

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

The Tide is Turning in the *McCormick* Era

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December 30, 2015

SECRET WARDLE NOTES

In the *McCormick* era, victories for the defense on dispositive motions are certainly noteworthy in third-party cases. Since *McCormick* was decided in 2010, many judges have been quick to find a question of fact in denying dispositive motions. Further, too often, dispositive motions are denied on the basis that even the slightest impairment establishes a “serious impairment of an important body function” as defined by the No-Fault Act. The tide is seemingly turning as the Court of Appeals has helped define the meaning of “serious impairment” in recent decisions, most recently in its unpublished decision in *Fuller v. Howard* (Docket No. 322429) where the Court held that a plaintiff who had an objective injury corroborated by medical records could not establish that the injury affected his general ability to lead his normal life.

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In *Fuller v. Howard* (Docket No. 322429), although the parties disputed whether the accident caused Plaintiff’s alleged injuries, the parties did not dispute the nature or extent of the injuries. Plaintiff’s medical records supported a finding that Plaintiff had bulging discs in his back. Plaintiff’s remaining claims—including tinnitus, vision problems, and headaches—were never corroborated by medical records or deemed to be the result of bulging discs in his back. Defendant moved for summary disposition on the basis that Plaintiff’s injuries failed to satisfy the requisite threshold of serious impairment under MCL 500.3135, which is an “(1) objectively manifested impairment (2) of an important body function (3) that affects the person’s general ability to lead his or her normal life.” *McCormick v. Carrier*, 487 Mich. 180 (2010). Defendant relied upon Plaintiff’s testimony to demonstrate that his life essentially remained unaltered by the subject accident. The trial court granted Defendant’s dispositive motion, finding that Plaintiff’s testimony regarding his post-accident lifestyle failed to demonstrate that his daily life was altered by the accident.

The Court of Appeals affirmed the ruling in favor of the Defendant, finding that a serious impairment had not been established as Plaintiff’s normal manner of living was not affected. Prior to the accident, Plaintiff did not have a job, engage in hobbies, play sports, or have a girlfriend; instead, Plaintiff spent most of his time watching television. Following the accident, Plaintiff testified that he “basically stays home and watches television.” Plaintiff’s only change in lifestyle was his alleged inability to ride a bicycle or perform yardwork. However, Plaintiff testified that he had not tried to ride a bicycle. As to the alleged inability to

perform yardwork, the *Fuller* Court found that, in and of itself, the aches and pains precluding him from performing yardwork were not enough to establish a serious impairment. The Court of Appeals looked to the entirety of Plaintiff's testimony, finding that Plaintiff's vague testimony was insufficient to create a question of fact on the issue of serious impairment. Reviewing the totality of Plaintiff's testimony, the Court upheld the trial court's determination that Plaintiff failed to satisfy the requisite threshold of serious impairment under the No-Fault Act.

The Court of Appeal's decision in *Fuller* is one of hopefully many affirming a trial court ruling in favor of a defendant's dispositive motion in a third-party action. The recent rulings provide clarity on what exactly constitutes a serious impairment but, more significantly, the recent rulings allow specific analogies to be drawn on summary disposition in fact patterns we see all too often. For an overview of another recent decision favoring the defense in a *McCormick* win, please see the article authored by my colleague, Alison Quinn, titled "[Hope exists in the post-McCormick era](#)", also available on the firm's website at www.secrestwardle.com.

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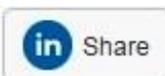


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