



Michigan Supreme Court Overrules *Kreiner*

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In a 4-3 decision handed down on July 31, 2010, the Michigan Supreme Court has held that "*Kreiner v Fischer*, 474 Mich 109; 683 NW2d 611 (2004) was wrongly decided because it departed from the plain language of MCL 500.3135, and is therefore overruled."

McCormick v Allied Automotive Group, et al., __ Mich __; __NW2d __ (2010)(No. 136738).

McCormick was injured when a coworker backed a truck into him and drove over his ankle. Metal hardware had to be surgically inserted to repair the ankle, and McCormick could not work for 19 months. The trial court granted Defendant summary disposition on the basis of *Kreiner*, and the Court of Appeals affirmed. The Michigan Supreme Court reversed, holding that Plaintiff McCormick suffered a serious impairment of a body function as a matter of law.

The majority elaborated on the No Fault statute's requirements for establishing serious impairment: Unless there is a factual dispute regarding the nature and extent of the person's injuries, the trial court decides as a matter of law whether the serious impairment threshold has been crossed by applying a three-pronged test to determine

1. Whether there is an objectively manifested (observable or perceivable from actual symptoms or conditions) impairment of
2. An important (of value, significance or consequence to the injured person) body function that
3. Affects the person's general ability (some of the person's capacity) to lead his or her normal life (live in his or her normal manner of living).

It was the third prong that generated the most extensive disagreement with *Kriener*, as follows:

- The person's general ability to lead his or her normal life must have been affected, but it need not have been destroyed.
- "General" modifies "ability," not "affect" or "normal life."
- The statute does not create an express temporal requirement.

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The majority held that *Kriener* injected ambiguity into an unambiguous statute when it imported two terms that the statute did not use -- "trajectory" and "entire" -- and aggravated the error by providing an extra-textual "non-exhaustive list of objective factors" to be considered. The majority agreed that *Kriener* should be overruled, but Justices Hathaway and Weaver concurred separately to avoid signing on to Justice Cavanaugh's analysis of *stare decisis*.

Justice Markman authored the dissent, in which Justices Corrigan and Young concurred. This case is a watershed event for third party No Fault litigation in Michigan.