



No-Fault: Benefiel v Auto Owners Insurance - An Analysis

By Kristen J. Kosciolk, Martin Bacon & Martin PC

Before the ink was even dry on the decision, lawyers were talking about *Benefiel*. For lawyers, the significance of case law is clear when it is commonly referred to by its first name only, i.e. *Kreiner* and *Daubert*. We also know a case is significant when it contains a key phrase which is repeated ad nauseum in our briefs, arguments and conversations. *Benefiel* has such potential.

In a unanimous decision, the Court of Appeals in *Benefiel v Auto-Owners Insurance Company*, 277 Mich.App. 412 (2007), outlined a test to determine a plaintiff's normal, pre-accident life under the Michigan No-Fault Act as well as the Michigan Supreme Court's interpretation under *Kreiner v Fischer*, 471 Mich. 109 (2007) of the serious impairment issue when multiple accidents are involved. In *Benefiel*, the plaintiff sued for noneconomic damages based on a serious impairment of a body function that he allegedly sustained as a result of the second of two car accidents. Of

interest is that the Court noted that the actual extent of the injuries caused by the second accident was difficult "if not impossible" to separate from the injuries sustained as a result of the first accident. The Court ultimately held that plaintiff's normal "pre-accident lifestyle should not be limited to the timeframe following the first accident."

The Court went on to note that the evidence failed to establish that the injuries plaintiff sustained in the first accident resulted in a "catastrophic, permanent, residual impairment physically incapable of healing;" a phrase sure to be quoted tirelessly in future briefs by this Bar. While the Court failed to provide a formula for applying this new legal phrase of art to future cases, it did provide the following two hypotheticals to demonstrate how the rule would apply:

(1) Plaintiff breaks his leg in the first accident. This is an injury that one would expect a full recovery; however,

due to the second accident, it was not given an opportunity to heal and a court must look to the plaintiff's whole life before the first accident when determining "normal" pre-accident life under *Kreiner*.

(2) Plaintiff loses his leg in the first accident. This is an injury not capable of complete recovery. When plaintiff is later injured in a second accident, the court should look at plaintiff's life after the first accident for comparison as to whether or not the second accident affected the course of plaintiff's "normal" life under *Kreiner*.

In applying this analysis to the facts of *Benefiel*, the Court found that under *Kreiner*, plaintiff's "normal" lifestyle must consider his life before the first acci-

dent. It found that the "second accident imposed a medical regime on plaintiff that made completing the course of treatment from the first accident, as well as full recovery from the injuries sustained in the first accident, physically impossible. In other words, as a direct result of the second accident, plaintiff lost all opportunity to heal and become pain-free after the first accident without being burdened by further complications or any additional conditions he sustained due to the second accident."

With the *Benefiel* rule in place, cases involving multiple vehicle accidents will likely become a battle of the experts, and maybe dictionaries, as to what in fact is "catastrophic", "permanent" and "residual impairment physically incapable of healing."

While the full impact of *Benefiel* remains to be seen, less than two months after the decision was issued, a different panel of the Court of Appeals unanimously decided the matter of *Al-Sayad v Farm Bureau General Insurance*

Company of Michigan, unpublished decision per curium of the Michigan Court of Appeals, Docket No. 275031 dated 2/12/08. *Al-Sayad* fails to apply the new *Benefiel* “rule” to a multiple vehicle accident case and fails to even acknowledge the decision. The *Al-Sayad* Court applied the pre-*Benefiel* rule which generally compared a plaintiff’s life following the second accident with their lives following the first accident.¹ Why this panel failed to follow or address *Benefiel* is a mystery.

In essence, whether or

not the new *Benefiel* rule becomes an oft cited phrase in legal briefs and referred to endlessly by its “first name only” is yet to be seen. Defendant Auto-Owners Insurance filed leave to appeal on February 6, 2008 and briefs for such leave, and in opposition, were filed before March 17, 2008. Bright line test or hiccup? We shall see. ■

¹ The following unpublished cases, in date order, were post-*Kreiner* and involved claims from multiple car accidents: *Moceri v Kondziolka*, unpublished opinion per curium of the

Michigan Court of Appeals, Docket No. 261237, dated 9/20/05; *Law v Novak*, unpublished opinion per curium of the *Michigan Court of Appeals*, Docket No. 254869, dated 10/13/05; *Webb v Reece*, unpublished opinion per curium of the *Michigan Court of Appeals*, Docket No. 262594, dated 10/20/05; *Lester v Castle*, unpublished opinion per curium of the *Michigan Court of Appeals*, Docket No. 267640, dated 6/15/06; *Rideout v Selvidge*, unpublished opinion per curium of the *Michigan Court of Appeals*, Docket No. 259937, dated 8/1/06; and *Benedict v State Farm*, unpub-

lished opinion per curium of the *Michigan Court of Appeals*, Docket No. 265595, dated 11/28/06.

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• This article has been republished due to an error in the August 2008 Issue. As hard as the MCBA tries to publish an error free magazine, mistakes can happen during the printing process. We apologize for any inconvenience.

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