

FEBRUARY 2011 MICHIGAN BAR EXAMINATION MODEL ANSWERS

ANSWER TO QUESTION NO. 1

The No-Fault Act generally bars actions for noneconomic damages, unless the injured person suffered an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. MCL 500.3135(7).

Although there is no factual dispute regarding the nature and extent of Meredith's injuries, she will still need to meet the serious impairment threshold test in order to be able to collect non-economic damages.

The court uses a three-prong test in order to determine whether a plaintiff meets the threshold for recovery of non-economic damages under the No-Fault Act. The court determines whether there has been: (1) an objectively manifested impairment, that is, observable or perceivable from actual symptoms or conditions; (2) of an important body function, that is, a body function of great value, significance, or consequence to the injured person; that (3) affects the person's general ability to lead his or her normal life, that is, influences some of the plaintiff's capacity to live in his or her normal manner of living; *McCormick v Carrier*, 487 Mich 180 (2010) overruling *Kreiner v Fischer*, 471 Mich 109 (2004), and *Netter v Bowman*, 272 Mich App 289 (2006). MCL 500.3135(7).

For purposes of determining whether a plaintiff has sustained an "objectively manifested impairment" under the No-Fault Act, the focus is not on the injuries themselves, but how the injuries affected a particular body function. *Id.*

Under the "serious impairment of body function" threshold, the requirement that the impairment "affects the person's general ability to lead his or her normal life" requires that a person's general ability to lead his or her normal life has been affected, not destroyed; thus, courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle element, but also whether, although a person is able to lead his or her pre-incident normal life, the person's general ability to do so was nonetheless affected. *Id.* There is no temporal requirement as to how long an impairment must last in order to have an effect on the person's general ability to live her normal life. *Id.*

There is no dispute that Meredith fractured her leg, was in a cast, had a metal rod surgically inserted, and was off work for approximately two months. A broken leg is observable. Meredith went to the hospital, there were presumably x-rays taken, a metal rod was surgically inserted into her leg, and she wore a cast for approximately two months. Her injury affected the use of her leg which is a body function that is of significance to her. She was on crutches temporarily and still has difficulty sitting or standing for prolonged periods of time.

The main issue is whether Meredith's injury affected her ability to lead her normal life. The facts suggest that Meredith was in a cast, then on crutches and unable to have unrestricted use of her leg for approximately two months. Additionally, she was unable to lift anything or do household chores for approximately three months. And lastly, she is unable to bicycle post-accident because of the pain. Although her injury was not extensive and her recovery period was relatively short, her ability to lead her normal life is nonetheless affected. As such, it appears that Meredith may have suffered a serious impairment of a body function for purposes of the statute and will be able to request noneconomic damages.

Meredith will be able to sue both McDreamy and his mother, Abby, for her damages. Under Michigan law, both the owner and operator of a motor vehicle are liable for "an injury caused by the negligent operation of [a] motor vehicle" if the owner expressly or impliedly consents or knows about the use of the vehicle. MCL 257.401(1). Here, the facts indicate that McDreamy's mother, Abby, consented to the use of her car. As such, Meredith could sue both

McDreamy and Abby, as both could be held liable for her damages.