

OREGON LAW UPDATE

Default Judgment May be Relieved If Resulting From “Excusable Neglect”

From the desk of Jeff Eberhard: In this case, the court extended the application of excusable neglect to an insurance company to relieve the insurer of a default judgment.

Claims Pointer: Everyone, no matter how talented, makes mistakes at times. If you are facing a default judgment, the strongest argument to overturn it is that the default was the result of a subordinate employee’s failure to follow established company policies and the directions of their supervisors. It is essential to emphasize that your company has established procedures in place and that the default was the result of a subordinate employee’s mistake.

case in point...

Johnson v. Sunriver Resort Ltd. Partnership, in the Court of Appeals of the State of Oregon, A146562, 287 P3d 1153 (September 12, 2012).

Judy Johnson allegedly fell and suffered injuries in Sunriver Resort’s store because of the store’s negligence. Sunriver Resort notified its insurer of Johnson’s claim. An initial adjuster was in negotiations with claimants counsel and was aware that the suit had been filed. The handling of the claim was transferred to an experienced litigation-specific adjuster who knew he was supposed to assign counsel to appear for their insured. The insurance company had well established policies and procedures in place for handling lawsuits and the litigation adjuster was aware of those policies. The litigation adjuster assigned to the claim failed to do anything without any explanation and Johnson moved for an order of default.

The trial court signed an order of default. Two months after the default had been signed, the insurer retained counsel, and counsel filed a motion for relief pursuant to ORCP 71 B arguing the default was a result of excusable neglect. The trial court granted the insurer’s motion for relief from the default since the insurer had policies and procedures in place to avoid default judgments and protect its insureds’ interests. It was the subordinate employee’s failure to comply with the policies and procedures that resulted in the default judgment, thus the mistake was by a subordinate employee and was a result of the insurer’s excusable neglect.

Johnson appealed arguing the subordinate employee’s failure to act did not constitute excusable neglect because as an experienced claims representative, the subordinate employee was responsible for ensuring that the complaint was referred to an attorney. She contended that insurance claims representatives are held to a higher standard. The insurer argued that motions

to set aside default judgments should be granted liberally and a subordinate employee’s failure to follow direction from a superior and follow policies and procedures constitutes excusable neglect. The Court of Appeals concluded that in these circumstances, the insurer is not held to a higher standard and that the insurer’s neglect was excusable because other employees all took reasonable steps to handle the claim appropriately and prevent a default. The default was caused by the subordinate employee’s neglect to follow direction and comply with the insurer’s policies and procedures and this type of neglect by a subordinate employee is excusable. Therefore, the trial court properly granted the insurer’s motion for relief from the default.



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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