

THE LAW OF JUDGMENTS

How should a concluding decision be labeled?

By Susan Marmaduke & Mark Johnson

The legislature amended Oregon's law of judgments effective Jan. 1, 2004. An Oregon Law Commission work group produced the proposed bill, HB 2646 (2003), enacted as Or Laws 2003, ch. 576. Chaired by Max Williams, the work group was one of the largest ever convened. It included both public and private lawyers. Legislative counsel David Heynderickx prepared a *Judgments Report*¹ on behalf of the commission, which was a part of the bill's legislative history.



Marmaduke



Johnson

According to the *Judgments Report*, the work group had several purposes in crafting the new law. One of the goals was to clarify which judgments were appealable. *Judgments Report* observes that "[a]n embarrassingly large number of appellate cases have been generated over the years by confusion relating to the appealability of decisions rendered by a court." The *Judgments Report*, *supra* at 5. The new law aimed to clear up that confusion.

The work group consolidated most of the laws governing judgments into ORS chapter 18, and strove to eliminate obsolete terminology. As the *Judgments Report* observed, most of

the statutes governing judgments were written before the advent of computers. "There was a large book called the register, and another large book that was called the docket. All filings and decisions in a case were entered in the register. The docket played a special role, since judgments that were entered in the docket created judgment liens." *Judgments Report*, *supra* at 4. The new law was drafted to reflect current practices and technology.

As part of an ongoing effort to merge the procedural rules for suits in equity and actions at law, the new law eliminates the obsolete term, "decree." However, apparently exhausted by the enormity of the project, the work group decided to defer to another day the task of eliminating all of the many references to "suits in equity" still found in the Oregon Revised Statutes.

The new law defines a judgment as "the concluding decision of the court on one or more claims in one or more actions, as reflected in a judgment document." ORS 18.005(9). Among many other changes, the new law changes the way judgments are labeled. It requires that the judgment document be separate from any other documents in the action, and that it be clearly labeled as a limited judgment, a general judgment or a supplemental judgment. ORS 18.038(2).

THE "LIMITED JUDGMENT" DISPOSES OF AT LEAST ONE, BUT FEWER THAN ALL CLAIMS

A "limited judgment" disposes of at least one but fewer than all claims in the action, and it precedes the entry of a general judgment. ORS 18.005(13).

Limited judgments include judgments entered under ORCP 67 B. The new law amends ORCP 67 B to eliminate the requirement that the judgment document contain an "express" determination that there is no just reason to delay the entry of judgment as to the adjudicated claim or claims.

Now, a trial judge who directs entry of a judgment document captioned "limited judgment" is deemed to have made the requisite determination, regardless of whether the so-called "magic words" are included in the judgment document. Although some wonder whether the deletion from the rule of the required "magic words" will result in more frequent interlocutory appeals, the new law continues to require the trial court to make the same findings as were required before the change.

Note that an order granting a motion for summary judgment is still just an order, notwithstanding the name of the motion. The order becomes final and appealable only upon entry of a limited judgment or a general judgment.

Lastly, a limited judgment, like its "67 B judgment" predecessor, is final for all purposes. This means that the appeal period starts running as soon as a limited judgment is entered. If, for example, the court grants summary

Oregon's new law of judgments does not simply give new names to familiar documents — It also makes some changes that have significant implications for the rights of the parties.

**HIRING THE RIGHT DAMAGE EXPERT IS TOUGH...
MAKING THE WRONG CHOICE COULD SPELL DISASTER.**



JAY SICKLER, CPA, ASA, ABV
Litigation & Valuation Services

CHOOSE WISELY.

We have provided complex financial damage analysis and expert testimony in some of Portland's largest cases.

Jay has testified in state and federal court, and in private arbitrations of all types and sizes.



**THOMPSON, WIEST
& SICKLER, P.C.**

CPAs and Litigation & Valuation Consultants

111 S.W. Columbia, Suite 750 ■ Portland, Oregon 97201
main 503.225.1612 ■ fax 503.243.2802
email jsickler@twscpas.com ■ www.twscpas.com

PRACTICE TIPS

judgment dismissing at least one, but fewer than all, of your claims, do not present the trial judge with a "limited judgment" unless you plan to appeal it within 30 days of its entry.

