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Appellate Court Clarifies Work Loss Under Michigan No-Fault Act

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The Michigan Court of Appeals recently held that the amount of personal protection insurance (PIP) work-loss benefits under the Michigan No-Fault Act is reduced to zero where, following a motor vehicle accident, a claimant earns an income that exceeds the applicable monthly maximum. (MCL 500.3107 (1)(b))

In *Agnone v Home-Owners Insurance*, ___ Mich App ___; ___ NW2d ___ (2015), the plaintiff was involved in a motor vehicle accident in 2009. At that time, the plaintiff owned and operated an insurance agency. Prior to the 2009 accident, he averaged more than $196,000 per year in gross income. Following the accident, his income actually increased to more than $222,000 in 2010, but he explained that the increase was due to work performed prior to the 2009 accident. Despite continuing to work following the 2009 accident, the plaintiff testified that because of the accident, he was unable to generate as many sales and suffered a wage loss with his gross income having dropped to approximately $140,000 in 2011 and $135,000 in 2012.

The plaintiff asserted that Home-Owners should pay him work-loss benefits equal to the difference between his average annual income in the preceding years and his actual annual income in the years following the accident. He claimed approximately $48,000 in lost income for 2011 and approximately $52,000 for 2012.

Home-Owners moved for partial summary disposition on this issue, having presented evidence that the plaintiff made substantially more than the $4,878 per month limit provided under MCL 500.3107(1)(b). The statutory monthly maximum is changed on Oct. 1 of each year. At the time of the December 2009 motor vehicle accident, the statutory monthly maximum was $4,878.

In response, the plaintiff argued that because his work loss for each of the relevant 30-day periods was less than the applicable maximum of $4,878, Home-Owners was responsible for all of his lost income. The trial court agreed with the plaintiff, and Home-Owners appealed.

On appeal, the Michigan Court of Appeals examined the language of MCL 500.3107(1)(b), finding that the Michigan Legislature unambiguously intended that where "the income that the injured person actually earns for work performed during the relevant period exceeds the statutory maximum, as [was] the situation in this case, the work-loss benefit is reduced to zero because the 'benefits payable for work loss ... and the income earned ... for work during the same period together' cannot exceed the [monthly] maximum."

Because the plaintiff continued to earn more than the monthly maximum, he was not entitled to any PIP work-loss benefits, despite having suffered actual loss of income. As a footnote to this case, although not specifically addressed in the appellate court's opinion, the plaintiff may be able to sue the at-fault driver under MCL 500.3135(3)(c) for " work loss … as defined in section[] 3107 … in excess of the … monthly, and 3-year limitations" contained in that section.

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