

no-fault newslines

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Significant Blow for Plaintiffs: Threshold Analysis Must Be Made Injury By Injury – Not As Cumulative Effect

By Nathan Edmonds

In determining if someone has a threshold injury under the No Fault Act, the injuries and their effects must be examined individually, rather than as a single, cumulative injury to a claimant. In *Minter v The City of Grand Rapids*, _ Mich App _ (2007), Plaintiff was involved in an accident with a police officer employed by the City of Grand Rapids. Plaintiff was 67 years old and living independently before the accident, but did have some preexisting health conditions. Plaintiff also had the assistance of family members with her household work, and plaintiff did not drive an automobile before or after the accident.

Plaintiff sustained a mild head injury from the accident, as well as a broken toe, a gash to her forehead, and a cervical strain. Plaintiff's physician opined that Plaintiff had fully recovered and no longer needed any physician care about four months after the accident. Plaintiff admitted that her headaches and the dizziness had essentially subsided prior to her deposition, and she did not seek any further medical attention. Plaintiff also admitted that she was never given any restrictions by her doctors. The trial court dismissed the case based on Plaintiff's lack of a threshold injury.

On appeal, Plaintiff mainly argued that her injuries resulted in a cumulative effect on her which, when taken as a whole, met the threshold standard. In upholding the trial court's dismissal in part, the Court of Appeals held that each injury must be looked at separately as to whether that injury crossed the threshold, i.e., that the "collective" effect of individually minor injuries cannot be added together to create a threshold injury.

SECRET WARDLE NOTES:

This case is very significant for defendants. If multiple injuries are claimed, each injury and its effect must be looked at individually to see if any one of the injuries meets the threshold on its own. The courts may not consider the cumulative effect of all the injuries to cross the threshold for recovery.

Additionally, as it related to closed head injury claims, even though a plaintiff may not have a qualified doctor to give an opinion sufficient to create an automatic jury question under the statute, the plaintiff may still attempt to claim the head injury meets the threshold.

Finally, in evaluating a scar, it appears that in relation to the facial scarring, the court may consider the movement of the facial area and the effect upon the face in evaluating the scar.

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As to the closed head injury claim, the Court held:

”If a properly qualified doctor testifies ‘that there may be a serious neurological injury,’ there would automatically be a jury question. That did not occur here. ‘The language of §3135 does not indicate, however, that the closed-head injury exception provides the exclusive manner in which a plaintiff who has suffered a closed-head injury may establish a factual dispute precluding summary disposition.’ *Churchman v Rickerson*, 240 Mich App 223, 232; 611 NW2d 333 (2000). Therefore, the lack of medical testimony on point only precludes plaintiff from taking advantage of the automatic route to a jury issue, it does not necessarily preclude her from establishing a question for the jury by other means.”

Therefore, Court reversed the trial court on the head injury issue and remanded the case to the trial court to determine if the head injury crossed the threshold without the automatic jury question being established under §3135.

In regard to whether Plaintiff’s facial scar met the serious permanent disfigurement threshold, the Court of Appeals ruled that this was a factual question for the jury. Specifically:

“If plaintiff truly cannot move her eyebrow in a normal or natural manner, that could add to a claim of disfigurement. And if a significant amount of her interaction with others is face-to-face, the scar could objectively be determined to have a great deal of impact on her life. We therefore find that the parties’ factual dispute regarding the scar is sufficient to give rise to a jury question.”

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