

EXAMINERS' ANALYSIS OF QUESTION NO. 10

This question raises two issues under Michigan's no fault statute, MCL 500.3101 *et seq*: (1) did Peter suffer a serious impairment of body function such that he can recover noneconomic damages against the driver, and (2) should these questions be decided by the court or the jury.

In *McCormick v Carrier*, 487 Mich 180, 215-216 (2010), the Supreme Court summarized the applicable steps and standards for deciding the issue of whether an individual has suffered a serious impairment of body function:

To begin with, the court should determine whether there is a factual dispute regarding the nature and the extent of the person's injuries, and, if so, whether the dispute is material to determining whether the serious impairment of body function threshold is met. MCL 500.3135(2)(a)(i) and (ii). If there is no factual dispute, or no material factual dispute, then whether the threshold is met is a question of law for the court. *Id.*

If the court may decide the issue as a matter of law, it should next determine whether the serious impairment threshold has been crossed. The unambiguous language of MCL 500.3135(7) provides three prongs that are necessary to establish a "serious impairment of body function": (1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or consequence to the injured person) that (3) affects the person's general ability to lead his or her normal life (influences some of the plaintiff's capacity to live in his or her normal manner of living).

The serious impairment analysis is inherently fact- and circumstance-specific and must be conducted on a case-by-case basis. As stated in the *Kreiner* dissent, "[t]he Legislature recognized that what is important to one is not important to all[;] a brief

impairment may be devastating whereas a near permanent impairment may have little effect." *Kreiner*, 471 Mich at 145 (CAVANAGH, J., dissenting). As such, the analysis does not "lend itself to any bright-line rule or imposition of [a] nonexhaustive list of factors," particularly where there is no basis in the statute for such factors. *Id.* Accordingly, because "[t]he Legislature avoided drawing lines in the sand ... so must we." *Id.*

1. Using these standards, an applicant should first determine if there are disputed material facts regarding the nature and extent of Peter's ankle and back injuries. The best conclusion is that there are not, as nothing provided reveals inconsistent or differing conclusions about the nature and extent of Peter's injuries. There is no conflicting expert testimony or other conflicting evidence on these facts. Thus, the court should rule on the issue as a matter of law.

2. The next step is for the applicant to discuss whether Peter suffered a serious impairment of body function. Clearly Peter's ankle and back injuries qualify as an objectively manifested impairment as they were observable from their conditions, i.e., broken bones and seeing the back injuries through the MRI. *Hunter v Sisco*, 300 Mich App 229, 242 (2013). Additionally, both the ankle and back are important body functions, as they are necessary for full ambulatory movement, which is of consequence to Peter and his active lifestyle.

3. Finally, the best argument (but by no means an absolute one) is that Peter's impairments did affect his ability to lead a normal life. The ankle and back injuries precluded Peter from engaging in work, travel, and hobbies - essentially limiting him from doing all the things in life he enjoyed on a daily basis prior to the accident. *Hunter*, 300 Mich App at 242-243. And, the fact that these conditions were temporary, and thus so were his limitations on leading a normal life, is not dispositive. *McCormick*, 487 Mich at 203. Although this is a fact-intensive inquiry, the most reasonable analysis is that Peter has established a serious impairment of a body function. However, the temporary nature of these injuries and limitations could lead one to reasonably conclude that these injuries did not preclude Peter from leading his normal life.

A reasoned analysis and conclusion that utilizes the controlling law and facts, despite the ultimate conclusion, should get full points.