**THE "GENERAL JUDGMENT"
REPLACES THE "FINAL
JUDGMENT"**

A "general judgment" disposes of all claims except those already decided by a limited judgment or those that may be disposed of by a supplemental judgment. ORS 18.005(8).

The new law provides that, when a trial judge makes a "written decision" that "reflects an express determination" that it be final as to the claim or claims involved, the written decision is deemed incorporated into a general judgment if the decision is consistent with the terms of the general judgment and any limited judgments in the case. ORS 18.082(2). The work group explained that most orders as they are currently written will qualify as "reflecting an express determination" of finality as to the claim or claims involved. *See Judgments Report, supra* 15.

Caution: If you are searching the record to determine how the rights of the parties were adjudicated, beware that such a written decision may be deemed incorporated into the general judgment even if it is not expressly mentioned in the general judgment.

Upon entry of a general judgment, any claim not mentioned in the judgment document is dismissed with prejudice unless it:

- a) was decided in a written decision that is deemed incorporated into the general judgment under ORS 18.082(2), above;
- b) was decided by a limited judgment; or
- c) can be decided by a supplemental judgment. ORS 18.082(3).

The work group described the effect of this subsection as "[reversing]

10,000 REASONS TO DO BUSINESS WITH US

NO. 237

OFFICE SUPPLIES

Our most impressive supply is the service.



At Stevens-Ness, you'll always find dependable help. From beautiful office furniture to paper clips to special orders, our experienced people can take care of your most pressing demands. No request is ever too demanding, no detail too small. Come visit our friendly store. Where you'll discover extraordinary service is never in short supply.

Stevens-Ness 916 S.W. 4th Ave. Portland, Oregon 97204
503-223-3137 fax 503-294-6008 www.stevensness.com

PRACTICE TIPS

the longstanding judicial rule that any claim not resolved by a decision of the trial court is presumed not to have been decided. Consistent with the definition provided by [ORS 18.005(8)], a judgment document that is designated a general judgment resolves all remaining claims." *Judgments Report, supra* at 15.

Word to the wise: If you prevail on a claim, be sure to mention in the judgment document the disposition of that claim to avoid the risk that it will be deemed dismissed with prejudice.

GENERAL JUDGMENTS OF DISMISSAL WITHOUT PREJUDICE

The law provides that ORS 18.082(3), above, "does not apply to a general judgment of dismissal." ORS 18.082(5). "Except as otherwise provided by law, by the Oregon Rules of Civil Procedure or by the terms of the judgment, a general judgment of dismissal is without prejudice as to any claim or charge in the action." ORS 18.082(5). This provision may cause confusion where, for example, the parties stipulate to a general judgment of dismissal with prejudice to all claims as part of a settlement. The parties should recite in the text of the judgment that all claims are dismissed with prejudice.

THE "SUPPLEMENTAL JUDGMENT" COVERS POST-JUDGMENT PROCEEDINGS

The new law calls a "supplemental judgment" those judgments that are authorized by law to be rendered after entry of a general judgment and that affect a substantial right of a party. ORS 18.005(15). The most common examples are a supplemental judgment for attorney fees and a judgment for modification of a dissolution of marriage judgment. As before, supplemental issues may be included in the general judgment if they have already been adjudicated.

One-stop resource.

Placing temporary and full-time employees with clients in the legal, business and IT fields.

Staffing Solutions is a complete, one-stop resource for clients needing temporary and full-time employees and applicants looking for a perfect assignment to match their skills. We provide services to both applicants and clients to maintain a high standard of performance and professionalism. Headquartered in Portland and locally owned, we have grown to be one of the most respected and best known staffing leaders in the legal, business and IT fields. Staffing Solutions is WBI certified in the State of Oregon.

