

OREGON LAW UPDATE

Got an Out-of-State Insurance Policy? - Oregon Attorney Fees May Still Apply

case in point...

From the desk of Jeff Eberhard: Although the Oregon Supreme Court's opinion in this case has the effect of significantly expanding the application of attorney fees to non-Oregon policies of insurance of all types, the Court's holding is particularly important to insurers evaluating Personal Injury Protection and Underinsured/Uninsured Motorist claims. Insureds can now recover attorney fees pursuant to Oregon law even if the policy at issue was not delivered or issued for delivery in Oregon.

Claims Pointer: If an insured files suit on any insurance policy in Oregon, attorney fees pursuant to ORS 742.061 may be available regardless of where the policy was actually delivered or issued for delivery. Claims adjusters evaluating PIP or UM/UIM claims where there is any indication that the insured may attempt to file suit in Oregon should consider issuing an Oregon ORS 742.061 "safe harbor" letter, accepting coverage and agreeing to binding arbitration even if the policy at issue is not an Oregon policy.

Morgan v. Amex Assurance Company, in the Supreme Court of Oregon, 352 Or 363, 287 P3d 1038 (September 14, 2012), petition for reconsideration denied, (November 21, 2012).

Carla Morgan lived in Vancouver, Washington where she purchased automobile insurance, including uninsured motorist (UM) coverage from Amex Assurance Company. Amex issued and delivered the policy in Washington. While Morgan was driving from Vancouver to Portland one day, she was struck by another vehicle whose driver was uninsured. Morgan filed a claim with Amex for UM coverage under her Washington automobile insurance policy. Morgan later moved to Oregon and ended up bringing suit against Amex in Oregon state court, alleging a right to attorney fees pursuant to ORS 742.061 (Oregon's statute authorizing the recovery of attorney fees on suits involving policies of insurance if claim is not settled within six months). Amex ultimately offered to pay Morgan \$85,000 exclusive of costs or attorney fees. Morgan accepted the offer and petitioned for her attorney fees, pursuant to ORS 742.061.

Amex objected to Morgan's attorney fees request arguing that ORS 742.001, which defines the scope of the Oregon Insurance Code, limited the application of ORS 742.061 to policies of insurance delivered or issued for delivery in Oregon, and Morgan's policy was delivered and issued for delivery in Washington. Both the trial court and the Oregon Court of Appeals agreed with Amex and denied Morgan's application for her attorney fees, concluding that ORS 742.061 only applied to insurance policies delivered or issued for delivery in Oregon. Morgan appealed the denial of her attorney

fees to the Oregon Supreme Court.

After reviewing the legislative history relating to the original enactment of Oregon's attorney fee statute, as well as the changes that have been made to it over the years, the Oregon Supreme Court concluded that ORS 742.061 was procedural and applied whenever an action based on an insurance policy is brought in an Oregon court, regardless of the language of ORS 742.001. Thus, the Court held Morgan was entitled to attorney fees even though her insurance policy was delivered and issued for delivery in Washington.

ORS 742.061 allows for some protection from attorney fees on PIP and UM/UIM lawsuits if the Plaintiff ultimately recovers equal to or less than any amount tendered by the insurer within six months of proof of loss, or where the insurer has accepted coverage and submitted to binding arbitration. In light of the Oregon Supreme Court's ruling in this case, we recommend that when evaluating any PIP or UM/UIM claim, an insurer should consider issuing an ORS 742.061 safe harbor letter within six months of proof of loss if there is any reason to believe that the claimant may end up filing suit in Oregon. If you'd like a sample "safe harbor" letter, don't hesitate to call us and we'll forward one to you.



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