

Week 2 – Attorney Fees

5:30 Today's agenda

Introduction (cont.)

Pop quiz

6:00 Break

The American rule

Contingency fees

Fee shifting statutes

6:30 Break

Loadstar

Class action common funds

Offers of judgment

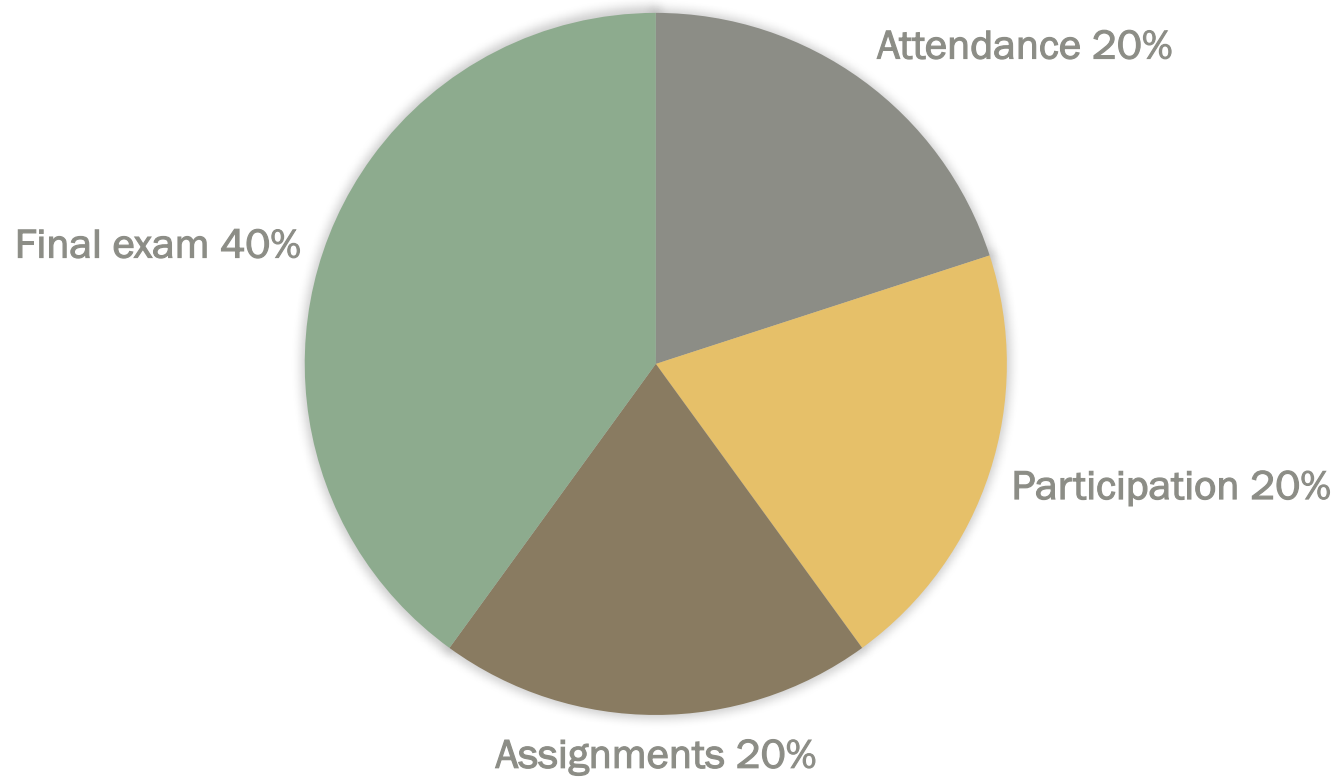
Next week's agenda

6:45 Speaker: Judge Michael Simon

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Class Grade Breakdown



Attendance

To earn attendance points, students should personally attend class having prepared at least one question for the guest speaker. Students can miss two classes without penalty. More than two unexcused absences will negatively impact a student's attendance score. Students should let the professor know prior to class if they are unable to attend. Students must maintain the law school's general attendance policies in addition to the criteria below.

Attendance Criteria / Max. Points

Attend all classes / 20 points
Miss one class / 20 points
Miss two classes / 20 points
Miss three classes / 15 points
Miss four classes / 10 points
Miss five classes / 5 points
Miss six classes / 0 points

Participation

To earn participation points, students must attend class having read the weekly materials, ready to engage in class polling, case reviews, oral arguments, and group discussions. Students may always “pass” if called on. However, more than two “passes” will negatively impact a student’s participation score.

Participation Criteria / Max. Points

Attend all classes, no passes / 20 points

One pass or absence / 20 points

Two passes or absences / 20 points

Three passes or absences / 15 points

Four passes or absences / 10 points

Five passes or absences / 5 points

Six passes or absences / 0 points

Assignments

To earn assignment points, students must participate in class pop quizzes and be prepared to share their answers. Students may always “pass” if called on. However, more than two “passes” will negatively impact a student’s assignment score.

Assignment Criteria / Max. Points

Attend all classes, no passes / 20 points

One pass or absence / 20 points

Two passes or absences / 20 points

Three passes or absences / 15 points

Four passes or absences / 10 points

Five passes or absences / 5 points

Six passes or absences / 0 points

Final Exam

To earn maximum final exam points, students must answer all 40 multiple choice questions correctly. Each question is worth one point, for a maximum 40 points total. Final exam scores may be curved to ensure final grades comply with Lewis & Clark Law School's GPA policies.

The final exam has eight questions on each of the following statutes: (1) the Unlawful Trade Practices Act, (2) the Fair Credit Reporting Act, (3) the Fair Debt Collection Practices Act, (4) the Telephone Consumer Protection Act, and (5) the Oregon Residential Landlord Tenant Act.

For each statute above, students should be prepared to answer questions about (1) the statutory private right of action for damages, (2) the claim elements, (3) the attorney fee shifting scheme, and (4) the statute of limitations.

The final exam will be open-book and unscheduled. Sample final exams are found at underdoglawyer.com/exam

Fact Pattern A

In January 2015, a consumer bought a laptop from Best Buy. Best Buy assured the consumer that the laptop came installed with an operating system. The consumer later discovered the laptop did not have an operating system, and had to spend another \$100 to install one.

1. Which consumer protection law contains the most relevant private right of action?
 - a. 15 U.S.C. § 1681 et seq.
 - b. 15 U.S.C. § 1692 et seq.
 - c. 47 U.S.C. § 227 et seq.
 - d. ORS 646.608 et seq.

2. Which of the following is **not** a claim element under the UTPA?
 - a. Defendant must have knowingly violated the law
 - b. Defendant must have willfully violated the law
 - c. Defendant must be a person in a business, vocation or occupation
 - d. Defendant's violation must have caused plaintiff ascertainable loss

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Which consumer law is **NOT**
on the final exam?

What consumer law is NOT on the final exam?

The RESPA

The FDCPA

The TCPA

The FCRA



Which fact pattern is **NOT**
on the final exam?



Which fact pattern will NOT be on the final exam?



a suit against a debt collector for harassment

a suit against a company for unfair termination

a suit against a car dealer for unfair trade practices

a suit against a bank for unfair credit reporting

a suit against a gym for unwanted texts



Which subject matter is **NOT**
on the final exam?

What subject matter will NOT be on the final exam?

claim elements

damages

attorney fees

statute of
limitations

securities
violations

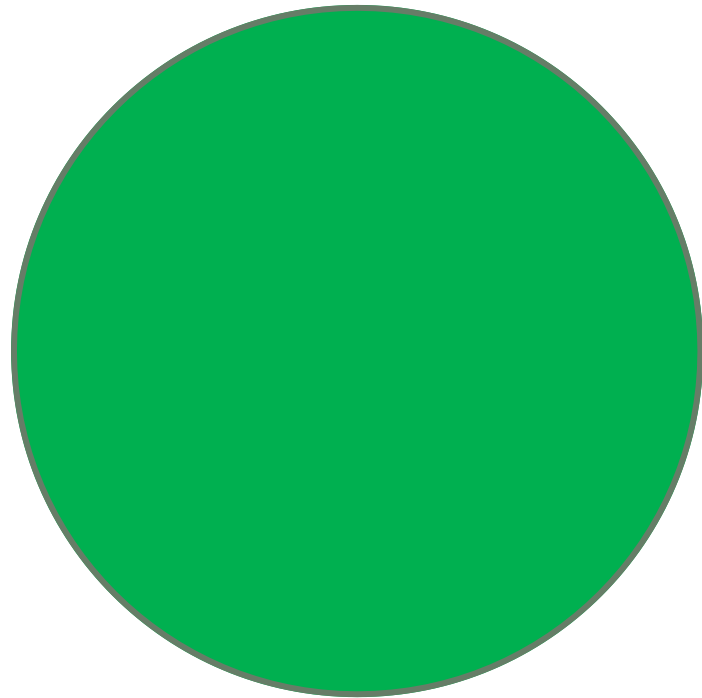
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“A small town that can’t support one lawyer can always support two.”



Honesty/Ethics in Professions

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low? How about -- [RANDOM ORDER]?

	Very High	High	Average	Low	Very Low
	%	%	%	%	%
Nurses	29	55	13	2	1
Pharmacists	15	52	26	6	2
Medical doctors	15	50	29	5	2
Engineers	13	52	29	4	1
Dentists	10	49	34	5	2
Police officers	16	42	29	10	3
College teachers	10	37	32	12	6
Clergy	12	32	39	9	4
Psychiatrists	6	32	45	9	3
Chiropractors	5	33	45	10	3
Bankers	2	22	46	22	8
Journalists	4	19	34	23	18
Lawyers	3	15	45	26	11
State governors	2	16	45	27	8
Business executives	2	15	50	23	9
Stockbrokers	2	10	46	28	11
HMO managers	1	11	48	23	8
Senators	1	11	37	36	14
Advertising practitioners	1	10	46	29	11
Insurance salespeople	1	10	51	28	10
Car salespeople	1	8	45	31	15
Members of Congress	1	7	31	39	20

Dec. 7-11, 2016

GALLUP

Attorney Fees Framework

- Under the **American rule**, consumers must pay their own fees.
- A **fee shifting statute** is an exception to the American rule.
- Courts use the **lodestar method** to decide fee motions.
- The **common fund doctrine** encourages class action attorneys to work on **contingency**.
- Defendants use **offers of judgment** to encourage settlement.

