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SUPREME COURT  
STATE OF WASHINGTON

82659-5

2009 AUG 03 P 4: 47

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**IN THE SUPREME COURT  
FOR THE STATE OF WASHINGTON**

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ROBERT BATES; B&H CONSTRUCTION SERVICES, INC.,  
a Washington corporation;  
Petitioners,

v.

JULIANNE McGUIRE,  
Respondent,

and

BANNER BANK (Bellingham),  
Bond Acct. #3540233253,  
Defendant.

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**SUPREME COURT NO. 82659-5**  
Court of Appeals No. 60463-5-I

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**RESPONDENT'S SUPPLEMENTAL BRIEF**

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**ORIGINAL**

**FILED AS  
ATTACHMENT TO EMAIL**

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## **I. INTRODUCTION**

In this case, Bates and McGuire exchanged offers, and declined offers. McGuire clearly indicated that an overall settlement must include fees and costs on top of the underlying claim. With that knowledge, Bates made an offer on the underlying claim exclusive of costs, and consequently exclusive of fees. Predictably, McGuire later requested fees, costs and interest, being entitled to those under RCW 18.27.040(6). No facts in this case point towards an intent by McGuire to waive attorney fees she was entitled to as one who prevailed “in the action.” Bates intentionally and deliberately chose the avenue of his final offer, and the consequences of his action were predictable, given the plain language of his offer and the statutes by which the parties were controlled.

## **II. ARGUMENT**

### **A. FREEDOM TO CRAFT OFFERS AS THEY SEE FIT IS IMPORTANT TO LITIGANTS**

A fundamental question is whether providing freedom for litigants to craft their offers as they see fit, and consequently provide them with predictability is good public policy. We respectfully submit that this is not only good public policy but absolutely critical in order for anything less than chaos in offers to settle lawsuits. This kind of freedom avoids

surprises and unfair pitfalls and informs both parties, and the court when necessary, exactly what is being negotiated and when it is being concluded.

Bates exercised his freedom to craft his offers of settlement in any fashion he chose, and to either incorporate a statute or not. Initially, Bates chose not to limit his offer. Bates was on notice through those earlier offers that McGuire was not interested in waiving her right to attorney fees and costs under RCW 18.27.040(6). He finally made an offer which clearly excluded costs, and consequently attorney fees. In his Petition to this court, Bates argues that his earlier refusal to pay amounts beyond the basic claim for damages for any attorneys fees McGuire incurred, is “significant evidence of the parties intent and should have settled her claim for fees.” (See Petition for Review at page 9) It is obvious that in this case, those earlier refused offers and counter offers terminated, and did not become part of the final settlement here. It is fundamental that those refused offers were no longer valid.

Bates also argues that the earlier failed negotiations create an ambiguity in the accepted offer in this case. However, in the case of *Muckleshoot Tribe v. Puget Sound Power & Light*, 875 F.2d 695 (9<sup>th</sup> Cir. 1989), with a parallel factual scenario to ours, the Court held just the

opposite. In that case the defendant had earlier attempted to reach a settlement which was all-inclusive and therefore would have dispensed with costs and attorney fees. In their final offer of settlement they had merely asked that the case be concluded with a dismissal with prejudice. That final offer was accepted. The Muckleshoot Tribe prevailed in the substance of their out-of-court agreement. The City of Auburn (co-defendant in the *Muckleshoot* case) was subsequently sued to collect their attorney fees of \$174,592. The U.S. District Court held there had been a waiver of the fees claim. The Ninth Circuit reversed. The Ninth Circuit specifically addressed the defendant's argument in our case. Dealing with the question of an earlier rejected settlement offer which was inclusive of fees, and a later settlement which was silent on fees, the court mentioned that:

“if, during the course of negotiations, the plaintiff rejects an explicit fee waiver provision, we are unlikely to construe ambiguous or a more limited language in the settlement instrument as a waiver of fees liability.” (*Muckleshoot* at page 698)

In our case, McGuire refused Bates earlier offer, countering for a settlement for the full underlying amount and attorney fees to date (at that time \$1,975). (CP 34-35) Bates' final settlement offer under RCW 4.84.270, just as in *Muckleshoot*, did not include attorney fees. (CP 46-47)

By accepting said offer, McGuire was in the same position as the Muckleshoot Tribe. McGuire has the same right as the Muckleshoot Tribe to rely on her earlier negotiations and an offer which did not include attorney fees, and then be deemed a plaintiff who “clearly and unambiguously” waive her right to attorney fees.

