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"We truly enjoy our work...not only for the mental challenge it presents, but also because it provides us with the opportunity to serve and defend reputable clients. We receive great satisfaction from seeing the judicial system work as it was intended and assisting our clients through the process."

Michigan Supreme Court Narrows a Landlord's Statutory Duties Under MCL 554.139

Under MCL 554.139 "covenant of habitability," a landlord is obligated to keep its premises in reasonable repair and fit for its intended use. For the last several years, landlords were having difficulty getting these cases dismissed because the "open and obvious" defense was unavailable to this allegation. However, the Michigan Supreme Court recently held that MCL 554.139 does not apply to social guests of tenant. Under this new (and binding) law, plaintiffs who are not tenants have no cause of action against a landlord under MCL 554.139. *Mullen v Zerfas*, 480 Mich 989 (2007).

The Michigan Supreme Court also recently heard oral arguments on the highly debated issue of whether a landlord's duties under MCL 554.139 apply to the removal of snow and ice in common areas; a decision is pending. If the Court holds that MCL 554.139 does not apply to snow and ice removal, a plaintiff's ability to maintain a successful lawsuit against landlords in the state of Michigan will be significantly hindered. *Allison v AEW Capital Management*. Contact [Tara Cannatella](#) for details.

Serious Impairment Revisited

In early December of 2007, the Michigan Supreme Court heard oral argument in *Jones v Olson*, an auto accident case where the Court of Appeals held that a jury could decide whether plaintiff Jones had sustained a serious impairment of body function. Jones's injuries disabled him from work for about six months after the accident. He then made a good recovery. The Supreme Court will now decide how long an injured person must be affected by auto accident injuries to overcome the serious impairment threshold.

Jones was a construction worker whose injuries initially prevented him from working and engaging in activities such as hunting, softball, yard work, getting dressed, feeding himself and caring for his child. Physical therapy improved his condition to the extent that a doctor said he was able to return to part-time work about five and one-half months after the accident and full time two to four weeks later. Because his job was seasonal, his work return was delayed slightly but, when he did return, he was working full time under no restrictions, missed no additional time from work and resumed all his normal activities.

In *Kreiner*, which established that an injury must affect one's general ability to lead a normal life to be a serious impairment, the Michigan Supreme Court also stated that the duration of an impairment does not necessarily preclude finding a serious impairment and that the serious impairment does not have to be permanent. Is six months long enough? Jones hopes so. Contact [Philip Reed](#) for details.

"Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those others that have been tried from time to time.

- Winston Churchill

Insurance Policy Provisions That Select Medical Examiner Upheld

A recent Michigan Supreme Court decision held that insurance companies involved in no-fault benefit claims have the right to include insurance policy provisions which allow them to select the examiner for physical or mental examinations. Furthermore, conditions can only be placed on the examination if the claimant can provide demonstrable evidence that the examination will cause annoyance, embarrassment, or oppression because, "Physicians are presumed to be bound by the methodologies of their profession and by principles of professional integrity."

In the case, the plaintiff argued that the examining physician had, during a previous examination, inappropriately asked about issues protected by attorney-client privilege. However, the Plaintiff insisted on a protective order which included many conditions unrelated to those questions. The Court ruled that certain conditions could be imposed, but they had to be limited to address the improper questioning. Contact [Philip Reed](#) for details.

Successful Cross-Exam of "Eye Witnesses" Leads to "Not Responsible" Verdict

In the summer of 2007, attorney Tara S. Cannatella achieved a "not responsible" verdict in a careless driving citation trial filed against a commercial truck driver. The City alleged that the truck driver carelessly forced a passenger vehicle off the freeway, which then flipped several times. Through pre-trial investigation and successful cross-examination of several eyewitnesses at trial, Ms. Cannatella revealed that none of the eyewitnesses could confidently identify the Defendant's tractor trailer as the one involved in the accident. Based on this, the Court agreed with Ms. Cannatella that the Prosecution had failed to meet its burden of proof and rendered a "not responsible" verdict in favor of the Defendant. Contact [Tara Cannatella](#) for details.

Criminal Misdemeanor Citations Pled Down to "No Point" Civil Infractions

Attorney Tara S. Cannatella recently found success in pleading down two citations all the way from criminal misdemeanors to the lowest civil infraction. Two commercial truck drivers received criminal misdemeanor citations for allegedly bypassing an open weigh scale. After discussing the incident with the responding motor carrier officer and the County Prosecutor, Ms. Cannatella convinced the Prosecutor to drop the criminal charges and accept a plea to impeding traffic – the lowest moving violation possible, with no points assigned to the drivers' records. Contact [Tara Cannatella](#) for details.