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OREGON LAW UPDATE

case in point ...

Oregon Courts May Combine Methods Used to Calculate Attorney Fees

From the Desk of Jeff Eberhard: In this case the Oregon Supreme Court held that courts may combine the two most common methods used to calculate attorney fees in actions against insurers.

Claims Pointer: Insurers should be aware that "hybrid" class-action lawsuits that combine statutory and common law claims may result in increased attorney fees, as Oregon courts are now authorized to combine the lodestar and percentage methods of calculating attorney fees. The good news is that fees still must be "reasonable," and Oregon continues to use a relatively straightforward method for calculating fees.

Strawn v. Famers Ins. Co. of Or., in the Supreme Court of the State of Oregon, S057520 (February 22, 2013).

Petitioner Mark Strawn ("Strawn") filed a class action lawsuit against Farmers Insurance Company of Oregon ("Farmers"), alleging breach of contractual agreements and fraud. The trial jury awarded Strawn $900,000 in compensatory damages and $8 million in punitive damages. The trial court also awarded Strawn $3.1 million in attorney fees, which the Oregon Court of Appeals later reduced to $585,441. Most of that amount was based on a "fee-shifting" award, which occurs when a statute provides for attorney fees. Under such a system, the prevailing party's attorney fees are shifted to the losing party. A small amount of Strawn's fee award was based on a "common-fund" award, payable from the punitive damages recovery. Rather than shift the plaintiff's litigation expenses to the losing party, the common-fund doctrine permits the burden of those expenses to be shared among those who benefitted from the litigant's efforts by allowing the plaintiff's lawyers to be paid from the common fund created or preserved by the litigation.

On review, the Oregon Supreme Court evaluated the two common approaches to calculating either a fee-shifting award or a common-fund award. The first of these methods is the "lodestar" method, in which the attorney is awarded a fee based on a reasonable hourly rate, multiplied by a reasonable number of hours spent on the case, with possible adjustments made to that amount for factors such as risk of loss and the quality of the attorney's work. The second method, the "percentage" method, sets the fees by calculating the total recovery secured by the attorneys and awarding them a reasonable percentage of that recovery. Under both methods, the fees awarded must be "reasonable." Courts have typically used the lodestar approach in cases where fee awards are permitted by statute. In class actions, courts have typically used the percentage method.

Strawn made the argument to the Court that the proper method of calculating the attorney fees was a blended approach between the lodestar and percentage methods. The Supreme Court agreed, concluding that a percentage method was a useful "cross-check" of the fees calculated under the lodestar method. The Court reasoned that Strawn's claims were "hybrid" in nature; a class action that resulted in a common-fund award that was brought, at least partially, pursuant to a statute authorizing a fee-shifting award. Additionally, Strawn brought both contract-based claims and fraud claims. Each of these claims has its own fee award system, and the prevailing attorneys, noted the court, should be compensated from both systems.

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