

# OREGON LAW UPDATE

## Paying Attorney's Fees? Object Specifically or Lose Again on Appeal

case in point ...

**From the Desk of Jeff Eberhard: Insurers and their attorneys should be aware that failure to object on specific grounds for attorney's fees will preclude those arguments on appeal. In short, state as many objections as you can think of or be prepared to pay the piper.**

**Claims Pointer: The Oregon Court of Appeals held that a party fails to preserve arguments against an award of attorney's fees, when the party's objections lacked the necessary level of specificity. A party's objections must state the particular reason why it objects, even though the underlying premises of all objections may be the same. Also, work performed prior to filing a case is recoverable if that work was reasonably related to prevailing on a claim.**

Quick Collect, Inc. v. Higgins, 258 Or. App. 234 (2013)

Quick Collect, Inc. ("Quick") filed a claim against Brian Higgins ("Higgins") to recover a debt. The Court transferred the case to arbitration, but prior to that, Higgins filed a counterclaim alleging unfair debt collection practices. In arbitration, Quick prevailed on its claim and Higgins prevailed on his counterclaim. Both parties were awarded attorney's fees.

Quick filed an exception in trial court to the attorney's fees awarded to Higgins. Quick argued that Higgins could not recover attorney's fees incurred before he filed his counterclaim; those fees related to defending against Quick's claim. Higgins did not prevail on that claim. Quick also argued the fees were generally unreasonable. The trial court denied Quick's arguments, and it appealed.

The Oregon Court of Appeals held that because Quick did not argue that the fee petition was fatally defective, nor did it object to the fee petition on the grounds of block-billing, it failed to preserve those errors for appeal. The Court found that Quick preserved its claim that Higgins was not entitled to attorney's fees for any legal work performed prior to the date he filed his counterclaim, January 12, 2011.

On appeal, Quick argued that Higgins' calculation of attorney's fees was fatally defective as a matter of law under ORCP 68 C (4)(a)(i) because it did not identify which tasks related to defending against Quick's

claim and which tasks related to his own claim against Quick. Alternatively, Quick argued that the majority of tasks described in Higgins' fee petition were for noncompensable work, explaining that the statutes authorizing attorney's fees to the Higgins only allowed for recovery of fees incurred in prosecuting his unlawful collections practice claim. Second, Quick argued that time billed prior to January 11, 2011 was not compensable because they related to defending against Quick's debt claim. Third, Quick argued that items billed in blocks of time made it impossible to determine which hours were spent defending against the claim and which were spent prosecuting the counterclaim. The last claim by Quick was not relevant to preservation of error.

Higgins argued that Quick made these arguments for the first time on appeal, thus, failing to preserve the errors required by ORAP 5.45 (1). In response, Quick argued that it informed the trial court that the fee petition was fatally defective because it raised the underlying reason as an objection.

The Court found in Quick's arguments that: (1) Higgins' account of attorney's fees was fatally defective and (2) block-billing made it impossible to separate the time required to defend against Quick's claim and the time spent prosecuting his own claim, were different than the objections made in trial court. This was true even though it was clear that Quick objected, in trial, to any work performed prior to January 12, 2011, based on the premise that such work related to defending against Quick's claims.



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