

MICHIGAN HOUSE PASSES “KREINER FIX” - AMENDMENT WOULD LOWER THIRD PARTY THRESHOLD

Motor Vehicle - No-Fault, Motor Vehicle Negligence Practice Groups

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Author: Mary Catherine Rentz
Direct: (313) 983-4856
mrentz@plunkettcooney.com

On April 2, 2009, Michigan’s House of Representatives passed House Bill 4680, which would make it easier for injured plaintiffs to meet the “serious impairment” threshold requirement for third party auto claims. If approved in the Senate, the bill would amend the No-Fault auto law by revising the definition of “serious impairment of body function.” The bill also seeks to dispense with the need for certain proofs that focus on the duration and life-altering severity of the injury.

The proposed amendment has been dubbed the “*Kreiner* fix”, referring to the Michigan Supreme Court’s decision in July 2004 that began a trend of more restrictive interpretations of the statute by requiring plaintiffs to demonstrate the types of proofs outlined above in order to meet the threshold put in place to reduce the number of third party lawsuits. The threshold requirement was a key part of Michigan’s No-Fault Act, which became effective in October 1973. Since its passage, courts have struggled with the consistency of its application, especially with regard to the determination of whether an injury was a serious impairment, one of the threshold tests required to maintain a third party lawsuit.

Supporters of *Kreiner* say the decision was the Supreme Court’s attempt to carry out the spirit of the “great compromise” of the No-Fault Act where injured plaintiffs were to receive the benefits of prompt and certain payments but give up their rights to common law tort remedies against “at fault” parties. *Kreiner* critics believe the decision misinterpreted the statute as intended by the legislature.

Sponsors of the “*Kreiner* fix,” led by State Representative Mark Meadows, set forth a revised definition of the “serious impairment of body function” requirement. As an initial matter, the term itself is rephrased as, “serious impairment of an important body function.” With the additional language, the impairment must affect an *important* body function.

Under the present definition, a serious impairment is: “*An objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.*”

As proposed, the term would be re-defined as: “*An objectively manifested injury or impairment of an important body function that affects, or did affect the injured person’s ability to live his or her normal life.” (added language underlined).*

In addition to the definitional change, the proposed amendment contains a provision that a plaintiff attempting to demonstrate a serious impairment would no longer need to prove any of the following Kreiner factors:

- that the injury or impairment was permanent, severe, extensive or pervasive or lasted for a significant period of time;
- that the injury or impairment altered the course or trajectory of the injured person's life;
- that the injury or impairment caused the injured person to be generally, or for the most part, unable to live his or her normal life;
- that the injury or impairment caused the injured person's life to be substantially different after the injury than it was before; or
- that the body function in question is essential or indispensable to sustaining or living a normal life.

The proposed amendment also revises the criteria used to determine whether a judge or jury decides that the threshold has been met. Presently, this issue is a question of law to be decided by a court if either there is no factual dispute concerning the nature and extent of the person's injuries or, in the alternative, if there is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.

As proposed, the amendment would have a judge decide the issue only if "there is no genuine issue as to any material fact." The proposed amendment would maintain the head injury exception, which would also expressly include the "genuine issue as to any material fact" test for head injuries.

If enacted, the law would apply to cases pending in the trial court or appellate court on the bill's effective date and to cases filed on or after the bill's effective date.

A similar bill was passed last year by the House of Representatives but was not acted upon by the Michigan Senate. That bill (HB 4301) was described by nonpartisan analysts as "more broad" in its scope in that it established factors to be used in determining whether a person's ability to lead a normal life had been affected at *any point in time* and it allowed an injured person to sue for loss of earning capacity.

The House passed the "*Kreiner* fix" with a 68 to 42 vote. If enacted, this law could have a significant impact on the three way tug-of-war between the judicial system, injured plaintiffs and auto insurers. A vote in the Senate has not been scheduled.

For more information about this proposed change in Michigan law and other issues concerning automobile insurance law, please contact Mary Catherine Rentz at (313) 983-4856 or Darren

Lossia at (313) 983-4420. In the alternative, click [here](#) to contact an attorney in the firm's Motor Vehicle Liability Practice Group.