

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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SERIOUS IMPAIRMENT ON PAR WITH DEATH AND PERMANENT SEVERE DISFIGUREMENT

By: Michael L. Updike & Christopher D. Filiatraut

There are still many unanswered questions concerning serious impairment of body function, even though the 2004 decision of the Michigan Supreme Court in *Kreiner v Fischer* is regarded as a landmark in no-fault law. The Michigan Court of Appeals recently issued a decision which goes a long way towards definitively answering many of the most important questions, including whether serious impairment of body function is on a par, in terms of severity, with death and permanent serious disfigurement, and how long an impairment must exist to affect the trajectory of a plaintiff's life.

The case has three major holdings.

First, *Netter* makes it clear that any objective manifestation of an injury must be verified by competent medical personnel and must be either physically observed or detected through medical means by such personnel. The mere reporting of symptoms by a plaintiff to medical personnel will not qualify—the symptoms must be independently verified by medical personnel.

Second, serious impairment of body function, in terms of its gravity, is on a par with death and permanent serious disfigurement.

Third, an impairment of body function must have significant duration in order to have an affect on the trajectory of a person's life. *Netter* suggests that six months of impairment is "relatively brief" and not enough to affect the trajectory of a life for the purposes of *Kreiner*. Arguably, *Netter* establishes that an impairment must last for more than six months to qualify as a serious impairment of body function. *Netter* is the first published appellate decision to give clear guidance on the issue of how long an impairment must last to affect the trajectory of a plaintiff's life.

The plaintiff in *Amber Netter v Sharon Rose Bowman*, ___ Mich App ___, ___ NW2d ___ (Michigan Court of Appeals No.

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Netter holds that the objective manifestation of an injury must be verified by competent medical personnel and must be either physically observed or detected through medical means by such personnel. Also, an impairment of body function must have significant duration in order to have an affect on the trajectory of a person's life, and a period of six months does not meet this requirement. Finally, serious impairment of a body function was meant by the legislature to be as significant an obstacle to recovery as posed by the requirements of death and permanent serious disfigurement.

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268571, rel'd 0/19/06) was a passenger in a stopped car when the vehicle was rear-ended at low speed by the defendant's automobile. The plaintiff subsequently claimed a serious impairment of body function as a result of the accident, based on the premature delivery of her twins and soft tissue injuries to her neck and back.

The trial court, after determining that the plaintiff's alleged impairment was only medically identifiable (i.e., soft tissue injuries), but not medically measurable, granted the defendant's motion for summary disposition. The trial court held that the plaintiff's injuries were not objectively manifested because they were not subject to medical measurement.

Court of Appeals Chief Judge Whitbeck, joined by Judge Hoekstra, and with Judge Wilder concurring in the result, affirmed the trial court's dismissal of the plaintiff's case, but on different grounds.

The Court of Appeals held that the objective manifestation of an injury requirement is met when a plaintiff has a medically identifiable injury or condition that has a physical basis. As the Court of Appeals put it, for there to be a finding that a plaintiff's injury has been objectively manifested within the meaning of *Kreiner*, "a plaintiff's injury must be capable of objective verification by a qualified medical person either because the injury is visually apparent or because it is capable of detection through the use of medical testing. This interpretation comports with the Legislature's intent that the 'serious impairment of body function' requirement is to be as significant an obstacle to recovery as that posed by the requirement of permanent serious disfigurement and death."

The Court of Appeals also held that the plaintiff, while she might have met the objectively manifested injury prong of *Kreiner*, did not meet the other *Kreiner* requirement that the injury and its sequelae affect the trajectory of her life. The Court of Appeals noted that the plaintiff was discharged from physical therapy after six months, that there was a medical report that the plaintiff had reached her "maximum medical improvement and pre-injury status," and that the plaintiff's impairment was "relatively brief (six months)." Whatever restrictions there were on the plaintiff's life and activities were merely self-imposed. Accordingly, the injury had not significantly affected the trajectory of the plaintiff's life, and the defendant was entitled to summary disposition on the basis the plaintiff had not suffered a serious impairment of body function as a result of the accident.

Mr. Christopher Filiatraut represented the defendant in the trial court, while Mr. Michael Updike represented the defendant on appeal.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Nelson

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