

## MICHIGAN LEGISLATURE REEXAMINES SERIOUS IMPAIRMENT THRESHOLD

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Richard Kreiner probably never suspected that his name would become a household name in Michigan legal circles before his automobile accident on Nov. 28, 1997.

Kreiner's accident resulted in injuries described as low back pain related to nerve root irritation, which resulted in both long lasting work and recreational restrictions. He was treated extensively by his personal physician and completed a physical therapy program.

Nonetheless, his case was dismissed at the circuit court level and that dismissal was upheld by the Michigan Supreme Court in the case of *Kreiner v Fisher*, [and its companion case *Straub v Collette and Heil-Wylie*], 471 Mich. 109; 683 NW2d 611 (2004).

With a thorough analysis of the judicial and legislative treatment of the term "serious impairment of a body function" in Michigan's no-fault law, the Supreme Court issued its most conservative opinion to date with respect to the meaning of the term "serious impairment of a body function" and the requirements to surpass its threshold in order to successfully pursue a tort claim for non-economic damages.

The court concluded that it was the intent of the Michigan Legislature to create a strict threshold standard for "serious impairment of a body function" when it defined it as an "[A]n objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." (MCL 500.3135(7)).

The conservative majority of the Supreme Court applied its strict constructionist analysis to the meaning of the legislation. The court stated that the affect on a person's general ability to lead a normal life means that "...the objectively manifested impairment of an important body function must affect the course of a person's life" as opposed to an injury that results in minor changes in how the injured person performs daily activities, but in which the activities can still "generally" be performed.

The Kreiner decision has been criticized by many in the Legislature as being oppressive in nature. With the wave of political change in the makeup of the Michigan Legislature as a result of the November 2006 elections, it became an early order of business in both the Senate and the House of Representatives to make legislative changes, which would result in a more liberal interpretation of "serious impairment of a body function."

The new Legislature was seated on Jan. 10. Only 20 days later, on Jan. 30, Senate Bill 124 was introduced containing proposed minor language changes that would redefine serious impairment of a body function as “an objectively manifested injury involving an important body function that in some way and for some time affected the injured person’s ability to lead his or her normal life.”

On the House of Representative’s side, however, a bill with numerous proposed changes related to recovery for non-economic damages for auto accident injuries was introduced on Feb. 27. That proposed bill (HB 4301) contains significantly liberalized language relating to the definition of “serious impairment,” including the very unusual statement within the statute itself that its proposed changes “are curative and intended to correct the misinterpretation of law and legislative intent that occurred in the Michigan Supreme Court decision in *Kreiner v Fischer* and *Straub v Collette and Heil-Wyllie* and subsequent appellate cases implementing that decision.”

The proposed legislation also includes language that would make the subsection applicable to all cases pending in trial or appellate court as of the date that the proposed changes become effective.

The amendments were passed by the House on March 14 and sent to the Senate. On March 15, the Senate referred the bill to its Judiciary Committee.

On April 25, Senate Bill 445 was introduced containing the same language as House Bill 4301. That bill has also been referred to the Senate Judiciary Committee.

While the eventual outcome of the proposed amendments to the serious impairment threshold is not known, it is clear that there is strong sentiment to reexamine the definition of the serious impairment threshold and the affect of the Kreiner opinion on Michigan automobile tort litigation.

The Michigan Supreme Court often states in its opinions that it will not reinterpret what it feels to be clear language set forth by the Legislature. Rather, the Supreme Court invites the Legislature to change the law if it wishes. That may very well happen. If many in the Legislature get their way, we would anticipate a new liberal threshold standard and the possibility of a flood of auto-related litigation.