COA Opinion: Plaintiff is not barred from seeking work-loss benefits where he was paid "under the table" and his employer cannot produce any employment records

17. March 2010

On Tuesday, March 16, 2010, the Michigan Court of Appeals published its opinion in *Ward v. Titan Insurance Company*, No. 284994. In *Ward*, the Court considered whether the Kent County Circuit Court erred in ruling that plaintiff was not entitled to work-loss benefits where he was paid "under the table" and his employer could not produce documentation evidencing his employment. The Court also decided whether the trial court erred in awarding plaintiff housing costs based on the full amount he paid for rent. In a 2-to-1 opinion, the Court reversed the trial court concluding that factual questions existed with respect to plaintiff's wage-loss claim and therefore summary disposition was inappropriate, and that the court erred in awarding plaintiff housing costs to the extent the costs were not greater as a result of the car accident. A copy of the Court's order can be found here.

Plaintiff was the victim of a motor-vehicle accident. As such, he was entitled to receive certain personal-protection insurance (PIP) benefits from his insurer, Titan Insurance Company. These PIP benefits entitled plaintiff to receive work-loss benefits for any loss of income he suffered during the first three years after the date of the accident. Under the No-Fault Act, claimants have the burden of proving the amount they would have earned had they not been injured in the accident. In this case, plaintiff claimed to work as a bouncer at a nightclub. This was corroborated by two of his fellow employees. However, the owner of the club testified that plaintiff was an independent contractor, not a direct employee, and that, if not for the accident, he would have been fired for drug use. Plaintiff later admitted that he was paid "under the table" and was not a direct employee of the club.

While the defendant, and the dissent, asserted that the employer's failure to produce documentation of plaintiff's employment was dispositive, the majority held that MCL § 500.3158(1) does not state that an injured person loses the right to claim work loss simply based on the employer's failure to produce the required documentation. Moreover, while the record suggests plaintiff failed to pay income taxes on his income from the club, his claim was not barred under the wrongful-conduct rule. The rule only bars an injured person's claim on his own illegal conduct. Here, the Court ruled that plaintiff's claim is not based upon his failure to properly file income-tax returns; instead, it is solely based on his loss of income as a result of the auto accident. Overall, the Court ruled that factual questions existed with respect to plaintiff's wage-loss claim, and therefore the trial court's grant of summary disposition on that claim was improper.

The Court also considered whether the trial court erred in awarding plaintiff the full amount of his housing costs. The Court noted that the issue was governed by *Griffith v. State Farm Mutual Auto Co.*, 472 Mich. 521, 697 N.W.2d 895 (2005). In *Griffith*, the Court held that a claimant was only entitled to compensation for any increase in his food expenses which was related to his injuries in the auto accident. The *Ward* court held that the same standard applied in the instant case. Plaintiff was only entitled to compensation for any increase in his housing costs directly related to the injuries he sustained in the accident.

This case was remanded to the Kent County Circuit Court for further proceedings consistent with the Court's ruling. The dissenting opinion is here.