

# Courts Continue to Find Serious Impairments in Post Kreiner Era

By Marc McDonald and Greg Gromek

May 2005

Despite a Michigan Supreme Court ruling that set new standards for establishing a threshold injury, some courts continue to find serious impairments even for short-lived injuries.

On July 23, 2004, the Michigan Supreme Court issued the long awaited decision of *Kreiner v Fisher*, 471 Mich 109, 683 NW2d 611 (2004). This decision redefined the standard for establishing a threshold injury pursuant to MCLA § 500.3135 in order to maintain a third party lawsuit for non-economic damage. This decision made it more difficult to establish a serious impairment because the Supreme Court held that the “course” or “trajectory” of a person’s life must have been altered.

Despite the strong edicts of *Kreiner*, some courts have continued to find serious impairments even for seemingly minor injuries. In the case of *Luther v Morris*, Docket No. 244483 (2005), the Michigan Court of Appeals held that an accident victim who only missed 52 days of work and could not use her right arm for several weeks after the accident did suffer a serious impairment of body function.

Similarly, in *Cook v Hardy*, Docket No. 250727 (2005), the plaintiff sustained an acute fracture of the mid-shaft of the right tibia and an acute, displaced fracture of the right fibula. The force of the impact also bent a titanium rod that had been surgically inserted in the plaintiff’s right tibia as a result of an earlier injury. The plaintiff was in a cast for approximately eight weeks. The court ruled that although the duration of plaintiff’s impairment was relatively short, she did, in fact, suffer a serious impairment.

Finally, some trial courts also continue to find serious impairments for relatively minor injuries. In the circuit court case of *Fitzgerald v Waste Management of Michigan, Inc.*, the Montcalm County Circuit Court ruled that a 73-year-old grandmother who broke her wrist in a car accident had suffered a serious impairment, even though the plaintiff was not employed prior to the accident, holding that the course of her life had been altered.

The above-stated case law seems to conflict with the strong edicts of *Kreiner*, which require that an impairment affect the entire course of an individual’s life. Therefore, it seems there is some uncertainty about how strict the *Kreiner* decision is and what does, in fact, entail a serious impairment of body function.

*This article is distributed by the firm of Plunkett & Cooney, P.C. The brevity of this article prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2005. All rights reserved PLUNKETT & COONEY, P.C.*