

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Hope exists in the post-*McCormick* era

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SECRET WARDLE NOTES

Although courts have repeatedly declined to resolve the serious impairment of body function issue when deciding motions for summary disposition in the post-*McCormick* era, the Court of Appeals' recent unpublished decision in *Sigan v Deziel* shows that a plaintiff's burden to meet the threshold requirements is still very much alive. Documentation in particular can assist in showing that no question of fact exists as to whether a plaintiff's general ability to lead his or her normal life was affected by a motor vehicle accident.

* * * *

In the June 2, 2015, unpublished opinion in *Sigan v Deziel* (Docket No. 320570), the Court of Appeals has shown that there is not a question of fact in every case involving the serious impairment of body function threshold under MCL § 500.3135 and *McCormick v Carrier*, 487 Mich 180 (2010). After the Michigan Supreme Court's opinion in *McCormick*, case-after-case in the appellate courts have held that questions of fact exist for a jury in determining whether a plaintiff has met the necessary tort threshold requirements. The *Sigan* opinion, however, is a win for the defense.

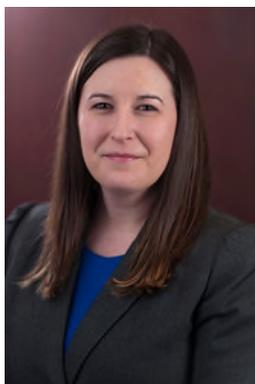
In *Sigan*, the plaintiff alleged that as a result of a February 1, 2010, motor vehicle accident she had right ankle surgery and suffered an exacerbation of her preexisting conditions including arthritis and fibromyalgia. While she admitted that she had preexisting medical conditions, she argued that "they were worsened by the accident." In addition, the plaintiff's treating doctor opined that the plaintiff's ankle injury was caused by a traumatic event and after her surgery her ability to walk was hindered.

However, the defendant filed a motion for summary disposition and included documentation showing that the plaintiff was totally disabled from a previous 1995 accident and in a questionnaire dated in 2001 claimed she could not walk more than four blocks, needed to stop and rest due to her pain, ceased any recreational activities, and household chores took forever as she had to take breaks. Further, defendant presented evidence that in 2005 an Administrative Law Judge determined that the plaintiff could not perform a full range of even sedentary work.

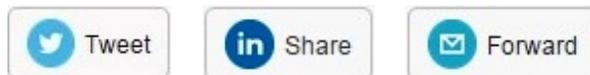
Plaintiff on the other hand testified that due to the 2010 accident she isolated herself and could not work or participate in recreational activities. The *Sigan* Court affirmed the trial court's ruling to grant the defendant's motion for summary disposition because the plaintiff had not established that the accident and impairment affected her general ability to lead her normal life—the third prong that must be shown under §3135 and *McCormick*.

Specifically, the Court of Appeals held that the plaintiff's life following the accident was not "significantly different from her life in the years preceding the accident." Both before and after the accident the record showed that the plaintiff had difficulty walking, was disabled and unable to work, and her recreational activities were basically the same. In all, there was "no appreciable difference" between her pre- and post- accident life and she did not meet the tort threshold required.

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