

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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No Written Documentation, No Tax Returns, No Problem

By Michael K. Faust, II

Plaintiff Timothy Ward sought work loss benefits and housing expenses from Defendant Titan Insurance Company as a result of injuries he sustained in a motor vehicle accident. There was conflicting evidence regarding how often Plaintiff worked, how much he earned, and what the prospect was for continuing his employment as a bouncer at Club Tequila, unrelated to his alleged injuries.

Ward testified that he was paid “under the table.” He advised that he did not file income tax returns and failed to provide Titan with any wage documentation to establish his earnings at the time of the accident. The only corroboration of Plaintiff’s employment was the testimony of two fellow employees and the person who hired him. The Court of Appeals found that a question of fact existed as to Plaintiff’s work loss and that the trial court had erred in denying Plaintiff’s claim.

In *Ward v Titan Ins Co*, ___ Mich App ___ (2010), the Court of Appeals held that “MCL 500.3158(1) does require an employer to furnish a sworn statement regarding the earnings of an injured person but nowhere does it state that, if such information is not provided, an injured person completely loses the right to work loss benefits[...]. The Court reasoned that section 3158(1) is not the only way in which a wage loss claim may be established and that wage loss was not dependent upon compliance with section 3158(1).

Furthermore, the failure to file a tax return is not a basis to preclude Plaintiff’s claim under the wrongful conduct rule. The rule only precludes a claim where a Plaintiff’s cause of action is based on “his own illegal conduct.” Citing *Orzell v Scott Drug Co*, 449 Mich 550, 559 (1995).

Plaintiff’s failure to provide evidence that his housing expenses differed as a result of the accident precluded his recovery of housing costs. The Court favorably cited *Griffith v State Farm Mut Auto Ins*, 472 Mich 521,

SECRET WARDLE NOTES:

It may be difficult to obtain summary disposition on a wage loss claim even if written wage documentation is not provided. This decision, in effect, allows for collusion and potential fraud between claimant and his employer. A claimant has the burden of proof regarding potential earnings post accident. Failure to file income tax returns does not eliminate the right to work loss. Hopefully, it would be of importance to a jury in deciding the issue.

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535-540 (2005) stating that “housing costs are only compensable to the extent that those costs became greater as a result of the accident.” Entitlement to housing expenses is based upon a showing that they are “different from those of an uninjured person.”

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