

OREGON CASE UPDATE

Offsetting Jury Awards by Previously Paid PIP Benefits

case in point...

From the desk of Josh Hayward: Under ORS 31.555, courts are to offset a party's jury award if the party has previously received payments for personal injury protection ("PIP") benefits. But when the economic damages on the verdict form are unsegregated, creating an ambiguity that does not allow a court to determine whether the jury's award specifically includes PIP benefits paid by the insurer, will the court reduce the award? Read on to find out.

Claims Pointer: In this case arising out of injuries sustained in a motor vehicle accident, the court held that offsetting plaintiff's award by previously provided paid PIP benefits was proper even though the damages were not segregated. It was proper because the verdict form offered by the plaintiff did not ask the jury to segregate the economic 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.

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 received PIP benefits from his insurer, Allstate Fire, and Casualty Company ("Allstate"). Plaintiff later sued Allstate for UIM benefits. Following the trial, the jury returned a verdict awarding damages in favor of Plaintiff. Relying on ORS 31.555, the trial court reduced the award by the amount of PIP benefits that Allstate previously paid to Plaintiff. Plaintiff appealed the trial court's decision.

The Oregon Court of Appeals reviewed the trial court's decision to offset the award by the amount of PIP benefits that Allstate paid to Plaintiff under ORS 31.555. The text of ORS 31.555 states that:

"If judgment is entered against a party on whose behalf an advance payment referred to in ORS 31.560 or 31.565 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments . . ."

Plaintiff agreed that the verdict form the jury used was non-segregated; meaning that the verdict form did not have separate sections under the award that would indicate whether

the jury's damages award overlapped with PIP benefits paid by Allstate. Plaintiff agreed that because a non-segregated verdict form was used, it was possible that the jury's verdict "compensated plaintiff for injuries for which plaintiff previously received PIP benefits." Nevertheless, Plaintiff argued that because it was impossible to determine which economic damages may have been related to the PIP payments, Allstate should not be entitled to any offset since Allstate had consented to the use of the non-segregated verdict form.

The court disagreed with Plaintiff. The court looked to its recent decision in *Cooksley v. Lofland*, 289 Or App 103 (2017) [see our prior case update on *Cooksley* here]. In *Cooksley*, the verdict form that the jury used was non-segregated, and as a result, "did not indicate whether the jury considered the PIP reimbursement in awarding damages." Nevertheless, *Cooksley* upheld the trial court's partial satisfaction of the judgment, explaining that although there was ambiguity in the form that was ultimately used, the verdict form offered by the plaintiff "would not have eliminated that resulting ambiguity."

The court noted that similar to *Cooksley*, although the trial court did not use Plaintiff's verdict form, the form submitted by Plaintiff was non-segregated, and if used, would not have enabled the trial court to discern whether "the damages award overlapped with the PIP



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benefits that plaintiff received.” Accordingly, the Oregon Court of Appeals upheld the trial court’s offset of the award.

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

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