

# Appellate Court Rules for Plaintiff in Serious Impairment PIP Claim

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Bloomfield Hills

The Michigan Court of Appeals recently ruled in favor of a plaintiff in considering whether an auto accident impacted his ability to lead his normal life.

The appellate panel echoed the rulings in *McCormick v Carrier* and reiterated that MCL 500.3135 does not create a temporal requirement and merely requires that “a person’s general ability to lead his normal life has been affected, not destroyed.”

In *Asraeel v Farm Bureau Insurance*, et al, No. 344022 (Mich Ct App, Oct. 1, 2019), the Michigan Court of Appeals reversed the trial court’s granting of summary disposition in favor of two defendant drivers, finding that there was no factual question that the plaintiff had not suffered a threshold injury under the no-fault act.

Plaintiff Asraeel was a passenger in a car driven by defendant Polus. Polus’ vehicle was struck by defendant Gerlach’s vehicle on Independence Day in 2016. Asraeel broke his clavicle in the accident, and the injury required surgery to repair. He was disabled from work for a six-week period. The plaintiff filed a complaint, alleging that the defendant drivers’ negligence resulted in a serious impairment of a body function.

The plaintiff also sought Personal Injury Protection (PIP) and Underinsured Motorist (UIM) benefits from Farm Bureau. Farm Bureau filed a motion for summary disposition with regard to the plaintiff’s claim for UIM benefits arguing that the plaintiff could not establish that he suffered a serious impairment of body function that affected his ability to lead his normal life.

Defendant Polus joined in the relief. The plaintiff contended that he demonstrated a threshold injury by not being able to work the same hours as a truck driver before the accident and not being able to partake in physical and recreational activities that he used to enjoy. The trial court granted summary disposition for defendant drivers Gerlach and Polus.

The appellate court determined that the trial court overlooked certain facts regarding the impact on the plaintiff’s life and disagreed with the lower court’s analysis. It relied on *McCormick v Carrier* (2010) and other case law in reversing the trial court’s decision.

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Specifically, the appellate court stated the trial court overlooked the fact “that plaintiff has to alter his work habits as a result of pain and discomfort caused by injury” and his inability to enjoy hobbies such as weight lifting, playing soccer and volleyball with friends. In addition, [t]he trial court’s opinion suggests that it believed for a plaintiff to demonstrate that he sustained a serious impairment of a body function, plaintiff was required to demonstrate an injury which would be long-lasting, if not permanent, and that the injury also would have to be exceedingly damaging to plaintiff’s ability to lead his daily life.”

Overall, the appellate court held that “it is clear that plaintiff’s injuries were not permanent and did not destroy his ability to lead his normal life,” however, “plaintiff clearly presented evidence that his general ability to live, work, and engage in activities that he previously enjoyed in his normal life have been affected by his injury.”

The appellate court’s opinion is liberating for a plaintiff who is faced with similar defenses. The defense bar should take a closer look at the evidence presented by a plaintiff before bringing similar motions as “only some of a person’s ability to live in their ‘normal manner of living’ must be affected to meet the threshold requirements of MCL 500.3135.”