

OREGON LAW UPDATE

The Fine Art of an Offer of Judgment

From the desk of Jeff Eberhard: Is a limited offer of judgment an admission of liability? What discretion does the offering party have in defining the terms of the offer? The Oregon Court of Appeals examines these issues and more in this case addressing a PIP offer of judgment's effect on a UIM claim.

Claims Pointer: An offer of judgment is a contract and, under ORCP 54 E, the offering party has essentially unfettered discretion in defining the contract's terms. Absent an express admission in the terms of the offer of judgment, an offer of judgment will not be treated as a "confession."

Miller v. American Family Mut. Ins. Co., --- P.3d ----, court's holding was in error.
262 Or.App. 730 (2014)

Eric Miller (Miller) was injured in a motor vehicle accident with an uninsured motorist. As a result of the accident, Miller claimed over \$90,000 in medical expenses, including \$80,000 from a spinal surgery performed months later. Miller's insurance provider, American Family Mutual Insurance Company (American Family), covered approximately \$7,000 of Miller's nonsurgical expenses under his personal injury protection (PIP) benefits, but refused to pay any of the surgery-related expenses, contesting the surgery's necessity. Miller filed suit against American Family seeking a judgment for the balance of his PIP policy limit, as well as his uninsured motorist (UIM) benefits.

Prior to trial, American Family served Miller with an ORCP 54 E offer of judgment. The offer provided that American Family would allow limited judgment on Miller's claim for PIP benefits of approximately \$8,000, the remainder of the benefits. The offer also stated that it did not apply to Miller's claim for Uninsured Motorist benefits and that, if accepted, the issue of Uninsured Motorist benefits would still be at issue. Miller accepted American Family's offer, however, on the day before trial, Miller filed a motion seeking to prevent American Family from offering evidence at trial that the surgery was not necessary, which was the remaining issue for trial on the UIM claim. Miller argued that American Family had admitted that the surgery was necessary in their offer of judgment because the offer amount exceeded Miller's unreimbursed nonsurgical expenses. As such, Miller contended that American Family could not contest the necessity of surgery in the trial on Miller's UIM claim. The trial court granted Miller's motion and, as there were no issues left to try, the court entered a general judgment in favor of Miller for the UIM policy benefits, \$50,000. American Family appealed, arguing that the trial

In reviewing the lower court's decision, the Oregon Court of Appeals examined the relevant text of ORCP 54 E(1), which states that a "party against whom a claim is asserted may . . . offer to allow judgment to be entered against the party making the offer for the sum, or the property, or to the effect therein specified." Oregon courts have routinely acknowledged the clear effect of the statute. An ORCP 54 (E) offer of judgment is a contract and the offering party is granted broad discretion in defining the terms of the offer by the phrase "to the effect therein specified." Once an offer of judgment has been accepted, the trial court can only enter a judgment which is in accordance with the terms of the offer.

American Family's offer was unequivocal. It proposed to allow limited judgment for PIP benefits and expressly stated that the offer did not apply to Miller's Uninsured Motorist benefits' claim. Furthermore, the opinion stated that, if the offer was accepted, Miller's Uninsured Motorist benefits would "remain at issue." The offer was clearly limited to Miller's PIP benefits and did not constitute an admission regarding Miller's UIM benefits claim. ORCP 54 (E) allows the offering party to define the terms of the offer and "by accepting the offer, [Miller] accepted its terms." As a result, Miller was entitled to only a limited judgment on his PIP claim and the trial court's conclusion that American Family had admitted the necessity of the surgery was in error.

case in point...



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