Bates choice of offer and his drafting was deliberate. He was hoping to impose on McGuire the adverse (for McGuire) consequences of a refused offer of settlement pursuant to RCW 4.84.250-280. Of course he was entitled to expect the outcome of an attorney fees request by McGuire. Bates hoped to be the prevailing party, because he offered \$14 more than McGuire’s entire claim. It was his prerogative alone. This *may* have resulted in McGuire having to pay Bates’ attorney’s fees, if she referred to the offer and she ended up winning every penny of her claim. Bates was apparently trying to use RCW 4.84.270 to eliminate McGuire’s entitlement to attorney fees and costs under RCW 18.27.040(6). Allowing that would sabotage an RCW 18.27.040(6) award for fees and costs, in the majority of cases that will be brought under this statute. That scenario was rejected by our courts in *Eagle Point Condo. Owners Assoc. v. Coy*, 102 Wn.App. 697, 9 P.3d 898 (2000) at page 709:

“...the condominium owners' complaints about the quality of the construction were not resolved by early agreement. They maintained their lawsuit at considerable expense... To impose the Richter result in these circumstances would be unjust. The attorney fees incurred in litigating small but meritorious consumer claims often exceed the value of the claim itself. It would be a substantial disincentive to making such claims if the defendant could disable the plaintiff from recovering attorney fees simply by waiting until the eve of trial to offer what the claim is worth.”

That outcome would also be contrary to the legislature's intent and is bad public policy. Bates chose to make his offer pursuant to RCW 4.84.270. It was exclusive of attorney fees and costs. This allowed McGuire to accept his settlement and still receive her mandated attorney fees and costs for securing a settlement in excess of the amount of the underlying claim.

Bates had open to him many different avenues for his offer, some of which, albeit not the route he chose, allow for a additional leeway in crafting the language of the offer. An approach which is allowed more leeway than the statutes employed in this case (RCW 4.84.250-280), are offers of judgment under CR 68. Under such offers a defendant may either include or exclude attorneys fees as part of the offer.

Finally, the most commonly used method for making an offer of settlement in any case is a simple written offer of settlement from one party to the other, drafted as they see fit. Whether or not there is an underlying statute which allows attorneys fees to a prevailing party, or a

statute which allows attorneys fees to one in whose favor a final judgment is entered, the litigant who chooses to simply craft an offer of settlement knows full well that the meaning of that offer of settlement lies squarely on their shoulders. Only they have the power in their offer to ignore, include or exclude attorney's fees and costs.

*Marek* does not require that a CR 68 offer specify that the "costs" include attorneys' fees. The court allows that result to flow as a matter of law from the terms of the underlying statute. However, as this case shows, the failure to do so may create uncertainty as to the exact meaning of the offer and could indeed be a trap for an unwary plaintiff.

Accordingly, it would be prudent practice and **we strongly recommend that where a defendant intends that his offer shall include any attorneys' fees provided for in the underlying statute he expressly so state.** His offer should say, "costs including attorneys' fees" or words to that effect. A defendant knows what he intends and fair dealing requires that he manifest that intention to the other party. If the underlying statute is unclear, such an offer will at least make the defendant's interpretation clear. This is a slight burden and it is fairly placed on the defendant who is seeking to terminate his liability for attorneys' fees at the time of settlement. *Hodge v. Development Services*, 65 Wn. App. 576, 828 P.2d 1175 (1992) at page 584 (emphasis supplied).

Bates' offer of settlement was completely within his control, see *Nusom v.*

*Comh Woodburn, Inc.*, 122 F.3d 830 (9th Cir. 1997) at page 833:

"At the same time, defendants are the master of what their Rule 68 offers offer."

...

"If there is any room for doubt about what is included, or excluded, when "costs" are offered, the defendant can craft its offer to make clear the total dollar amount that it will pay."

It is respectfully submitted here that there is no logical difference, nor conceptual difference, whether a defendant decides to employ a statute, court rule, or not, within the context of an offer of settlement. The main question is what effect the words of the offer are, and if anything is incorporated in that offer such as a statute, what the plain meaning is of that statute.

