

STATE OF MICHIGAN  
IN THE SUPREME COURT

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DOUGLAS D. JONES,

Plaintiff-Appellee,

-vs-

Sct No.: 132385

COA No.: 268929

LC No.: 05-18785-NI

KATHLEEN P. OLSON and  
TODD R. OLSON,

Defendants-Appellants.

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PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF

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FILED

JUL 20 2007

CORBIN R. DAVIS  
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MICHIGAN SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

- I. WHETHER THE MICHIGAN COURT OF APPEALS WAS CORRECT IN THEIR RULING THAT PLAINTIFF-APPELLEE SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION IN LIGHT OF *KREINER v FISCHER*?

Plaintiff-Appellee answers: Yes.  
Defendants-Appellants answer: No.  
The Court of Appeals would answer: Yes.

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## STATEMENT OF FACTS

This third-party automobile negligence case arises from a motor vehicle accident that occurred on August 1, 2003. On that date, Plaintiff, Douglas Jones, was traveling westbound on M-115 in Wexford County. As Plaintiff reached the intersection of State Road 35, Defendant<sup>1</sup>, Kathleen Olson, pulled out from State Road 35 directly into the path of Plaintiff's vehicle. The impact between the vehicles was significant, and Defendant's vehicle was rendered inoperable. Defendant's testimony, among other things, shows that her actions were plainly negligent. The facts surrounding this case show that Defendant's negligence caused significant injuries to Plaintiff. Most notably, **Plaintiff sustained a fractured cervical vertebra.** Follow-up diagnostic testing revealed two bulging discs. Plaintiff submits that Defendant's negligent actions amount to the proximate cause of his injuries and that his injuries surmount the serious impairment of body function threshold.

Before trial, Defendants filed a Motion for Summary Disposition on the issue of serious impairment of body function as set out in MCL 500.3135, and as defined by Michigan's Supreme Court in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). Following a hearing before the trial court, Defendant's Motion

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<sup>1</sup> Defendant, Kathleen Olson's negligence arises out of her operation of a motor vehicle. Defendant, Todd Olson's negligence arises out of his ownership of that motor vehicle. MCL 257.401.

for Summary Disposition was granted. The trial judge concluded that Plaintiff's fractured cervical spine did not affect his ability to lead his normal life and that he was off work for over six (6) months. The trial court denied Plaintiff's motion for Summary Disposition with regard to the issue of serious impairment.

On September 21, 2006, the Court of Appeals reversed the trial court's ruling. The Court of Appeals held that Plaintiff did suffer a serious impairment of body function as a matter of law. More specifically, the Court of Appeals held:

"We find that the facts of this case present more than a 'minor interruption' in plaintiff's life. Plaintiff's general ability to lead his normal life was put entirely on hold for the first two months after the accident, and returned only gradually over the following four months. Plaintiff's lifestyle before the injury was dramatically different from his lifestyle for the six months after the accident. Following the *Kreiner* Court's dictate that an injury need not be permanent to constitute a serious impairment, we hold that where, as here, an injury entirely disrupts a person's ability to lead his normal life, the fact that the person eventually recovers does not preclude recovery for that injury. To hold otherwise would disregard the Court's direction to consider such factors as the duration of the disability, comparative lifestyle before and after the injury, length of treatment, and other factors that suggest permanence is not dispositive. The totality of the circumstances of this case support plaintiff's contention that he should recover damages for the time period when his ability to lead his normal life was entirely disrupted." *Jones v Olson*, unpublished opinion per curiam of the Court of Appeals, decided September 21, 2006 (Docket No. 268929).

This Honorable Court, on June 8, 2007 issued an order indicating that the application for leave to appeal the September 21, 2006 judgment of the Court of Appeals will be considered. This Honorable Court directed the parties to specifically address whether the Court of Appeals erred in reversing the trial court's grant of Defendants' motion for Summary Disposition, in light of *Kreiner v Fischer*, 471 Mich 109 (2004).

**LAW AND ARGUMENT**

**I. THE MICHIGAN COURT OF APPEALS WAS CORRECT IN HOLDING THAT PLAINTIFF-APPELLEE SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION, AND THIS RULING SHOULD BE UPHELD.**

This Honorable Court in *Kreiner v Fischer* 471 Mich 109, 683 NW2d 611, interpreted MCL 500.3135(1). MCL 500.3135(1) provides:

"A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement."

"Serious impairment of 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." MCL 500.3135(7).

There is no question in this case that Plaintiff-Appellee suffered an objectively manifested impairment of an important body function. The issue in this case is whether the impairment

affected Plaintiff-Appellee's general ability to lead his normal life.

This Honorable Court in *Kreiner* held that the starting point in analyzing whether an impairment affects a person's general ability to lead his normal life should be identifying how his life has been affected, by how much, and for how long. *Id.* at 131. This Honorable Court went on to state that in determining whether the course of Plaintiff-Appellee's normal life has been affected, a court should engage in a multifaceted inquiry, comparing Plaintiff-Appellee's life before and after the accident as well as the significance of any affected aspects on the course of the Plaintiff-Appellee's overall life. *Id.* at 132. This Honorable Court went on to state that the court must then engage in an objective analysis regarding whether any difference between Plaintiff-Appellee's pre and post-accident lifestyle has actually affected Plaintiff-Appellee's "general ability" to conduct the course of his life. *Id.* at 133. Finally, this Honorable Court gave a non-exhaustive list of objective factors that may be of assistance in evaluating whether the Plaintiff-Appellee's "general ability" to conduct the course of his normal life has been affected. *Id.* at 133. These factors are as follows:

- (a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any

residual impairment, and (e) the prognosis for eventual recovery.

Turning to the case at hand, Plaintiff-Appellee's general ability to lead his normal life has been affected. First, Plaintiff-Appellee, because of his injuries, was forced to miss a significant amount of work. This accident occurred on August 1, 2003 and Plaintiff-Appellee was not able to return to work until March of 2004. Thus Plaintiff-Appellee was forced to miss over 6 months of work because of injuries from this accident.

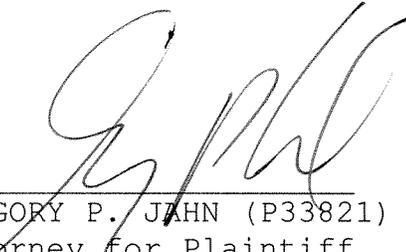
Not only did Plaintiff-Appellee miss a significant amount of work because of his injuries from this accident, his recreational activities were also severely limited. Plaintiff-Appellee enjoyed hunting and riding his snowmobile. Unfortunately because of this accident, Plaintiff-Appellee was unable to enjoy these activities for at least six months. Plaintiff-Appellee also enjoyed playing softball before the accident but due his injuries, Plaintiff-Appellee was unable to play softball for at least six months. Plaintiff-Appellee also enjoyed working on cars before this accident. Due to his injuries, Plaintiff was not able to work on his cars for at least six months.

Plaintiff-Appellee also had other parts of his life that were severely affected because of this accident. Plaintiff-Appellee could not even drive for three months after this

accident. Furthermore, Plaintiff-Appellee was unable to be intimate with his girlfriend until at least two months after the accident. Plaintiff-Appellee was also forced to wear a cervical collar for at least a couple of months.

Given the fact that Plaintiff-Appellee missed 6 months of work, he could not drive for three months, he could not be intimate with his girlfriend for at least two months and he was unable to partake in recreational activities, it seems that Plaintiff-Appellee's general ability to lead his normal life has been affected.

Dated: July 18, 2007

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