TORTS

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I. INTRODUCTION

The 2010-2011 *Survey* period was a pivotal time in Michigan tort jurisprudence. Some decisions from the Michigan Supreme Court were issued before the 2010 November elections. After the election, the balance of the court changed again. In automobile negligence and medical malpractice, sanity and legislative intent were restored in important cases. This *Survey* Article analyzes and comments upon certain tort decisions which have affected people from many walks of life. Duties to children, patients, customers, cheerleaders, swimmers, and pedestrians have been clarified.

II. AUTOMOBILE—SERIOUS IMPAIRMENT

The development of case law and changes in legislation regarding automobile negligence law could be the subject of an entire *Survey* article. One of the most important decisions in this area was issued by the

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Michigan Supreme Court in *McCormick v. Carrier*.[1] When the court decided *Kreiner v. Fischer* in 2004,[2] a very strict interpretation of serious impairment was announced. *McCormick* presented the opportunity to revisit *Kreiner* and correct several misinterpretations.

The No-Fault Insurance Act[3] provides benefits that include accident related health care, wage loss, and replacement services without regard to who may be to blame for an automobile accident. Typically, these benefits are paid by one's own no-fault insurer. The right to claim non-economic damages from an auto tortfeasor was preserved, but this entitlement only arises if a certain threshold is met. This threshold is met if one demonstrates that "she has suffered death, serious impairment of body function, or permanent serious disfigurement."[4]

In 2005, Mr. McCormick, the plaintiff, fractured his ankle when a truck knocked him down and then ran over his ankle.[5] The injury required surgical intervention with metal hardware implanted and a subsequent surgery to remove the metal hardware.[6] After a variety of medical treatments and insurance physical examinations, Mr. McCormick returned to the workplace nineteen months after the incident, where he was given a new job without any reduction in pay.[7] Mr. McCormick testified that prior to his injury, he worked sixty hours per week as a truck loader, played golf on the weekends, and fished during the spring and summer.[8] By the time he returned to work, his medical treatment was complete; he resumed fishing, golfed but once, and took care of all of his personal needs.[9]

On defendant's motion for summary disposition, the trial court dismissed the plaintiff's case, holding that he had not established a serious impairment.[10] The court of appeals affirmed.[11] Initially, leave to appeal was denied, but on the plaintiff's motion for reconsideration, the court agreed to hear the case.[12]

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1. 487 Mich. 180, 795 N.W.2d 517 (2010).
2. 471 Mich. 109, 683 N.W.2d 611 (2004).
3. MICH. COMP. LAWS ANN. §§ 500.3101-79 (West 2005).
4. MICH. COMP. LAWS ANN. § 500.3135(1).
5. *McCormick*, 487 Mich. at 185.
6. *Id.*
7. *Id.* at 185-87.
8. *Id.* at 187.
9. *Id.*
10. *Id.* at 188.
11. *McCormick*, 487 Mich. at 188 (citing McCormick v. Carrier, No. 275888, 2008 WL 786529 (Mich. Ct. App. Mar. 25, 2008)).
12. McCormick v. Carrier, 485 Mich. 851, 770 N.W.2d 357 (2009).

The Michigan Supreme Court noted that in the original statute, "serious impairment of a body function" was not defined.[13] Several courts at all levels grappled with this phrase and how to define it.[14] However, the legislature stepped in to define this phrase. Serious impairment of a body function is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."[15] The legislation put forth a requirement that this determination was a question of law for the court to decide.[16] An exception was written into the law in that the court cannot make this determination if there is a factual dispute regarding the nature and extent of injury and the dispute is relevant to deciding whether the threshold is met.[17]

The court noted that the statute did not reference injury but rather referenced impairment.[18] It did not matter whether an injury was objectively manifested but whether an impairment was objectively manifested.[19] The court instructed to focus not on the injuries themselves but "how the injuries affected a particular body function."[20]

Further, the court analyzed the phrase "affect the person's general ability to lead his or her normal life."[21] The court held that this means "to have an influence on some of the person's capacity to live in his or her normal manner of living."[22] Because the legislature inserted "his or her" with "normal life," it intended that a subjective analysis of the individual plaintiff's normal life be considered.[23] To do so, a court need not require that a life be destroyed, or that a certain percentage of the life be affected, or that it must last a certain period of time.[24]

