

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

08.20.09

Supreme Court Poised To Reverse *Kreiner*

By Mark Masters

On August 20, 2009, the Michigan Supreme Court granted leave to appeal in *McCormick v. Carrier*. On October 22, 2008, the Court had denied the Plaintiff's application to appeal the Court of Appeals' ruling in favor of the defense but has now reversed itself.

McCormick has been under observation for months as the most likely battleground for a new threshold standard under Michigan's No Fault Act. After former Chief Justice Clifford Taylor lost re-election in the fall of 2008, the balance of the Court dramatically shifted. Since then, there has been a flurry of activity in *McCormick*. Plaintiff moved for reconsideration, and notable third parties have been busy filing *amicus* briefs on all sides of the threshold issue.

The timing of today's order was a surprise since the Court is technically in recess. Unsurprisingly, the minority of the Court has again accused the new majority of political gamesmanship and for failing to adhere to precedent. The new majority extols the virtue of its decision, and is expected to render an unapologetic reversal of *Kreiner v. Fischer*, 471 Mich 109 (2004) before the end of the year.

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While everyone believes that *Kreiner* will be overruled, there is no way to tell what the new standard will be until the decision in *McCormick* is issued. The "new" threshold standard could simply be a re-instatement of the old *DiFranco v Pickard*, 427 Mich 32 (1986) standard, or something completely new.

Therefore, if you currently have claims which you are defending on the threshold issue, you will want to re-evaluate them for potential settlement now. The passage of time will only weaken your settlement position on the threshold issue.

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We welcome your questions and comments.

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