The American Rule



- Each party bears its own attorney fees

- **Rationale:**

The fear of paying a prevailing defendant's fees shouldn't discourage people from bringing meritorious lawsuits

The English Rule



- The prevailing party recovers its attorney fees

- **Rationale:**

The inability to afford an attorney shouldn't limit people from bringing meritorious lawsuits



Which attorney fee rule is **most fair**?

Which attorney fee rule is more fair?

The
American
rule

The English
rule



Three ways consumer attorneys get paid

1. Cash Retainer
2. Contingency Fees
3. Statutory Fee Shifting



Type of Employment – Private

Bankruptcy	\$138,906	\$83,900
Business/Corporate – Litigation	\$192,715	\$140,000
Business/Corporate – Transactional	\$180,403	\$149,500
Civil Litigation, Defendant (excludes Insurance Defense)	\$159,125	\$125,000
Civil Litigation, Insurance Defense	\$171,418	\$96,000
Civil Litigation, Plaintiff (excludes Personal Injury)	\$116,309	\$82,000
Civil Litigation, Plaintiff – Personal Injury	\$204,786	\$150,000
Criminal – Private Bar	\$134,779	\$100,000
Family Law	\$99,637	\$71,000
Real Estate/Land Use/Environmental Law	\$165,051	\$150,000
Tax/Estate Planning	\$124,827	\$82,000
Workers, Compensation	\$139,419	\$93,000
General (no area over 50%)	\$100,060	\$85,000
Other	\$184,405	\$131,000

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Contingency Fees



Woman says stranger's ashes in father's urn, sues for \$2.5M

By The Associated Press

PORTLAND, Ore. — Aug 23, 2017, 4:09 PM ET



A woman is suing an [Oregon](#) cremation company for \$2.5 million, claiming it gave her the remains of a stranger instead of her deceased father.



Kimberly Grecco (r) with her father Ronald Roark in 2015. (Courtesy of Kimberly Grecco)

PORTLAND NEWS

Portland tenant who faced 45% rent hike sues for \$1 million

Updated Jun 30, 2017; Posted Jun 30, 2017



A photo of Aleina Langford's son is pictured on a flier that angry tenants of a Southeast Portland apartment complex circulated late last summer. (Courtesy of Portland Tenants United)



By **Aimee Green**, agreen@oregonian.com
The Oregonian/OregonLive

Contingency Fees

- A **contingency fee** means a lawyer is paid only if they win
- A contingency fee is usually a **fixed percent** of the total recovery
- ORPC 1.5(a) says contingency fees **cannot be “clearly excessive”**
- Contingency fees are usually **33%**, sometimes up to 50%



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City of Portland Sued Over Stolen Car Mixup

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By [Lisa Loving | The Skanner News](#)

Published: 02 June 2014

PORTLAND NEWS

Lawsuit claims Grand Central Bowl charges hidden 2% fee

Updated Nov 17;
Posted Nov 16



Gallery: Grand Central Bowl



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OREGONLIVE
The Oregonian



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BP loses lawsuit in Multnomah County, will stop charging 35 cents for debit purchases



BP plans to appeal a decision that could leave it paying \$200 to customers who paid a 35-cent fee to use their debit cards to buy gas at Arco and AmPm stations. In the meantime, the company will stop charging the 35-cent fee on debit purchases. *(Simon Dawson/AP Photo)*



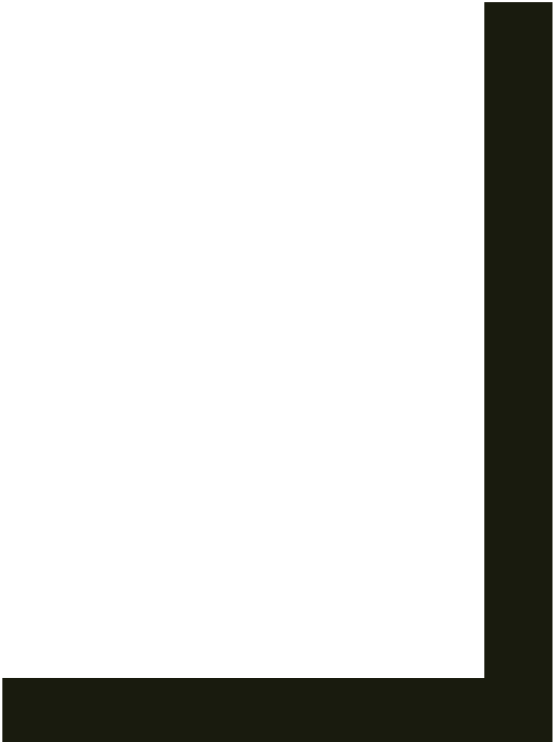
By [Laura Gunderson](#) | The Oregonian/OregonLive

[Email the author](#) | [Follow on Twitter](#)

on January 31, 2014 at 7:59 PM, updated January 31, 2014 at 8:01 PM

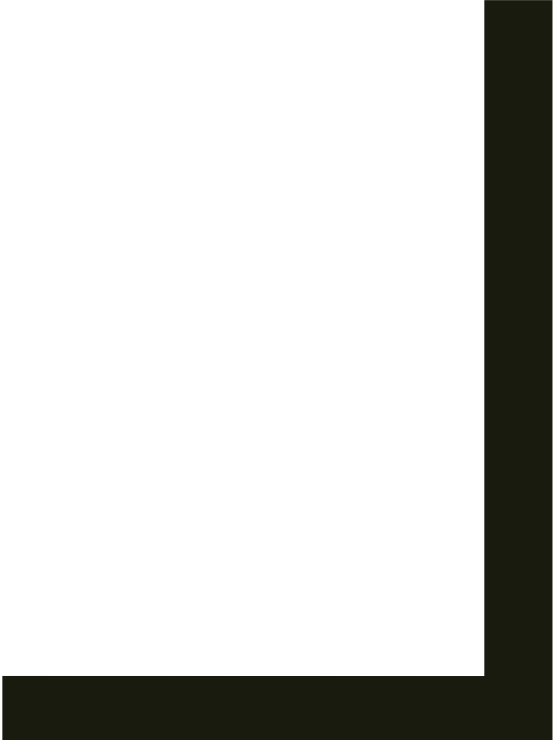


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Fee Shifting Statutes

- A **fee shifting statute** is an exception to the **American rule**
- States shift fees to **encourage settlement** of certain small tort claims
- Congress shifts fees to **encourage private enforcement** of consumer protection laws
- Judges shift fees as **sanctions** for bad faith conduct and rule violations



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Published: 02 June 2014

Attorney fees for certain small tort claims

“In any **action for damages** for an injury ... where the amount pleaded is **\$10,000 or less**, and the **plaintiff prevails** in the action, there shall be taxed and allowed to the plaintiff ... **attorney fees** for the prosecution of the action, if the court finds that **written demand** for the payment of such claim was made on the defendant, ... not less than **30 days before the commencement** of the action ... **However, no attorney fees shall be allowed** ... if ... the **defendant tendered** to the plaintiff, prior to the commencement of the action ... **an amount not less than the damages awarded** to the plaintiff.”

ORS 20.080

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ERICA BATTLES,

Plaintiff,

vs.

THE CITY OF PORTLAND,

Defendant.

Case No. 14CV09195

**STIPULATED LIMITED JUDGMENT
IN FAVOR OF ERICA BATTLES
AGAINST THE CITY OF PORTLAND**

MONEY JUDGMENT

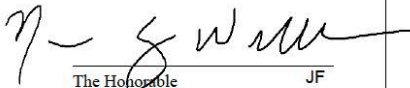
Based upon the decision of arbitrator Laura Chock and the stipulation between plaintiff Erica Battles and defendant The City of Portland,

IT IS ORDERED AND ADJUDGED that Erica Battles is awarded \$2,000.00 compensatory damages against The City of Portland, and

IT IS ORDERED AND ADJUDGED that pursuant to ORS 20.080, The City of Portland directly reimburse the law firm of OlsenDaines, P.C. \$19,408.20 attorney fees and \$827.65 costs incurred in this action.

Signed: 7/10/2015 02:00 PM

DATED: _____, 2015


The Honorable JF

Presented and Stipulated to by:

/s/ Michael Fuller
Michael Fuller, Attorney for Plaintiff

Stipulated to by:

/s/ Jim Rice
Jim Rice, Attorney for Defendant

**STIPULATED LIMITED JUDGMENT IN FAVOR OF ERICA BATTLES AGAINST
THE CITY OF PORTLAND - Page 1**

PORTLAND NEWS

Lawsuit claims Grand Central Bowl charges hidden 2% fee

Updated Nov 17;
Posted Nov 16



Gallery: Grand Central Bowl

Unlawful Trade Practices Act

“The court may award **reasonable attorney fees and costs** at trial and on appeal to a **prevailing plaintiff** in an action under this section. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the court finds that an objectively reasonable basis for bringing the action or asserting the ground for appeal did not exist.”

ORS 646.638(3)

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

KEVIN MEHRENS, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

CONCEPT ENTERTAINMENT-SIX,
LLC dba GRAND CENTRAL
RESTAURANT AND BOWLING
LOUNGE,

Defendant.

Case No.

CLASS ACTION COMPLAINT

Unlawful Trade Practices

ORS 646.638

Not Subject to Mandatory Arbitration

Filing Fee Authority: ORS 21.135(1)

1.

INTRODUCTION

Each day, defendant misleads its lounge customers about the true price of its food and beverages menu items. Customers don't realize they've been overcharged (if they realize it at all) until it's too late, after their cards have already been swiped or their cash has been taken.

Over the course of a year, defendant's individual 2% overcharges add up to tens of thousands of dollars in wrongful profits. By misleading its customers about

expense of litigation. Injunctive relief will prevent further ongoing harm to Oregon consumers, and the availability of defendant's sales records and customer data will facilitate proof of class claims, processing class claims, and distributions of any recoveries. To the extent Oregonians who defendant overcharged cannot be located, their monies may be distributed through a cy pres process.

13.