In justifying its decision, the majority took great issue with the analysis used and the additional requirements imposed by the *Kreiner* Court.[25] In defining "general" ability, the *Kreiner* Court was charged with "selectively quot[ing] only the dictionary definitions of 'general' that best supported its conclusions," which did not "make the most

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13. *McCormick*, 487 Mich. at 190.
14. *See e.g.*, Cassidy v. McGovern, 415 Mich. 483, 330 N.W.2d (1982); DiFranco v. Pickard, 427 Mich. 32, 398 N.W.2d 896 (1986).
15. MICH. COMP. LAWS ANN. § 500.3135(7) (West 2005).
16. MICH. COMP. LAWS ANN. § 500.3135(2)(a).
17. *Id.*
18. *McCormick*, 487 Mich. at 197.
19. *Id.*
20. *Id.* (citing *Difranco*, 427 Mich. at 67).
21. *Id.* at 201.
22. *Id.* at 202.
23. *Id.*
24. *McCormick*, 487 Mich.. at 202-03.
25. *Id.* at 203-09.

sense" in the proper context.[26] The court further instructed that the focus should be on the person's *ability* to lead his or her life rather than how much the impairment affects one's life.[27] The *Kreiner* Court was further criticized for its interpretation of "to lead his or her normal life."[28] The *Kreiner* Court stated that this meant the plaintiff's entire life had to be considered and "if 'the course and trajectory of the plaintiff's normal life' was not affected then the threshold had not been met."[29] In making that ruling, the *McCormick* majority held that the *Kreiner* Court "significantly erred, . . .went astray and gave the statute a labored interpretation."[30]

In addition to *Kreiner*'s result-driven and labored analysis of the no-fault law, it "aggravated" the error and legislated a "nonexhaustive list of objective factors" to compare a plaintiff's pre-accident lifestyle to his or her post-accident lifestyle.[31] Taking into account these criticisms, the court felt compelled to overrule *Kreiner*. It explained that *Kreiner* "defies practical workability" as it "took unambiguous statutory text and, through linguistic gymnastics, contorted it into a confusing and ambiguous test."[32] The court applied the proper analysis to Mr. McCormick and held that he satisfied the threshold of serious impairment of a body function.[33] He had been unable to perform job functions for fourteen months and did not return to work for nineteen months.[34] This was a refreshing and well-analyzed opinion. The Michigan Supreme Court minority, which has frequently accused the opposition of judicial legislation, was exposed for creating tests and standards in *Kreiner* which were never intended by the legislature.

III. GOVERNMENTAL IMMUNITY

In *Sharp v. City of Benton Harbor*, the plaintiff fell when a curb crumbled when she stepped onto it.[35] The trial court rejected the defendant's motion for summary disposition.[36] The plaintiff relied on

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26. *Id.* at 204.
27. *Id.* at 204.
28. *Id.*
29. *Id.* at 205 (citing *Kreiner*, 471 Mich. at 131).
30. *McCormick*, 487 Mich. at 204-05.
31. *Id.* at 207-08.
32. *Id*.
33. *Id*. at 219.
34. *Id.* at 219.
35. Sharp v. City of Benton Harbor, 292 Mich. App. 351, 352, 806 N.W.2d 760 (2011).
36. *Id.*

Meek v. Department of Transportation.[37] The defendant relied on *Nawrocki v. Macomb County Road Commission*.[38] The court of appeals held that neither of these cases applied to the instant facts.[39] *Meek* and *Nawrocki* were inapplicable because those cases concerned the duties of state and county road commissions, which are different than the duties of municipalities.[40] State and county road commission duties do not extend to "sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel."[41] The court directed its attention to the first part of this statutory section and sought to determine whether the highway was maintained in reasonable repair so that it was "safe and convenient for public travel."[42] In holding that a curb comes within the definition of "public highway, road or street,"[43] the court reasoned that "curbs routinely serve as the frames for travel on public roads and in this sense are integral components of a road.[44] Consequently, the defendant (the city) was held responsible for maintaining the curb in reasonable repair.[45]

IV. ORDINARY NEGLIGENCE AND PREMISES LIABILITY

A. Parental Waivers of Liability

Trent Woodman had a birthday party at Bounce Party with inflatable slides and play structures.[46] His father, who hosted the party with his mother, signed a liability waiver on behalf of Trent.[47] Mr. Woodman agreed to assume the risk for his son and indemnify and hold defendant harmless from any liability, costs, or attorney fees.[48] The court held that the common law is clear on this point: parents and guardians are not permitted to bind minors contractually.[49] It held that Mr. Woodman had

