



Case Study

Cutting Off Attorney Fees: The Interaction Between ORS 20.080(1) & Offers of Judgment

— by Jeffrey D. Eberhard

Under ORS 20.080(1), a plaintiff is entitled to attorney fees when the amount pleaded is \$5,500 or less and a written demand for payment is served on defendant at least 10 days before the lawsuit is commenced. Defendants have long believed (and vigorously argued) that an offer of judgment made under ORCP 54E will nevertheless cut off a plaintiff's right to receive any ORS 20.080(1) attorney fees incurred after the date the offer is made unless the plaintiff receives a higher award at arbitration or trial. With the release of the court of appeals' *Bell v. Morales* decision, defendants finally have case law to cite for this position.

In *Bell v. Morales*, plaintiff sent defendant a \$5,500 demand letter after the parties were involved in a motor vehicle accident. When defendant did not respond within 10 days, plaintiff filed suit seeking \$5,500 plus attorney fees under ORS 20.080. The prayer did not include \$496 in PIP benefits that plaintiff had received from his PIP carrier. Defendant countered by serving plaintiff with an offer of judgment under ORCP 54E for \$2,584 plus reasonable attorney fees and costs. This offer included \$2,088 in new money and \$496 for PIP reimbursement. Plaintiff indicated that he could not accept the offer because he did not represent the PIP carrier in the action.

At arbitration, plaintiff was awarded \$1,200 in economic damages and \$1,500 in attorney fees (representing fees only up until the time of the ORCP 54E offer). Plaintiff challenged the attorney fee award in circuit court, arguing he was entitled to \$5,400 in attorney fees under ORS 20.080(1). Defendant argued that because plaintiff's arbitration award was less than the ORCP 54E offer, plaintiff's attorney fees were limited to those incurred before the offer was made. The trial court agreed with plaintiff and awarded him the full \$5,400 attorney fee request.

Claims Pointer
An offer of judgment under ORCP 54E cuts off a plaintiff's right to any ORS 20.080(1) attorney fees incurred after the date the offer is made, unless the plaintiff's award at arbitration or trial exceeds the amount of the offer.

On appeal, the plaintiff argued that a 1956 case, *Colby v. Larson*, controls the interaction between the two statutes and allows ORS 20.080(1) fees to continue to accrue despite an offer of judgment. The court of appeals disagreed, noting that *Colby* interpreted an older version of the offer-of-judgment statute that has since been substantively changed by the legislature. The court held that the new offer-of-judgment statute (ORCP 54E) does not conflict with ORS 20.080(1) and both may be given effect. "We hold that ORCP 54E applies to an attorney fee award under ORS 20.080(1)."

The court also rejected plaintiff's argument that defendant's offer was not valid because it included PIP reimbursement when plaintiff's complaint did not seek PIP and plaintiff did not represent the PIP carrier. The court noted that the offer included a known PIP amount and that neither party disputed the amount of PIP reimbursement. The court examined the PIP statutes and found that the offer did not improperly prejudice the PIP carrier's rights. Furthermore, the offer included \$2,088 of new money - an offer that exceeded plaintiff's \$1,200 recovery. ❖

— *Bell v. Morales* was arbitrated and argued on appeal by Ryan McLellan of Smith Freed & Eberhard, PC. Ryan is an associate on Denny Freed's team. If you would like to contact Ryan, he can be reached at rmclellan@smithfreed.com.

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