



# Recent Case Notes\*

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*Case Notes Editor*

## SATISFACTION OF JUDGMENTS/PIP

### *Ambiguity in jury award caused by defense prevented partial satisfaction of judgment for PIP payments*

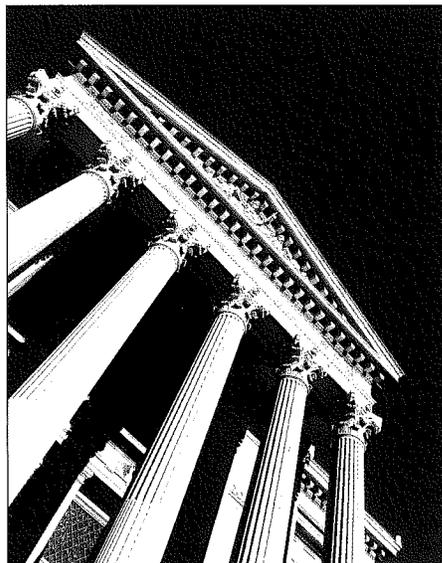
In *York v. Paakkonen*, 259 Or App 276 (Oct. 30, 2013), the Court of Appeals held that a defendant is not entitled to partial satisfaction of judgment under ORS 31.555(2), which provides for a reduction in the judgment for payment of PIP benefits when that party's verdict form fails to indicate whether the award includes damages covered by PIP benefits.

Plaintiff was a passenger in a vehicle driven by defendant when it was struck by another vehicle. Plaintiff received PIP benefits from defendant's insurer that were paid solely to cover medical expenses. Plaintiff's negligence claim against defendant included economic damages for past and future medical expenses and for past and future loss of earnings. At trial, defendant objected to plaintiff's proposed verdict form, which would have allocated an award based on the specific categories of damages sought. The court adopted defendant's nonsegregated verdict form that required that the jury only distinguish between economic and noneconomic damages. After returning a verdict for plaintiff for economic damages only, the trial court granted defendant's motion for an order of partial satisfaction under ORS 31.555(2) based on the PIP-paid medicals.

On appeal, defendant argued that

the jury award included amounts covered by PIP because the amount of the award was the precise amount plaintiff sought for past medical expenses. Plaintiff argued that whether the unspecified award included amounts for past medical expenses was speculative.

The Court of Appeals agreed with plaintiff, concluding that the award could have been comprised of some combination of the various categories of economic damages plaintiff sought. The Court held that defendant was not entitled to a partial satisfaction due to the ambiguity in the award. The Court observed that it was defendant's verdict form, and not plaintiff's, that caused the ambiguity. Plaintiff's proposed verdict form would have cured the issue because the jury would have allocated the award based on the specific categories of damages. The Court pointed out that the purpose of ORS 31.555—avoiding a double recovery—is



accomplished by using a segregated verdict form that indicates whether the resulting judgment includes damages previously covered by PIP. ♦

— Submitted by Peder Rigsby,  
Bullivant Houser Bailey PC

## STATUTE OF LIMITATIONS/ DISCOVERY RULE

### *The statute of limitations in actions for the taking of personal property under ORS 12.080(4) is subject to a discovery rule*

In *Rice v. Rabb*, 354 Or 721 (Jan. 30, 2014), the Supreme Court held that ORS 12.080(4)—the statute of limitations in an action for taking personal property—contains a discovery rule by virtue of ORS 12.010.

In 1972, plaintiff Rice inherited an outfit worn by the 1930 Queen of the Pendleton Round-Up. Plaintiff decided to display the outfit at the Pendleton Round-Up and the Happy Canyon Hall of Fame (Happy Canyon). Plaintiff entrusted Lieuallen, an acquaintance, to deliver the outfit to Happy Canyon but did not gift or transfer ownership of the outfit to Lieuallen. In 2000, defendant Rabb, an heir of Lieuallen, demanded from Happy Canyon the return of the outfit on behalf of Lieuallen. Happy Canyon complied with defendant's request. In 2007, plaintiff learned that the outfit had been removed.

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