

COA Opinion: Plaintiff is not entitled to JNOV in a no-fault action tried before *McCormick v. Carrier*, when the jury found that plaintiff had not suffered a serious impairment of bodily function and the jury instructions did not include wording specific to *Kreiner*'s more stringent definition

2. February 2011 By Sarah Lindsey

Under the No-Fault Insurance Act, a defendant is only liable for noneconomic loss caused by a car accident “if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” In *Nelson v Dubose*, the Court of Appeals held the trial court did not abuse its discretion in denying the plaintiff’s motion for JNOV after the jury found the plaintiff had not suffered a serious impairment of bodily function. The plaintiff argued that the case should have been decided in light of *McCormick v. Carrier*, 487 Mich. 180 (2010), in which the Michigan Supreme Court overruled *Kreiner v. Fischer*, 471 Mich. 109 (2004), with respect to the definition of serious impairment of a body function.

Under *Kreiner* - which was in effect at the time of the trial in this case - the definition of serious impairment of a body function focused on the injury and whether the injury affected an important body function to the point of preventing the plaintiff from leading a normal life. After the trial, the Michigan Supreme Court overturned *Kreiner* in *McCormick*, which “eased the burden on the plaintiff to show how the impairment has prevented the plaintiff from leading a normal life.” Under *McCormick*, a plaintiff must now show that her ability to lead a normal life has been affected by comparing her life before and after the injury.

Even though the case was decided under the later-overruled *Kreiner* standard, the court held that the jury instructions made no reference to the *Kreiner* definition, and therefore, they were not erroneous. The court had instructed the jury that a serious impairment of a body function was “an objectively manifested impairment of an important body function that affects the plaintiff’s general ability to lead her normal life.” The Court of Appeals also emphasized that there was a factual question as to whether plaintiff suffered a serious impairment of bodily function, and reasonable jurors could honestly have disagreed about whether plaintiff’s injuries rose to the level of a “serious impairment of body function.” Thus, the trial court did not err in denying the motion for JNOV.

Judge Jansen [concurred](#) in the majority’s conclusion but wrote separately because she thought that a new trial was warranted; she believed that the jury’s determination that plaintiff’s shoulder condition did not constitute a threshold injury was against the great weight of the evidence. But the issue of whether the trial court properly denied plaintiff’s motion for a new trial had not been presented for appellate review.