

MICHIGAN SUPREME COURT TO RECONSIDER KREINER AND THRESHOLD INJURY

Trucking & Transportation Practice Group

September 25, 2009

The Michigan Supreme Court recently granted leave to hear oral argument to reconsider a case which would overturn the 2004 decision of *Kreiner v Fischer*, 471 Mich 109, 683 NW2d 611 (2004) regarding what threshold injury a plaintiff must show to maintain an automobile tort action.

Under the Michigan No-Fault Act, when an individual is injured in an automobile accident, the individual is entitled to recover from his own insurance company all of his medical expenses and work loss for three years after the accident.

The individual must establish a “threshold injury” in order to seek non-economic damages or excess economic damages from the alleged tortfeasor. MCLA § 500.3135 mandates that the individual must establish a “serious impairment of body function” to maintain the tort action.

However, the Michigan Supreme Court, in the landmark case of *Kreiner* greatly heightened the threshold level requiring that the injury affect the “course or trajectory” of the individual’s life. This decision resulted in 194 out of 244 *Kreiner*-related cases being dismissed by the Michigan Court of Appeals, according to the Coalition Protecting Auto No-fault, a coalition of organizations like the AARP and UAW that feel it is imperative to save Michigan’s no-fault system. Critics of the *Kreiner* decision attempted numerous times in the legislature to overturn the case.

House democrats tried changing the precedent with legislation in 2007, but said legislation was blocked in the senate. Two bills were proposed in 2009; however, both failed to make it out of committee.

The *Kreiner* decision was a 4-3 ruling by the Michigan Supreme Court. However, Democrat Diane Hathaway unseated Republican incumbent and Supreme Court Chief Justice Clifford Taylor in the November 2008 election, ending the conservative control of the Supreme Court.

On Aug. 20, with more liberal justices in control, the court granted oral argument to reconsider the case of *McCormick v Carrier*, which could overturn the *Kreiner* decision and lessen the threshold requirement to establish a serious impairment.

It is assumed that the *McCormick* decision will do just that. Justice Diane Hathaway has been critical of *Kreiner* and will likely be the fourth vote needed to overturn the controversial decision.

The effect of this ruling and the extent to which the threshold level will be lowered remains to be seen. However, if *Kreiner* is overturned, it is certainly likely that the number of plaintiffs entitled to recovery against tortfeasors will dramatically increase. It is also anticipated that the number of lawsuits filed will rise based on the lower threshold requirement.

The Supreme Court is expected to decide the *McCormick* case between October 2009 and May 2010. Of course, Plunkett Cooney will issue updates as this situation develops.

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