

# WASHINGTON CASE UPDATE

## Washington Rewards Attorneys who Represent Parties in Small Cases

case in point...

**From the desk of Kyle Riley: When a Defendant is successful on a small claim, can they recover attorney fees if their settlement offers did not invoke the small claims statute? Will the amount in controversy be a factor in determining the reasonable amount of attorney fees under the small claims statute? Read on to see how the Washington Court of Appeals answered these questions.**

**Claims Pointer: When defending against small claims, plaintiffs are deemed on notice as to the small amount of the claim, and a successful defendant need not provide additional notice to claim attorney's fees. Moreover, the amount of the claim in controversy will not be a factor in determining the reasonable amount of attorney's fees for claims subject to RCW 4.84.250.**

Target Nat. Bank v. Higgins, in the Washington Court of Appeals, 180 Wash. App. 165 (2014).

Target National Bank ("Target") sued Jeanette Higgins ("Higgins") for defaulting on a credit card debt of \$2,052.37. In its Complaint, Target requested reasonable attorney's fees, but did not justify any basis for the request. Higgins denied liability and also asserted a claim for reasonable costs and attorney's fees in defense of the action. Similarly, Higgins did not specify a basis for attorney's fees. Higgins sent Target a notice of deposition, request for production of documents, interrogatories and request for admissions. After the deadline passed, Higgins moved for summary judgment, arguing Target failed to respond with admissible evidence of a debt.

The trial court granted Higgin's motion for summary judgment. Higgins requested \$11,076 in reasonable attorney's fees and costs under RCW 4.84.250 (the small claims statute for claims at or below \$10,000) and RCW 4.84.330 (the reciprocal attorney's fee statute). The trial court denied fees under RCW 4.84.250 and granted fees under RCW 4.84.330, but limited the amount of fees to \$5,625 due to the minimal amount in dispute. Higgins appealed, arguing the award of attorney's fees was insufficient. Target argued Higgins failed to give notice under RCW 4.84.250.

The Court of Appeals analyzed the case law and policy behind the small claims statute and concluded that since Higgins was a defendant, the opposing party was on actual notice that the suit to collect the alleged debt was subject to RCW 4.84.250 (i.e. under \$10,000) and any additional

notice was superfluous. The court also observed that the policy behind the statute was to encourage out of court settlement and to penalize parties who unjustifiably brought or resisted small claims. The requirement that a plaintiff provide notice to a defendant when bringing a small claim existed to ensure the defendant would realize the amount of the claim is small and the opposing party should settle or risk paying attorney's fees. The court pointed to the rule that a defendant can recover reasonable attorney's fees and costs without an offer of settlement when the plaintiff recovers nothing.

The Court next considered whether the amount in controversy is an appropriate factor to consider when awarding attorney's fees under the small claims statute. The court again reiterated the purpose of the small claims statute was to encourage out of court settlements and penalize those who unjustifiably brought or resisted small claims. Additionally, the statute seeks to enable a party to pursue a meritorious small claim without seeing his award diminished by attorney's fees. Thus, the court will ignore the amount in controversy when determining the amount of reasonable attorney's fees to be awarded under RCW 4.84.250.

The Court of Appeals remanded the case to the trial court to address the amount of fees awarded in light of their holding. In doing so, the court was careful to note the court could still reduce the amount of fees awarded if the work was duplicitous, wasteful or excessive in nature, but the trial court could not consider the amount in controversy in determining the amount of attorney's fees.



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