In his Petition to this Court, Bates provided the Washington Practice form for an offer of settlement "...subject to the provisions of RCW 4.84.250-.280." It would be elevating form over substance to argue that the language suggested in that form, located at 10A Breskin, Washington Practice: Civil Procedure Forms § 68.28 (3d Ed.), "plaintiff's claim" is somehow substantially different from "all claims." It is a significant and tortured stretch to conclude that simply changing from the singular to the plural, has now changed the meaning of the offer (and consequently the acceptance) to be outside the explicitly included statutes, and now means: "including costs and attorneys fees." It is good public policy to require litigants to live with the consequence of their own offers. Such a policy promotes predictability and allows litigants the freedom to draft and incorporate as they see fit. This allows the parties to accurately anticipate the consequences of, as in this case, their offer being accepted.

## **B. PREDICTABILITY IS IMPORTANT PUBLIC POLICY**

The decision in this case can provide predictability and still afford the parties complete freedom on how and when to settle their lawsuits. This decision can reiterate the well-established rules on offers of settlement and how to interpret the plain language of a statute. It is good public policy to allow litigants to craft their offers of settlement to fit the case. Allowing litigants this freedom assures them of a predictable outcome. If they decide to employ a statute in this fashion, the plain language of said statute must control. If not, the offeror and the offeree will never never be able to predict the consequence of an accepted offer.

For instance, when a defendant decides to make an offer of judgment under CR 68, all sides can predict whether the accepted offer will include attorney fees in the matter. First of all, because CR 68 includes the phrase "...or to the effect specified in his offer..." the courts have determined that CR 68 offers may be lump sum offers, if a party so desires. In other words CR 68 offers are not subject to the statutory language we see in RCW 4.84.250-280. See *Eagle Point Condo. Owners Assoc. v. Coy*, 102 Wn.App. 697, 9 P.3d 898 (2000). Attorney fees are included in one of two simple ways. For example, attorney fees may be specifically called out in the offer of judgment as being wrapped into the

offer, as in a lump sum settlement. Second, attorney fees may not be called out specifically in the offer of judgment, and an underlying statute which authorizes attorneys fees denominates them as “costs”, and consequently are included in the offer of judgment. This is for those occasions when the offer of judgment is silent on attorney fees.

If a CR 68 offer of judgment is silent on the issue of attorney fees, then the court must look to the underlying statute or contract provision. If the statute or contract defines attorney fees as part of costs, then the offer of judgment is inclusive of attorney fees even though they are not mentioned.<sup>[fn4]</sup> If attorney fees are defined as separate from costs under the statute or contract, then the court must award those fees in addition to the amount of the offer. Seaborn Pile Driving Co. v. Glew, 132 Wn.App. 261, 131 P.3d 910 (2006) at page 267.

Bates argues in his Petition for Review (at page 13) that this Court should employ the CR 68 approach in this case. McGuire finds this curious. If Bates’ had made a CR 68 offer for entry of a judgment, like the offer he made in this case, it would have been silent on attorney fees. As in Seaborn, we are then directed to the underlying statute, in this case RCW 18.27.040(6). This underlying statute does define attorneys fees separately from costs, which would then result in both a judgment from the offer, and in addition, the court “must” award those attorney fees in addition to the amount of the offer, just as the trial court did in this case. Seaborn, supra, at page 267.

An interesting parallel exists between the method that concluded this case (entry of a judgment incorporating the settlement of the parties on the underlying claim) and that in a CR 68 “offer of judgment.” In neither case is there an admission of liability. Therefore, similarly to this case where a judgment was entered pursuant to an offer and acceptance on the underlying claim, judgment would also be entered pursuant to a CR 68 offer of judgment. In neither case will there be a finding of liability, a determination of factual disputes, or a finding on the merits of a claim.

Here, Bates excluded costs and attorney fees from his final offer, and now blames Ms. McGuire for that omission. In the CR 68 context, the *Nusom* Court pointed out that it is incumbent on the Defendant to state clearly that attorney fees are included, if they wish to “avoid exposure”, *Nusom*, supra, at page 834. In this case, although we have seen that RCW 4.84.250-280 offers do not include costs, and consequently do not include attorney’s fees, the same principle applies: If Bates had wished to make a “lump sum” offer, Bates should not have restricted his offer to the RCW 4.84.250-280 statutory scheme.