37. 240 Mich. App. 105, 610 N.W.2d 250 (2000).
38. 463 Mich. 143, 615 N.W.2d 702 (2000).
39. *Sharp*, 292 Mich. App. at 353.
40. *Id.* at 353-54 (citing MICH. COMP. LAWS ANN. § 691.1402(1) (West 2012)).
41. MICH. COMP. LAWS ANN. § 691.1402(1) (West 2012).
42. *Sharp*, 292 Mich. App. at 354 (citing MICH. COMP. LAWS ANN. § 691.1402(1)).
43. MICH. COMP. LAWS ANN. § 691.1401(e).
44. *Sharp*, 292 Mich. App. at 356.
45. *Id.* at 358.
46. Woodman *ex rel.* Woodman v. Kera LLC, 486 Mich. 288, 233, 785 N.W.2d 1 (2010).
47. *Id.*
48. *Id.* at 233-34.
49. *Id.* at 239.

no more authority to bind his son to the liability waiver than to bind any other third party who had not consented to do so.[50]

The court considered whether the common law should be changed.[51] They analyzed policy objectives. On the one hand, enforcing parental waivers could save businesses legal costs and promote the availability of various children's activities.[52] On the other hand, it could also encourage business owners to become lax in property maintenance and safety measures.[53] It could also shift responsibility for medical care from the tortfeasor to taxpayers.[54] Rather than change the law as a judicial body, the court relegated that task to the legislature.[55]

Releases and waivers have become commonplace. They exist even without signatures on parking passes, sporting event tickets, and coat checks. Waivers give business owners license to act negligently without fear of recourse. This decision eliminates that security that exists where children are involved, as they are the ones most in need of protection and safe business operation.

B. Duty to Supervise Children

LaToya Wheeler brought her son, Domonique, and five other children to a motel for a birthday party and swimming.[56] Ms. Wheeler was trying to keep an eye on her infant son as well as Domonique and the other children.[57] At some point, for a brief period, Wheeler's attention was diverted away from Domonique.[58] Soon thereafter, he was found dead at the bottom of the pool.[59] At the pool there were signs which indicated that no lifeguard was present.[60] After the trial court granted summary disposition for the defendant motel, this appeal followed.[61]

The court stated that the open and obvious danger rule argued by the defendant was not applicable because this was a negligence case as

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50. *Id*. at 243.
51. *Id.* at 244.
52. *Woodman*, 486 Mich. at 243.
53. *Id.* at 249.
54. *Id.*
55. *Id.* at 257-58.
56. Wheeler v. Cent. Michigan Inns, Inc., 292 Mich. App. 300, 301, 807 N.W.2d 909 (2011).
57. *Id.* at 302.
58. Id.
59. *Id.*
60. *Id.* at 303.
61. *Id.* at 303-04.

opposed to a premises case.[62] Because this was not a premises case, the plaintiff could not rely on the heightened duty of care owed by landowners to minors.[63] More pertinently, the court noted that property owners are not normally required to supervise minor children of guests on their property.[64]

In a similar case, the court of appeals held that landowners have a duty to supervise minor guests only when they assume that duty voluntarily and the minor is not accompanied by a parent.[65] Relying on that case, the court held that defendant Central Michigan Inns had no duty to supervise the minor decedent, affirming summary disposition.[66]

C. Duty to Supervise Recreational Activities

Jessica Sherry was a junior varsity cheerleader with the East Suburban Football League.[67] She was severely injured while performing a "full extension cradle," a difficult and dangerous maneuver.[68] She sued the league, claiming that the coaching staff failed to position itself nearby during the stunt.[69] A coach was notified that the girls were "engaged in horseplay" while practicing this stunt, but she instructed the girls that they would have to run laps if they dropped the plaintiff.[70]

The defendant argued that the case was governed by the ruling in *Ritchie-Gamester v. City of Berkley*.[71] In that case, the court aligned itself with the majority of jurisdictions by adopting reckless misconduct as the standard to use in judging the conduct of co-participants in recreational pursuits.[72] The court in the instant case held that *Ritchie-Gamester* did not apply because co-participants were not involved in the dispute, rather it was between a participant and her coaches.[73] The court viewed the evidence in a light most favorable to the non-moving party and found

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62. *Wheeler*, 292 Mich. App. at 304 (citing Woodman v. Kera, LLC, 280 Mich. App. 125, 154, 760 N.W.2d 641 (2008)).

