STATE OF MICHIGAN

68TH DISTRICT COURT (GENESEE COUNTY)

JULIUS CARRINGTON,

Plaintiff,

-vs-

AUTO CLUB INSURANCE ASSOCIATION,

Defendant.

CASE NO: 6B-3600

JUDGE: SIEGEL

OPINION

At a session of said Court, held in the City of Flint, County of Genesee, State of Michigan, on this 16th day of October, A.D., 1987.

PRESENT: THE HONORABLE KENNETH M. SIEGEL, DISTRICT JUDGE

Plaintiff missed thirteen days of work due to an automobile accident. The monthly maximum for work loss benefits prescribed under the No Fault Act for the time period covering the accident is $2,434.00 for a thirty day period. The amount earned by the Plaintiff during the balance of the thirty day period (including a set-off amount provided by Plaintiff's sickness and accident benefits) exceeds this maximum. On the basis of this, Defendant insurance company argues that there is no compensable wage loss under the No Fault Act. Plaintiff disagrees, arguing that the thirty day period must be prorated to a daily amount to provide for the thirteen days.

MCLA 500.3107; MSA 24.13107 reads, in pretinent part, as follows:

> "Personal protection insurance benefits payable for the following:
>
> (b) Work loss consisting of loss income from work an injured person would have performed ... The benefits payable for work loss sustained in a single day period and the income earned by an injured person for work during the same period together shall not exceed $2,434.00, which maximum shall apply pro rata to any lesser period of time.

The issue is the interpretation of the last sentence just quoted. While there are no appellate cases on the issue, the Court believes that Plaintiff's interpretation is correct. If it were not the correct interpretation, there would be no need for the words "which maximum shall apply pro rata to any lesser period of work loss". These words appear to be designed specifically for situations like that in the instant case, i.e., where the insured has a work loss period less that thirty days and his income for the remaining days (the days he worked) in a thirty day period exceeds the statutory maximum. This language is not needed to cover the situation where the insured's income for that part of the thirty day period where he does work is less than the maximum. Such an insured is already covered without this phrase. That situation would be covered by the following language:

> "Work loss consisting of loss of income from work an injured person would have performed ... The benefits payable for work loss sustained in a single day period and the income earned by an injured person for the work during the same period together shall not exceed $2,434.00 ..."

Attaching the phrase "which maximum shall apply pro rata to any lesser period of time" in such a situation ads nothing; it would be unnecessary and superflous in such a situation. It is fair to assume that words and phrases are put in a statute for a purpose. If the phrase in question is not to be interpreted as Plaintiff argues, the phrase would have no purpose. The Court cannot imagine any hypothetical situation other than those falling in this category, i.e., situations where the insured has a work loss period less than thirty days and his income for the remaining days in the thirty day period exceeds the maximum, where the result would be different if the phrase in question did not appear in the statute. The Court concludes that this phrase was written into the statute to cover just this type of situation.

The sentence starting with the word "the benefits payable" and ending with the words "lesser period of work loss" should be looked at as having two sections:

> (1) The benefits payable for work loss sustained in a single thirty day period and the income earned by an injured person for work loss during the same period shall not exceed $2,434.00
>
> (2) which maximum shall apply pro rata to any lesser period of work loss.

Part (1) prescribes the distribution of work loss benefits for any thirty day period and part (2) prescribes the benefit entitlement for any period shorter than thirty days. Isolating part (2) then,

the statute should be read as saying that the $2,434.00 limitation shall "apply pro rata" to any period of time less than thirty days. Thus, in the instant case, the $2,434.00 maximum applies pro rata to the thirteen day period.

The Court's analysis here is consistent with what appears to be a principle underpinning the work loss income section. That principle is that the intention is to limit the amount of work loss income that an individual can be compensated for rather than an intention to limit the total (income earned plus no-fault work loss income) amount of income that can be received. For example, take the hypothetical of an individual who earns $240,000.00 per year ($20,000.00 per month) and misses one month's work and one month's pay. Despite the fact that this individual still made $220,000.00 in an eleven month period, he could still collect his $2,434.00. If the underlying principle of the work loss income provision was to limit the total amount of income one could receive, such an individual would probably be prevented from receiving work loss income benefits. Instead, the intent of the law is not to limit the amount of income he can earn, but rather to limit the amount of work loss income he can be compensated for. Thus, despite the fact that he would have made $20,000.00 in the thirty day period he can only receive the $2,434.00 maximum.

In the instant case Plaintiff is entitled to his pro rata share of the $2,434.00 even though his income for the thirty day period has exceeded $2,434.00. Again, this is because the no-fault