

ATTORNEY FEES IN SMALL-VERDICT CASES (G.S. 6-21.1)

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1) G.S. 6-21.1:

- a) Attorney fees may be awarded in the following cases where the “judgment for the recovery of damages” is \$10,000 or less:
 - i) Personal injury or property damage suit (*e.g.*, car accident, slip and fall)
 - ii) Suit by insured/beneficiary *against insurer* where court finds that the insurer made an unwarranted refusal to pay the claim that is the basis of the suit.

2) Calculating “judgment for the recovery of damages”:

- a) Add together:
 - i) Amount of verdict for compensatory damages; and
 - ii) Prejudgment interest on amount of verdict (G.S. 24-5).
- b) If sum of i) and ii) above is \$10,000 or less, attorney fees may be awarded.
- c) Do *not* include in the calculation:
 - i) Statutory costs. *Brown v. Milsap*, 358 N.C. 212 (2004).
 - ii) Punitive damages. *Boykin v. Morrison*, 148 N.C. App. 98, 105-06 (2001).
- d) Example 1:
 - i) Plaintiff sues defendant for damages sustained in slip-and-fall case.
 - ii) Jury’s verdict is for \$8,500.
 - iii) Prejudgment interest is \$1,800.
 - iv) “Judgment for the recovery of damages” is \$10,300. Court *may not* award attorney fees under G.S 6-21.1.
- e) Example 2:
 - i) Plaintiff sues defendant for injury to knee in car accident.
 - ii) Jury awards \$9,000 in compensatory damages, \$5,000 in punitive damages.
 - iii) Prejudgment interest is \$850. Statutory costs are \$350.
 - iv) “Judgment for the recovery of damages” is \$9,850. Court *may* award attorney fees under G.S. 6-21.1.

- 3) May prejudgment interest be waived to keep a judgment under \$10,000?
 - a) Unsettled. No published case has addressed the specific question. Waiver is probably more likely to be upheld on appeal if the interest is waived in a settlement or prior to the verdict.
 - b) Some guidance:
 - i) *Brown v. Milsap*, 358 N.C. 212 (2004). States that pre-judgment interest is mandatory under G.S. 21-5, but the case did not involve a waiver issue.
 - ii) *Winrow v. Discovery Ins. Co.*, (unpublished), 189 N.C. App. 212, 2008 WL 565678 (2008). Analyzes *Brown* and concludes that it is not against public policy to allow such waiver in a settlement agreement or stipulation.
- 4) Attorney fees on counterclaim(s):
 - a) May be awarded to counterclaimant if claim meets criteria in G.S. 6-21.1. *Mickens v. Robinson*, 103 N.C. App. 52, 58 (1991).
 - b) Practical note: Court generally should limit award to fees incurred in prosecuting counterclaim and should not award fees incurred solely in defending against plaintiff's claims. *Mishoe v. Sikes*, 115 N.C. App. 697, 701-02 (1994), *aff'd*, 340 N.C. 256 (1995). The Court of Appeals has, however, declined to require that the trial court make specific findings of fact allocating the time spent between prosecuting and defending. *Mickens*, 103 N.C. App. at 59.
- 5) Attorney fees for appellate work. On remand, trial court may award reasonable attorney fees under G.S. 6-21.1 to prevailing party for services performed during appeal. *Messina v. Bell*, 158 N.C. App. 111, 116 (2003); *Furmick v. Miner*, 154 N.C. App. 460, 465 (2002).
- 6) Attorney fees where no trial necessary. Court is authorized to award attorney fee where defendant makes an offer of judgment of \$10,000 or under and the plaintiff accepts. *Hicks v. Albertson*, 284 N.C. 236, 240 (1973).
- 7) Attorney fees where judgment reduced to less than zero. When the claimant's jury verdict of \$10,000 or less against the defendant is reduced pursuant to G.S. 1B-4 by the amount paid by a third-party defendant, and thus results in an order of zero compensation from the defendant, the court still has authority to award plaintiff's attorney fees under G.S. 6-21.1. *Reinhold v. Lucas*, 167 N.C. App. 735, 740 (2005).
- 8) Determining attorney fees award:
 - a) Award of "reasonable" attorney fee in these cases is within the judge's discretion. Standard of review is abuse of discretion. *House v. Stone*, 163 N.C. App. 520, 525 (2004).
 - b) Requires consideration of the entire record and the factors set forth in *Washington v. Horton*, 132 N.C. App. 347 (1999), *where relevant*:
 - i) Settlement offers made prior to institution of action;

- ii) Offers of judgment (Rule 68), and whether final judgment obtained was more favorable than offer¹;
 - iii) Whether defendant unjustly exercised superior bargaining power;
 - iv) Context in which dispute arose (in insurer cases);
 - v) Timing of settlement offers;
 - vi) Amount of settlement offers compared to verdict.
- c) Requires findings of fact sufficient to:
- i) Show that relevant *Horton* factors were considered; and
 - ii) Demonstrate reasonableness of fees, by addressing (1) time and labor expended; (2) skill required; (3) customary fee for like work; and (4) experience and ability of attorney. *Gilchrist v. French*, 169 N.C. App. 255 (2005); *Messina*, 158 N.C. App. at 114; *Barbee v. Atlantic Marine*, 115 N.C. App. 641 (1994).

¹ Under Rule 68, “judgment finally obtained” is the amount entered by the court as representing the final judgment, and includes the verdict, costs (pre- and post-offer), pre-judgment interest, and attorney fees assessed as costs (if awarded). *Roberts v. Swain*, 353 N.C. 246, 250-51 (2000); *Poole v. Miller*, 342 N.C. 349, 354 (1995).