanction of denial of acclaim for failure to attend an EUO, the instant case mandates such a denial because of the significant questions raised by the respondent. The assignor's failure to cooperate defeats the ability of the respondent's attorney to determine salient facts necessary to properly defend the respondent. The failure of the assignor to attend the EUO constitutes a failure to meet a condition precedent to the filing of a claim for benefits.

This Award is in FULL SATISFACTION of all claims submitted to this arbitration.

April 15, 2004  
Date

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Patrick W. Foley, Esq.