



## CASES *of* NOTE

**PERSONAL INJURY/UNINSURED MOTORIST/ATTORNEY FEES:** In the case of *Lizama v. Allstate Fire and Casualty Ins. Co.*, 292 Or App 611 (July 5, 2018), the Oregon Court of Appeals decided the issue of plaintiff's entitlement to attorney fees on his UM claim under ORS 742.061(1). Plaintiff argued that the defendant's "safe harbor" letter did not track the language of the statute, and did not convey defendant's willingness to arbitrate the case; instead it merely expresses plaintiff's ability to seek arbitration. The court held that the trial court erred in concluding that defendant's letter complied with the requirement of ORS 742.061(3) (b) that the insurer consent to submit the case to binding arbitration. The court reversed and remanded the ruling on summary judgment denying plaintiff's request for attorney fees on his UM claim.

<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/15293/rec/1>

**RESIDENTIAL EVICTION** In the case of *Kailash Ecovillage, LLC v. Santiago*, 292 Or App 640 (July 5, 2018), the Oregon Court of Appeals decided the issue of whether the landlord's pretermination notice gave tenant the statutorily required amount of time to remedy the defects identified in the notice. The resolution of that issue turns on whether landlord met the requirements under ORS 90.155(1) for serving tenant by first class mail and attachment, known commonly as "nail and mail" service. The court held that it is the landlord's responsibility to supply a tenant with a valid and effective mailing address that allows the tenant to serve the landlord by first class mail. Because that did not happen here, landlord was not entitled to use nail and mail service, and was required to give tenant a longer compliance period than that stated in the notice.

<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/15300/rec/1>

**WRONGFUL DEATH/SERVICEMEMBERS CIVIL RELIEF ACT/TOLLING OF LIMITATIONS PERIOD:** In the case of *Wilcox v. Les Schwab Tire Centers of Oregon*, 293 Or App 452 (August 22, 2018), the Oregon Court of Appeals held that the Servicemembers Civil Relief Act (SCRA) tolled the limitations period for the wrongful-death action during the time that plaintiff was on active duty with the Air Force. As such, plaintiff's action in his capacity as the personal representative of his wife's estate was timely filed.

<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/15642/rec/1>

**NONCOMPETITION AGREEMENTS:** In the case of *Oregon Psychiatric Partners, LLP v. Henry*, 293 Or App 471 (August 22, 2018), the Oregon Court of Appeals concluded that plaintiff's evidence supported an

inference that defendant's patients would reasonably have been expected to return to OPP for treatment at the time of defendant's departure and were therefore "customers of the employer" under ORS 653.295(4)(b). As a result, the court held that, under ORS 653.295(4)(b), the agreement is at least in part enforceable as a "covenant not to solicit or transact business with customers of the employer" and that the trial court erred in dismissing the complaint.

<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/15645/rec/1>