



Case Study

Attorney Fees
When a Plaintiff Makes a Demand for \$5,500 or Less

— by Jennifer Krumm

Forsi v. Hildahl, __ Or. App. __ (8/25/04)

On May 16, 2001, as plaintiff was riding her bicycle, the defendant hit her with her car. Several months after the accident, the plaintiff made a written demand for \$5,500. The defendant's insurer countered with an offer to settle the case for \$4,500.

Plaintiff rejected the counter-offer and filed a lawsuit alleging more than \$27,000 in damages. The case proceeded to mandatory arbitration, and the arbitrator awarded the plaintiff \$3,200 in damages. Plaintiff appealed the arbitration award and requested a jury trial.

Three days before the trial, the plaintiff sent a letter to the defendant notifying him that she planned to file an amended complaint that reduced her damages allegation from \$27,000 to \$5,500. The purpose of the amendment was to entitle her to attorney fees under ORS 20.080, which authorizes the court to award attorney fees to a prevailing party where the amount pled is \$5,500 or less.

On the day of trial, the plaintiff filed a motion with the court asking permission to amend the complaint. The court initially denied the motion. However, mid-way through the trial, the court changed its mind and allowed the plaintiff to amend. After a jury returned a verdict in favor of the plaintiff for \$5,500, the court entered a judgment against the defendant for \$17,726 — \$5,500 in damages, \$1,192 in costs, and \$9,034 in attorney fees.

The defendant appealed the court's decision to allow the amendment, arguing that allowing the plaintiff to amend her complaint on the day of trial suddenly and unfairly exposed her to attorney fees.

The Oregon Court of Appeals disagreed and concluded that the trial court properly allowed the plaintiff to amend her complaint. ❖

ADJUSTING POINTER: Be very careful if a claimant makes a demand for \$5,500 or less. If the demand is rejected, the claimant may be entitled to attorney fees, even if they later sue for much more money.

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