FIRST CLAIM FOR RELIEF – VIOLATION OF ORS 646.608

Defendant willfully, recklessly, knowingly, and intentionally violated ORS 646.608(1) (i), (s), and (t) as alleged above, causing plaintiff and the class ascertainable losses. Defendant continues to falsely advertise the cost of its menu items to lounge customers to this very day. Plaintiff seeks an injunction under ORS 646.636 to stop defendant's ongoing unlawful trade practices. Plaintiff and the class are also entitled to equitable relief in the form of an accounting, restitution, and unless agreed upon by defendant, an order to preserve sales records and customer data that relate to this claim under ORS 646.638. Plaintiff and the class are entitled to recover litigation expenses under ORS 646.638. Defendant can avoid paying any damages in this case by immediately changing its menus to comply with Oregon law, complying with ORCP 32 I, giving refunds to Oregon consumers, and depositing any unclaimed refunds into Court so the funds may be distributed through a cy pres process, and covering plaintiff's litigation expenses to date. If defendant refuses to do the right thing, plaintiff will have no choice but to amend this complaint to add claims for actual and statutory and punitive damages.

Fee Shifting Chart

CONSUMER LAW	STATUTORY AUTHORITY	AMERICAN RULE	PREVAILING PLAINTIFF	PREVAILING PARTY
UTPA	ORS 646.638(3)		✓	
FCRA	15 U.S.C. § 1681o(a)(2)		✓	
FDCPA	15 U.S.C. § 1692k(a)(3)		✓	
TCPA	47 U.S.C. § 227(b)(3)	✓		
ORLTA	ORS 90.255			✓

Attorney Fee Shifting (cont.)

Prevailing plaintiff

- UTPA, FCRA, FDCPA, ORS 20.080

Prevailing party

- OUDCPA, ORS 20.082, FRCP

Sanctions

- 28 U.S.C. § 1927, inherent authority

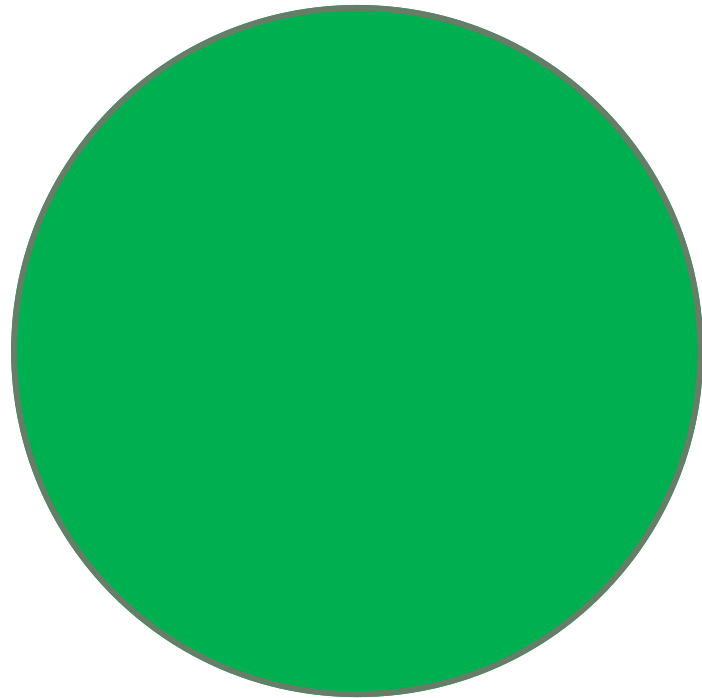
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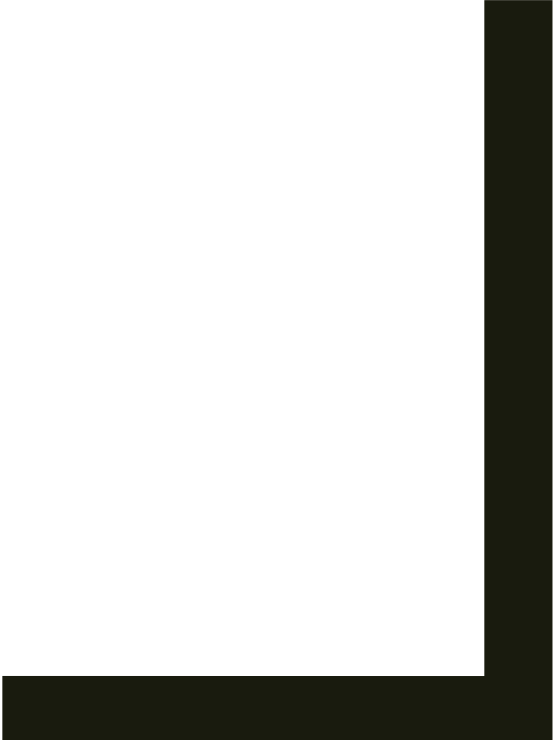
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Loadstar

- The **loadstar method** calculates “reasonable fees” under a fee shifting statute
- Courts multiply reasonable **hours** incurred by a reasonable hourly **rate**
- Anything more than a 10% “**haircut**” requires judges to **show their work**

Hourly Billing Rate by Area of Practice – Private Practice

Area of Private Practice		Oregon	Portland	Tri-County
Bankruptcy	Average	\$269	\$356	\$231
	Median	\$250	\$380	\$225
	25th Percentile	\$210	\$305	\$200
	75th Percentile	\$320	\$410	\$250
	95th Percentile	\$416	\$429	\$312
Business/ Corporate – Litigation	Average	\$284	\$311	\$252
	Median	\$275	\$300	\$248
	25th Percentile	\$225	\$255	\$174
	75th Percentile	\$328	\$360	\$258
	95th Percentile	\$450	\$450	\$459

How To Help Those With Limited Resources

RECOVERING STATUTORY ATTORNEY FEES



Phil Goldsmith

By Phil Goldsmith
OTLA Guardian

A decade ago, Mark Griffin, Hope Del Carlo and I won a great victory in a predatory mortgage lending case.¹ A hard working immigrant couple, Panfilo Vasquez-Lopez and Maria Dominguez, built their credit to be able to buy a home. But then they were tricked into refinancing by a callous bilingual mortgage loan originator.

They signed the English language loan documents that they couldn't read on his representation they were getting a better interest rate. In fact, it was several percent higher. When they came to us, they feared they would lose their home.

The jury found they had been defrauded and assessed \$500,000 in punitive damages. After the lawsuit, they

owned their home free and clear.

But the defendant worked us hard in the trial court and on appeal. So hard that we couldn't have gotten full payment for our time from a percentage of their recovery. We only did because of statutory attorney fees.

Based on that experience and many others, I'll offer suggestions on (1) how to prepare in advance for a fee petition and (2) effective techniques to recover reasonable attorney fees.

Generally, the same principles apply whether the fee petition is governed by state or federal law.² One major difference is state law requires a court to consider the factors in ORS 20.075. Some of these could justify less than a fully compensatory fee, unless the legislative policy of a particular fee statute requires full payment.³

Preparation at the outset

In small value cases, the fee may be significantly greater than the client's recovery.⁴ So the standard contingent fee contract must be adjusted to insure that you, not the client, receive the fees. You must also determine whether the IRS could consider your fees to be taxable income to your client and, if so, how to advise the client.⁵

Framing the complaint

If you allege substantially greater

damages than what seems provable, a court might reduce the fees ultimately awarded.⁶ Think through your claims for relief, as multiple claims create additional timekeeping obligations for you. In state court, ORCP 68 dictates what you must allege to recover fees.

Record your time as you work

Ordinarily, the hours you work are a fundamental component of a statutory fee award.⁷ Provide some detail about what you did. Some courts will not compensate for general entries like "call with X."⁸ And if later developments make some of your time non-compensable, the detail will help you determine what time to remove. You can protect privilege and work product by redacting the records submitted to defense counsel.

When possible, identify the time spent on each discrete task worked in a day. Failure to do so could result in time being discounted for block billing.⁹ In multiple claim cases, note those tasks that advance some but not all claims.

Fee petition strategies

"[B]oilerplate submissions [can be] self-defeating."¹⁰ Obviously, the effort you put into a fee petition depends on the amount at stake and the level of expected opposition. But in every case, you must educate the judge on the law and facts that

See *How to Help* p 40

How to Help
Continued from p 39

warrant the fee you seek, as well as the public policy you have enforced and how a fee award serves that policy. You also need to demonstrate your reasonableness.¹¹

What hours to claim

Courts often reduce a petitioner's hours. In federal court, a reduction up to 10 percent is called "a haircut" and does not require a specific explanation.¹² Your goal, therefore, cannot be to receive payment for every hour worked. Instead, you must make reasonable judgments and hope your opponent will aid you by taking extreme positions.

The first step is to apply billing judgment, i.e., to ask yourself if I received this bill would I think it fair or consider some of the work excessive, redundant or unnecessary? If this causes you to reduce your time significantly, tell the court. No need for two haircuts.

Unless you have won — and are entitled to fees on — every claim, you normally will have to remove more time.¹³ Certainly any time spent exclusively on a claim that you cannot receive fees for.¹⁴ And when your success on fee-generating claims is "partial or limited," you will need to discount that time too.¹⁵

Detailed time records will aid you in determining specific entries to remove. But likely you will need to propose a further percentage reduction. Be reasonable and hope your opponent will over-

reach.

Courts recognize there can be missteps on the road to success. Often it will be appropriate in seeking compensation on a successful claim to include a motion you've lost or a line of investigation which proved fruitless.¹⁶ But billing judgment may dictate differently when you took a considerable trip down an unsuccessful path.

Explain any case dynamics that required you to spend more time than might be expected.¹⁷ Include the time you spend on the fee petition.¹⁸

What hourly rates to claim

You are entitled to the "prevailing market rates in the relevant community."¹⁹ In a protracted case, courts award interest or use current hourly rates to compensate for delay.²⁰ The rate recently awarded you by another court and the rate you charge hourly clients are suggestive, but not conclusive, evidence of the prevailing market rate.

Often courts look to the average rates for lawyers of comparable experience in the Oregon State Bar's economic survey.²¹ But those rates may not be appropriate. Lawyers with superior skills command higher rates.²² The bar survey itself shows that certain specialty areas such as bankruptcy, commercial litigation and real estate/environmental litigation generally receive higher rates.²³ For commercial litigation, this is confirmed by the surveys conducted by forensic accountant Serena Morones.²⁴

Consider consulting with an attorney fee expert about the rate you should seek. Remember courts will expect lawyers with higher hourly rates to be more efficient.

Claiming enhancement for risk

Risk enhancements are possible under state, but not federal, law.²⁵ Despite appellate guidance,²⁶ state trial judges vary widely on when and how they will enhance attorney fees for contingent risk. So in shaping the argument for a particular case, learn how your judge has previously ruled.