Legal

- Attorney
- Manager
- Administrator
- Paralegal
- Legal Secretary
- Help Desk
- Software Trainer
- Office Support

Business Services

- Office Manager
- Administrative Assistant
- Secretary
- Word Processing Operator
- Data Entry Clerk
- Records Specialist
- Receptionist
- Accounting Clerk
- Human Resources Clerk
- Customer Service Clerk

Information Technology

- PC & Desktop Support
- Networking & Systems Specialist
- Database Development
- Applications Development
- Software Engineer
- Software QA
- Website Design

STAFFING



SOLUTIONS

Staffing Solutions, LLC
K-Counsel®

610 SW Broadway, Suite 500 • Portland, OR 97205 • T: 503.295.9948 • F: 503.295.9977 • E: admin@staffingsolutionsllc.com

OBJECTIVE, CONCISE AND TIMELY EVALUATIONS
FOR CASE RESOLUTION OR LITIGATION

Vocational Expert & Rehabilitationist

- Life Care Planning
- Vocational Capacity Determination
- Rehabilitation Potential
- Earnings Capacity Impact
- Labor Market Access
- Extent of Disability
- Expert Witness

HANK
LAGEMAN

Certified Vocational Evaluator
Board Certified Forensic Examiner
Diplomate, American Board of Vocational Experts

One Embassy Centre
9020 SW Washington Square Rd., Suite 210
Portland, Oregon 97223
Web site: www.VocExpert.com

Phone: 503-469-8600
Fax: 503-671-9630
Outside Portland: 1-800-583-4265
Email: Hank@VocExpert.com



MBA Membership: A Sound Investment for Oregon Attorneys

The Multnomah Bar Association offers programs and services to attorneys located across the state. Any OSB Member is eligible to join and take advantage of MBA member benefits, including:

- ◆ Access to the MBA Health Plan, with major medical providers, dental and vision coverage.
- ◆ Discounts on Lexis Nexis, AT&T Wireless, Wells Fargo Banking services, and more.
- ◆ The *Multnomah Lawyer* newsletter and our Web site keep you informed and in touch.

To learn more about the Multnomah Bar Association, visit us online at <http://www.mbabar.org> or call us at 503.222.3275.

the perfect fit IS out there

With the Oregon State Bar Online Career Center, **online recruiting** has never been easier. Find the legal professionals you need with affordable, guaranteed results.



Head to www.osbar.org to start your search today.

The definition of a supplemental judgment was not intended to create or limit existing rights to raise issues after entry of a general judgment.²

Note that the legislature has abandoned the former rule that no order for temporary support could take the form of a judgment. A judgment for temporary support before trial in a domestic relations case is a limited judgment, but it is not immediately appealable. As under the prior law, it may be appealed only upon entry of the general judgment in the action. ORS 107.095(2). By contrast, a judgment for temporary support during a domestic relations appeal is a supplemental judgment, and it is immediately appealable. ORS 107.105(4).

CORRECTED JUDGMENTS

Ideally, the court system would modify its computer system to prevent entry in the register of judgments that are not labeled as a limited, supplemental or general judgment. Budgetary constraints have prevented the court system from making that change. Therefore, the new law provides that, if the court administrator inadvertently enters something labeled a "decree" or "judgment" into the register, the document will have the effect of a general judgment. ORS 18.082(6). The new law provides for a motion to correct such a judgment to show that it is actually a limited judgment or a supplemental judgment. ORS 18.112(1)(a).

The new law also provides for a motion to change the designation of a general judgment to a limited judgment based on a showing that the inadvertent designation of the judgment as a general judgment occurred "under circumstances that indicate that the moving party did not reasonably understand that the claims that were not expressly decided by the judgment would be dismissed." ORS 18.112(1)(b).

A corrected judgment must be la-

beled as a "corrected general judgment," "corrected limited judgment" or "corrected supplemental judgment." ORS 18.107(1).

Be mindful that the effect of correcting a judgment on the time for appeal depends on the nature of the correction and on whether the correction is made before or after the time for appealing the original judgment has expired. See ORS 18.107(2), (3); ORS 18.112(4).

