

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

MARK DESANTIS,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No: N15C-01-164 ALR
	)	
	)	
DONEGAL MUTUAL INSURANCE	)	
COMPANY,	)	
Defendant.	)	

Submitted: July 30, 2015  
Decided: August 3, 2015

***Upon Defendant’s Motion for Reargument***  
**DENIED in part; GRANTED in part**

This matter is before the Court on Defendant’s motion for reargument, which is opposed by Plaintiff. By Memorandum Opinion dated July 22, 2015, the Court granted Plaintiff’s motion in limine and ruled that determination of the net loss of earnings of a sole proprietor under 21 *Del. C.* § 2118 (“Section 2118”) was not limited to Plaintiff’s draws but that, as long as the calculation is predictable, a self-employed plaintiff is entitled to that predictable amount as net loss of earnings. The Court also calculated the PIP benefits due and owing based on the submissions of the parties.

Defendant disputes the Court’s legal findings—which is merely a rehashing of legal arguments already rejected by the Court—and also *now* contends that the Court should not have actually *calculated* the amount owed because Defendant has not had the opportunity for discovery on this issue. Although this distinction was

noticeably absent from Defendant's submission in opposition to the underlying motion, it is a fair point and allowing discovery on this issue is appropriate.

The Court's legal reasoning is sound and its legal ruling stands. The 1982 statutory amendment to Section 2118 serves to "put self-employed persons on equal footing with those who work for others."<sup>1</sup> The decisional law that correctly relies upon the 1982 amendment establishes that, to recover net loss of earnings, a self-employed plaintiff need only establish predictable income, not necessarily specific wages or salary.<sup>2</sup> Therefore, as long as the calculation is predictable, a self-employed plaintiff is entitled to that predictable amount as net loss of earnings.

An alternative method of calculation for net lost earnings other than that based on periodic draws is consistent with the statutory mandate. The net loss of earnings of a self-employed person "is generally computed by looking at the gross income and deducting only such business expenses that would be necessary to the production of that income."<sup>3</sup> This method of calculation satisfies the predictability standard required by Delaware statutory and decisional law. Thus, allowing a self-employed plaintiff to recover net loss of earnings based on his or her gross income

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<sup>1</sup> *In re Kapsalis v. State Farm Mut. Ins. Co.*, 1997 WL 529590, at \*1 (Del. Super. Apr. 30, 1997).

<sup>2</sup> As noted, the most recent opinion on the issue of predictability in calculating net amount of lost earnings, *State Farm Mut. Auto. Ins. Co. v. Girgis*, 2010 WL 1077846 (Del. Super. March 9, 2010), relied on *U.S. Fidelity and Guaranty Insurance Co. v. Neighbors*, 421 A.2d 888 (Del. 1980), which was explicitly overruled by the 1982 amendment to 21 *Del. C.* § 2118.

<sup>3</sup> *In re Kapsalis*, 1997 WL 529590, at \*1.

less necessary business expenses is consistent with the 1982 amendment's goal of placing self-employed persons on equal footing with those employed by others.<sup>4</sup>

Accordingly, Defendant's motion for reargument is denied to the extent it challenges the Court's legal rulings in its Memorandum Opinion dated July 22, 2015 and granted to the extent the Court accepted Plaintiff's calculation of PIP benefits.

**NOW, THEREFORE, on this 3<sup>rd</sup> day of August, 2015,** the Court hereby rules that Plaintiff is entitled to PIP benefits calculated according to an alternative method of computation for net lost earnings other than that based on periodic draws. The Court also rules that the net loss of earnings of a self-employed person is generally computed by looking at the gross income and deducting only such business expenses that would be necessary to the production of that income. Defendant is entitled to discovery on the actual calculation of the benefits owed.

**IT IS SO ORDERED.**

*Andrea L. Rocanelli*

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**The Honorable Andrea L. Rocanelli**

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<sup>4</sup> *Id.*