Presenting testimony of a fee expert

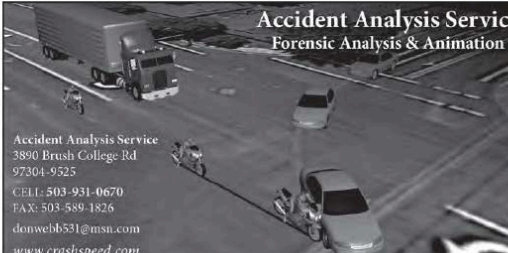
In major cases, expert testimony on market rates, appropriate enhancement and similar subjects offers potential benefits that significantly exceed the cost.²⁷ A lawyer who regularly handles smaller statutory fee cases may achieve sufficient long-run value from a favorable hourly rate decision to justify the expense of a testifying fee expert. But sometimes it is financially prudent just to consult with an expert.

Responding to attacks

The fee opposition may claim you spent too much time on a simple case, and that you don't deserve the hourly rate you seek. Don't let it show if you take these attacks personally. Your judge has seen your performance. You won't enhance your status by responding to your opponent in kind.

Provide any facts that deflate your opponent's claims. Among the key facts are the aggregate hours worked by each lawyer for your opponent and the rates at which they bill.²⁸ Many judges will allow their discovery.

In a recent class action where plaintiffs' counsel were accused of overstaffing, discovery established they had billed 2,000 hours fewer than defense counsel. The trial court consequently awarded more than 90 percent of the requested hours.²⁹ The fee opponent who blocks discovery of lawyers' hours and rates may



Accident Analysis Service

Forensic Analysis & Animation

Accident Analysis Service
3890 Brush College Rd
97304-9525
CELL: 503-931-0670
FAX: 503-589-1826
donwebb531@msn.com
www.crashspeed.com

DATE	DESCRIPTION	COST
3/28/2017	Service – Certified and Regular Mail under FRBP 7004(h)	\$10.58
4/3/2017	Advocacy Campaign – Twitter	\$100.00
4/4/2017	Advocacy Campaign – Twitter	\$100.00
5/1/2017	Advocacy Campaign – Twitter	\$100.00
5/2/2017	Advocacy Campaign – Twitter	\$200.00
5/10/2017	Advocacy Campaign – Twitter	\$100.00
5/13/2017	Advocacy Campaign – Twitter	\$500.00
5/14/2017	Advocacy Campaign – Twitter	\$400.00
5/15/2017	Advocacy Campaign – Twitter	\$100.00
5/25/2017	Service – Proposed Motion for Sanctions under FRBP 9011	\$12.68
6/27/2017	Airfare to 30(b)(6) Deposition – Portland to Cincinnati to St. Lewis to Portland Business Class	\$1,645.19
7/10/2017	Airfare to 30(b)(6) Deposition – Cincinnati to Portland Business Class	\$994.59
7/10/2017	Meal Per Diem GSA Rate Cincinnati	\$69.00
7/11/2017	Credit – Airfare Partial Reimbursement from US Bank	-\$250.00
7/11/2017	Meal Per Diem GSA Rate Cincinnati	\$69.00
7/12/2017	Hotel – DoubleTree Hilton Cincinnati Airport	\$422.84
7/12/2017	Meal Per Diem GSA Rate Cincinnati	\$69.00
9/1/2017	Transcript / Court Reporter – 30(b)(6) Depositions	\$2,587.90
9/11/2017	Kelly Jones Invoice – Appellate Counsel	\$800.00
9/11/2017	James Sinclair Invoice – Independent Settlement Counsel	\$1,971.00
9/13/2017	Transcript / Court Reporter – Phone Call Recordings	\$93.50
	GRAND TOTAL:	\$10,095.28

DATE	DESCRIPTION	TIME	BILLER
5/31/2017	amended deposition notice, reviewed matters for examination, emailed to OC	0.30	MF
7/26/2017	attended depositions, review notes with NB prior to examinations, debrief with NB over dinner after examinations	7.50	MF
6/13/2017	attended hearing, debriefed with NB	0.70	MF
5/2/2017	called OC to confer, emailed OC requesting a call back	0.10	MF
8/10/2017	called RD to speak before replying, drafted reply to OC email, sent re use of deposition videos based on client's instructions, timing, etc.	0.30	MF
7/24/2017	cleared entire calendar, reviewed and notated entire deposition binder, reviewed all pleadings, reviewed all discovery, drafted notes for questions, reviewed Rules of the Road for framing questions, boxing questions, etc.	6.50	MF
5/31/2017	conference with NB and client re: the bank's discovery responses, the bank denies liability, still unclear what happened and why he kept getting calls, discussing moving forward, costs, etc.	0.40	MF
5/22/2017	conferred with OC, drafted lengthy email to OC re conferral confirmation, request to withdraw offer of judgment, motion for sanctions for the bank's false allegations	0.30	MF
5/15/2017	conferred with OC, read email from OC re bank will oppose any effort to consolidate, will need PO before producing procedures, made note to file	0.20	MF
9/12/2017	cont. drafting MSJ, brief, concise statement of facts, printed to PDF, hand-reviewed, made changes, called KJ re standard for willful, adding Mwangi analysis to footnote, etc.	2.50	MF
9/6/2017	cont. drafting Oliveira settlement memo, added attachments 1-7, printed to paper, hand-reviewed, made changes, circulated to team for review, called RD re: making sure this memo isn't too forward and won't offend Judge McKittrick, etc.	3.20	MF
7/3/2017	created draft email to client re damages, read In re Hunsaker, Adv. No. 14-6218, Case No. 12-64782-fra13 re Judge Alley awarded \$1,000 and \$3,000 in damages against IRS, reviewed factors considered by Judge Alley, drafted memo to file for use in MSJ; read Sternberg v Johnston, \$20,000 stay violation award affirmed	0.50	MF
3/17/2017	created hard file for Rafael Oliveira, downloaded all bankruptcy documents, reviewed NB internal file for any notes, forwarded to MF for review	0.60	MN

▲ Caution
As of: December 27, 2017 4:35 AM Z

[Camacho v. Bridgeport Fin., Inc.](#)

United States Court of Appeals for the Ninth Circuit

March 13, 2008, Argued and Submitted, San Francisco, California; April 22, 2008, Filed

No. 07-15297

Reporter

523 F.3d 973 *, 2008 U.S. App. LEXIS 8665 **

RITA CAMACHO, on behalf of herself and all others similarly situated, Plaintiff-Appellant, v. BRIDGEPORT FINANCIAL, INC.; RAY LEWIS; CHRISTINA HARBRIDGE, Defendants-Appellees.

Subsequent History: On remand at, Costs and fees proceeding at, Motion granted by [Camacho v. Bridgeport Fin., Inc.](#), 2008 U.S. Dist. LEXIS 61652 (N.D. Cal., July 24, 2008)

Prior History: [**1] Appeal from the United States District Court for the Northern District of California. D.C. No. CV-04-00478-CRB/MEJ. Charles R. Breyer, District Judge, Presiding.

[Camacho v. Bridgeport Fin., Inc.](#), 2007 U.S. Dist. LEXIS 8134 (N.D. Cal., Jan. 24, 2007)

Disposition: VACATED and REMANDED.

Core Terms

attorneys, district court, cases, costs, services, awarding, hourly rate, declarations, lodestar, flat, reasonable hourly rate, fees-on-fees, prevailing, prevailing market rate, lodestar method, calculate, spent, relevant community, comparable, reputation, skill, supplemental declaration, inappropriate, presumptively, materials, parties

Case Summary

Procedural Posture

Plaintiff debtor sought review of an order from the United States District Court for the Northern District of California awarding a reduced amount in merits fees, costs, and fees-on-fees after the debtor filed a motion for attorneys' fees under [15 U.S.C.S. § 1692d\(a\)\(3\)](#) as the prevailing party in a class action against defendant debt collector under the Fair Debt

Collection Practices Act, [15 U.S.C.S. § 1692 et seq.](#)

Overview

The debtor alleged that the debt collector violated [15 U.S.C.S. § 1692g\(a\)\(3\)](#) because it misrepresented the rights of consumers in its initial letter by requiring them to dispute debts in writing. The debtor filed the motion for attorneys' fees after the parties settled the case and then could not agree on the amount of the attorneys' fees and costs. The court agreed with the debtor that the district court applied the wrong legal standard when determining a reasonable hourly rate because it did not consider rates in the relevant community. The district court also failed to identify the facts that led to its conclusions that it would be unreasonable to award the full hourly rates requested by the debtors' three attorneys and that the appropriate hourly rate was \$ 200. The court also held that the district court abused its discretion by awarding a "flat award" of \$ 500 for fees-on-fees rather than applying the lodestar method to determine a reasonable fee. Finally, the court found that the district court failed to include law clerk/associate and paralegal fees in the final award notwithstanding the fact that the district court found the requested fees reasonable.