63. *Id.* (citing Bragan v. Symanzik, 263 Mich. App. 324, 335, 687 N.W.2d 881 (2004)).

64. *Id.* at 305.

65. *Id.* at 306 (citing Stopczynski v. Woodcox, 258 Mich. App. 226, 671 N.W.2d 119 (2003)).

66. *Id.* at 307.

67. Sherry v. E. Suburban Football League, 292 Mich. App. 23, 25, 807 N.W.2d 859 (2011).

68. *Id.*

69. *Id.* at 30.

70. *Id.*

71. 461 Mich. 73, 597 N.W.2d 517 (1999).

72. Id. at 89.

73. *Sherry*, 292 Mich. App. at 27-28.

that factual questions remained as to whether the coaching staff was negligent in their supervision of the activity.[74]

D. Open and Obvious Danger

In *Watts v. Michigan Multi-King, Inc.*, the plaintiff ate at the defendant's restaurant and, upon leaving her table, slipped and fell on her way to the trash bin.[75] She testified that she looked at the floor as she walked and did not notice anything unusual, nor did she suspect that there was a spill or water on the floor.[76] Employees of the defendant authored an incident report stating that the plaintiff slipped on a wet floor, but that warning signs had been posted.[77] The plaintiff disputed the placement of any warning signs.[78] The court was asked to rule on whether the trial court correctly dismissed the case based on the open and obvious danger rule.[79] This rule is defined as "whether 'it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection.'"[80] The court held that the defendant offered no evidence that the floor was visibly or obviously wet so that it was reasonably observable on casual inspection.[81] The court explained that the defendant wanted to expand the open and obvious danger rule to encompass even non-visible hazards.[82] Intelligently, the court further explained that the facts of this case are not consistent with the open and obvious danger doctrine, but more akin to the assumption of risk doctrine, which has been non-existent in Michigan since 1965.[83]

E. Notice of Non-Party Fault

Six-year-old Chad Vandonkelaar injured his finger on a metal pipe while at a daycare center.[84] The defendant's attorney met with Chad's doctor who had prescribed physical therapy for the finger.[85] Although the

74. *Id.* at 30.
75. Watts v. Mich. Multi-King, Inc., 291 Mich. App. 98, 99, 804 N.W.2d 569 (2010).
76. *Id.* at 100.
77. *Id.* at 101.
78. *Id.*
79. *Id.* at 101-02.
80. *Id.* at 102 (quoting O'Donnell v. Garasic, 259 Mich. App. 569, 575, 676 N.W.2d 213 (2003)).
81. *Watts*, 291 Mich. App. at 103.
82. *Id.*
83. *Id.* at 105.
84. Vandonkelaar v. Kid's Kourt, L.L.C., 290 Mich. App. 187, 191, 800 N.W.2d 760 (2010).
85. *Id.*

doctor had prescribed eight to twelve sessions, Chad's parents only took him to physical therapy twice.[86] The defendant argued for leave to file a notice of non-party fault identifying Chad's parents as having contributed to his condition by failing to obtain the necessary medical treatment.[87]

The court noted that tort reform statutes regarding comparative fault[88] have abolished joint and several liability.[89] Previously, tortfeasors could be held jointly and severally liable even if there was no common duty, so long as they produced an indivisible injury.[90] In this case, under previous law, the parents could only be held liable severally, not jointly, because the acts were separate.[91]

A comparative fault statute[92] allows the trier of fact to assess all persons' percentage of fault for damages, regardless of whether a person is a party or could have been a party. The court held that the parents' action (or inaction) did not play a role in causing the finger injuries.[93] Their conduct could arguably be a subsequent tort, but not one which was entitled to a percentage analysis in the case against the daycare center.[94] In order to assess the percentage of fault, the claimed negligence must be part of the causal chain in regard to the injuries.[95]

V. MEDICAL MALPRACTICE

A. Traditional Malpractice or Loss of Opportunity

Raymond O'Neal claimed that the physicians at St. John Hospital misdiagnosed acute chest syndrome as pneumonia and, in relying on the misdiagnosis, did not correctly treat the condition to prevent a stroke.[96] The plaintiff's experts maintained that it was imperative that O'Neal timely receive an aggressive blood transfusion or exchange transfusion, and because these were not given in a timely a manner, O'Neal suffered