The policy to allow litigants to predict the outcome of their settlements would be dealt a severe blow if Bates is allowed to defeat a request for attorney fees when the parties know very well that a) McGuire

prevailed by receiving more than her request, and b) was entitled to attorney fees under RCW 18.27.040(6).

**C. A PLAINTIFF IS A PREVAILING PARTY AND ENTITLED TO  
HER ATTORNEY FEES AFTER SETTLEMENT UNLESS  
CLEARLY AND UNAMBIGUOUSLY WAIVED**

Would it be bad public policy to allow Bates to elect his own settlement language “pursuant to RCW 4.84.250-280”, excluding costs and attorney’s fees, only later to avoid any responsibility for fees, costs and interest when the statute governing his own bond and license allows such additions to a prevailing party? This is just the lesson we don’t need in today’s world. After all, there is a strong public policy for victims of contractors to be made whole. There is also a strong public policy for the settlement of small claims. The accepted offer, combined with the award of attorney fees, costs, and interest fulfills both public policies precisely. A full trial was avoided, saving the Court and both parties additional amounts. Second, fees, costs and interest were allowed to the party who “prevailed in this action” (securing judgment for more than the underlying claim). Again, this outcome was predictable given the language of each statutory scheme, and the wording of Bates’ final offer and McGuire’s bare acceptance.

In the context of a CR 68 settlement or offer of judgment, attorney fees may still be added to the offer, if they have not been clearly waived and foreclosed.

In defense of its failure to specify that attorney fees were included, Seaborn correctly submits that defendants can make "lump sum" offers and need not provide a "break-down" of what the offer includes.[fn23] However, this does not help Seaborn's case. The Ninth Circuit, following *Marek v. Chesny*,[fn24] concluded that when an underlying statute does not define attorney fees as part of costs, and the offer does not specify that attorney fees are included, then the offeree may seek attorney fees in a separate motion.[fn25] The court held that "a waiver or limitation on attorney fees must be clear and unambiguous"[fn26] and the defendant's lump sum offer did not constitute such a waiver.

*Seaborn*, supra, at 271.

Bates should be treated in the same fashion as Seaborn. Bates could easily have made a lump sum offer outside of RCW 4.84.250-280, but chose not to. In this case, it was Bates who made certain there was no "clear and unambiguous" waiver or limitation on attorney fees.

Bates nonetheless argues that Ms. McGuire has waived any possible right to attorney fees. This is a high burden for Bates, given that once McGuire prevailed in this action, a waiver of a right to attorney fees must be "clear and unambiguous." *Nusom*, supra, at page 833.

This Court recently reviewed the determination of "prevailing party" in a case concerning the interpretation of RCW 4.84.330. The

analysis in that case gives strong direction for the analysis here. RCW 4.84.330 is the statute that imposes bilateral attorney fees provisions on a unilateral contract. After reviewing precedent, this Court found that cases had been mis-cited, and again directed the parties back to the plain language of the statute. Because prevailing party is defined in RCW 4.84.330 to be one in whose favor a “final judgment” is entered, and because there had only been a dismissal but no judgment, this Court did not find prevailing party status. *Wachovia SBA Lending v. Kraft*, 165 Wn.2d 481, 200 P.3d 683 (2009). In *Wachovia*, this Court analyzed *Anderson v. Gold Seal*, 81 Wn.2d 863, 505 P.2d 790 (1973) pointing out that *Anderson* did not deal with a RCW 4.84.330 scenario. The question in *Anderson* was whether a mere dismissal under a fee shifting statute that provides attorney fees to the “prevailing party”, specifically the long arm statute, RCW 4.28.185(5), may support a defendant as a prevailing party, even though no final judgment is rendered. The key parallel between this case and *Anderson* is that the same words are used in the underlying fee shifting statutes involved: “prevailing party” in *Anderson* (under RCW 4.28.185(5)), and “prevails in the action” in our case, under RCW 18.27.040(6). So the question is whether the Court of Appeals was correct in our case that a final judgment is not required under RCW 18.27.040(6).

The analysis in *Wachovia* and *Anderson* are controlling and RCW 18.27.040(6) likewise should be given the plain meaning of the words. McGuire having secured a settlement *and* judgment for more than the basic claim has “prevailed in the action”.