Outcome

The court vacated the attorneys' fee award and remanded for further consideration.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > General Overview

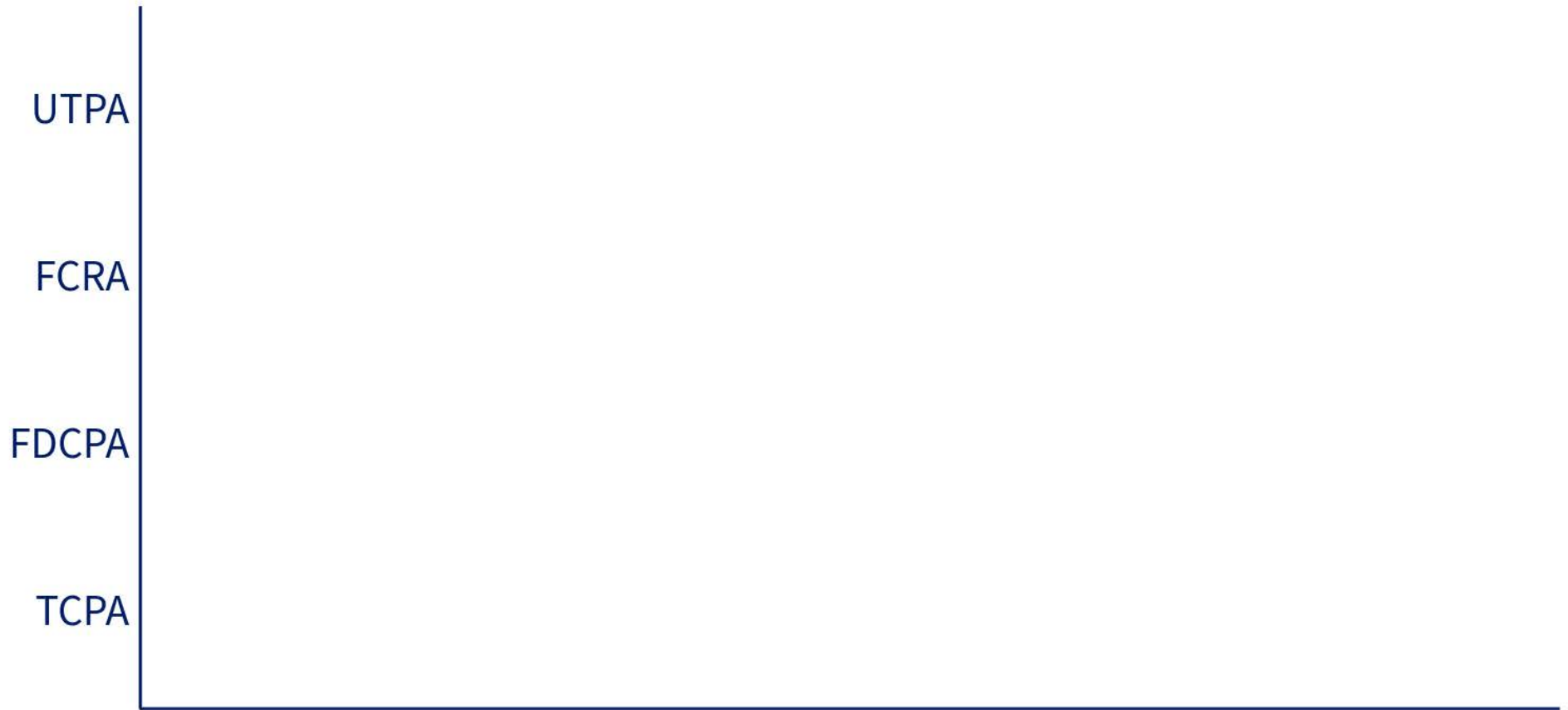
Civil Procedure > Appeals > Standards of

Michael Fuller



In *Camacho*, which consumer protection law shifted the plaintiff's attorney fees?

In Camacho, which consumer protection law shifted the debtor's attorney fees?





In *Camacho*, why did the plaintiff file a motion for attorney fees?

In Camacho, why did the debtor file a motion for attorney fees?

She won a jury trial

She settled but couldn't
agree on attorney fees

She settled attorney fees
but couldn't agree on costs

The defendant appealed
the debtor's fee award



Which of the following is **NOT** a loadstar factor in determining a reasonable fee award?

Which is not a "loadstar" factor in determining a reasonable fee award?

The number of
hours expended

The hourly rate of
the attorney

The size of the
corporate defendant

Campista v. Creditors Fin. Group LLC

United States District Court for the District of Oregon

January 13, 2014, Decided; January 13, 2014, Filed

Case No. 3:13-cv-00640-SI

Reporter

2014 U.S. Dist. LEXIS 3588 *; 2014 WL 127083

ANNETTE CAMPISTA, Plaintiff, v. CREDITORS
FINANCIAL GROUP LLC., Defendant.

Core Terms

lodestar, attorney's fees, hourly rate, calculation, costs, settlement, time spent, spent, negotiations, district court, attorneys, objects, reasonable hourly rate, cost bill, prevailing, discovery, preparing, expenses, parties, argues, confer, cases

Counsel: [*1] For Plaintiff: Bret Knewton, Bret Knewton, Esq., Hillsboro, OR; and Young Walgenkim, Hanson & Walgenkim, LLC, Salem, OR.

For Defendant: Jeffrey I. Hasson, Davenport & Hasson, LLP, Portland, OR.

Judges: Michael H. Simon, United States District Judge.

Opinion by: Michael H. Simon

Opinion

OPINION AND ORDER

Michael H. Simon, District Judge.

Plaintiff moves for an award of \$13,080 in attorney's fees and \$421.32 in costs, Dkt. 27. Defendant objects that the bill of costs was not in the proper format and not properly verified and that the attorney's fees requested includes attorney time that was not reasonable, an unreasonable requested hourly rate for attorney Bret Knewton, and insufficient verification. The Court finds that the requested costs and attorney's fees and expenses are reasonable.

DISCUSSION

A. Legal Standards

Plaintiff brought this action under the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA provides that any debt collector who fails to comply with its provisions is liable "in the case of any successful action . . . [for] the costs of the action, together with a reasonable attorney's fee as determined by the court." 15 U.S.C. § 1692k(a)(3). As the United States Court of Appeals for the Ninth Circuit [*2] has acknowledged, "[t]he FDCPA's statutory language makes an award of fees mandatory." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). A district court's disposition of a motion for attorney's fees must "provide a reasonably specific explanation for all aspects of a fee determination" in order to allow for "adequate appellate review." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 558, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010).

The preferred method of calculating reasonable attorney's fees is the "lodestar" method. *Id.* at 551-52. This is because the lodestar method produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case, is readily administrable, and is objective. *Id.* Additionally, one purpose of the federal fee-shifting statutes is to ensure that prevailing plaintiffs' counsel receive a fee that is "sufficient to induce a capable attorney to undertake the representation of a meritorious . . . case." *Id.* at 552. The lodestar method of calculating attorney's fees yields a fee that is presumptively sufficient to achieve this objective. *Id.* Although the lodestar [*3] calculation results in a presumptively reasonable fee, this fee may be adjusted in certain circumstances. *Id.*

The lodestar amount is the product of the number of hours reasonably spent on the litigation¹ times a reasonable hourly

¹ It is "well established that time spent in preparing fee applications" is also compensable. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1210 (9th Cir. 2013) (quoting *Anderson v. Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir. 1996) (quotation marks omitted)).

rate. *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009). In making this calculation, the district court should take into consideration various reasonableness factors, including the quality of an attorney's performance, the results obtained, the novelty and complexity of a case, and the special skill and experience of counsel. See *Perdue*, 559 U.S. at 553-54; *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1209 n.11 (9th Cir. 2013).

In determining the number of hours reasonably spent, "the district court should exclude hours 'that are excessive, redundant, or otherwise unnecessary.'" *McCown*, 565 F.3d at 1102 (quoting *Hensley*, 461 U.S. at 434). The party seeking an award of attorney's fees "has the burden [*4] of submitting billing records to establish that the number of hours it has requested [is] reasonable." *Gonzalez*, 729 F.3d at 1202.

After determining the number of hours reasonably spent, the district court then calculates the reasonable hourly rates for the attorneys and paralegals whose work comprise the reasonable number of hours used in calculating the lodestar amount. For this purpose, the "prevailing market rates in the relevant community" set the reasonable hourly rates." *Gonzalez*, 729 F.3d at 1205 (quoting *Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005)). "Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." *Id.* (quoting *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010)). Within this geographic community, the district court should consider the experience, skill, and reputation of the attorneys or paralegals involved. *Id.*

In determining reasonable hourly rates, typically "[a]ffidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory [*5] evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). In addition, courts in the District of Oregon have the benefit of several reliable billing rate surveys. One useful survey is the Oregon State Bar 2012 Economic Survey ("OSB 2012 Survey"), which contains data on attorney billing rates based on type of practice, geographic area of practice, and years of practice. A copy of the OSB 2012 Survey is available at <http://www.osbar.org/docs/resources/Econsurveys/12EconomicSurvey.pdf> (last visited on November 18, 2013).

There is a strong presumption that the fee arrived at through the lodestar calculation is a reasonable fee. *Perdue*, 559 U.S. at 552. A district court may, however, adjust the lodestar amount in "rare" and "exceptional" cases, such as when a particular factor bearing on the reasonableness of the

attorney's fee is not adequately taken into account in the lodestar calculation.² See *Perdue*, 559 U.S. at 552-54 (finding that, in certain circumstances, the superior performance of counsel may not be adequately accounted for in the lodestar calculation); *Cunningham v. Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988) [*6] (finding that although in ordinary cases the "results obtained" factor is deemed adequately accounted for in the lodestar calculation, it may serve as a basis to adjust the lodestar when "an attorney's reasonable expenditure of time on a case [is not] commensurate with the fees to which he [or she] is entitled").

B. Analysis

Defendant objects to the fee petition on both technical and substantive grounds.

1. Technical objections

Defendant argues that the fee petition should be denied or reduced significantly because Plaintiff's counsel failed properly to confer and the time records submitted by Plaintiff's counsel are inadmissible hearsay. Defendant further argues that Plaintiff's cost bill should be denied because Plaintiff failed to follow the proper procedures for submitting a cost bill. The Court has considered these arguments and finds them unavailing.

Plaintiff's counsel called Defendant's counsel three times on October 10, 2013, to confer on the motion. October 10, 2013 was 14 days from the date the acceptance of offer of judgment was filed, and it appears that Plaintiff's counsel believed it was the deadline for filing the fee petition. Defendant's counsel had not yet returned Plaintiff's counsel's call, and Plaintiff's counsel filed the motion on October 10, 2013,

² Factors that may be relevant to the reasonableness of a fee include: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) time limitations imposed by the client or the circumstances; (7) the amount involved and the results obtained; (8) the experience, reputation, and ability of the attorneys; (9) the "undesirability" of the case; (10) the nature and length of the professional relationship with the client; and (11) awards in similar cases. See *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Based on subsequent case law, a twelfth factor identified in *Kerr*, the fixed or contingent nature of the fee, is no longer a valid factor to consider in [*7] determining reasonable attorney's fees. See *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 n.7 (9th Cir. 2011).



Why must district courts **explain**
all aspects of a fee determination?

Why must district courts explain all aspects of a fee determination?

An explanation is required
under most federal laws

An explanation is required
under the federal rules

to allow for adequate
appellate review

To avoid the appearance
of impropriety



Which *Kerr factors* do you
find most relevant?

