

87 Bayard Street, New Brunswick, NJ 08901
Telephone: (732) 828-3433
Fax: (732) 828-5862
Website: www.mcbalaw.com
Email: admin@mcbalaw.com

2008-09 Term

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Hon. Gary R. Chiusano
115 Demarest Road
Suite 2B
Sparta, NJ 07871

Hon. Gary S. Schaer
1 Howe Avenue
Suite 302
Passaic, NJ 07055

Re: A.2692

Dear Assemblymen Chiusano and Schaer:

On behalf of the Middlesex County Bar Association, please accept this letter to express our opposition to Assembly Bill 2692.

The purpose of A2692 is to require a "permanent injury" under the lawsuit threshold as defined in N.J.S.A. 39:6A-8(a) to seriously impact the life of injured persons to satisfy the threshold. However, such legislation is unnecessary in light of the rulings made by the New Jersey Supreme Court in *DiProspero vs. Penn*, 183 N.J. 477 (2005) and *Serrano vs. Serrano*, 183 N.J. 508 (2005) which held that in order to recover injuries emanating out of Type 6 injuries, i.e. "permanent injury" the claimant need only prove the existence of a permanent injury within a reasonable degree of medical certainty.

The Supreme Court, in the *DiProspero* and *Serrano* decisions explicitly found that when N.S.J.A. 39:6A-8 was revised by the 1998 Automobile Insurance Cost Reduction Act (AICRA) the need to prove a "serious life impact to the person" had been eliminated by AICRA. This in fact, was and is true. Evidence of such can be found in the fact that AICRA's limitation on lawsuit threshold was significantly different from the verbal threshold of the 1988 law. Just as an example, AICRA reconfigured the verbal threshold's nine categories into six in the limitation on lawsuit threshold.

AICRA also recast other categories of injuries. Significant scarring was added to the significant disfigurement category. In addition, under the 1988 law, any fracture was sufficient to vault the threshold. AICRA limited this category to displaced fractures, a more serious type of fracture involving complete separation of broken bone. The final four categories of the old verbal threshold were deleted and replaced in AICRA with the permanent injury category which also required the filing of a certification, within 60 days of the filing of a complaint, from a licensed physician stating that the claimant had suffered an injury as contained in one of the six categories based upon "objective medical evidence" as demonstrated by accepted medical and diagnostic testing.

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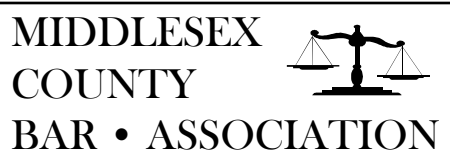
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It should be noted that the recasting of the categories of injuries was not accidental. The process by which such recasting took place was the result of a negotiation process between consumer advocates, the insurance industry, and the state's legislators. In fact, when we review that process, we can see the wisdom of replacing the "Serious Impact" Standard with the "Permanent Injury" Standard.

In order for an injured party to satisfy the "Permanent Injury" Standard, they must obtain the Certification of the existence of such injury from a qualified licensed physician attesting that in all medical probability, that person has sustained an injury which will impact that person for the rest of their life. Such an opinion, being offered by a professional with the necessary experience, training, and expertise would, by definition, be objective in nature. In contrast, the "Serious Impact" Standard, is a wholly subjective standard subject to the view of a non-professional. As between the two, clearly, the "Permanent Injury" Standard is more reliable.

The insurance industry knew full well how the definition of the permanent injury category was being changed. In fact, in exchange for the modification of such definition of a permanent injury, the insurance industry negotiated a recasting of the category pertaining to fractures so as to require fractures to be dislocated in order to satisfy the lawsuit threshold. They cannot now be heard to argue that, having achieved such concession pertaining to fracture type injuries, they should be allowed to hold a claimant to the same definition of permanent injuries contained in the 1988 law.

For these reasons, in addition to those cited in the litany of other expressions of opposition to this bill cited by others, the Middlesex County Bar Association opposes the proposed legislation.

Respectfully,

Mary P. Nelson

MARY P. NELSON
President

MPN/jpc

Cc: All Middlesex County Legislators
New Jersey State Bar Association
All New Jersey County Bar Associations
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