

# WASHINGTON CASE UPDATE

## Attorney Fees Not Available Under Washington's Small Claims Statute Without a Final Judgment

**From the desk of Kyle Riley:** Recently the Washington Supreme Court, sitting en banc, addressed the issue of whether a defendant is entitled to attorney fees under RCW 4.84.250 and RCW 4.84.270 when the plaintiff voluntarily dismisses its claim.

**Claims Pointer:** Split 5-4, the Washington Supreme Court adopted a three-prong test in response to a defendant's request for fees under RCW 4.84.250 and .270. To be entitled to fees, (1) the damage sought must be equal to or less than \$10,000, (2) there must be an entry of judgment, and (3) the defendant must be deemed the prevailing party.

*AllianceOne Receivables Mgmt. Inc v. Lewis*, --- P.3d ---, 2014 WL 1848030 (2014)

AllianceOne Receivable Management Inc. (AllianceOne) brought a collections suit against William Lewis (Lewis) and then voluntarily dismissed it. Lewis sought attorney fees under RCW 4.84.250 and .270, claiming that he was the "prevailing party" because AllianceOne had "recovered nothing." The district court denied Lewis' request and Lewis appealed. Noting the Court of Appeals' split of authority on the issue, the Washington Supreme Court granted Lewis' motion for direct review.

Under RCW 4.84.250, a "prevailing party" can request attorney fees so long as no other provisions of RCW 4.84 or RCW 12.20.060 conflict. RCW 4.84.260 states that the plaintiff is the "prevailing party" when the recovery, excluding costs, is as much or more than the amount offered in settlement by the plaintiff. Pursuant to RCW 4.84.070, a defendant, on the other hand, receives fees if the plaintiff "recovers nothing, or if the recovery, exclusive of costs, is the same or less than an amount offered in settlement by the defendant."

When phrases or terms are not defined by a statute, they are given their common law or ordinary meaning. Of the four definitions for "recover" provided by *Black's Law Dictionary*, three associate "recover" with a final judgment. Considering this definition in the context of the statutory scheme, the majority determined that the Legislature's intent was clear: under RCW 4.84.250 and .270 there is no prevailing party, and subsequently no recovery, without an entry of judgment.

The Washington Supreme Court then adopted the Division Three Court of Appeals' three-part test announced in *Cork Insulation Sales Co. v. Torgeson*, holding that a defendant would be entitled to fees only if (1) the damage sought is equal to or less than \$10,000, (2) there is an entry

of judgment, and (3) the defendant is deemed the prevailing party. Furthermore, the court concluded that a voluntary dismissal does not result in an entry of judgment and is equivalent to no recovery. Under the majority's reading of RCW 4.84, the "prevailing party" is determined based upon the final judgment. Therefore, without a final judgment, there can be no prevailing party.

Due to the fact that Lewis' claim was voluntarily dismissed, resulting in no entry of judgment, Lewis did not constitute a "prevailing party." Under the *Cork* test, Lewis failed two of the three necessary elements to recover attorney fees and the Washington Supreme Court majority affirmed the district court's denial of Lewis' request.

It should be noted that four justices dissented from the majority opinion and stated, instead, that the district court's denial of attorney fees was inconsistent with the plain language of the statute. According to the minority dissent, "recovers nothing" needs little interpretation. Since AllianceOne recovered nothing from the lawsuit, the minority opined that Lewis should have received attorney fees.

case in point...



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