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## Plaintiffs, Defense Lawyers Joust Over Verbal Threshold Standard

Both sides urge Supreme Court to enunciate a uniform, bright-line rule

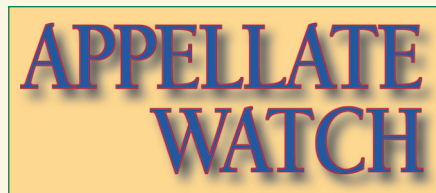
By Michael Booth

The state Supreme Court last Monday heard arguments in two cases that may help clear up the confusion over what proofs plaintiffs must shoulder to meet the verbal threshold of the Automobile Insurance Cost Reduction Act.

Plaintiffs' and defense attorneys in the two cases — *DiProspero v. Penn*, A-66-03, and *Serrano v. Serrano*, A-99-03 — agreed that the Court has to clear up the confusion over two phrases: "serious impact" and "permanent." Each has been advanced as the applicable standard for deciding whether an injured motor vehicle occupant can sue for pain and suffering.

Trial and appeals courts have come up with varying answers, and lawyers are complaining that there is no statewide standard being applied and that there needs to be one. The

plaintiffs' bar argues that the injuries need only be shown to be permanent. The defense argues the injuries must



have a serious impact on the plaintiff's ability to continue life as before the accident.

Franklin Solomon, the lawyer for plaintiff Christina DiProspero, said the question for the Court is whether the Legislature, under AICRA, intended for people who may be in pain for life to be left without a remedy just because they chose the verbal threshold.

Justice Barry Albin asked what the best option would be for plaintiffs.

"A whole new category," said

Solomon, of Cherry Hill's Weitz & Luxenberg. "Permanency with a certification from a physician."

"So permanent is serious?" Albin asked. Solomon replied, "Yes."

Defense lawyer Susan Stryker said to allow "permanent" to equate with "serious impact" would be to erode AICRA and *Oswin v. Shaw*, 129 N.J. 290 (1992), the seminal case on the pre-AICRA verbal threshold.

Permanency, she said, does not equate with serious impact. "Clearly, [when the Legislature approved AICRA] everyone assumed *Oswin* would survive," said Stryker, a partner at Trenton's Sterns & Weinroth. "Nothing was intended to repeal *Oswin*." If the Legislature had so intended, it would have done so expressly, she added.

Chief Justice Deborah Poritz and Justice James Zazzali wondered openly whether *Oswin* and AICRA should be modified to benefit those who cannot afford the high premiums associated with an uninhibited right to sue.

"It seems as though you are looking at *Oswin* as a cost-benefit analysis," said Poritz.

Zazzali added, "It seems the threshold is for a person who really can't afford that analysis." ■