

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Procedure

Judge Anna J. Brown held that a complaint rejected by a civil intake clerk for lack of the proper filing fee (consistent with Local Rules) is, nonetheless, deemed filed as of the time it was first tendered to the Clerk's Office for purposes of the statute of limitations. The court also held that a complaint placed with a check for the proper filing fee in the Clerk's night drop-box, notwithstanding Local Rules to the contrary, also is deemed filed when placed in the drop-box for purposes of the statute of limitations. Accordingly, the court denied a defense motion to dismiss the action for failure to file within the relevant limitations period.

However, the court granted a defense motion to dismiss a civil rights claim that sought to redress violations of the federal Telecommunications Act through 42 U.S.C. § 1983, finding that plaintiff failed to state a claim on that basis. Voice Stream PCS I, LLC v. City of Hillsboro, CV 03-365-BR (Opinion, July 28, 2003).
Plaintiff's Counsel:

Christopher P. Koback;

Thomas H. Tongue
Defense Counsel:
Pamela J. Beery

Jurisdiction

A defendant removed a \$49,982 wage claim to federal court, reasoning that the court had diversity jurisdiction because plaintiff's counsel initially refused to stipulate that his attorney fees would not exceed \$25,018, hence it was not certain that the amount in controversy would be less than \$75,000.

Judge Panter ruled that the plaintiff was not required to agree to such a stipulation, which would cap the amount of attorney fees awarded to the plaintiff regardless of the course the litigation might take or which side was responsible for compounding the costs. Defendant also erred by assuming that removal jurisdiction exists unless plaintiff establishes that the amount recovered, including attorney fees, can not possibly exceed \$75,000. Removal jurisdiction

is a creature of statute and is construed strictly, with any doubts resolved in favor of remand.

Although reasonable attorney fees may exceed \$25,000 in some cases, Judge Panter declined to make such an assumption in what appeared to be a relatively simple wage claim dispute. Consequently, the amount in controversy requirement was not satisfied, and the action was remanded to state court.

Judge Panter also noted that the case had been removed to the wrong division. Cases arising in Deschutes County are to be filed in (or removed to) the court's Eugene division, not Portland. See L.R. 3.3. Marks v. Rite Aid Corp., CV 03-866-PA (Opinion, July 17, 2003).

Plaintiff's Counsel:

L. Todd Wilson

Defense Counsel:

David H. Wilson, Jr.

Employment

Judge Garr M. King recently determined the proper measure of damages for the breach of an at will employment contract. The

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plaintiff argued he should be allowed to recover either his “expectation” damages (i.e., damages that would put him in the position he would have been in had the contract not been breached) or, if those expectation damages were inadequate, his “reliance” damages (i.e., damages that would put him in the position he would have been in had the contract never been made). The defendant argued the only proper measure of damages was the plaintiff’s alleged “expectation” damages.

Judge King agreed with the defendant and held that, if the plaintiff proves the defendant breached their employment contract, the plaintiff could only recover his expectation damages. Here, this amount would be the difference between what the plaintiff actually earned while employed by the defendant, and what the plaintiff would have earned if the defendant had paid the salary it allegedly had promised to pay the plaintiff. Snodgrass v. Lanphere Enterprises, Inc., CV 00-700-KI (Opinion and Order, July 18, 2003).

Plaintiff’s Counsel:

Don S. Willner

Defense Counsel:

David J. Riewald

Anti-trust

A jury returned a \$79 million

jury verdict in an anti-trust action. The Defendant then moved for judgment as a matter of law, arguing that the Plaintiffs’ experts used flawed damage models. Judge Panner denied the motion, which could be granted only if there was no basis in the record to support an award of any quantifiable amount of damages. Since the Defendant did not request a remittitur or new trial on this ground, there was no occasion to decide whether the evidence supported the entire sum awarded by the jury. The court also denied Defendant’s other post-trial motions.

Confederated Tribes v.

Weyerhaeuser, CV 00-1693

(Opinion, July 5, 2003).

Plaintiffs’ Counsel:

Mike Haglund,

Michael Kelley

Defense Counsel:

Michael Simon,

Thomas Johnson

Administrative Law

Judge John Jelderks denied the FDA’s request for a permanent injunction against a seafood processing plant. The court found that the proposed injunction would be very costly and burdensome to this small

business, and the FDA failed to establish that the defendant was likely to violate the food and drug laws unless enjoined. The defendant had been cooperating with the FDA, the past violations were inadvertent, and the defendant had taken steps to ensure those violations would not recur. The FDA did not show that the defendant had refused to comply with any FDA directives. In addition, the FDA had not inspected the plant since April 2001 and did not know if there were presently any violations.

United States v. Fishhawk

Industries, CV 02-529-JE

(Opinion, July 23, 2003).

Plaintiff’s Counsel:

Allen Gordus; Robert

McCallum, Jr.; Robert Nesler

Defense Counsel:

John Ransom,

Marc Blackman

Picnic Time

The Oregon District Court Historical Society Annual Picnic is this Sunday, August 3, 2003 from 1-4 p.m. at Judge Leavy’s Family Hops Farm. Please RSVP to Linda Sherry by tomorrow (6/30/03) at 503-326-8009 or e-mail to:

linda_sherry@ord.uscourts.gov