

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Threshold Defense Strengthened by Michigan Supreme Court Decision

By John H. Cowley, Jr.

In *Kreiner v Fischer* __ Mich __ 2004, the Michigan Supreme Court reversed the Court of Appeals decision finding as a matter of law that Plaintiff's injuries did not constitute a serious impairment of body function.

The majority opinion traced the origin and developments of the Michigan No-Fault Act and subsequent landmark cases such as *CASSIDY v McGovern*, 415 Mich 483 (1982) and *DiFranco v Pickard*, 427 Mich 32 (1986). The opinion discusses the legislature's abolishment of tort liability in exchange for the no-fault automobile insurance system which provides certain economic benefits such as lifetime medical benefits. The Court utilized dictionary definitions to interpret the statutory language of MCLA 500.3135(7), which states that serious impairment of body function is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." The Court went on to list objective factors to be taken into consideration in its expanded definition of the term "general ability to lead their normal lives." The end result was a reversal of two cases that were consolidated on appeal in which the Court of Appeals had reversed the trial court's entry of summary disposition.

Kreiner was a self employed carpenter who sustained injuries to his lower back, right hip and right leg as a result of a motor vehicle accident. The Court held that the injuries constituted an impairment of an important body function that was objectively manifested. The issue was whether the impairment affected Kreiner's general ability to lead his life.

It was agreed that Kreiner could no longer stand on a ladder for longer than 20 minutes, no longer lift anything over 80 pounds and was forced to limit his work days to 6 hour days because of his injuries. He also had difficulty walking more than 1/2 mile without resting and could not longer hunt rabbits although he

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The Michigan Supreme Court's decision effectually strengthens the no-fault threshold making it more difficult for individuals to recover non-economic damages. In directing trial courts to compare a Plaintiff's functional abilities and activities both pre and post accident, and admonishing that temporary limitations do not satisfy the statutory requirements, should prove to be an obstacle for recovery of non-economic damages. This was a 4-3 decision, so any change in the make-up of the Court might influence further decisions in this area.

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was able to hunt deer. The Supreme Court held that in determining whether a Plaintiff is “able” to lead his normal life requires an inquiry concerning whether Plaintiff is, “for the most part, able to lead his normal life.” Further, an objectively manifested impairment of an important body function “must affect the course of a person’s life. Accordingly the effect of the impairment in the course of Plaintiff’s entire normal life must be considered.”

Applying the aforementioned analysis and looking at Kreiner’s life as a whole, before and after the accident, the nature and extent of his injuries, the Supreme Court concluded that the impairment did not affect his overall ability to conduct the course of his normal life. Although, the Court acknowledged that Plaintiff was somewhat restricted in being able to engage in lifting, bending, twisting and standing as required by his job. The Court stated:

While he cannot work to a full capacity, he is generally able to lead his normal life. The negative effect on a particular aspect of an injured person’s life is not sufficient in itself to meet the tort threshold as long as the injured person is still generally able to lead his normal life. Considered against the back drop of his pre-impairment life, Kreiner’s post impairment life is not so different that his “general ability” to conduct the course of his normal life has been affected.

The Court also applied its expanded definition in the consolidated case of *Straub v Collette* in holding that the threshold had not been met. Straub’s injuries included a closed fracture, open wound and tendon injuries to two fingers on his non-dominant hand. While the Court concluded that Straub sustained impairment of an important body function that was objectively manifested, the injuries did not affect his general ability to lead his life. Straub was employed as a cable lineman and did not work at all for eight weeks. He initially returned and worked 20 to 25 hours for the next three weeks before returning to his position full time. Also, Straub was a weekend bass guitar player and did not return to that endeavor until four months after the accident.

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We welcome your questions and comments.

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