

# OREGON LAW UPDATE

## ORS 20.080: Look Beyond the Total Amount Pleaded

case in point ...

**From the Desk of Jeff Eberhard: Often in ORS 20.080 cases, plaintiffs will allege more than one claim for relief. This presents the question, if the total of these claims exceeds \$10,000, does ORS 20.080 still apply? Read on to find out the answer.**

**Claims Pointer: A plaintiff may recover attorney fees under ORS 20.080 alleging multiple claims totaling more than \$10,000, so long as each separate claim is for the same damages and each is for less than the \$10,000 statutory limit.**

Bedford v. Merety Monger Trust, in the Court of Appeals of the State of Oregon, A146562, --- P3d ---- (August 22, 2012).

Dan and Crystal Bedford (jointly, the Bedfords) and Merety Monger Trust (the Trust) were neighbors who shared a water delivery system. The water system ran from a nearby stream through a pipeline primarily located on the Bedfords' property, to a storage tank on the Trust's property. In 2008, the Trust shut off the water delivery system depriving the Bedfords of their only water source. The Bedfords sent a demand letter stating the Trust wrongfully terminated their water access, causing them to incur \$2,500 in expenses to obtain and treat water from another nearby source. They stated that if the Trust does not reconnect the water delivery system and compensate them for their expenses within 10 days, the Bedfords would pursue legal action. The trust did neither and the Bedfords filed a lawsuit against the Trust.

Allegations relevant to this issue in the Bedfords' second amended complaint included: entitlement to a declaration stating they had an implied easement seeking \$2,500, and a nuisance claim because shutting off access to the water delivery system interfered with the Bedfords' use and enjoyment of their property seeking \$5,000. On the claim for implied easement, the Bedfords received a verdict of \$2,500, and on the claim for nuisance, they received a verdict of \$1,250. The court awarded judgment for the larger amount -- \$2,500. At trial, the Bedfords prevailed. At the time the

Bedfords filed their complaint, the maximum under ORS 20.080 was \$5,500 (Currently, the statutory limit under ORS 20.080 is \$10,000.). The trial court determined the tort claims were two different theories to recover the same damages, and therefore, the Bedfords were entitled to attorney fees under ORS 20.080.

On appeal, the Trust argued the Bedfords were not entitled to attorney fees under ORS 20.080 because the aggregate amount of damages the Bedfords pleaded was over the statutory maximum; specifically, the Trust claimed the aggregate amount of damages on the two tort claims should be considered because those claims were based on the same operative facts and the damages exceeded the maximum under ORS 20.080. The Bedfords argued the damages should not be aggregated because their claims were based on alternative theories of relief. The largest amount of damages they pleaded was \$5,000 which was below the statutory maximum of \$5,500. The Court of Appeals agreed with the Bedfords and concluded that since the claims were separate and distinct and the amount alleged in tort damages was below the statutory maximum, the Bedfords were entitled to attorney fees under ORS 20.080.



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