The general rule is that a money judgment of any amount (the judgment in this case was for \$2,180) entitles one to “prevailing party” status. This rule is clearly stated in 10 *Moore’s Federal Practice* § 54.171(3)(C) (Matthew Bender 3d Ed):

“a money judgment in favor of the plaintiff for any amount modifies the defendant’s behavior in a way that benefits the plaintiff by forcing the defendant to pay an amount of money that would otherwise not be paid. Even a nominal damage recovery alters the legal relationship between the parties and is therefore sufficient to make the plaintiff a prevailing party.” See Vol. 10 Moore F.P. at page 54-303.

The Ninth Circuit has also held that under the Supreme Court’s decision in *Buckhannon Bd. & Care Home, Inc. v. West Virginia. Dep’t of Health & Human Res.*, 532 US 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001), the existence of a legally enforceable settlement makes the plaintiff’s suit more than a “mere” catalyst in bringing about the relief obtained by the plaintiff. The plaintiff is a prevailing party if she or he enters into a settlement agreement that is legally enforceable against the defendant, even if it is not made part of a court decree, *Barrios v. California*

*Interscholastic Fed'n.*, 277 F.3d 1128, 1135, &n.5 (9th Cir. 2002). In our case, the settlement agreement in question was:

- (i) for more than the claim,
- (ii) Reduced to a judgment, and
- (iii) is presently enforceable against the defendant.

This clearly means that the “legal relationship” between McGuire and Bates has changed substantially.

In *Moore’s Federal Practice* at pages 54-311 and 312, the editors have summarized the general rules on prevailing party status in the context of a dismissal or settlement.

“A judgment on the merits has precisely the same effect on the legal relationship between the parties as does a dismissal with prejudice; both extinguish the plaintiff’s cause of action (see ch. 131, claim preclusion and res judicata). **Moreover, the defendant’s agreement to settle or moot the action is tantamount to the plaintiff’s success, unless its decision to do so was wholly gratuitous.** (see [iii][C], above). For similar reasons the plaintiff’s decision to dismiss with prejudice should make the defendant a prevailing party.”<sup>1</sup> (Emphasis supplied)

In a case involving an underlying federal statute which allows attorneys fees to the “prevailing party”, the Ninth Circuit Court of Appeals

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<sup>1</sup> See also *Hawk v. Branjes*, 97 Wn.App. 776, at 782, 986 P.2d 841 (1999) for cases where a bilateral contractual attorney fees provision to the “successful party” supported prevailing party status to a dismissed defendant, who then successfully sought their attorney fees. See also *Walji v. Candyco, Inc.*, 57 Wn. App. 284, 787 P.2d 946 (1990) and *Allahyari v. Carter Subaru*, 78 Wn.App. 518, 897 P.2d 413 (1995).

handed down very clear rules when a case is settled in favor of the plaintiff. The defendant later resisted the plaintiff's request for attorneys fees. In that case the defendant argued that attorney fees and costs should have been dispensed with by the settlement. The case involved a 42 USC §1983 claim between the Muckleshoot Tribe and the City of Auburn, Washington, over water. The Court first pointed out that under civil rights claims the definition of prevailing party can include litigants who "successfully conclude settlement negotiations," *Muckleshoot Tribe v. Puget Sound Power & Light*, 875 F.2d 695 (9<sup>th</sup> Cir. 1989) at page 696 citing *Maier v. Gagne*, 448 US 122, 129, 100 S.Ct. 2570, 65 L.Ed.2d 653 (1980). The court went on to hold that:

"... when a §1983 dispute is settled after the commencement of litigation, a prevailing plaintiff may sue for reasonable attorneys fees unless the defendant shows that the plaintiff clearly waived fees as part of the settlement."

The court also made clear that the parties have the ability and freedom to "...negotiate a provision waiving attorney fees." (*Muckleshoot* at p. 698)

Also in a 42 USC §1983 case, *Erdman v. Cochise County, Ariz.*, 928 F.2d 877 (9<sup>th</sup> Cir. 1991), the Ninth Circuit held that an error in drafting a CR 68 offer of judgment by the County (defendant) would be construed against the drafter. The County in that case employed in their

offer the words "...with costs now accrued", and costs include attorney fees in 42 USC §1983 and §1988 actions. Therefore, in addition to the underlying amount of the offered judgment of \$7,500.00, Erdman was also allowed attorney fees. This was an application of the *Muckleshoot* decision to the realm of CR 68 offers. Citing and quoting an Illinois District Court case which had dealt with a "similar situation", the Court went on:

"It would be ludicrous and manifestly unjust to allow the defendants to argue after the fact that their offer really means more than it says." *Erdman*, supra, at page 880.

