



Clarifying the “Made on Defendant” Requirement in ORS 20.080

— by Jeffrey D. Eberhard

Being required to pay a plaintiff’s attorney’s fees can turn an otherwise low dollar claim into a high dollar headache. Getting stuck paying such fees may become more common in Oregon under the Oregon Supreme Court’s most recent interpretation of ORS 20.080. In *Carol Lee Woods v. Carl Karcher Enterprises, Inc.*, ___ P.3d ___, 2006 WL 3028246 (Or. October 26, 2006) the court found that the notice requirement of ORS 20.080 could be satisfied by sending a pre-filing demand by first class mail, reversing the Court of Appeal’s holding that the statute required delivery of the pre-filing demand by certified mail.

Carol Woods filed an insurance claim after she slipped and fell at defendant’s Carl’s Jr. restaurant. The restaurant’s insurer denied Woods’ claim. As the two-year statute of limitations approached, Woods’ attorney contacted the insurer and threatened to sue if the matter was not resolved quickly. The insurer responded by reiterating that defendant was not liable and invited Woods’ attorney to follow up with any questions.

Woods’ attorney then sent an ORS 20.080 demand letter by first class mail (no return receipt requested) to the restaurant where plaintiff fell, addressed “To Whom It May Concern.” Two weeks later, Woods filed a complaint seeking damages and attorney fees under ORS 20.080. Following arbitration and appeal, plaintiff received a damage award and costs, but no attorney fees, based on the finding that she failed to satisfy the notice requirements of ORS 20.080. The Court of

Appeal held a demand letter was analogous to a service of summons in a civil action and that sending the demand letter by first class mail (rather than by certified mail) was not reasonably calculated to apprise the defendant of the demand.

Claims Pointer

A plaintiff may be entitled to attorney fees under ORS 20.080 if he or she serves a written demand for payment “in a manner reasonably calculated to apprise the defendant of the demand” at least 10 days before an action is filed. The written demand does not need to be sent by certified mail to meet this requirement.

On further appeal, the Oregon Supreme court rejected the Court of Appeal’s analogy between a demand letter and service of process. The Court distinguished between the purposes of a demand letter and that of a service of summons, holding that the two should not be held to the same mailing requirements. The Supreme Court retained the appeals court’s standard that a demand letter under ORS 20.080 (1) must be “made on the defendant in a manner reasonably calculated to apprise the defendant of the demand”, but held that on these facts, delivering a letter via first class mail to the restaurant where the alleged injury occurred

satisfied the “made on the defendant” requirement under ORS 20.080(1).

The decision of the Court of Appeals and the judgment of the circuit court were reversed and the case was remanded to the trial court for further proceedings. ❖

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