



No-Fault Work Loss Benefits Are Not Barred by Lack of Sworn Earnings Statement or Failure to File Income Tax Return

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In a published opinion issued March 16, 2010, the Michigan Court of Appeals held that an injured person cannot be denied work loss benefits based on an employer's failure to provide a sworn statement of the injured person's earnings, nor does the injured person's failure to file tax returns preclude work loss benefits. *Ward v Titan Ins Co*, Docket No. 284994 (Mar. 16, 2010).

Plaintiff, who was seeking work loss benefits from the defendant insurer, claimed that he was employed as a bouncer, but he failed to produce documentation of his employment. Specifically, he did not provide a sworn earnings statement, which an employer is required to furnish under MCL 500.3158. He also admitted that his wages were paid "under the table" and that he did not properly file income tax returns.

The Court of Appeals held that the employer's failure to provide a sworn earnings statement did not preclude plaintiff from recovering work loss benefits because the statute imposes an obligation on the employer, not the injured person. The court further held that plaintiff's failure to file tax returns did not bar recovery under the wrongful conduct rule because plaintiff's claim was not based on his tax returns; his failure to file tax returns was only incidentally related to his claim for benefits.

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The court concluded that fact issues existed as to whether plaintiff was employed as he claimed, and thus it reversed the trial court's decision granting summary disposition to defendant. The court also noted that plaintiff's housing costs were "compensable only to the extent that those costs became greater as a result of the accident."

Ward clarifies, and arguably relaxes, the evidentiary burden that a claimant must meet when seeking work loss benefits. It is not known whether defendant will seek leave to appeal.