Which Kerr factors do you find most relevant?

time and labor

novelty and difficulty

skill level required

preclusion of other employment

customary fee

whether the fee is fixed or contingent

time limitations imposed by the case

amount involved and the results obtained

attorney's experience, reputation, and ability

the "undesirability" of the case

type of client relationship

awards in similar cases

Week 2 – Attorney Fees


- 5:30 Today's agenda
Introduction (cont.)
Pop quiz
- 6:00 Break
The American rule
Contingency fees
Fee shifting statutes
- 6:30 Break
Loadstar
Class action common funds
Offers of judgment
Next week's agenda
- 6:45 Speaker: Judge Michael Simon

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“...only a **lunatic** or a **fanatic** sues for \$30.”

Carnegie v. Household Int'l, Inc., 376 F. 3d 656, 661
(7th Cir. 2004)



Richard Posner
American jurist

Richard Allen Posner is an American jurist and economist who was a United States Circuit Judge of the United States Court of Appeals for the Seventh Circuit in Chicago from 1981 until 2017, and is a ... [Wikipedia](#)

Born: January 11, 1939 (age 78), Brooklyn, New York City, NY
Spouse(s): Charlene Horn
Appointed by: Ronald Reagan
Children: [Eric Posner](#), [Kenneth A. Posner](#)
Education: [Yale College](#), [Yale University](#), [Harvard Law School](#)

PORTLAND NEWS

Lawsuit claims Grand Central Bowl charges hidden 2% fee

Updated Nov 17;
Posted Nov 16



Gallery: Grand Central Bowl



Set Weather ▾



OREGONLIVE
The Oregonian



Sign In



Search

BP loses lawsuit in Multnomah County, will stop charging 35 cents for debit purchases



BP plans to appeal a decision that could leave it paying \$200 to customers who paid a 35-cent fee to use their debit cards to buy gas at Arco and AmPm stations. In the meantime, the company will stop charging the 35-cent fee on debit purchases. *(Simon Dawson/AP Photo)*



By [Laura Gunderson](#) | The Oregonian/OregonLive

[Email the author](#) | [Follow on Twitter](#)

on January 31, 2014 at 7:59 PM, updated January 31, 2014 at 8:01 PM

The Common Fund Doctrine

Common Fund Doctrine refers to a principle that a litigant who creates, discovers, increases, or preserves a fund to which others also have a claim is entitled to recover litigation costs and attorney's fees from that fund. That doctrine is an **equitable** doctrine designed to prevent **unjust enrichment**.

Common-Fund Doctrine Law and Legal Definition | USLegal, Inc.

<https://definitions.uslegal.com/c/common-fund-doctrine/>



About this result



Feedback

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STEVEN SCHARFSTEIN, individually
and on behalf of all other similarly situated
persons,

Plaintiff,

vs.

BP WEST COAST PRODUCTS, LLC, a
Delaware limited liability company

Defendant.

Case No. 1112-17046

AMENDED GENERAL JUDGMENT

THIS MATTER was tried before a jury from January 14, 2014, through February 4, 2014. The case was tried by David Sugerman, Tim Quenelle and Amy Johnson ("class counsel") on behalf of Plaintiff Steven Scharfstein, individually and representing a class, and by David Harria, Abby Risner, Brad Daniels, Doug Berry and Lois Rosenbaum on behalf of Defendant BP West Coast Products LLC ("defendant" or "BPWCP"). Scott Shorr and Josh Ross also appeared on behalf of the class. William F. Gary, Sharon A. Rudnick and Susan D. Marnaduke also appeared on behalf of defendant.

The class is defined as Plaintiff Steven Scharfstein ("plaintiff" or "Scharfstein") and all consumers who, between January 1, 2011, and August 30, 2013, bought BP-branded gasoline, including gasoline plus additional items, at Oregon ARCO stations or Oregon *am/pm* minimarkets, who paid with a debit card and who were charged with a debit card fee (the "class"). Excluded from the class are 2,441 former class members who filed valid opt-out forms and are specifically identified in Exhibit A to this judgment, which is incorporated herein by reference. ORCP 32 O. These 2,441 excluded class

1 Inc.; Belmont Auto Service Inc.; BP American Production Company; TP Liberty
2 LLC; and SKR Inc. As a result of a clerical error, the Limited Judgments did not
3 dismiss the claims against Defendant Jamal M H Al-Soudani Inc. The Court
4 intends this General Judgment to dismiss all of the claims against all of the
5 defendants except Defendant BPWCP.

6
7 Based upon the foregoing,

8
9 IT IS HEREBY ORDERED AND ADJUDGED as follows:

10 1. Defendant is permanently enjoined from charging a \$0.35 debit card fee at
11 its Oregon ARCO and *ampm* stations in addition to its price for gasoline, unless that
12 condition is clearly and conspicuously advertised on its street signs and pumps in
13 compliance with OAR 137-020-0150(3)(d).

14 2. Defendant is permanently enjoined from charging more than the total
15 amount registered on the gasoline pump at the selected unit price for the gasoline sold at
16 its ARCO and ARCO *ampm* stations in Oregon.

17 3. Subject to Paragraphs 5 and 6 below, Plaintiff Steven Scharfstein and the
18 class members are entitled to an award of \$200 each as statutory damages under ORS
19 646.608(u), ORS 646.638(1), and ORS 646.638(3)(a).

20 4. Subject to Paragraphs 5 and 6 below, Plaintiff Steven Scharfstein and the
21 class members shall have, take and recover judgment against defendant in the aggregate
22 amount of \$343,245,800.

23 5. Upon the affirmance of this General Judgment after the exhaustion of all
24 available appeals, Plaintiff Steven Scharfstein and the class members who filed claims
25 shall have, take and recover from defendant \$8,000,000, payable as follows: the amount
26 of \$1,585,600 in attorney fees and \$292,892 in costs payable to class counsel pursuant to
ORS 646.638(3); and the amount of \$6,121,508 payable to the class as partial payment of

1 the Common Fund attorney fee judgment in Paragraph 6 below. Pursuant to ORS
2 82.010(2)(g) and ORS 18.042(2)(c), interest on the portion of the judgment described in
3 this paragraph 5 shall not begin to run until 14 days after the appellate judgment issues
4 from the appellate court of last resort.

5 6. Plaintiff Scharfstein shall have, take and recover judgment payable from
6 the Common Fund for attorney fees in the aggregate amount of \$60,277.860 for the
7 benefit of and payable to Class Counsel. The final attorney fee amount will be allocated
8 pro rata to the claim of each class member that either filed a claim or is deemed to have
9 filed a claim.

10 7. Pursuant to ORCP 32 D, the Oregon State Bar shall have, take and recover
11 judgment against defendant in the amount of \$53,027.100 for the finding of legal
12 services provided through the Legal Services Program established under ORS 9.572.

13 8. Pursuant to ORCP 32 D, the Oregon Community Foundation shall have,
14 take and recover judgment against defendant in the amount of \$33,027.100 for the
15 purposes stated in the May 11, 2016 Order Granting Plaintiff's Fourth Amended Motion
16 to Adopt Proposed Plan of Allocation of Unclaimed Proceeds (ORCP 32 G).

17 9. The claims against Defendant Jamal MH Al Soudani Inc. are hereby
18 dismissed.

19 **MONEY AWARD I**

20 1. Judgment Creditors: Steven Scharfstein and the class defined
21 above. (Excluded from the class and this
22 judgment are those former class
23 members who filed valid opt out claims
and are listed in Exhibit A to this
Judgment)

24 Steven Scharfstein
25 52 Touchstone Drive
26 Lake Oswego, OR 97035

Week 2 – Attorney Fees

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Offers of Judgment

- State and federal rules permit **offers of judgment** before trial
- Offer of judgment rules encourage early **settlement of cases**
- An **unaccepted** offer can shift fees and costs in favor of a defendant

Offer of Judgment

“... a party defending against a claim may serve on an opposing party **an offer to allow judgment on specified terms**... If the judgment that the offeree finally obtains **is not more favorable** than the unaccepted offer, the offeree **must pay the costs** incurred after the offer was made.”

FRCP 68

Offer to Allow Judgment

“... any party against whom a claim is asserted may ... serve upon any other party asserting the claim **an offer to allow judgment** to be entered against the party making the offer for the sum, or the property, or to the effect therein specified. ... **If the offer is not accepted** ... it shall be deemed withdrawn ... and may be filed ... after the case has been adjudicated ... **only if the party asserting the claim fails to obtain a judgment more favorable than the offer**... In such a case, the party asserting the claim **shall not recover costs ... or attorney fees** incurred after the date of the offer, but the party against whom the claim was asserted **shall recover from the party asserting the claim** costs and disbursements ... from the time of the service of the offer.

ORCP 54 E

William L. Larkins, Jr., OSB #812882
Danielle Hunsaker, OSB #045365
Brett Applegate, OSB #132944
Larkins Vacura Kayser LLP
121 SW Morrison St., #700
Portland, OR 97204
wlarkins@lvklaw.com
dhunsaker@lvklaw.com
bapplegate@lvklaw.com
Telephone: 503-222-4424

Attorneys for Defendant U.S. Bank
National Association

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

RAFAEL MAIA DE OLIVEIRA and
JESSICA ANN MAIA DE OLIVEIRA

Debtors

RAFAEL MAIA DE OLIVEIRA,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

Case No. 16-34353-tmb7

Adv. Proc. No. 17-03039

OFFER OF JUDGMENT

To: Rafael Maia De Oliveira, through his attorney Michael Fuller, Olsen Daines, US
Bancorp Tower, 111 SW 5th Ave., Suite 3150, Portland, Oregon 97204

Pursuant to Fed. R. Bankr. P. 7068 and Fed. R. Civ. P. 68, defendant U.S. Bank
National Association ("U.S. Bank") hereby offers to allow judgment to be taken against it by
plaintiff Rafael Maia De Oliveira in the amount of \$5,000, exclusive of costs incurred as of the

OFFER OF JUDGMENT

Page 1

LARKINS VACURA KAYSER LLP
121 SW Morrison St, Suite 700
Portland, Oregon 97204
503-222-4424

Case 17-03039-tmb Doc 54 Filed 10/02/17

date of this offer, reasonable attorney fees incurred as of the date of this offer, and costs and
fees incurred in connection with prosecuting any petition for fees and costs. Any entitlement
by plaintiff to costs or attorney fees, and the amount thereof, shall be determined by the Court
after acceptance of this offer.