MONEY AWARDS MUST BE CLEARLY LABELED AND SET OUT IN A SEPARATE SECTION

The new law clarifies that, as a condition of creating a judgment lien, a judgment that includes a money award must contain a separate section clearly labeled as a money award. ORS 18.042(1). The specific information that must be included in order to create a judgment lien is listed in ORS 18.042(2). A judgment document that awards money, but that lacks the requisite information in a separately labeled "money award" section, may be enforced, but not through remedies that depend on the existence of a judgment lien. ORS 18.042(1).

EXCLUSIONS FROM REQUIREMENTS FOR FORM OF JUDGMENT DOCUMENT

Nothing in the new law affects the validity, lien effect or enforceability of any judgment or decree entered before Jan. 1, 2004. The requirements for the form of judgment documents do not apply to foreign judgments filed with the court under ORS 24.115 (Uniform Enforcement of Foreign Judgments Act) or ORS 110.405 (Uniform Interstate Family Support Act). And the requirement that the title must indicate whether the judgment is a limited judgment, a general judgment or a supplemental judgment does not apply to judgments in criminal actions, juvenile proceedings, justice courts, municipi-

JUDGMENT LIENS AND JUDGMENT REMEDIES

The work group recognized that the text of former ORS 18.360 did not accurately reflect what was meant by the "expiration" of a judgment. "For example, a judgment that convicts a person of a crime does not 'expire' at the end of 10 years." See *Judgments Report, supra* at 5. The new law provides instead for expiration of "judgment remedies," which include judgment liens and other forms of execution. See ORS 18.005(12).

Any judgment containing a money award can create a judgment lien (assuming the judgment document meets the requirements of ORS 18.042), but a judgment requiring periodic child or spousal support payments does not create a judgment lien until a payment accrues and remains unpaid. The "support arrearage lien" thus created expires when the late payment is made. The effect of these provisions is to permit the unencumbered transfer of property, despite the presence of a support award, so long as all of the debtor's payments are current. See ORS 18.150.

Judgment remedies generally expire 10 years after judgment entry in a civil action (unless they are extended), and 20 years after judgment entry in a criminal action. Child support and arrearage judgment remedies — including arrearage liens on real property — expire 25 years after entry of the judgment. Spousal support judgments are enforceable by execution for 25 years after entry of the judgment, or 10 years after any unpaid installment, whichever is later. A spousal support arrearage lien on real property expires 25 years after entry of the judgment unless it is extended. ORS 18.180.

The new law revokes the former requirement that judgment remedies be renewed in an order signed by a judge. Now, renewal is accomplished by the creditor's filing of a certificate. The certificate extends judgment remedies for an additional 10 years. ORS 18.182(5). In the case of a spousal support arrearage lien, the judgment creditor may file the certificate anytime more than 15 years after entry of the judgment. ORS 18.185. In no case may expired judgment remedies be renewed. ■

pal courts or county courts performing judicial functions. ORS 18.038.

CONCLUSION

Oregon's new law of judgments does not simply give new names to familiar documents — it also makes some changes that have significant implications for the rights of the parties.

The law contains a trap for the unwary: a mislabeled or incorrectly drafted judgment document may dismiss claims that are not mentioned in it, and the ability to obtain a correction may be limited. Lawyers should familiarize themselves with the three types of judgments as they apply in a particular practice area and should ensure

that every judgment document is properly labeled. ■

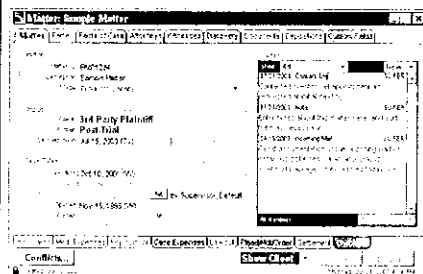
Susan Marnaduke is a shareholder in the Portland office of Harrang Long Gary Rudnick PC. Her practice focuses on business litigation and appeals. Mark Johnson is a shareholder at Johnson Renshaw & Lechman-Su PC in Portland. His practice focuses on appellate litigation and family law.

