

PLEADING ACCOUNT

17.003 Pleading account; delivery of copy of account; further account. A party may set forth in a pleading the items of an account therein alleged, or file a copy thereof, with the pleading verified by himself, or his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he does neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective. [Formerly 16.470]

17.005 [Repealed by 1979 c.284 §199]

17.010 [Repealed by 1979 c.284 §199]

17.015 [Repealed by 1979 c.284 §199]

17.020 [Repealed by 1979 c.284 §199]

17.025 [Repealed by 1979 c.284 §199]

17.030 [Repealed by 1979 c.284 §199]

17.033 [1973 c.812 §5; repealed by 1979 c.284 §199]

17.035 [Repealed by 1979 c.284 §199]

17.040 [Amended by 1957 c.376 §1; repealed by 1979 c.284 §199]

17.045 [Amended by 1955 c.497 §5; 1957 c.376 §2; repealed by 1979 c.284 §199]

17.050 [Amended by 1969 c.388 §1; repealed by 1979 c.284 §199]

COMPROMISE; SETTLEMENT

17.055 [Amended by 1975 c.512 §4; repealed by 1979 c.284 §199]

17.065 Definitions for ORS 17.065 to 17.085. As used in ORS 17.065 to 17.085, unless the context requires otherwise:

(1) "Compromise" means an agreement to allow judgment to be given for a sum or value specified.

(2) "Employer" includes any agent or representative of an employer.

(3) "Release" means an agreement to abandon a claim or right to the person against whom the claim exists.

(4) "Settlement" means an agreement to accept as full and complete compensation for a claim a sum or value specified. [1975 c.512 §1; 1979 c.284 §49]

17.075 When settlement prohibited between employer and employe. (1) An employer whose interest is or may become adverse to that of an injured employe shall not, within 15 days from the date of the occurrence causing the employe's injury:

(a) Negotiate or attempt to negotiate a settlement or compromise with the injured employe; or

(b) Obtain or attempt to obtain a general release of liability from the injured employe; or

(c) Obtain or attempt to obtain any statement, either written or oral from the injured employe.

(2) Paragraph (c) of subsection (1) of this section does not apply to the extent that compliance with statutes or rules of federal or state agencies requiring reports of accidents and injuries necessitates obtaining an employe statement within the 15-day period following the date of the injury.

(3) Any settlement or compromise agreement entered into, any general release of liability or any written or oral statement made by any employe after he incurs a personal injury, which is not obtained in accordance with ORS 17.085, requiring notice, may be disavowed by the injured employe within 12 months following the date of the injury and such statement, release, compromise or settlement shall not be admissible evidence in any court action or administrative proceeding relating to the injury. [1975 c.512 §2]

17.085 When settlement allowed. ORS 17.075 relating to settlements, compromises, releases and statements obtained by an employer whose interest is or may become adverse to an injured employe shall not apply, if at least five days prior to obtaining the settlement, compromise, release or statement, the injured employe has signified his willingness that a settlement, compromise, release or statement be given. [1975 c.512 §3]

17.105 [Repealed by 1979 c.284 §199]

17.110 [Repealed by 1979 c.284 §199]

17.115 [Amended by 1973 c.836 §315; repealed by 1979 c.284 §199]

17.120 [Repealed by 1979 c.284 §199]

17.125 [Repealed by 1979 c.284 §199]

17.130 [Amended by 1975 c.781 §5; 1977 c.262 §3; repealed by 1979 c.284 §199]

17.135 [Repealed by 1979 c.284 §199]

17.140 [Repealed by 1979 c.284 §199]

17.145 [Repealed by 1979 c.284 §199]

17.150 [Repealed by 1979 c.284 §199]

17.155 [Repealed by 1979 c.284 §199]

17.160 [Repealed by 1979 c.284 §199]

17.165 [Repealed by 1979 c.284 §199]

17.170 [Repealed by 1979 c.284 §199]

17.175 [Repealed by 1979 c.284 §199]

17.180 [Repealed by 1979 c.284 §199]

17.185 [Repealed by 1979 c.284 §199]

17.190 [1969 c.222 §1; repealed by 1979 c.284 §199]

17.205 [Repealed by 1979 c.284 §199]

17.210 [Repealed by 1979 c.284 §199]

17.215 [Repealed by 1979 c.284 §199]

17.220 [Repealed by 1979 c.284 §199]

17.225 [Amended by 1969 c.222 §2; repealed by 1979 c.284 §199]

17.230 View of premises by jury. Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent, no person, other than the judge or person so appointed, shall speak to them on any subject connected with the trial.

