

## **The Effect of *McCormick v. Carrier* on Michigan Auto Law Requirements**

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*Rodney McCormick v. Larry Carrier and Allied Automotive Group, Indemnitor of General Motors Corp.* was released just before midnight on Sunday, August 1, 2010. This decision overturned the controversial *Kreiner v Fischer* “serious impairment of body function” threshold case, returning important legal rights to potentially hundreds of Michigan car accident victims who were told they did not have a case under *Kreiner*.

McCormick’s case was originally thrown out of court under the Michigan Supreme Court’s ruling of *Kreiner*. The Court found two surgeries, months of being unable to walk, and about one year off of work was not considered serious enough under Michigan’s auto law. Judges Whitbeck and Jansen, writing for the majority in the Court of Appeals and dismissing McCormick’s case, found that the “course or trajectory of plaintiff’s normal life” was not affected because he had made a great recovery one year later.

In other words, Judges Whitbeck and Jansen found as a matter of law that Rodney McCormick’s pain did not matter. His months of near total incapacitation and recuperation after surgeries did not make a difference. An entire year off of work and of being physically unable to enjoy the activities that are most important to him – were not enough.

The important *McCormick v. Carrier* decision reestablishes the proper interpretation of the clear and unambiguous language in the No-Fault Act's MCL 500.3135 (see more detail at <http://www.michiganautolaw.com/no-fault/no-fault-act/noneconomic-damages.php>) by creating the following test for anyone in Michigan who has been injured in a car accident.

As of August 2, 2010, this is Michigan’s new “serious impairment of body function” law according to *McCormick v. Carrier*:

**Step 1:** 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.

**Step 2:** 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”

Auto accident victims must meet three prongs under McCormick to recover pain and suffering compensation in Michigan

**Step 3:** If a car accident lawyer can prove the three requirements below, the personal injury victim will have a pain and suffering case in Michigan.

(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 person with the personal injury) that

(3) affects the person’s general ability to lead his or her normal life (in other words, influences some of the plaintiff’s capacity to live in his or her normal manner of living).

**Step 4:** It's important for car accident lawyers in Michigan to remember that legal recovery after an auto accident is inherently fact- and circumstance- specific to each injured person, and must be conducted on a case-by-case basis.

As stated in *McCormick v. Carrier*, “[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.” As such, the analysis does not “lend itself to any bright-line rule or imposition of [a] non-exhaustive 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.”

*McCormick* removes the additional restrictive hurdles created by the Michigan Supreme Court by taking away additional judge-made restrictions like “course or trajectory” and “entire normal life.” Read more about lifestyle impact requirements at <http://www.michiganautolaw.com/michiganlawyers/lifestyleimpactrequirement.php>. In other words, most of the language requiring long, temporal periods of disability after an auto accident are now removed.

But it is important to remember that this is not a “win” for auto accident lawyers, and certainly not for auto accident victims in this state. Removing the judge-made language from *Kreiner* is important, but it still leaves Michigan with one of the hardest auto accident thresholds in the entire nation. Don’t forget, **the auto law has simply been returned to the way it was intended and enacted by the Michigan Legislature back in 1995.**

It is still tougher to bring a case for pain and suffering and injuries from a car accident here than it is in almost any other state. But at least serious injuries from car accidents - the fractures, the herniated disks, the surgeries, the people who lose weeks and months from work; the types of cases that you and I intuitively understand in our gut are serious cases where people should be getting something - are cases that can now still be heard under *McCormick v. Carrier*.

For more detailed information and best practices on pursuing auto accident cases in Michigan, Michigan Auto Law has created a comprehensive **Attorney Guide for Michigan Lawyers** at <http://www.michiganautolaw.com/michiganlawyers/index.php>.

**Michigan Auto Law** is the leading largest law firm exclusively handling car accident, truck accident and motorcycle accident cases throughout Michigan for more than 50 years. Our auto accident attorneys have received the largest reported jury verdict for an automobile accident case in Michigan in seven of the past 10 years, including 2009, according to published year-end verdicts and settlements reports. For further information and over 600 pages of comprehensive legal information, visit our website at <http://www.michiganautolaw.com/>.

**Steven M. Gursten** is recognized as one of the nation's top experts in serious car and truck accident injury cases and automobile insurance no-fault litigation. Steve has received the largest jury verdict for an automobile accident case in Michigan in four of the past seven years, and the largest Michigan car accident settlement in 2009.