RESOURCES FOR LAWYERS

Judgments Report, prepared by David Heynderickx, senior deputy legislative counsel, on behalf of the Judgments Work Group (approved by the Oregon Law Commission on Feb. 6,

De Novo CaseMgr™
Case Management software

- Ⓞ Auto Calendar Makes practicing
- Ⓞ Client database law a *whole* lot easier!
- Ⓞ Case database Now you can do it
- Ⓞ User-defined Fields *Your Way. Yourself.*
- Ⓞ Custom Reports Consultants? *Techies?*
- Ⓞ Easy & Affordable *No longer necessary!*



*New tabbed interface...
it's incredibly easy!*

De Novo Systems 800 755-9744
INCORPORATED CaseMgr.com

Bill Gibson

*Arbitrator & Mediator
Portland/Clackamas*



Available Statewide

503 • 659-6187

bgibson@cnnw.net

References on request

Mediation & Arbitration

Serving Oregon and SW Washington since 1989



Visit us at our web site at www.usam-oregon.com

Janis Sue Porter, *Executive Director*
1000 SW Broadway, Suite 1710
Portland, Oregon 97205
Phone (503) 223-2671
Email USAM@usam-oregon.com

PANEL

Don Atchison
E. Richard Bodyfelt
Edward Brunet
Ralph Cobb
Hon. Laurence Cushing
Barbara Diamond
Hon. George Eltman
Arnold Gray
Douglas Green
Arlen Gregorio
Charles Holloway

John H. Holmes
Thomas Howes
William King
Hon. James Ladley
Sidney Lezak
Norman Lindstedt
Noreen McGraw
Frank Moscato
Marvin Nepom
Daniel O'Leary
Katherine O'Neil

Hugh Potter
William Replogle
Joe Richards
Hon. Betty Roberts
Michael Silvey
Hon. John Skimas
Jeffrey Spere
Ralph Spooner
Hon. George Van Hoomissen
Jim Vick
Hon. Stephen Walker

Panel members will travel throughout Oregon and Southwest Washington

PRACTICE TIPS

2003), available at www.willamette.edu/wuel/oregonlawcommission.

Judgments and Enforcement of Judgments Bill, by Jim Nass, appellate legal counsel, Supreme Court/Court of Appeals, posted on the Multnomah Bar Association's website at www.mba.org.

Judgment Day for Litigators, a CLE seminar co-sponsored by Harrang Long Gary Rudnick P.C. and the Oregon Law Institute of Lewis & Clark Law School on Dec. 12, 2003, available by audiotape, videotape or online through OLI at www.lclark.edu/org/oli.

ENDNOTES

1. Oregon Law Commission, *Judgments Report* (HB 2646) (2003). The report is available online at http://www.willamette.edu/wuel/oregonlawcommission/home/work_groups4.html.

2. *Supplemental Report* by Raudall C. Jordan, a member of the Oregon Law Commission Judgments Work Group.

TSONGAS LITIGATION CONSULTING INC.

STRATEGIC PARTNERS IN TRIAL PREPARATION

*Providing a Competitive Advantage
to Northwest Lawyers since 1978*

STRATEGY • RESEARCH • GRAPHICS



Case Strategy



Witness Preparation



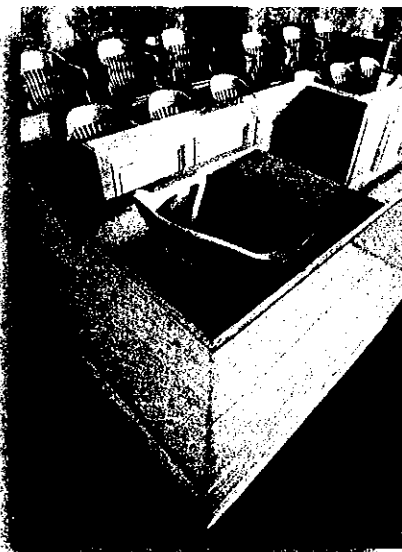
Focus Group Research



Community Attitude Survey



Case Evaluation



Litigation Graphics



Mock Trial Research



Jury Selection



Post-Trial Interviews



CLE Programs

Portland, Oregon, Telephone: (503) 225-0321 Fax: (503) 225-0382
Seattle, Washington, Telephone: (206) 382-2121 Fax: (206) 224-3705
Toll Free: (888) 452-8019

info@tsongas.com www.tsongas.com