

## Million-dollar man | 'Kreiner' has turned auto-accident cases cold, but Steve Gursten's firm is running hotter than ever

### Business of Law

By Natalie Lombardo

Times are tough for no-fault practitioners. Yet, Steven M. Gursten's litigation practice is thriving

Gursten told *Michigan Lawyers Weekly* that the no-fault world got turned on its head in 2004 when the Michigan Supreme Court handed the citizens of Michigan "the worst auto threshold law in the entire country."

What he's referring to is the Supreme Court's decision in *Kreiner v. Fischer*.

In *Kreiner*, the justices interpreted the No-Fault Act's "serious impairment of body function" statute, which establishes the pre-condition plaintiffs must meet before they can sue for noneconomic damages.

Gursten said that, as a result of *Kreiner*, many Michigan personal injury attorneys who used to handle auto accident cases are now retiring, not taking such cases anymore, practicing in other states, or referring the cases to specialists like himself.

Part of the reason is because *Kreiner* has made it difficult for plaintiffs to win, let alone keep their cases in court, he said.

According to data gathered by *Lawyers Weekly*, 189 out of 208 plaintiffs have lost their "serious impairment" cases in the Michigan Court of Appeals.

And, of those 208 cases, 193 were appeals from summary disposition motions.

But somehow, through all the *Kreiner*-related adversity, Gursten and his firm have survived.

In fact, he said, "we've actually never been busier."

One look at his firm's performance statistics, and the truth of Gursten's statement becomes clear.

Every year since *Kreiner* came down, Gursten has won "serious impairment" settlements totaling \$5 million or more.

And 2008 seems to be no exception: Already Gursten has more than \$4 million in "serious impairment" cases.

Additionally, the firm has grown significantly in four years.

Six new attorneys have joined the ranks of Gursten Koltonow Gursten Christensen & Raitt PC, bringing the total number of lawyers to 15.

And, the firm has expanded its reach beyond its home base in Southfield, opening offices in Detroit, Ann Arbor, Grand Rapids and Warren.



Asked what he attributes his firm's success to, Gursten said it's a combination of specialized expertise, ingenuity and professionalism.

### Outstanding in his field

It's no secret that Gursten has developed into one of Michigan's foremost experts on no-fault litigation, especially "serious impairment" cases involving car and truck accidents, and wrongful death claims.

At 28, Gursten, who's now 38, became the youngest lawyer in Michigan history to receive a million-dollar verdict for "soft tissue" injuries in a "serious impairment" case.

Since then, he has co-chaired the Michigan Association for Justice's Auto No-Fault Committee, and served as a member on the American Association for Justice's (AAJ) Traumatic Brain Injury Group.

Currently, he is president of the AAJ's Interstate Truck Litigation Group.

Indeed, the depth of Gursten's expertise isn't lost on his adversaries.

"[Gursten] has carefully analyzed *Kreiner* and understands that in order to create value for his cases, he has to meet the criteria set forth by the Supreme Court," said James L. Borin, a prominent Troy insurance defense lawyer and adjunct professor at the Thomas M. Cooley Law School.

Gursten "doesn't attempt to circumvent

the criteria," Borin said, "but rather he establishes the components ... which, in my view, is really a remarkable aspect of what he's accomplished."

### Capitalizing on experience

When asked how he uses his "serious impairment" expertise to the firm's and its clients' benefit, Gursten said the answer is simple.

"There may be fewer cases, but that doesn't mean that you can't make the cases that are left worth more.

In other words, Gursten said he channels what he's learned through study and trial and error (not so much) into ways to build a better "serious impairment" case.

By "plugging potential holes before they become dangerous problems," he said, not only do you increase your chances of beating the defense's summary disposition motion, but you might also "drive up the settlement value of cases."

One strategy, he said, is documenting injuries and impairments over time.

This starts, with having clients undergo independent medical examinations and functional capacity testing, Gursten said.

That way, he said, one can start with a clear picture of the impairments and injuries.

Another strategy is using *Kreiner* to the plaintiff's advantage, Gursten said.

To do that, the Southfield lawyer has “pioneered” the process of having his clients’ medical examiners match up their results, where possible, with the “serious impairment” criteria set out in *Kreiner*.

Southfield attorney Wayne J. Miller, who is also a Wayne State University Law School professor, said that was an excellent idea.

“You need certain testimony,” he said. “And sometimes if you can’t get it from the treating physician, because he is not fluent in [the requirements of the law], then you might get it from a plaintiff’s retained physician.”

Finally, Gursten said that, even if what a lawyer is trying to build is a strong noneconomic damages case, he or she shouldn’t overlook the “economics” of his or her client’s situation.