86. *Id.*
87. *Id.*
88. MICH. COMP. LAWS ANN. §§ 600.2957-.6304 (West 2000).
89. *Vandonkelaar*, 290 Mich. App. at 196 (quoting Kaiser v. Allen, 480 Mich. 31, 37, 746 N.W.2d 92 (2008)).
90. *Id.* at 197 (citing Markley v. Oak Health Care Investors of Coldwater, Inc., 255 Mich. App. 245, 252, 660 N.W.2d 344 (2003)).
91. *Id.*
92. MICH. COMP. LAWS ANN. § 600.2957.
93. *Vandonkelaar*, 290 Mich. App. at 200.
94. *Id.* at 202.
95. *Id.*
96. O'Neal v. St. John Hosp. & Med. Ctr., 487 Mich. 485, 490, 791 N.W.2d 853 (2010).

a preventable stroke.[97] The plaintiff's hematology expert concluded that a patient with acute chest syndrome has a ten to twenty percent chance of having a stroke, but with a timely transfusion the risk is decreased to less than five to ten percent.[98]

Defendant successfully argued that "a reduction in the risk of stroke from 10 to 20 percent to less than 5 to 10 percent amounted to at best a 20 percentage point differential, which would be insufficient to meet the burden of proof of proximate causation," and the court of appeals relied upon *Fulton v. William Beaumont Hospital*[99] in dismissing plaintiff's case.[100] The court of appeals applied *Fulton* and held that because plaintiff could not prove a greater than fifty percent change in the risk of a stroke, the case could not proceed.[101] The court reasoned that this was a claim involving lost opportunity and that under MCL section 600.2912a(2), the plaintiff could not carry his burden of proof.[102]

The Michigan Supreme Court found that *Fulton* was inapplicable to the instant case.[103] It reasoned that a lost opportunity case exists when there are probabilities and possibilities that may arise.[104] In O'Neal's situation, he did have a stroke, so there was no reason to focus on what might occur because it had already occurred.[105] The only relevant inquiry for proximate cause was the traditional one: "whether the negligent conduct was a cause of Plaintiff's injury and whether Plaintiff's injury was a natural and probable result of the negligent conduct."[106] The plaintiff had to prove that it was more likely than not that the defendant's negligence caused the plaintiff's injury, because this was a traditional medical malpractice case.[107]

B. Comparative Negligence

Plaintiff Donald Beebe celebrated his thirty-third birthday drinking beer and riding his snowmobile, a combination which led him to fall and severely injure his right leg.[108] He alleged that Dr. Hartman at

97. *Id.*
98. *Id.* at 491.
99. 253 Mich. App. 70, 655 N.W.2d 569 (2002).
100. O'Neal, 487 Mich. at 491-92.
101. *Id.* at 492-93.
102. *Id.* at 492.
103. *Id.* at 503.
104. *Id.*
105. *Id.*
106. *O'Neal*, 487 Mich. at 503.
107. *Id.*
108. Beebe v. Hartman, 290 Mich. App. 512, 514, 807 N.W.2d 333 (2010).

Community Health Center failed to timely and appropriately diagnose compartment syndrome, resulting in disability and pain.[109] Defendants sought summary disposition because the plaintiff was fifty percent or more responsible for his snowmobile accident and was intoxicated at the time.[110]

MCL section 600.2955a gives an absolute defense to defendants if an injured plaintiff was intoxicated, and as a result was fifty percent or more the cause of the accident. However, the court determined that the injury which was relevant in the instant case was the medical malpractice, not the initial injuries from the snowmobile accident.[111] Defendants' failed medical treatment was the event upon which to focus; therefore, the plaintiff's comparative fault with intoxication and/or negligent snowmobile operation was inapplicable to the medical malpractice case.[112]

The court provided a well-reasoned analysis. It would be a poor policy choice to allow medical providers to commit unfettered malpractice upon intoxicated individuals without any consequence. Two distinct acts and injuries should be subject to separate consideration of fault.

