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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## POST TRAUMATIC STRESS DISORDER CLAIM DOES NOT SATISFY THE NO-FAULT INJURY THRESHOLD

By John L. Weston

In *Balley v Allied Ins. Co.*, an unpublished decision of the Michigan Court of Appeals, the Court considered whether Plaintiff's post-traumatic stress disorder (PTSD) claims met the no-fault threshold for serious impairment of body function because the PTSD affected Plaintiff's general ability to lead her normal life, as delineated under *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004).

While the trial court acknowledged that Plaintiff had suffered an objectively manifested impairment of an important body function in relation to her PTSD, it ruled that Plaintiff's trauma, including her PTSD symptoms, did not change her post-accident life enough to affect her general ability to lead her normal life, and the no-fault injury threshold requirement was therefore not satisfied. The court accordingly entered a judgment of no cause of action, and Plaintiff appealed.

The Court of Appeals analyzed the threshold requirement, noting that the no-fault act defined "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). Because the trial court found that Plaintiff suffered an objectively manifested impairment of an important body function in relation to her PTSD, the appellate court indicated that the issue at hand was, therefore, whether the trial court erred in finding that this impairment did not affect Plaintiff's general ability to lead her normal life.

The Court of Appeals stated that, under *Kreiner v Fischer*, determining whether an impairment affects a plaintiff's general ability to lead his or her normal life requires "a multifaceted inquiry" that compares "plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff's overall life." This approach is a balance of subjective and objective inquiries.

### SECRET WARDLE NOTES:

Although *Balley* is an unpublished decision and not binding on lower courts, it accurately sets forth Michigan law regarding the analysis and application of the no-fault threshold requirement. If a plaintiff cannot establish that his/her accident related injuries have affected the general ability to lead a normal life, even claims as serious as permanent PTSD may not satisfy the threshold requirement.

## CONTINUED...

As the Kreiner Court noted:

[W]hat is “normal” is to be determined subjectively on the basis of plaintiff’s own life and not the life of some objective third party. However, once that is fixed as the base, it is to be objectively determined whether the impairment in fact affects the plaintiff’s “general ability to lead” that life. [Id.] The effect on the plaintiff must be substantial enough to affect the Plaintiff’s “general ability to conduct the course” of his or her own life.

The Court of Appeals, in *Balley*, further noted that the Kreiner Court articulated:

A nonexhaustive list of objective factors” to assist lower courts in evaluating whether a plaintiff’s injury affected that plaintiff’s “general ability to conduct the course of [her] normal life.” These factors include: (a) the nature and extent of the impairment; (b) the type and length of treatment required; (c) the duration of the impairment; (d) the extent of any residual impairment, and; (e) the prognosis for eventual recovery. No single factor is meant to be dispositive. The inquiry should look at the “totality of circumstances” and should center around the ultimate question of “whether the impairment affects the person’s general ability to conduct the course of his or her normal life.”

Plaintiff claimed that, for over a year after the accident, the nature and extent of her injuries were quite serious. There was testimony that plaintiff suffered from insomnia, nightmares, poor performance in school, irritability, and loss of friendship. The Court of Appeals noted, however, that Plaintiff’s PTSD symptoms were not continuously affecting her everyday normal life, but rather, were the result of unpredictable and sporadic triggering effects. It further noted that her injuries did not prevent Plaintiff from having a dating relationship with a boyfriend and a job, both of which began after her accident. She testified that she did obtain her driver’s license and was able to drive. In addition, Plaintiff’s grades recovered, and she was admitted to a local college.

Analyzing the five factors set forth in *Kreiner*, the Court of Appeals concluded that all but the fifth – prognosis for recovery – supported Defendants. The Court held that Plaintiff’s impairment did not affect all aspects of her life. The types of treatment she required when her PTSD symptoms recurred were medication and therapy, which did not appear so invasive as to affect her general ability to conduct the course of her normal life. While it was undisputed that her injury was categorized as permanent, with a high likelihood of recurrence, the duration of her more serious symptoms were temporary. She also had no physician-imposed restrictions placed on her. Plaintiff suffered a temporary drop in grades, social activities, and interpersonal relationships after the accident; however, since then, she had acquired and maintained a job, was accepted into college, and had a long-term boyfriend. Accordingly, the Court of Appeals affirmed the trial court’s judgment of no cause of action, finding that Plaintiff’s PTSD did not meet the no-fault threshold for serious impairment of body function.

## CONTACT US

### Farmington Hills

30903 Northwestern Highway, P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500 Fax: 248-851-2158

### Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651  
Tel: 586-465-7180 Fax: 586-465-0673

### Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917  
Tel: 517-886-1224 Fax: 517-886-9284

### Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546  
Tel: 616-285-0143 Fax: 616-285-0145

### Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183  
Tel: 217-378-8002 Fax: 217-378-8003

[www.secretwardle.com](http://www.secretwardle.com)

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## CONTRIBUTORS

### Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

### Editor

Carina Nelson

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