As such, he said, economists can come in very handy during case preparation.

“*Kreiner* applies to the noneconomic pain and suffering portion of the case,” Gursten said. “But even if that is dismissed, you can still move forward on economic damages because there is no threshold.”

Plus, he said, experience has shown that a solid economics case may be the saving grace for the noneconomic damages case.

“Judges are going to be much less likely to grant defense [summary disposition] motions if they know they’ll still have to hear the same case for economic loss,” Gursten said.

### Taking care of the client

Managing the client relationship can often be just as important as managing the client’s case, Gursten said.

Not only do good client relations translate into a smoother-running case, he said, but they also increase the chance of repeat business from the client and/or the attorney who referred him or her.

Gursten said lawyer referrals is a sig-

nificant source of the firm’s business.

“Our firm philosophy has always been that if we can continue to do the best job for our clients — and that doesn’t just mean the highest verdicts and settlements, it means taking good care of people and treating them respectfully and with compassion — then lawyers will refer auto accident cases to us,” he said.

One of the things the firm has done to maintain its high standards with regard to client relations, especially given the firm’s recent growth, is create its pre-suit unit, Gursten said.

The unit consists of three lawyers whose job it is to assist clients in whatever they need, he said.

Whether it’s returning phone calls, answering legal questions, or helping clients navigate through their health and no-fault insurance plans, “we want someone, who is an expert in the law and medicine, who can be available at any time if there is a problem or a question,” Gursten said.



THE FIRM’S OFFICE IS LOCATED IN THE TRAVELERS BUILDING IN SOUTHFIELD, A CENTRAL LOCATION FOR METRO DETROIT.



ALISON F. TOMAK (BACK ROW, FROM LEFT), KEVIN H. SEIFERHELD, IAN M. FREED, AMY L. GUBESCH, BRANDON M. HEWITT, MICHAEL R. SHAFFER, JEFFREY A. BUSSELL, DEBORAH A. TONELLI, JEFFREY H. FELDMAN, THOMAS W. JAMES; DAVID E. CHRISTENSEN (FRONT ROW FROM LEFT), STEVEN M. GURSTEN, LAWRENCE E. GURSTEN, LEONARD M. KOLTONOW AND ROBERT M. RAITT OF GURSTEN, KOLTONOW, GURSTEN, CHRISTENSEN & RAITT, PC.

## Thriving in a post-‘Kreiner’ world

Although some no-fault practitioners have found the “course and trajectory” of their practices have changed for the worse since the Michigan Supreme Court decided *Kreiner v. Fischer* in 2004, that hasn’t been the case for Southfield attorney Steven M. Gursten.

Every year since *Kreiner*, Gursten - who heads the firm Gursten Koltonow Gursten Christensen & Raitt PC - has settled more than \$5 million in “serious impairment” cases.

And, he looks to be right on track for 2008.

### 2008

*Barnes v. Cassens Transport Company*: \$3.6 million — Three plaintiffs suffered mild traumatic brain injury and back, shoulder, elbow and carpal tunnel surgeries from truck accident. Defendant alleged that as there was very low vehicle damage, injuries had no causal relationship to accident.

*Jane Doe v. confidential*: \$1.15 million — Mild traumatic brain injury, contested liability automobile accident.

### 2007

*John Doe v. confidential*: \$2.2 million — Wrongful death truck accident with contested liability and defense that plaintiff’s negligence caused crash.

*Schenkel v. DeGrazia and Kubik*: \$1.5 million — Loss of eye following motor vehicle accident.

*Estate of Michael Brown*: \$1.4 million — Wrongful death car accident settled pre-suit with defense claim of comparative negligence.

*Sterbyci v. Moe’s Transport Trucking*: \$1.25 million — Truck accident with contested liability, traumatic brain injury and soft-tissue physical injuries.

*Quednau v. Everest Inc.*: \$1.25 million — Fractured leg injury requiring surgery.

*Heintz v. Shell*: \$1 million — For serious injuries from truck accident.

### 2006

*John Doe v. confidential*: \$2.5 million — For traumatic brain injury and back and neck surgeries.

*Xhialli v. Atlas Copco Tools, Inc.*: \$1.8 million — For brain injury and various orthopedic injuries and surgeries to husband and wife.

*McDowell v. Ford Motor Co.*: \$1.275 million — For traumatic brain injury in contested liability truck accident.

*Gilmore v. Secret*: \$1.1 million — Damages for shoulder and back injuries suffered by plaintiff in a collision with a semi-trailer truck. Defendant had only offered \$100,000 up to and including first day of trial.

### 2005

*Norris v. Atsalis Brothers Painting*: \$9 million — Largest pain and suffering settlement in Michigan in preceding decade.