C. Standard of Care for Multi-Specialty Health Care Providers

Daniel Jilek went to an urgent care facility complaining of congestion, chest tightness, and trouble breathing, all of which affected his ability to run.[113] He maintained that in such a situation, until cardiac problems were ruled out, the standard of care required Dr. Stockson not to prescribe Albuterol and to advise the patient to refrain from exercise.[114] The plaintiff died while exercising and while using the prescription Albuterol.[115]

The trial court instructed the jury that the standard of practice was that of a family practitioner practicing in an urgent care facility.[116] The court of appeals held that this was an improper instruction under *Woodard v. Custer*.[117] The *Woodard* court held that multiple and hybrid specialties do not form the standard, rather than the one most relevant

109. *Id.* at 515.
110. *Id.* at 518.
111. *Id.* at 522.
112. *Id.*
113. Jilek v. Stockson, 289 Mich. App. 291, 294, 796 N.W.2d 267 (2010).
114. *Id.* at 294.
115. *Id.*
116. *Id.* at 300-01.
117. *Id.* (citing Woodard v. Custer, 476 Mich. 545, 560, 719 N.W.2d 842 (2006)).

specialty being practiced at the time is the proper focus.[118] The standard of care is that for "the specialty engaged in by the defendant physician during the course of the alleged malpractice."[119] The court, in the present case, cited a similar case in which a board certified family practitioner was practicing in the emergency room and was held to the standard of care for an emergency physician.[120] The court was not persuaded that a family practice standard of care should be used because urgent care centers often serve as primary care institutions.[121] Finding that the inappropriate standard of care instruction confused the jury and was prejudicial to the parties, the court reversed the jury's no-cause verdict and remanded the case back for a new trial.[122]

Woodard and its progeny have made it easier for plaintiffs and their malpractice attorneys to determine the appropriate specialty and expert. An illogical extreme would be to try to match an expert with an internal medicine physician moonlighting in an urgent care facility, delivering a baby from a mother who had undiagnosed heart problems. According to *Woodard* and *Jilek*, a doctor practicing out of his primary specialty is held to the standard of care for the specialty being practiced, not the specialty of his schooling.

D. Ex Parte Meetings with Physicians

Andrea Holman, personal representative of the estate of Linda Clippert, brought a wrongful death medical malpractice action against Mark Rasak, D.O., and during that case signed medical authorizations for the defendant to obtain the decedent's medical records.[123] The defendant made a request, but the plaintiff refused to provide an authorization for the defendant's attorneys to meet privately with the decedent's doctors.[124] The plaintiff maintained that privacy rights were protected under the Health Insurance Portability and Accountability Act (HIPAA).[125] Defendant sought a qualified protective order (QPO) to permit ex parte interviews, but this was denied by the trial court.[126]

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118. *Woodard*, 476 Mich. at 560.
119. *Id.*
120. *Jilek*, 289 Mich. App. at 301 (citing Reeves v. Carson City Hosp., *on remand*, 274 Mich. App. 622, 630, 736 N.W.2d 284 (2007)).
121. *Id.* at 303.
122. *Id.* at 305.
123. Holman v. Rasak, 486 Mich. 429, 432, 785 N.W.2d 98 (2010).
124. *Id.*
125. 42 U.S.C. § 1320d (2006).
126. *Holman*, 486 Mich. at 432.

The court began its analysis with reference to an earlier decision on this subject which predated HIPAA.[127] That opinion held that defense counsel may seek ex parte meetings with a plaintiff's treating physicians.[128] Importantly, *Domako* does not *require* ex parte meetings; rather, it allows defendants to seek them out and the physicians cannot be forced to attend.[129] After dissecting HIPAA and what was considered to be "protected health information," the court concluded that seeking ex parte interviews with treating doctors is not contrary to HIPAA.[130] Doctors may disclose health information if they receive assurance that reasonable efforts have been made to secure a QPO which meets the requirements of 45 C.F.R. 164.512 (e)(1).[131]

The ruling does not give defendants and their attorneys unlimited access to treating doctors, nor does it dismiss the trial court's participation. Defendants may seek a meeting, but a doctor does not have to participate.[132] Defendants may request a QPO, but trial courts may impose conditions on it.[133]

VI. CONCLUSION

This *Survey* period saw customers, children, and patients obtain more protection from the courts. Hopefully reconstituting the courts at biennial elections will not eradicate the safeguards and protections which have become law.

127. Domako v. Rowe, 438 Mich. 347, 475 N.W.2d 30 (1991).
128. *Id.* at 361.
129. *Id.* at 361-62.
130. *Holman*, 486 Mich. at 446.
131. Id.
132. *Id.*
133. *Id.* at 448-49.