

OREGON LAW UPDATE

20.080 Attorney Fees for Certain Small Tort Claims

case in point...

(1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is \$10,000 or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant, and on the defendant's insurer, if known to the plaintiff, not less than 30 days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed \$10,000, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

(3) A written demand for the payment of damages under this section must include the following information, if the information is in the plaintiff's possession or reasonably available to the plaintiff at the time the demand is made:

(a) In an action for an injury or wrong to a person, a copy of medical records and bills for medical treatment adequate to reasonably inform the person receiving the written demand of the nature and scope of the injury claimed; or

(b) In an action for damage to property, documentation of the repair of the property, a written estimate for the repair of the property or a written estimate of the difference in the value of the property before the damage and the value of the property after the damage.

(4) If after making a demand under this section, and before commencing an action, a plaintiff acquires any additional information described in subsection

(3) of this section that was not provided with the demand, the plaintiff must provide that information to the defendant, and to the defendant's insurer, if known to the plaintiff, as soon as possible after the information becomes available to the plaintiff.

(5) A plaintiff may not recover attorney fees under this section if the plaintiff does not comply with the requirements of subsections (3) and (4) of this section.

(6) The provisions of this section do not apply to any action based on contract. [Amended by 1955 c.554 §1; 1979 c.525 §1; 1981 c.897 §1; 1981 c.898 §19; 1985 c.342 §7; 1985 c.618 §15c; 1997 c.46 §2; 1999 c.947 §1; 2001 c.S42 §2; 2009 c.A87 §§I,J]

Note: Section 4, chapter 487, Oregon Laws 2009, provides:

Sec. 4. (1) The amendments to ORS 20.080 by section 3 of this 2009 Act become operative on January 1, 2012.

(2) Except as provided in subsection (3) of this section, the amendments to ORS 20.080 by section 3 of this 2009 Act apply to all causes of action, whether arising before, on or after January 1, 2012.

(3) The amendments to ORS 20.080 by section 3 of this 2009 Act do not apply to an action that was filed before January 1, 2012. [2009 c.487 §41]



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