

CLIENT ALERTS

Always Take Your Change—Every Coin Counts

Client Alert

7.21.2025

You just won your case for breach of contract and your written agreement has a provision that allows the winner to collect attorney fees and costs. You spent a lot of time preparing for trial, assembling your proofs showing how your opponent breached your contract, as well as your damage proofs showing how much you lost. Now that you've won, you can go back and ask for recovery of your attorney fees, right?

Not so. If your contract has an attorney fee provision, you have to submit your attorney fees as part of your damages in your main case. The Michigan Court of Appeals recently dealt with a somewhat recurring and confusing issue when it comes to collecting contractual attorney fees. In short, Michigan law views a contractual provision for attorney fees no different than any other contractual provision, such as liquidated damages and the like. In other words, even though you are spending money on attorneys to try your case, you will also need to present proof of your attorney fees in your case before verdict, not after. In this case, the plaintiff won its case for breach of contract before a jury and then sought recovery of its attorney fees after the verdict. The defendant objected stating that the plaintiff had already presented its damage proofs and, as such, the court had no authority to consider attorney fees. The Court of Appeals agreed—leaving the plaintiff penniless to recover its attorney fees.

Michigan has historically followed “the American Rule,” which means that each side is responsible for its own attorney fees. But three exceptions to the American rule exist: contract, statute, or case law. Specifically, if a contract, or a statute, or case law provides for the winner to recover attorney fees, they may be pursued as damages. This is an important and lucrative point to remember. If your contract has an attorney fee provision, you will be required to furnish proof of your attorney fees as part of

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your case in chief.

How does this work practically? The authors advise that if your case has a contractual provision for attorney fees, you would be well-advised to submit your bills (redacted only as necessary for privilege) in both discovery and as designated exhibits at trial. And if you're proceeding at trial, you should keep and present a continuing log of your time or obtain a pre-trial court order specifically keeping proofs open to allow for the attorney fees incurred during trial.

So, the moral of this tale is to make sure your lawyer collects every penny owed to you. Please feel free to call the authors of this Client Alert or your Butzel attorney with any questions.

Daniel J. McCarthy

248.258.1401

mccarthyd@butzel.com

Kurtis T. Wilder

313.983.7491

wilder@butzel.com

Joseph E. Richotte

248.258.1407

richotte@butzel.com