

# OREGON CASE UPDATE

## Court Rules Letter Insufficient to Entitle the Insurer to the “Safe Harbor” Protection

case in point...

**From the desk of Josh Hayward:** Under ORS 742.061(1), a first party plaintiff is entitled to attorney fees if they recover on a first party claim. However, in the underinsured motorist (“UIM”) context, the insurer can avoid paying attorney fees so long as the insurer sends a “safe harbor” letter within six months from the proof of loss. The “safe harbor” letter must state that the insurer accepts coverage, the insurer consents to binding arbitration, and that the only issues are liability and damages. Will a letter stating that damages and liability are the “focus” of the claim be sufficient to invoke the “safe harbor” protection? Read on to find out.

**Claims Pointer:** In this case arising out of injuries sustained in a motor vehicle accident, the court held that a letter committing to “focus” on the issues of liability and damages is insufficient to entitle the insurer to the “safe harbor” protection. Instead, the insurer must commit to limit the issues solely to damages and liability of the underinsured. This case serves as a reminder the importance of a clearly written “safe harbor” letter.

Daniels v Allstate Fire and Casualty Company, 289 Or App 698 (2018)

This case arose from injuries suffered by Danny Daniels (“Plaintiff”) in a car accident. Following the accident, Plaintiff notified his insurer, Allstate Fire and Casualty Company (“Allstate”) of his claim that sought to recover underinsured motorist (“UIM”) benefits. In response, Allstate sent Plaintiff a “safe harbor” letter, agreeing to submit the case to binding arbitration, and stating that “[w]e will now focus our efforts on liability issues and damages related to this claim.” After Plaintiff settled his claim against the at-fault driver, he filed suit against Allstate for damages he incurred in the accident. Following trial, the jury returned a verdict in favor of Plaintiff. Thereafter, Plaintiff filed a motion for attorney fees. The trial court denied the motion, finding that Allstate was entitled to the statutory “safe harbor” protection in ORS 742.061(3). Plaintiff appealed.

The Oregon Court of Appeals reviewed the trial court’s decision to determine whether Allstate’s letter was sufficient to invoke the safe harbor exception. (The court also considered whether the trial court was correct in offsetting Plaintiff’s damages award by previous payments for PIP benefits, which we will address in a separate case update.)

In reviewing Allstate’s letter, the trial court explained that ORS 742.061(1) entitles a first

party plaintiff to attorney fees if “the plaintiff’s recovery exceeds the amount of any tender made by the defendant in such action.” However, in the UIM context, ORS 742.061(3) provides a “safe harbor” exception to this rule:

“if, in writing not later than six months from the date proof of loss is filed with the insurer:

- (a) The insurer has accepted coverage and the only issues are the liability of the . . . underinsured motorist and the damages due the insured; and
- (b) The insurer has consented to submit the case to binding arbitration.”

According to the court, Allstate’s letter “did not limit the issues on the table to ‘only’ the liability of the underinsured motorist and damages.” Instead, Allstate’s letter stated that damages and liability would be the current “focus.” The court explained that “focus” is ordinarily defined as “to cause to be concentrated.” According to the court, ORS 742.061(3) demands more from an insurer who wishes to invoke the safe harbor protection. Commitment to focusing or concentrating on the issues of liability and damages is insufficient, instead, the insurer must “commit that those are the only issues, to the exclusion of all other issues.” (emphasis added). Because Allstate’s letter did not commit to limit the issues on dispute to solely liability and damages, the court reversed the



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trial court’s denial of attorney fees.

View full opinion at: <http://www.publications.ojd.state.or.us/docs/A160873.pdf>

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