Pursuant to Fed. R. Civ. P. 68(b), evidence of this offer is not admissible except in a
proceeding to determine costs. If this offer is not accepted in writing and received by U.S.
Bank within 14 days after it is served, it shall be deemed withdrawn. U.S. Bank further
provides notice under Fed. R. Civ. P. 68(d) that in the event plaintiff rejects this offer and fails
to recover a judgment on more favorable terms, plaintiff must pay the costs that U.S. Bank
incurs after the date of this offer.

DATED: September 13, 2017.

LARKINS VACURA KAYSER LLP

William L. Larkins, Jr., OSB #812882
wlarkins@lvklaw.com
Danielle Hunsaker, OSB #045365
dhunsaker@lvklaw.com
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bapplegate@lvklaw.com
Ph: 503-222-4424

Attorneys for Defendant U.S. Bank National
Association

OFFER OF JUDGMENT

Page 2

LARKINS VACURA KAYSER LLP
121 SW Morrison St, Suite 700
Portland, Oregon 97204
503-222-4424

Case 17-03039-tmb Doc 54 Filed 10/02/17



September 25, 2017

Delivered by Email

US Bank National Association
c/o attorney Danielle Hunsaker
121 SW Morrison Street, Suite 700
Portland, Oregon 97204
dhunsaker@lvklaw.com

RE: Acceptance of Offer of Judgment
Oliveira v US Bank (17-03039)

Ladies and Gentlemen,

Now that US Bank has accepted liability in his case, my client has decided to accept its attached offer of judgment dated September 13, 2017.

Please let us know if the attached proposed judgment is acceptable to file with your electronic signature. The judgment includes a grant of additional time under LBR 9021-1(d) in hopes the parties can resolve fees and costs short of a formal application and prove up hearing. Thank you.

Sincerely,

s/ Michael Fuller
Partner

Enclosures Offer of Judgment
Proposed Judgment

US Bancorp Tower • 111 SW 5th Ave. • Suite 3150
Portland, Oregon 97204 • 503-201-4570 • underdoglawyer.com

Page 1 of 1

Case 17-03039-tmb Doc 54 Filed 10/02/17

Below is a Judgment of the Court. If the judgment is for money, the applicable judgment interest rate is:


TRISH M. BROWN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

Rafael Maia De Oliveira
Jessica Ann Maia De
Oliveira,

Debtors.

Rafael Maia De Oliveira,

Plaintiff,

v.

U.S. Bank National Associa-
tion,

Defendant.

Case No. 16-34353-tmb7

Adv. Proc. No. 17-03039

**STIPULATED LIMITED
JUDGMENT**

Based upon the stipulation of the parties and the terms of the offer of judgment made by US Bank on September 13, 2017 and accepted by plaintiff on September 25, 2017,

STIPULATED LIMITED JUDGMENT – Page 1 of 2

IT IS ADJUDGED that US Bank shall pay plaintiff \$5,000.

IT IS ADJUDGED that US Bank shall pay plaintiff reasonable attorney fees and costs incurred as of September 13, 2017, and reasonable attorney fees and costs incurred in connection with prosecuting any petition for fees and costs.

IT IS ORDERED that within 30 days after entry of this judgment, if the parties are unable to stipulate to an amount of reasonable fees and costs, plaintiff shall file a fee petition and cost bill.

###

Presented by and stipulated to by:

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Olsen Daines PC
Special Counsel for Plaintiff
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

Stipulated to by:

/s/ Bret Applegate
Brett Applegate, OSB #132944
Larkins Vacura Kayser LLP
Of Attorneys for US Bank
121 SW Morrison St., #700
Portland, Oregon 97204
bapplegate@lvklaw.com
Telephone 503-222-4424

STIPULATED LIMITED JUDGMENT – Page 2 of 2



According to *Campbell-Ewald*,
what is the sole sanction under FRCP 68?

According to Campbell-Ewald, what is the sole sanction under FRCP 68?

an unfavorable judgment

payment of costs after an offer
is made

payment of attorney fees after
an offer is made

payment of litigation expenses
after an offer is made



What was the basis for
Campbell's argument that its
offer mooted Gomez's claim?

What was the basis for Campbell's argument that its offer mooted Gomez's claim?

the offer lapsed before
Gomez moved for class
certification

the offer provided Gomez
with complete relief

a class action cannot proceed
after an FRCP 68 offer is made

Campbell had immunity from
suit under the TCPA



What was the **main holding** of the
Campbell-Ewald opinion?

What was the main holding of the Campbell-Ewald opinion?

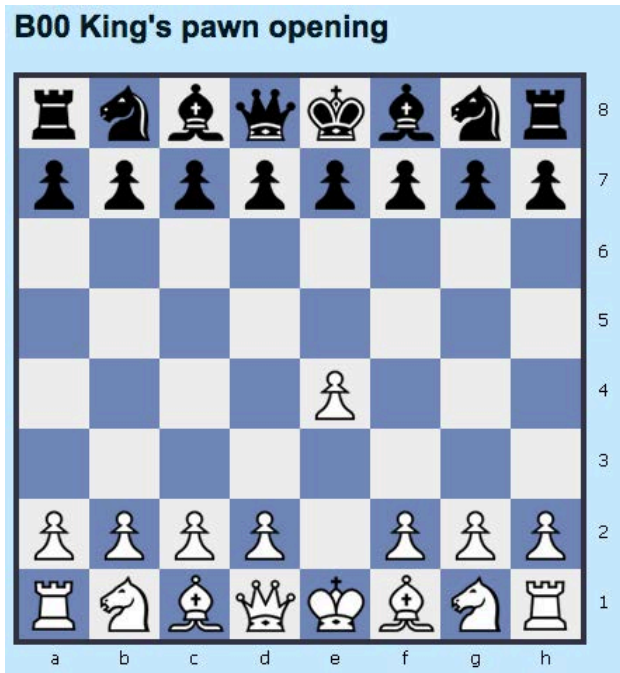
an offer of judgment must
provide complete relief

an unaccepted offer does
not moot a plaintiff's case

a contractor can be held
liable under the TCPA

In sum, [HN8](#)^[↑] [LEdHN/8](#)^[↑] [8] an unaccepted settlement offer or offer of judgment does not moot a plaintiff's case, so the District Court retained jurisdiction to adjudicate Gomez's complaint. That ruling suffices to decide this case. We need not, and do not, now decide whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount. That question is appropriately reserved for a case in which it is not hypothetical.

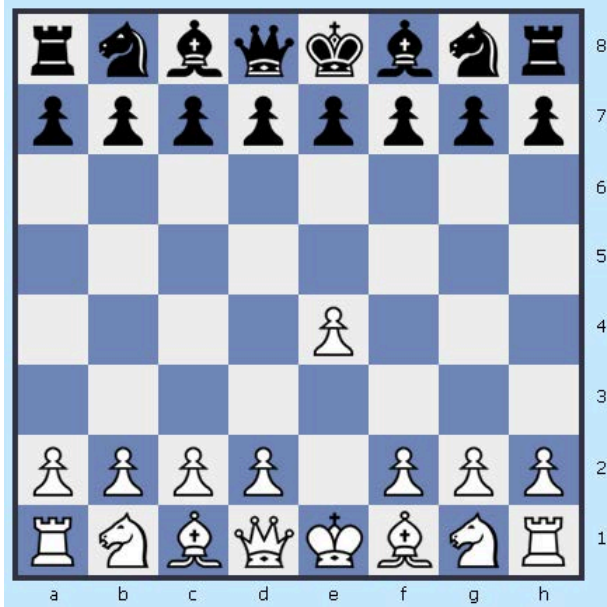
Litigation Tactics



Next Move	# of Games Played	Last	Winnings percentage White / Draw / Black		
1... c5	697378	2017	36.1 %	29.7 %	34.3 %
1... e5	398920	2017	41.1 %	29.8 %	29 %
1... e6	222716	2017	38.7 %	30.7 %	30.6 %
1... c6	119768	2017	37.3 %	33.1 %	29.6 %
1... d6	74066	2017	40.8 %	27.8 %	31.4 %
1... d5	61150	2017	41 %	27.2 %	31.8 %
1... g6	51040	2017	37.4 %	28.1 %	34.5 %
1... Nf6	40036	2017	37.8 %	29 %	33.1 %
1... Nc6	11575	2017	41 %	24.8 %	34.1 %
1... b6	4643	2017	46.6 %	21.2 %	32.3 %
1... a6	1066	2017	44.6 %	19.5 %	35.9 %
1... g5	138	2007	58 %	16.7 %	25.4 %
1... f5	62	2009	64.5 %	19.4 %	16.1 %
1... a5	57	2009	61.4 %	29.8 %	
1... Nh6	52	2011	57.7 %	19.2 %	23.1 %
1... f6	43	2007	65.1 %	23.3 %	
1... h6	40	2016	47.5 %	22.5 %	30 %
1... h5	26	2015	57.7 %	15.4 %	26.9 %
1... Na6	23	2007	30.4 %	17.4 %	52.2 %
1... b5	23	2014	60.9 %	26.1 %	

The Offer of Judgment Opening

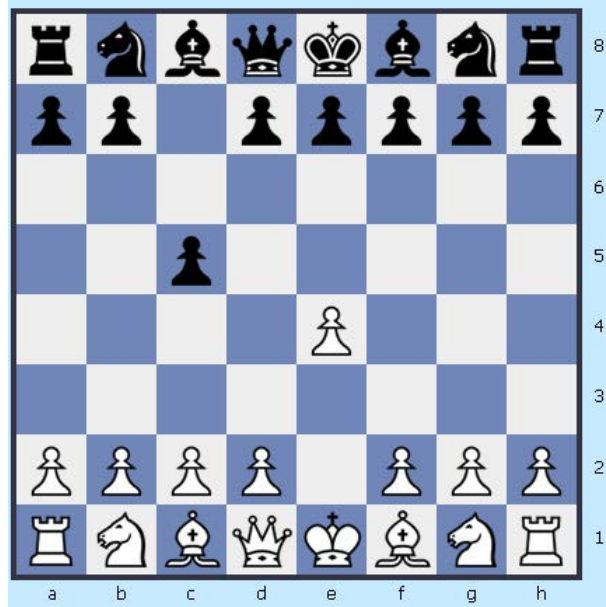
B00 King's pawn opening



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500

The Offer of Judgment Opening

B20 Sicilian defence



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500
2. Defendant serves \$1,500 offer of judgment

