

# CRAIN'S DETROIT BUSINESS

## Ruling may spur auto injury cases

By [Chad Halcom](#)

A **Michigan Supreme Court** ruling last week relaxing the standard for recovering non-economic damages in automotive injury cases may mean hundreds of new lawsuits and higher insurance premiums for motorists over the next year.

But attorneys on both sides of the issue agreed it's too early to gauge the full impact of *McCormick v. Carrier*.

"We're still trying to get our arms around the metrics of what the impacts will be. We may know more in the next month or two on that. But it will be an evolutionary change in terms of rates," said Pete Kuhnmuensch, executive director of the **Insurance Institute of Michigan**, a government affairs and information association of more than 90 insurers and related organizations.

"The answer to the simpler question would be yes, more litigation will tend to mean more awards, so your rates would go up. But the severity or number of accidents could also change during the year at the same time, and unfortunately it's not a one-to-one relationship (liability to premiums)."

*McCormick v. Carrier*, 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, turned on his standing to seek damages for pain and suffering in a lawsuit against his employer, **Allied Automotive Group Inc.**, which had assumed GM's liability, and a co-worker.

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 *Kreiner v. Fischer* ruling of 2004 restricted serious impairment to mean the "course or trajectory of the plaintiff's normal life has ... been affected," which was widely interpreted to mean recovery was not complete and the injury would have a lifelong, measurable impact.

But *Kreiner* was widely expected to be reversed after Justice Diane Hathaway unseated former

Justice Clifford Taylor in the 2008 election, eroding the court's conservative majority.

“Right now the insurance industry is throwing up their hands and telling us all the sky is falling, they'll have to raise rates and this is a disaster,” said [Steven Gursten](#), managing partner at **Gursten, Koltonow, Gursten, Christensen & RaittPC**, which does business as Michigan Auto Law in Farmington Hills.

“But this is essentially returning us all to the standard of the law that they (insurers) actually helped to write in the 1990s, when they saw the opportunity to amend no-fault through a Republican governor and the Legislature.”

Gursten estimates his firm may have as many as 100 potential automotive negligence lawsuits awaiting the outcome of McCormick, and other firms across the state also would have pent-up claims. But he also said the decision could lead in time to less litigation, not more.

“I used to be able to resolve one-third or more of my claims at the adjuster stage, pre-lawsuit. But Kreiner took that level to nearly zero,” he said. “You might see an initial spike in litigation, but those cases I used to be able to settle without lawsuits I'll be able to settle again. I think a year or so from now (the number of lawsuits) might net out to about the same level as today, or even a little below.”

According to the **Coalition Protecting Auto No-Fault**, an association of state medical professional associations, consumer groups and plaintiff attorneys, 199 out of 252 automotive injury cases in the state's appellate court system led to a dismissal or a ruling in favor of the defendant by the end of last year because the injury was not serious enough to meet the Kreiner standard.

But George Sinas, general counsel for the coalition and senior partner at **Sinas, Dramis, Brake, Boughton & McIntyre P.C.** in Lansing, said the ruling doesn't mean all of those claims get restored.

“Supreme Court opinions have retroactivity, but it applies to any case that is pending at the time or has not yet been filed,” he said. “If your case was dismissed and closed, you will not be able to resurrect that case.”

But Kuhnmuensch said his member insurance companies “never bought into that claim” that the Kreiner ruling caused so many dismissals, and some may be attributable to “poor lawyering” or drew upon other legal precedents.

He also said insurers must take any request to adjust rates before the state **Office of Financial and Insurance Regulation**, and the institute will consider seeking new legislation in Lansing during the fall that would supplant Kreiner.

“In both courts' defense (in Kreiner and McCormick), the language of no-fault is pretty general,” he said. “But what the Kreiner court tried to do is provide guidance and interpret the ruling in terms of the total effect on the individual. What the McCormick ruling has done is to decide if even some impairment has happened for some limited time, it counts.”

Michigan's system of circuit courts reported 17,534 pending automotive negligence cases statewide last year, including 9,067 new filings, according to data compiled by the **State Court Administrative Office**. That's compared with 20,988 pending cases, including 10,185 new filings in 2003, the year before Kreiner became law.

Michael Sheehy, partner and leader of the trucking and transportation practice group at **Plunkett & Cooney P.C.**, which represents **Meadowbrook Insurance Group** and **Frankenmuth Insurance** among other insurers, said client inquiries have increased after McCormick, but those talks have yet to lead to any action.

“I haven't had the direct question about rates (increasing) put to me, but I know it has their attention,” he said. “A lot of us will probably be looking at the environment pre-Kreiner to see what the difference will be in exposure going forward.”

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August 8, 2010