



August 2, 2010

**Re: NEW MICHIGAN SUPREME COURT DECISION ON NO-FAULT THRESHOLD**

I am writing to alert you of a very important decision just released by the Michigan Supreme Court which substantially changes the threshold a plaintiff must meet under Michigan law in order to recover non-economic damages following a motor vehicle accident. In *McCormick v. Carrier*, the Supreme Court expressly overruled its earlier decision in *Kreiner v. Fischer*, 471 Mich 109; 683 NW2d 611 (2004). A link to obtain a copy of the *McCormick* decision is below:

- [\*McCormick v. Carrier\*](#)

The *McCormick* decision substantially reduces the burden a plaintiff faces, and the Supreme Court focused its decision on revisiting the standard which needs to be met to establish “a serious impairment of bodily function” as defined by MCL 500.3135. Not only does this decision make such claims easier for plaintiffs to prove, but it also substantially makes a defendant’s ability to prevail on motion for summary disposition on such claims much more difficult.

MCL 500.3135 contains three requirements in order to establish “a serious impairment of bodily function.” These elements are:

1. An objectively manifested impairment;
2. of an important bodily function;
3. affecting one’s ability to lead their normal life

The *McCormick* decision expressly held *Kreiner* was improperly decided and revisited how these three factors are to be addressed and interpreted.

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With regard to the first factor, the Court determined the appropriate focus is not on whether an objective injury was sustained, but rather whether the claimed impairment itself can be established objectively, and attention must be paid to how bodily functions were affected. Of great importance is the Supreme Court's express holding that medical documentation is now no longer always necessary in order to sustain this requirement.

With regard to the second element, the Supreme Court held this determination is one which is inherently subjective in nature, and must be addressed on a case-by-case basis. They indicated whether an impaired bodily function is important will vary from person to person, and will also depend on how that person lives their life.

With regard to third element, the Supreme Court emphatically stated it need only be established that one's ability to lead a normal life is affected, and that their ability need not be destroyed. Again, the Supreme Court indicated this was a subjective and fact-specific inquiry, and further stated the ultimate determination hinges on comparing one's life before and after an accident. The Supreme Court also noted "...the statute only requires that some of the person's *ability* to live in his or her normal manner of living has been affected, not that some of the person's normal manner of living has itself been affected." Additionally, the Supreme Court held while other threshold elements under the statute required a finding of permanency (i.e. a claim for serious disfigurement), a claim for serious impairment of a bodily function need not be permanent, and again was left to be addressed on a case-by-case basis. The rationale provided in part was, in some instances a brief period of impairment may be more problematic than a minor permanent impairment.

Based upon this development, you can expect to see a substantial increase in the number of plaintiffs coming forward with third party auto liability claims. The standard set forth under *McCormick* allows them now to move forward with asserting a claim even if they sustained a minor subjective injury which fully resolves itself, so long as they can put forth some evidence that for some period of time, their ability to lead their normal life was adversely affected.

In the short term, you will see a substantial increase in the number of claims. The only way to effectively counteract this decision is for the legislature to amend MCL 500.3135, and strengthen the definition of "serious impairment of bodily function."

Should you have any further questions regarding this decision or its implications, please do not hesitate to contact our firm.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Tom F. Glassman', written in a cursive style.

Thomas F. Glassman