



## Maybe the sky IS falling...

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I'm rarely accused of being alarmist. Even now I plan to couch this news in lots of caveats — but last week while I was in the throes of completing a story package on Bloomfield Park some telling news broke about whether *McCormick v. Carrier* might raise auto insurance rates.

The Michigan Supreme Court in its 2010 Annual Report compiles data on civil, criminal, domestic and appellate filings at the state's 57 circuit courts last year, found that 10,722 automotive negligence lawsuits were filed last year. That's an increase of 18.2 percent over the 9,067 filings in 2009, while total case dispositions in that category only grew by 6 percent, from 8,708 to 9,225.

Until 2009, auto negligence case dispositions slightly outpaced new filings. Now they are trailing by 1,500 cases. That's quite a surge, in a year when total civil litigation at the circuit courts actually declined 3.2 percent to 45,760 cases in 2010.

The data appear to be a vindication for the Insurance Institute of Michigan, a government affairs and information association of more than 90 insurers and related organizations, which predicted after the McCormick ruling in August 2010 that the floodgates would open for new injury lawsuits.

That in turn would mean more trials, more damage awards and an increase in premium rates to cover the added liability, Executive Director Pete Kuhnmuensch predicted.

"This wasn't at all unexpected," he said of the new Supreme Court report. "If you loosen the standard on the ability to bring pain-and-suffering lawsuits, there's going to be more of them, you're going to spend more to defend them and some will mean bigger awards. And it's ultimately the consumer who pays more for this change in standards."

*McCormick*, your may recall, was a 2006 lawsuit by Rodney McCormick, a General Motors Co. contract employee injured when a co-worker backed over his ankle with a truck at a Flint plant. The case turned on his standing to seek damages for pain and suffering in a lawsuit against his employer, Allied Automotive Group Inc., which was indemnifying GM, and a co-worker.

At issue was a clause in the Michigan No-Fault Act says that a plaintiff seeking non-economic damages for pain and suffering must be dead, permanently disfigured or has "serious impairment of a body function."

The last controlling precedent from the high court was the 2004 *Kreiner v. Fischer* ruling, which restricted serious impairment to mean the "course or trajectory of the plaintiff's normal life has ... been affected." That was generally taken to mean the injury would have a lifelong, measurable impact and the patient would not fully recover.

Kreiner was reversed in August, after an election in 2008 eroded the court's conservative majority, and it would be interesting to get a breakout of how many of those 10,722 lawsuits came after the ruling date.

It's safe to say many did. At the time **Steven Gursten, managing partner at Michigan Auto Law** (Gursten, Koltonow, Gursten, Christensen & Raitt PC), which does business as Michigan Auto Law in Farmington Hills, predicted a short-term bump in new lawsuits from his and other automotive plaintiff firms. And the last time auto neg filings stopped 10,000 was in 2004, the year *Kreiner* was decided.

"I think it will probably go down again, not all the way back but close (to pre-McCormick levels)," he said. "This just reflects the backlog of cases before, where people had serious injury cases, maybe went back to work in 6-9 months, but still could have seen their cases thrown out under Kreiner.

"But that's total nonsense to think this is the beginning of a problem. We were talking maybe 6 cents on the no-fault dollar that got spent before, on automotive tort costs. And now we're going to be at maybe 7 cents."

He estimates his firm alone filed 80 or so cases in the months following McCormick, but that he is also settling more claims with adjustors, prior to filing litigation.

Plaintiff attorneys have said the decision would probably lead in time to less litigation, not more, as attorneys get a handle on the full impact of the new ruling and more claims get resolved short of litigation. Some accused the insurance industry at the time of taking a "sky-is-falling" tack on that ruling, when they knew the legal system could most likely absorb the added claims.

The Michigan Office of Financial and Insurance Regulation, which receives notices of planned premium rate increases from auto insurance carriers, has seen a largely mixed bag of provider requests this year, said OFIR public information officer Jason Moon.

The largest market share holder in Michigan, State Farm Mutual Automobile Insurance, has a planned increase of 0.7 percent on one insurance product that takes effect July 1 — but another notice calls for a decrease on the same date, of 0.3 percent on a different auto product.

Fourth-largest market share holder Progressive Insurance also anticipates an increase later in the year. But as a whole, OFIR reports a mixture of increases and decreases that isn't wildly out of step with past years.

So maybe the sky is falling. Maybe not.

Aren't you all glad when I'm this helpful?