



SMITH | FREED
EBERHARD

Oregon Case Update



Oregon Supreme Court Limits Claims Based on Abuse of Vulnerable Persons

From the desk of Bill P. Taaffe: Oregon’s statute on abuse of vulnerable persons—here, elderly persons—provides plaintiffs with a claim against a person who wrongfully, or in bad faith, withholds a vulnerable person’s money or property. The statute also provides for treble damages, giving the judge or jury the discretion to award an “amount equal to three times all economic damages.” But will the statute apply in a situation where the plaintiff alleges that an insurance company delayed processing claims in bad faith and refused to pay the plaintiff full benefits owed under the policy? Read on to find out.

Claims Pointer: In this case arising out of a dispute over healthcare insurance benefits, the Oregon Supreme Court held that the statute on elder financial abuse does not provide plaintiff with a claim against the insurance company for delaying the processing of claims and refusing to pay full benefits owed under the policy. This case serves as an important clarification on the scope of Oregon’s statute on elder financial abuse, making it clear that the statute does not apply to claims against insurance companies for denying benefits. damages. In the future, we should expect plaintiff attorneys to submit much more detailed verdict forms asking the jury to specifically determine which medical treatments were related to the accident.

Bates v. Bankers Life and Casualty Co., 362 Or 337 (2018)

In this case, Plaintiffs Lorraine Bates and Charles Ehrman Bates (“Plaintiffs”) purchased long-term healthcare insurance policies sold by Bankers Life and Casualty Company and its parent company (collectively “Bankers”). Plaintiffs later brought claims in federal district court against Bankers for elder financial abuse pursuant to ORS 124.110(1)(b). In support of their claims, Plaintiffs alleged that Bankers “developed” procedures to delay and deny insurance claims in bad faith, such as “failing to answer phone calls, losing documents, [and] denying claims without notifying policyholders.” Plaintiffs contended that as a result of Bankers’ practices, Bankers denied “insurance benefits to which Plaintiffs were entitled under the policies.” The federal district court ruled that Plaintiffs’ failed to state a claim for elder financial abuse, and dismissed the claim. Plaintiffs appealed to the Ninth Circuit Court of Appeals. In turn, the Ninth Circuit Court of Appeals

certified the question to the Oregon Supreme Court, asking:

Does a plaintiff state a claim under Oregon Revised Statutes 124.110(1)(b) for wrongful withholding of money or property where it is alleged that an insurance company has in bad faith delayed the processing of claims and refused to pay benefits owed under an insurance contract?

In answering that question, the Oregon Supreme Court looked to the text of ORS 124.110(1)(b), which provides that:

- (1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:
- (b) When a vulnerable person requests that another person *transfer to the vulnerable person any money or property that the other person holds or controls* and that belongs to or is held in express trust, constructive trust or resulting



Bill P. Taaffe

btaaffe@smithfreed.com

Phone: 503.227.2424
Fax: 503.227.2535
www.smithfreed.com

Oregon Office
111 SW 5th Ave, Suite 4300
Portland, OR 97204



Oregon Case Update



trust for the vulnerable person, and the other person, without good cause, either *continues to hold the money or property or fails to take reasonable steps to make the money or property readily available* to the vulnerable person when: (A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and (B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.

(emphasis added).

The Court noted that a cause of action under ORS 124.110(1)(b) requires proof of four elements. Under the **first element**, the other person must have acquired ownership or control of the money or property from the vulnerable person. The **second element** requires that the vulnerable person requests the other person to transfer the money or property that “belongs to” the vulnerable person. The **third element** requires that the other person continue to hold the money or property “without good cause.” As for the fourth element, the other person must act in “bad faith, or knew or should have known of the right of the vulnerable person” to have the money or property transferred as they requested. All **four elements** must be met to bring a claim under ORS 124.110(1)(b).

The Court held that Plaintiffs could not meet even the first element. The Court noted that Plaintiffs’ position “essentially reads out of the statute the first element of the claim,” which required Bankers to *acquire ownership or control of Plaintiffs’ money or property*. (emphasis added). Plaintiffs classified the money or property as their contractual right to receive benefits. The Court

noted that Bankers did not “acquire” the contractual right. Instead, under the agreement, Plaintiffs paid insurance premiums to Bankers in exchange for insurance policies. Plaintiffs were not requesting that Bankers return the insurance premiums that they transferred to Bankers. Instead, Plaintiffs were requesting the contractual benefits to which they alleged they were entitled. According to the Court, the “money or property” that Plaintiffs transferred to Bankers in the form of insurance premiums, is “factually and legally different from the insurance benefits they claim Bankers is withholding.” Because the contractual benefits were different from the premiums that Plaintiffs paid Bankers, the Court held that Plaintiffs’ did not meet the first element of the claim.

The Court went a step further and undertook a contextual analysis of ORS 124.110(1)(b). According to the Court, the statute’s use of the article “the” in almost every reference to “money or property” was significant. Use of the article “the” implied that the statute was intended to be limited to situations where the other person holds the *same* money or property it acquired from the vulnerable person, and “that it still ‘belongs to’ the vulnerable person.” (emphasis added). The Court noted that the insurance benefits under the policy were not the same “money or property” that Bankers acquired from Plaintiffs. As such, the Court confirmed that Plaintiffs failed to state a claim for relief under ORS 124.110(1)(b).

View full opinion at <http://www.publications.ojd.state.or.us/docs/S064742.pdf>

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



Bill P. Taaffe

btaaffe@smithfreed.com

Phone: 503.227.2424

Fax: 503.227.2535

www.smithfreed.com

Oregon Office

111 SW 5th Ave, Suite 4300
Portland, OR 97204

