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Appellate Court Rules Psychologist's Testimony May be Used in Proving Closed-head Injuries

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Plaintiffs may have an easier time pursuing closed-head injury cases following a recent decision by the Michigan Court of Appeals, which ruled that a plaintiff is not limited to the testimony of a medical doctor in proving a closed-head injury, but may instead rely solely upon the testimony of a psychologist.

In an unpublished opinion concerning Michigan no-fault law, *Crittendon v. Johnson,* 2009 WL 793987 (Mich. App., March 26, 2009), the Michigan Court of Appeals held that the trial court erred by not considering a psychologist's testimony regarding the plaintiff's alleged closed-head injury and its relationship to other alleged injuries in determining whether the plaintiff had met the statutory threshold of serious impairment of an important body function.

The plaintiff in *Crittendon* was involved in automobile accident in which her car was struck from behind by another vehicle. The plaintiff alleged that she suffered from cervical disk abnormalities, right cervical raiculitis, thoracic and lumbar pain, closed-head injury, depression, anxiety and impaired memory function, which resulted in serious impairment of important bodily functions.

The plaintiff submitted an affidavit of a Ph.D. psychologist in support of her closed-head claims. The psychologist diagnosed the plaintiff as suffering severe depression and post-traumatic brain syndrome secondary to a closed-head injury, which significantly impacted the plaintiff's general level of intellectual functioning.

The defendant moved for summary disposition, which the trial court granted. The court based its decision on the fact that the affidavit concerning closed-head injury was made by a psychologist rather than a medical doctor and that the plaintiff's injuries did not rise to the level of being a serious impairment of an important body function. The plaintiff appealed.

The Michigan Court of Appeals reversed the trial court's granting of summary disposition for the defendant.

The appellate court began its analysis by examining the statutory language found in MCL 500.3135. The statute provides that for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician, who regularly diagnoses or treats closed-head injuries testifies, under oath that there may be a serious neurological injury. MCL 500.3135(2)(a)(ii).

The court stated that this language does not limit a plaintiff to proving a closed-head injury exclusively through the testimony of a medical doctor. Rather, there is an exception that permits a plaintiff to automatically create a question of fact through the introduction of such testimony. The appellate court, therefore, reversed the trial court, holding that the trial court failed to consider whether the plaintiff presented the requisite proof of a closed-head injury, separate and distinct from the automatic exception found in MCL 500.3135(2)(a)(ii).

Furthermore, the appellate court held that by failing to consider the plaintiff's evidence with regard to a closed-head injury, the trial court also erred by granting the defendant's motion for summary disposition with regard to the plaintiff's neck and back injury claim. The appellate court noted that the evidence of the plaintiff's closed-head injury, if admissible, could affect the nature and extent of the plaintiff's injuries as a whole.

Therefore, the court remanded the case to the trial court for consideration of whether the plaintiff's neck and back injuries met the statutory threshold of serious impairment of an important body function.

Should you have any questions about this case or closed-head injuries, generally, as they relate to litigation, please feel free to contact Michael K. Sheehy or any member of Plunkett Cooney's Trucking & Transportation Practice Group.