



## UIM Benefits: Attorney Fees

— by Jennifer Krumm

*Weatherspoon v. Allstate Insurance Co.,  
\_\_\_ Or. App. \_\_\_ (5/12/04)*

Plaintiff was injured in an automobile accident with an underinsured motorist. After the accident, Plaintiff applied for and received personal injury protection benefits from her insurance company, Allstate. After Allstate paid Plaintiff the maximum amount of her PIP benefits, Plaintiff continued to send Allstate copies of her medical bills. More than six months later, Allstate sent the Plaintiff a letter accepting coverage and agreeing to arbitrate her UIM claim.

Plaintiff later filed a lawsuit against Allstate for UIM benefits. A jury returned a verdict in plaintiff's favor.

Plaintiff then requested attorney fees. She served a copy of the request on Allstate and gave a copy to the trial court judge. However, she did not file a copy of the request with the court clerk as required by ORCP 69(C)(4). The trial court granted Plaintiff's request.

On appeal, Allstate argued that the trial court should not have awarded attorney fees because the plaintiff failed to file a request with the court clerk. The court disagreed, noting that Allstate failed to raise this objection with the trial court.

Allstate also argued that ORS 742.061(3) barred the recovery of attorney fees because Allstate had accepted coverage within six months of receiving notice of the plaintiff's UIM claim. Plaintiff responded that because she had submitted an application for PIP benefits and continued to send medical bills to Allstate after her PIP benefits had been exhausted, Allstate should have known that the plaintiff was seeking UIM benefits. Accordingly, because Allstate failed to accept coverage within six months of receiving the PIP application and continued medical bills, attorney fees were appropriate.

The appellate court agreed with Allstate. It held that the PIP application and continued medical bills were **not** enough to put Allstate on notice that the plaintiff was seeking UIM benefits. Thus, the plaintiff could not recover her attorney fees because Allstate had accepted coverage within six months of plaintiff submitting any other proof of loss.

— Full case available at <http://www.publications.ojd.state.or.us/A118160.htm>

— For additional information, please visit our website at [www.smithfreed.com](http://www.smithfreed.com).

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