It is respectfully submitted that the public will be best served in this case by following *Muckleshoot*, *Erdman*, and the well-established rules on statutory and contractual construction. McGuire, who clearly prevailed in this action, had a right to receive her costs, interest, and attorney fees unless a clear waiver can be found. The record in this case is devoid of any facts or circumstances which point towards any hint of a waiver by McGuire. In fact, the opposite is true. Ever since the amended complaint was filed and served, Bates has been keenly aware of this.

There is a good policy reason to adopt the analysis from the cases brought pursuant to claims under 42 USC §1983 and §1988. Our underlying statute (RCW 18.27.040(6)) has substantial legislative history,

and clear statutory language which shows that the legislature intended to narrowly and carefully draft law that would protect residential consumers only. In fact, "Residential homeowner" is narrowly defined to be a owner or lessee of real property who intends to reside in a to-be-built single family residence, or in a home in which improvements are to be made to a single family residence. This shows the legislature's concern that there would be unequal bargaining positions between an established bonded contractor and such a narrowly defined "Residential homeowner." See RCW 18.27.010(10). Under both the Federal and State scenarios, the mandatory attorney fees and costs to the prevailing party should not be thwarted unless there is a clear and unequivocal waiver by the prevailing party, in this case by McGuire.

The authorities unanimously support the determination that McGuire prevailed in this action. Given her status, only clear and unambiguous waiver of her right to costs, interest, and attorney fees under RCW 18.27.040(6) can defeat her motion to the trial court. There is no such waiver here.

**D. RESPONDENT REQUESTS ATTORNEY FEES**  
**UNDER RAP 18.1.**

Respondent respectfully requests an award of reasonable attorney's fees under RAP 18.1, if she prevails on appeal. This request is based on the award below, and the law that a prevailing party on appeal who was entitled to an award of attorney's fees at the trial level, and subsequently prevails on appeal, is similarly entitled to attorney's fees on appeal. See *Martin v. Johnson*, 141 Wn. App. 611, 170 P.3d 1198 (2007) at page 623-624:

RAP 18.1(a) permits us to award attorney fees and costs on appeal if applicable law grants a party the right to recover attorney fees or expenses. In general, a prevailing party who is entitled to attorney fees below is entitled to attorney fees if it prevails on appeal. *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, at 423, 161 P.3d 406 (2007) (citing *Richter v. Trimmerger*, 50 Wn. App. 780, 786, 750 P.2d 1279 (1988)).

**III. CONCLUSION**

The parties here, and public in general should be sent a clear message: protective fee shifting statutes will always allow a request for attorney fees to a prevailing party, unless there is either:

- (i) a "clear and unambiguous" waiver of that right through a complete and final settlement with consideration; or



#### **IV. APPENDIX**

##### **RCW 18.27.040(6)**

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to a construction contract, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond is not liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction.

##### **RCW 18.27.010(10)**

(10) "Residential homeowner" means an individual person or persons owning or leasing real property:

(a) Upon which one single-family residence is to be built and in which the owner or lessee intends to reside upon completion of any construction; or

(b) Upon which there is a single-family residence to which improvements are to be made and in which the owner or lessee intends to reside upon completion of any construction.

**RCW 4.84.250 ATTORNEYS' FEES AS COSTS IN DAMAGE ACTIONS OF TEN THOUSAND DOLLARS OR LESS — ALLOWED TO PREVAILING PARTY.**

Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

**RCW 4.84.260 ATTORNEYS' FEES AS COSTS IN DAMAGE ACTIONS OF TEN THOUSAND DOLLARS OR LESS — WHEN PLAINTIFF DEEMED PREVAILING PARTY.**

The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280.

**RCW 4.84.270 ATTORNEYS' FEES AS COSTS IN DAMAGE ACTIONS OF TEN THOUSAND DOLLARS OR LESS — WHEN DEFENDANT DEEMED PREVAILING PARTY.**

The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280.

**RCW 4.84.280 ATTORNEYS' FEES AS COSTS IN DAMAGE ACTIONS OF TEN THOUSAND DOLLARS OR LESS — OFFERS OF SETTLEMENT IN DETERMINING.**

Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.