The Offer of Judgment Opening

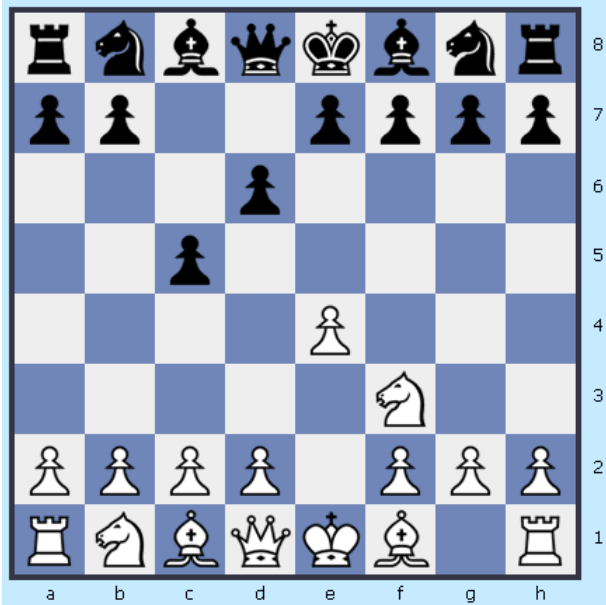
B27 Sicilian defence



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500
2. Defendant serves \$1,500 offer of judgment
3. Plaintiff lets offer lapse

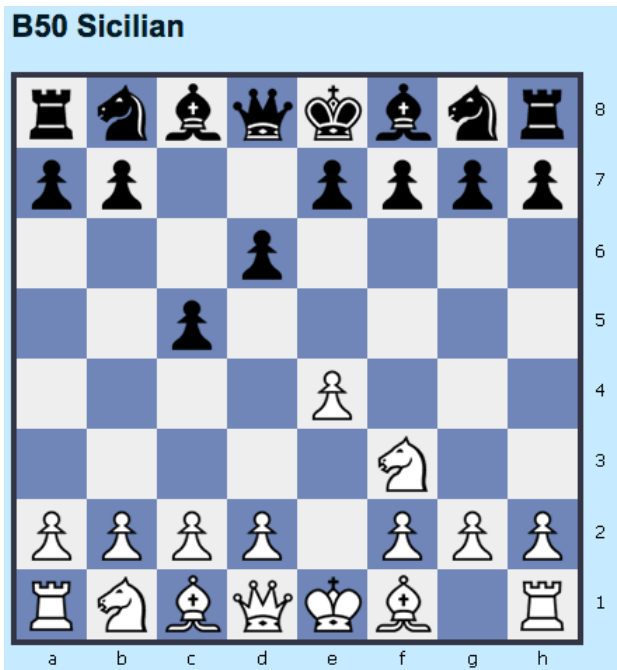
The Offer of Judgment Opening

B50 Sicilian



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500
2. Defendant serves \$1,500 offer of judgment
3. Plaintiff lets offer lapse
4. Defendant pays \$1,500 into account payable to plaintiff, files motion for entry of judgment

The Offer of Judgment Opening

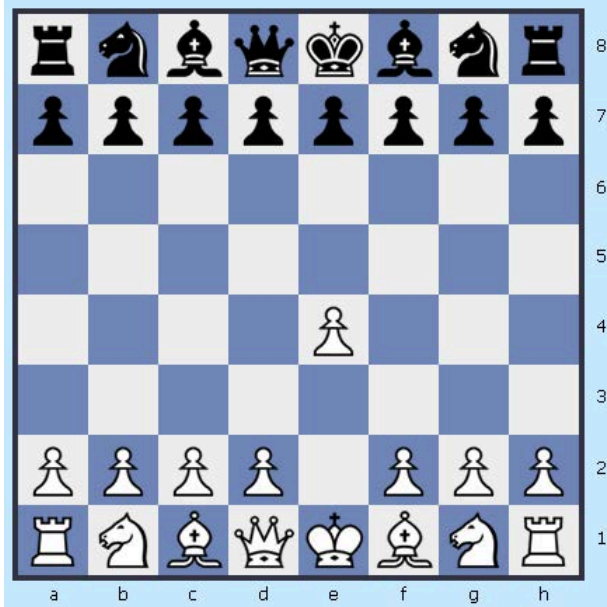


1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500
2. Defendant serves \$1,500 offer of judgment
3. Plaintiff lets offer lapse
4. Defendant pays \$1,500 into account payable to plaintiff, files motion for entry of judgment

PLAINTIFF WINNING PERCENTAGE: 25%

The Offer of Judgment Opening

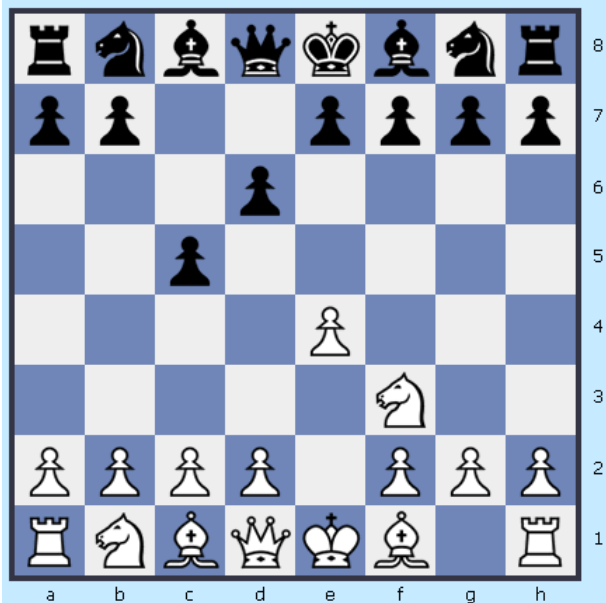
B00 King's pawn opening



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500, and declaratory relief that defendant “willfully” violated the TCPA, and an order requiring defendant to appear at a future Court hearing to ensure it has finally adopted procedures to comply with the TCPA”

The Offer of Judgment Opening

B50 Sicilian



1. Plaintiff files complaint, alleges TCPA robo-call violation, prays for \$1,500, and declaratory relief that defendant “willfully” violated the TCPA, and an order requiring defendant to appear at a future Court hearing to ensure it has finally adopted procedures to comply with the TCPA”
2. Defendant serves \$1,500 offer of judgment
3. Plaintiff lets offer lapse
4. Defendant pays \$1,500 into account payable to plaintiff, files motion for entry of judgment

PLAINTIFF WINNING PERCENTAGE: 75%

CAUSE OF ACTION

11 U.S.C. § 362(k) / 11 U.S.C. § 105

11 U.S.C. § 362(a) imposed an affirmative duty on defendant to promptly terminate all collection activity against plaintiff after learning plaintiff filed bankruptcy. Defendant's violation of 11 U.S.C. § 362(a)(6) as alleged in this complaint was "willful" because its acts and omissions were intentional, it had prior actual knowledge of the automatic stay, its conduct was unreasonable, and any alleged mistake of law was not a defense. Under 11 U.S.C. § 362(k), plaintiff and the putative class members are entitled to compensation for actual damages, proportional punitive damages, and reasonable fees and costs from defendant in amounts to be decided by the Court. Under 11 U.S.C. § 105 and this Court's inherent authority, plaintiff and the putative class members are entitled to an order requiring defendant to notify all members of the putative Oregon class that they are under no obligation to pay defendant's pre-petition debt, an order requiring defendant to return all moneys collected on account of pre-petition debt from members of the putative class during the automatic stay, and an order requiring defendant to appear at a continued status conference to confirm it has implemented procedures to receive notices from the bankruptcy noticing center and to comply with the automatic stay in future cases.

Attorney Fees Framework

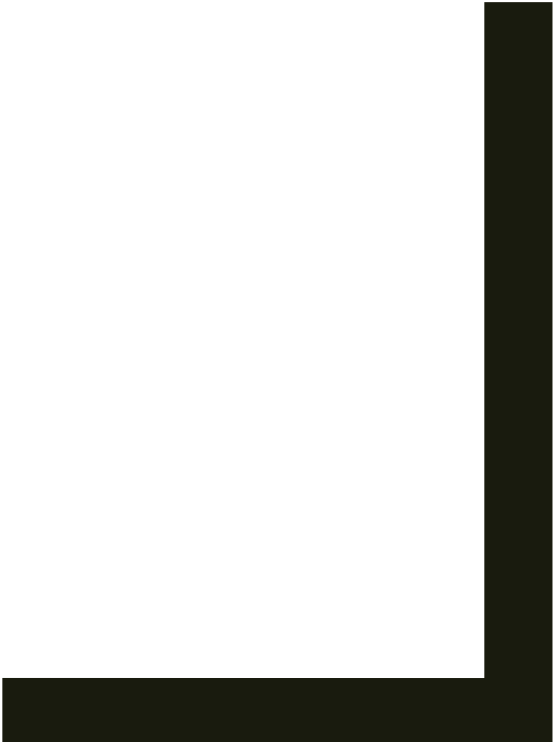
- Under the **American rule**, consumers must pay their own fees.
- A **fee shifting statute** is an exception to the American rule.
- Courts use the **lodestar method** to decide fee motions.
- The **common fund doctrine** encourages class action attorneys to work on **contingency**.
- Defendants use **offers of judgment** to encourage settlement.

Week 2 – Attorney Fees

- 5:30 Today's agenda
Introduction (cont.)
Pop quiz
- 6:00 Break
The American rule
Contingency fees
Fee shifting statutes
- 6:30 Break
Loadstar
Class action common funds
Offers of judgment
Next week's agenda
- 6:45 Speaker: Judge Michael Simon



Week 2 – Attorney Fees

- 5:30 Today's agenda
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Next week's agenda
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- 

Next Week – Class Actions

- 5:30 Today's agenda
Attorney fees (cont.)
Pop quiz
- 6:00 Break
Prefiling considerations
Rule 23
Rule 32
- 6:30 Break
Mutidistrict litigation
Class settlement
- 6:45 Speaker: Jennifer Wagner



Week 2 – Attorney Fees

- 5:30 Today's agenda
Introduction (cont.)
Pop quiz
- 6:00 Break
The American rule
Contingency fees
Fee shifting statutes
- 6:30 Break
Loadstar
Class action common funds
Offers of judgment
Next week's agenda
- 6:45 **Speaker: Judge Michael Simon**