

Post Traumatic Stress Disorder May Not Reach Threshold Injury in Third-Party Automobile Claims

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Michael K. Sheehy
(313) 983-4721
msheehy@plunkettcooney.com

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In a recent decision, *Overweg v Thomas*, the Michigan Court of Appeals ruled that the plaintiff's Post Traumatic Stress Disorder (PTSD) did not satisfy the threshold requirements of the Michigan No-Fault Act (MCL 500.3135) to bring a third-party tort action to recover non-economic damages against a negligent defendant driver.

In *Overweg*, the plaintiff was driving her vehicle, while her husband followed behind in his vehicle. A third driver, the defendant in the case, lost control of his vehicle, crossed the median, and collided with the plaintiff's husband's vehicle. The plaintiff immediately stopped her vehicle, ran back to the scene of the accident, but could not free her husband, who was pinned underneath his vehicle. EMS personnel arrived, and while they were able to free the plaintiff's husband, they could not revive him.

The plaintiff was diagnosed with PTSD as a result of having witnessed her husband's death, and she subsequently filed a third-party negligence claim against the defendant under a number of theories, including a claim under the Michigan No-Fault Act, MCL 500.3135.

The Michigan No-Fault Act, MCL 500.3135(1), states that a plaintiff may only bring a negligence action against a negligent driver for non-economic damages if the plaintiff has suffered death, serious impairment of body function, or permanent serious disfigurement. A "serious impairment of body function" is defined in MCL 500.3135(5), as an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. The interpretation of MCL 500.3135(5) and serious impairment of body function has been the subject of much litigation since the passage of the law in 1973.

According to *McCormick v Carrier*, 487 Mich. 180, 795 N.W.2d 517, 521 (2010), the most recent Supreme Court case to interpret MCL 500.3135(5), a plaintiff will meet the serious impairment threshold if they can show the following: "(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

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lead his or her normal life (influences some of the plaintiff's capacity to live in his or her normal manner of living)."

The plaintiff in *Overweg* presented expert testimony establishing that she suffered from loss of appetite, anxiety, nightmares, flashbacks and insomnia. Nonetheless, the trial court found, and the Michigan Court of Appeals affirmed, that the plaintiff's PTSD claims did "not establish an objectively manifested impairment because the plaintiff failed to show how her PTSD ha[d] affected a particular body function," as required under MCL 500.3135(1).

In light of this decision, it is now clear that PTSD by itself will not constitute a threshold injury, because "an impairment is not the injury itself." A plaintiff suffering from PTSD must provide evidence that "a particular body function has been affected by plaintiff's PTSD" in order to prove he or she suffered a threshold injury.