

Tab 4



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Updating MUJI

3 messages

Alyson McAllister <alyson@sykesmcallisterlaw.com>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Thu, May 16, 2019 at 10:19 AM

I found one of the instructions I was thinking of:

CV632 Threshold.

[Name of defendant] claims that [name of plaintiff] has not met the threshold injury requirements and therefore cannot recover non-economic damages.

A person may recover non-economic damages resulting from an automobile accident only if [he] has:

[(1) permanent disability or permanent impairment based on objective findings.] or

[(2) permanent disfigurement.] or

[(3) reasonable and necessary medical expenses in excess of \$3,000.]

References

Utah Code Section 31A-22-309(1)(a).

Committee Notes

Neither the statute nor case law has provided clear boundaries on the definitions of disability and impairment. It is also undecided whether the plaintiff or the defendant who asserts the defense carries the burden of proof or burden of moving forward.

I had saved this note when the court of appeals ruled in the Pinney case on the definitions on disability and impairment. However, it is my understanding that the defense in that case has appealed and the Utah Supreme Court is going to hear the case, so this may be premature. I think there is also a case on appeal right now (Geneva Rock?) that defines permanent disfigurement. I don't think the instruction needs to be changed, but I think depending on what the court does the committee note should be changed.

Sent from my iPad

Nancy Sylvester <nancyjs@utcourts.gov>
To: Alyson McAllister <alyson@sykesmcallisterlaw.com>

Thu, May 16, 2019 at 12:09 PM

Thanks for passing this along, Alyson. It sounds like we may just need to keep an eye out for both *Pinney* and *Geneva Rock* in the Supreme Court cases. I created a Westlaw alert using the code section. If that gives us too many unhelpful things, I'll turn it off.

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To: Nancy Sylvester <nancyjs@utcourts.gov>

Thu, May 16, 2019 at 1:30 PM

Thanks!

Alyson Carter McAllister

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[Quoted text hidden]

Date of Printing: August 12, 2019 09:02:18 AM CDT
Last Run: August 05, 2019 09:03:38 AM CDT

KEYCITE ALERT

[§ 31A-22-309. Limitations, exclusions, and conditions to personal injury protection](#), UT ST § 31A-22-309

Results Narrowed by:

History References

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Citing References

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History

No references satisfied your KeyCite Alert History request.

Citing References

Citing References (1)

Title	Date	NOD Topics	Type
<p>1. 59 Am. Jur. Trials 347, Litigating the No-Fault Serious-Injury Threshold Am. Jur. Trials</p> <p>"No-fault" automobile insurance systems are statutory schemes to provide automobile accident victims with compensation for certain expenses arising out of personal injuries...</p> <p>... her life, that the herniated disc would not go away on its own, and that motorist would not be able to regain all bodily function. Utah Code Ann. § 31A-22-309(1)(a)(iii))Pinney v. Carrera, 2019 UT App 12, 438 P.3d 902 (Utah Ct. App. 2019) [Top ...</p>	2019	—	Other Secondary Source

Motorist who suffered a herniated disc in her back following car accident met the tort threshold injury requirement of permanent impairment under no-fault statute, and, thus, could seek general damages for her personal injuries in action brought against other driver who allegedly failed to stop at a stop sign and struck injured motorist's car; treating chiropractor testified that based on the examinations, treatment, and MRI, that injured motorist had suffered a permanent impairment, and chiropractor further testified that motorist would be plagued by the injury for the rest of her life, that the herniated disc would not go away on its own, and that motorist would not be able to regain all bodily function. Utah Code Ann. § 31A-22-309(1)(a)(iii). *Pinney v. Carrera*, 2019 UT App 12, 438 P.3d 902 (Utah Ct. App. 2019).

59 Am. Jur. Trials 347 (Originally published in 1996)

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