

## **The State of "Verbal Threshold": Recent Changes to New Jersey Auto Law** by [Lisa A. Cauley](#), Esquire

Since 1988, New Jersey drivers have had the option of agreeing to restrict their right to sue for injuries sustained in automobile accidents in exchange for payment of lower insurance premiums. This restriction, known as "verbal threshold", limits recovery for non-economic damages, the most common example of which is "pain and suffering", unless the person sustained at least one of the delineated types of injury: 1) Death; 2) dismemberment; 3) significant disfigurement; 4) Loss of a fetus; 5) Fracture; 6) Permanent loss of use of a body organ, member, function or system; 7) Significant limitation of use of a body function or system, or 8) Medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment. See N.J.S.A. 39:6A-8(a).

Since 1992, following the Supreme Court's decision in *Oswin v. Shaw* 129 N.J. 290 (1992), in addition to proving that their injuries fell within one of the categories set forth above, a plaintiff subject to the "verbal threshold" also had to demonstrate that the injury had a "serious impact" on the plaintiff's life. Proving "serious life impact" required an analysis and examination of the details of everyday life and how the plaintiff's injuries affected the plaintiff's ability to work, engage in recreation, and engage in household tasks.

In 1998, the law encompassing "verbal threshold" requirements was amended by the Automobile Insurance Cost Reduction Act (AICRA), which further restricted the allowable categories of injury to: 1) Death; 2) dismemberment; 3) significant disfigurement or significant scarring; 4) displaced fractures; 5) loss of a fetus; or 6) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement. Additionally, courts still required a plaintiff to prove that the injury seriously impacted his/her life. *James v. Torres*, 354 N.J. Super. 586 (App. Div. 2002).

This summer, however, in a decision dated June 14, 2005, the New Jersey Supreme Court eliminated the "serious life impact" requirement in *DiProspero v. Penn*, 183 N.J. 477 (2005) and a companion case, *Serrano v. Serrano*, 183 N.J. 508 (2005). The Supreme Court concluded that the 1999 New Jersey Auto Cost Reduction Act does not contain or imply a "serious life impact" requirement for those seeking to sue for non-economic damages. The *DiProspero* Court noted that while courts continued to apply the "serious life impact" standard after the AICRA was passed, a review of the history and language of the AICRA revealed that lawmakers did not intend to carry forward the "serious life impact" test, and that new legislation would be required to enact such a standard.

While striking the life-impact criteria creates an opening for some cases otherwise restricted by verbal threshold, a plaintiff's case must still fall within the six criteria set forth in the AICRA, which are more stringent than those previously in place. New Jersey courts are currently addressing the application of the *DiProspero* ruling to pending cases, while lawmakers discuss and propose bills amending the AICRA to definitively require proof of a "serious life impact."