

STATE OF MICHIGAN
COURT OF APPEALS

JOANN SPARKS,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant-Appellee.

UNPUBLISHED

May 25, 2010

No. 289395

Genesee Circuit Court

LC No. 07-087473

Before: METER, P.J., and MURRAY and BECKERING, JJ.

MURRAY, J. (*concurring*).

Although defendant does not specifically argue that plaintiff's unemployment at the time of the accident in and of itself precluded recovery under MCL 500.3107(1)(b), I feel compelled to nonetheless note my agreement with Judge O'CONNELL's dissent in *Sullivan*. *Sullivan v North River Ins Co*, 238 Mich App 433, 439-440; 606 NW2d 383 (2000). As Judge O'CONNELL stated in that opinion, both the statute and our Supreme Court's analysis of it in *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 466; 521 NW2d 831 (1994), indicate that "[t]he provisions governing the award of work-loss benefits are contingent on the employment status of the claimant at the time of the accident." Thus, the *Popma* Court held that "[a]n employed claimant's work-loss benefits are calculated pursuant to MCL 3107(1)(b)," *id.* at 473, "while § 3107a applies when a claimant is temporarily unemployed[,]" *id.* at 466. In other words, "[s]ection 3107(1)(b) applies when a claimant is working at the time of the accident," *id.*, and because plaintiff was not actively employed at the time of the accident, she should be precluded from pursuing her claim under § 3107(1)(b).

/s/ Christopher M. Murray