17.235 [Repealed by 1979 c.284 §199]

17.240 [Repealed by 1979 c.284 §199]

17.245 [Repealed by 1979 c.284 §199]

ROLE OF JURY

17.250 Jury judge of the effect of evidence; instructions. The jury, subject to the control of the court, in the cases specified by statute, are the judges of the effect or value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

(1) That their power of judging of the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

(2) That they are not bound to find in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number, or against a presumption or other evidence satisfying their minds;

(3) That a witness false in one part of his testimony is to be distrusted in others;

(4) That the testimony of an accomplice ought to be viewed with distrust, and the oral admissions of a party with caution;

(5) That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory, the finding shall be according to the preponderance of evidence; that in criminal cases guilt shall be established beyond reasonable doubt;

(6) That evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

(7) That if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

17.255 [Amended by 1965 c.534 §1; repealed by 1979 c.284 §199]

17.305 [Repealed by 1979 c.284 §199]

17.310 [Repealed by 1979 c.284 §199]

17.315 Food and lodging for jurors. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

17.320 [Amended by 1977 c.357 §1; repealed by 1979 c.284 §199]

17.325 [Repealed by 1979 c.284 §199]

17.330 [Repealed by 1979 c.284 §199]

17.335 [Repealed by 1979 c.284 §199]

17.340 [Amended by 1959 c.638 §3; repealed by 1979 c.284 §199]

17.345 [Repealed by 1979 c.284 §199]

17.350 [Repealed by 1979 c.284 §199]

17.355 [Amended by 1975 c.279 §1; repealed by 1979 c.284 §199]

17.360 [Repealed by 1979 c.284 §199]

17.405 [Repealed by 1979 c.284 §199]

17.410 [Repealed by 1979 c.284 §199]

17.415 [Repealed by 1979 c.284 §199]

17.420 [Repealed by 1979 c.284 §199]

17.425 [Repealed by 1979 c.284 §199]

17.430 [Amended by 1953 c.580 §2; 1959 c.558 §28; 1959 c.638 §4; repealed by 1965 c.177 §1 (17.431 enacted in lieu of 17.430)]

17.431 [1965 c.177 §2 (enacted in lieu of 17.430); repealed by 1979 c.284 §199]

17.435 [Amended by 1965 c.177 §3] 17.440 [Repealed by 1965 c.177 §4 (17.441 enacted in lieu of 17.440)]

17.441 [1965 c.177 §5 (enacted in lieu of 17.440); repealed by 1979 c.284 §199]

17.505 [Amended by 1977 c.357 §2; repealed by 1979 c.284 §199]

17.510 [Amended by 1977 c.357 §3; repealed by 1979 c.284 §199]

17.515 [Amended by 1971 c.565 §5; repealed by 1979 c.284 §199]

17.520 [Repealed by 1955 c.611 §13]

17.525 [Repealed by 1955 c.611 §13]

17.605 [Repealed by 1979 c.284 §199]

17.610 [Repealed by 1979 c.284 §199]

17.615 [Repealed by 1979 c.284 §199]

17.620 [Repealed by 1979 c.284 §199]

17.625 [Repealed by 1979 c.284 §199]

17.630 [Repealed by 1979 c.284 §199]

REFEREES

17.705 Referee defined. A referee is a person appointed by the court or a judicial officer, with power:

(1) To try an issue of law or of fact in a civil action or proceeding, and report thereon.

(2) To ascertain any other fact in a civil action or proceeding, when necessary for the information of the court, and report the fact.

(3) To execute an order or judgment, or to exercise any other power or perform any other duty expressly authorized by statute. [Amended by 1965 c.391 §1]

17.710 Reference defined. The appointment of a referee is denominated a reference.

17.720 Reference on consent of parties. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties.

17.725 Reference on motion. When the parties do not consent, the court may, upon the application of either, or on its own motion, direct a reference in any of the following cases:

(1) When the trial of an issue of fact requires the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

17.730 Selection of referees; number. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

17.735 Qualifications of referee appointed by the court. When the appointment of referees is made by the court or judge, each referee shall be:

(1) Qualified as a juror as provided by statute; and

(2) Competent as a juror between the parties.

17.740 Challenge to referees. When the referees are chosen by the court, each party shall have the same right of challenge, to be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

17.745 Trial by referees. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, preserve order, and punish all violations thereof upon such trial, and to compel the attendance of witnesses, and to punish them for nonattendance, or refusal to be sworn or testify, as is possessed by the court.

17.750 Action by majority of referees. Whenever there is more than one referee, all must meet, but a majority of them may do any act which might be done by all.

17.755 Requisites of referees' report; filing evidence; costs. The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party is not admitted on the trial, and the party offering the same excepts at the time to the decision rejecting such evidence, the exception shall be noted by the referees, and they shall take and receive such testimony, and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

17.760 Filing report; proceedings thereon. The report shall be filed with the clerk. Either party, within such time as may

be prescribed by the rules of the court or by special order, may move to set the report aside or for judgment thereon, or such order or proceeding as the nature of the case may require. [Amended by 1959 c.638 §5]

17.765 Affirmance or setting aside of report; weight of report. The court may affirm or set aside the report either in whole or in part. If it affirms the report, it shall give judgment accordingly. If the report is set aside, either in whole or in part, the court may make another order of reference, as to all, or so much of the report as is set aside, to the original referees, or others, or it may find the facts and determine the law itself, and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

PENALTIES

17.990 Penalties. A person wilfully violating subsection (1) of ORS 17.075 shall upon conviction be fined not more than \$1,000. [1975 c.512 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel