

# OREGON CASE UPDATE

## Rejected Offers of Judgment Must be Filed to Eliminate Plaintiff's Entitlement to Attorney Fees

**Claims Pointer: ORCP 9 requires that all offers of judgment be filed with the court within a reasonable time after service on the plaintiff. This is especially important if the plaintiff rejects or ignores the offer of judgment because an unfiled offer of judgment, as proscribed by ORCP 54E, will be ineffective at eliminating a plaintiff's right to attorney fees (note that this differs from the Federal Rules of Civil Procedure (FRCP) 68 which does not require that offers of judgment be filed with the court).**

*Wilmoth v. Ann Sacks Tile and Stone, Inc.*, Civ. No. A127861, in the Court of Appeals of the State of Oregon (December 3, 2008).

Ann Sacks Tile and Stone, Inc. (ASTS) was apparently a pretty lousy place to work from 2002 to 2003. Business was down, jobs were eliminated, wages were frozen and morale was low. During all of this turmoil, Plaintiff, who was gay, struck up a romantic relationship with a co-worker, who Plaintiff felt was being treated poorly as a result of her sexual orientation. Plaintiff voiced these concerns on her girlfriend's behalf to management but little was done.

Plaintiff became further distressed when she happened to read her boss' computer monitor. On the screen was an email from a management consultant who recommended that Plaintiff's girlfriend be fired. Plaintiff began venting to other employees that she could not believe that the company was paying a consultant \$10,000 a month to keep tabs on her lesbian relationship. The consultant's salary was known by Plaintiff because of her position within the company and by disclosing that information, Plaintiff violated the confidentiality agreement she had agreed to. The next day, employees began going to management complaining about their own stagnant salary while the consultant was making so much. Shortly thereafter, ASTS fired plaintiff. ASTS stated the reason for the dismissal as violation of the confidentiality agreement. Plaintiff argued that many people violated the same policy without reprimand and that her dismissal was retaliation for complaining about the way some at ASTS treated her girlfriend. At trial, Plaintiff succeeded on some claims and failed on others. Plaintiff recovered \$10,758.50 on her claim, which included attorney fees. ASTS appealed, among other things, Plaintiff's award of attorney fees.

ASTS based its appeal on ORCP 54E which states that a plaintiff cannot recover attorney fees if the amount received by the plaintiff at trial is less than a pre-trial amount offered by the defendant with the understanding that the defendant would agree to also accept an adverse judgment (i.e., offer of judgment). Here, ASTS had made a pre-trial offer that exceeded Plaintiff's award at trial and were willing to accept a judgment entered against it. Therefore, ASTS believed that an award of attorney fees was improper.

The Oregon Court of Appeals agreed with most of ASTS's analysis of ORCP 54E, but disagreed on one fundamental point. The court stated that ORCP 9 makes clear that "every" offer of judgment, whether it is accepted or rejected (either expressly or by ignoring the offer), must be served and filed with the court. Even though an unaccepted offer of judgment is inadmissible as evidence at trial, an exception to the serving and filing requirement is not created by a rejection. In this instance, because ASTS did not file the unaccepted offer with the court, ORCP 54E's provision barring Plaintiff from collecting attorney fees could not be given effect.

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