

OREGON LAW UPDATE

The Basics of Advance Payments

case in point...

Claims Pointer: Insurers must provide any person who receives, or directly benefits from, an advance payment a letter notifying the beneficiary of when the statute of limitations runs on his or her claim. Failure to provide this letter in the manner proscribed by the Oregon Department of Consumer and Business Services will toll the statute of limitations until proper notice is given.

If an entity (including an insurer) makes an advance payment to a person entitled to recover damages due to death, injury or destruction, that entity has an obligation to send a notice letter. The letter must notify the payee of the date on which the statute of limitations expires on the payee's potential claim. ORS 12.155(1). A notice-letter need only be sent to the person who received a direct benefit as a result of the advance payment. *Sheppard v. Weekly*, 72 Or. App. 868 (1985) (holding that insurer was not required to provide notice-letter under ORS 12.155 to passenger of vehicle because passenger did not directly benefit from an advance payment for costs to repair the vehicle).

If a notice-letter is not sent within 30 days from when a payment is made, the statute of limitations on the payee's potential claim is tolled until such a letter is sent. ORS 12.155(1). If a letter is sent beyond the 30-day window, the date on which the statute of limitations would have expired is extended by a period of time equal to the letter's tardiness. ORS 12.155(2). Any tolling of the statute of limitation under ORS 12.155 has no impact on the running of the potential claim's statute of ultimate repose. *David v. Blanchard*, 84 Or. App. 99 (1987). Also, tender of an advance payment is not an admission of liability. ORS 31.560.

There are two purposes to this statute:

- (1) to allow insurers to make advance payments without having to admit liability, and
- (2) protect injured parties from being misled into thinking that the limitation period was no longer applicable. *Duncan v. Dubin*, 276 Or. 631 (1976).

The legislature left it to the Director of the Department of Consumer and Business Services (the "Director") to decide the "form" the notice letter must take. ORS 12.155(1). The Director has required that notice letters include the following five pieces of information:

- (1) time and place of the occurrence for which the payment is made;

- (2) statement signaling that the payment will be credited against any judgment entered in favor of the payee;

- (3) the words, "The period of limitation for commencement of an action for damages as set by Chapter 12 of Oregon Revised Statutes will expire on _____";

- (4) the signature of a person authorized to act for the insurer; and

- (5) the date on which notice was transmitted to the party receiving the advance payment. OAR 836-50-150(1). The rule also requires the writing be in a normal-sized font and not obscured. OAR 836-50-150(2).

Presumably, if the notice letter fails to meet any of these requirements, the notice is invalid and the statute of limitations will be tolled until notice is tendered in the proper form.

Other key aspects of advance payments include:

- ORS 12.155 only applies to advance payments that are made voluntarily. *Meoli v. Brown*, 200 Or. App. 44 (2005). This in turn, means that ORS 12.155 does not apply to PIP benefits. *Smith v. Ryker*, 88 Or. App. 579 (1987).

- Advance payments will likely trigger ORS 12.155 for purposes of any potential claims arising from the tortfeasor's act. In the case of *Pipkin v. Zimmer*, 113 Or. App. 737 (1992), the court held that the statute of limitations was tolled on payee's personal injury claim after insurance company had provided an advance payment for property damage and had failed to notify payee of the statute of limitations on the potential personal injury cause of action.

- Case law is unclear as to whether PIP reimbursements trigger the advance payment statute. The most cautious approach would be to send an advance payment letter within 30 days of PIP reimbursement.



Contact: Jeff Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

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Finally, payment does not have to be received directly by the party who suffered the injury or destruction for it to be deemed an "advance payment" under ORS 12.155. The statute will be triggered whenever the injured person receives payment directly or has a payment made on his behalf. *Anais v. Dias*, 70 Or. App. 478 (1984). For example, a payment will be deemed an "advance payment" if an insurer makes a payment to the injured person's automobile repair shop or a rental car company so that the injured party has transportation while her automobile is being repaired.



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