

# No Fault:

Benefiel v

Auto Owners Insurance

## An Analysis, Part 2



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**A**nd the saga continues.....

In the September 2008 issue of Bar Briefs, this author posed a question regarding the 2007 Court of Appeals decision in *Benefiel v Auto-Owners Insurance Company*, 277 Mich.App. 412 (2007): Would it become a new No-Fault test for threshold cases involving multiple motor vehicle accidents or would the case be a quickly forgotten hiccup in the legal world? On December 12, 2008, the Michigan Supreme Court provided the answer:

Neither!

The Michigan Supreme Court has vacated the judgment of the Court of Appeals entirely and remanded the case back to the trial court for further proceedings consistent with its Order. [*Supreme Court Order No. 135778 & (70)*]. In that Order, the Supreme Court held that although the Court of Appeals had properly reversed the trial court's grant of summary disposition for defendant, the analysis for that reversal was "faulty."

The Court of Appeals analysis at issue involved its interpretation of how to

measure a plaintiff's "normal life" under the No-Fault statute<sup>1</sup> so as to satisfy the threshold for noneconomic damage recovery. The Court of Appeals held that when a plaintiff sues for noneconomic damages arising from the second of two motor vehicle accidents that plaintiff's "normal life" analysis was not limited to the time frame between the two accidents upon certain conditions being satisfied. The Supreme Court has now held that in order for a plaintiff to use the time before he was ever involved in any accident as his "normal life" under a



threshold analysis, a plaintiff must show that:

*"[h]is preexisting impairment was exacerbated or that his recovery was pro-longed as a result of the subsequent accident for which he seeks noneconomic damages. Furthermore, this subsequent impairment must meet the statutory*

*threshold in order for the plaintiff to recover noneconomic damages."*

It appears the Supreme Court has created a new Benefiel "test" for threshold analysis under the No-Fault Act in cases involving multiple motor vehicle accidents and, likely, those cases which involve plaintiffs with preex-

isting impairments of any kind.

Previously, this author suggested that Benefiel may come to share company with those cases whose significance is clear due to their first-name-only familiarity, i.e. Kreiner and Daubert. The Supreme Court has effectively awarded Benefiel this

honor, although perhaps not in the way the Court of Appeals would have preferred.

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*' A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body*

*function, or permanent serious disfigurement. (7) As used in this section, "serious impairment of a body function" means 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.*