



KOPKA PINKUS DOLIN & EADS, LLC

Client Advisory

MICHIGAN SUPREME COURT TO RE-EXAMINE “THRESHOLD” IN THIRD-PARTY AUTO CASES

A change in the makeup of the Michigan Supreme Court has set the stage for a re-examination of what constitutes the “threshold” for third-party auto cases. In a 4-3 vote, spurred by recently elected Supreme Court Justice Diane Hathaway, the Michigan Supreme Court reconsidered its prior order which denied the Plaintiff’s application for leave to appeal in the case of *McCormick v. Carrier*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2008 (Docket No. 275888).

In *McCormick*, the Plaintiff suffered injury when his ankle was run over by a vehicle. The injuries required two surgeries. The Plaintiff was still able to golf and fish, and returned to work one year after at the same rate of pay, however was assigned different duties. On March 25, 2008, the Michigan Court of Appeals held that although the Plaintiff had an objectively manifested serious impairment of an important body function, his injuries did not affect his ability to lead his normal life as required by *Kreiner v Fischer*, 471 Mich 109; 653 NW2d 611 (2004). Thus, summary disposition for the Defendant was granted.

The Plaintiff filed an application for leave to appeal to the Michigan Supreme Court. On October 22, 2008, the application was denied. At that time, former Chief Justice Clifford Taylor voted to deny leave, consistent with the principles in *Kreiner*. With the recent change of justices, Justice Maura Corrigan wrote in her dissent, “Now, although neither the law nor the facts of the case have changed, Plaintiff seeks reconsideration of our order. He and his *amici* seek to take advantage of the intervening change in this Court’s membership to open an otherwise final case. They have succeeded.” The Plaintiff’s application to appeal to the Supreme Court was granted.

We will keep you apprised of the Supreme Court’s ruling.

For more information on the details of this advisory contact

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