

COURTHOUSE NEWS

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

A Court Publication Supported by the Attorney Admissions Fund
Vol. IX, No. 25, December 23, 2003

Taxes

Plaintiff filed an action against an Oregon Department of Revenue Agent claiming that she had violated several constitutional rights when she caused his wages to be garnished for back taxes. Judge Anna J. Brown dismissed the action for lack of subject matter jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341. In dismissing the action with prejudice, the court explained that plaintiff could effectively litigate all of his constitutional claims in the Oregon tax court. White v. Maureen 98057, CV 03-1031-BR (Opinion, December 5, 2003).

Plaintiff: Pro Se

Defense Counsel:

Andrew Logerwell

Procedure

In a contract and breach of fiduciary dispute between a majority and minority shareholder over a Slovakian surfboard business, the defendant sought dismissal or a stay of an action pending in Oregon. Defendant claimed that parties in privity with the parties in the Oregon case were already litigating parallel claims in Slovakia.

Judge James A. Redden denied the motion to dismiss or stay. The court noted that the only relief sought in the foreign proceeding was equitable and that the claims asserted by different parties in Oregon were distinct from the claims and injuries sought to be redressed in Slovakia. Cooper v. Dalbey, CV 03-1136-RE (Opinion, Dec. 8, 2003).

Plaintiff's Counsel:

Scott J. Kaplan

Defense Counsel:

John McGrory

Civil Procedure

Judge Panner granted the Plaintiffs' motion to invoke offensive issue preclusion in an antitrust action. At trial, the defendant may not dispute the existence of the relevant market, that the defendant monopolized that market, or that it willfully acquired or maintained such monopoly through anti-competitive conduct. Those questions were necessarily decided by the jury in a prior action. Although the prior action was brought by a different plaintiff, the answers to those questions does not differ between

plaintiffs. Either the defendant monopolized the market, or it did not. Judge Panner rejected the defendant's attempt to re-litigate those issues or distinguish the earlier verdict, and the defendant's contention that the verdict was ambiguous.

Plaintiffs must still prove that they personally sustained antitrust injury, during the applicable limitations period, as a result of the defendant's unlawful conduct. That question was not decided by the first jury.

Defendant also argued that the motion was procedurally improper because it was filed less than 20 days after service of the Third Amended Complaint. Judge Panner disagreed. The 20 day waiting period in Rule 56(a) runs from commencement of the "action." An amended "complaint," restating the claims against the same defendant, is not a new "action" for purposes of this rule. While the previous version of the complaint was dismissed with leave to replead, that dismissal terminated only the defective complaint, not the underlying action. Westwood Lumber Co. v. Weyerhaeuser, CV 03-551-PA (Opinion, Dec. 12, 2003).

2 The Courthouse News

Plaintiffs' Counsel:

Mike Haglund, Mike Kelley

Defense Counsel:

Tom Tongue (local)

Attorney Fees

Judge Panner awarded the prevailing Plaintiff in an antitrust case \$1,416,236 in attorney fees and out-of-pocket expenses, and \$6,887 in statutory costs. This was less than half the amount requested. Issues discussed in the opinion include (1) adjusting the fee award when only one of three plaintiffs prevail, (2) whether paralegal services performed by a secretary and "staff forester" are compensable, (3) whether the cost of a mock trial conducted by a jury consulting firm is recoverable, and (4) whether attendance at a press conference, and giving interviews to reporters, is compensable.

Judge Panner reduced the Plaintiff's fee award by \$25,000 for "block billing." The "Message From the Court Regarding Attorney Fee Petitions" at http://ord.uscourts.gov/attorney_fee_statement.pdf explains this practice and why it is disfavored and could result in reduction or denial of a fee award.

Confederated Tribes of Siletz Indians v. Weyerhaeuser, CV 00-1693-PA (Opinion, October 28, 2003).

Plaintiff's Counsel:

Mike Haglund, Mike Kelley

Defense Counsel:

Michael Simon

Criminal Procedure

Police stopped a bicyclist for riding at night without the required lights. A consent search of his backpack found a gun, resulting in the charge of Felon in Possession of a Firearm. Defendant moved to suppress the physical evidence and statements, contending that the detention was illegally prolonged past the time necessary to carry out its purposes, the issuance of a traffic citation. The motion was denied, with the court holding that a quick radio check on defendant's identification was not an unreasonable seizure. The court also held that there were sufficient objective facts to arouse the officer's suspicion to seek consent to search without violating the Fourth Amendment. US v. Wilson, CR03-376-KI, Opinion and Order of Dec. 5, 2003
AUSA: Thomas Edmonds
Defense Attorney:

Francesca Freccero

Notice

As of January 1, 2004, Jolie Russo, law clerk to the Honorable Ann Aiken, will take over as Editor of The Courthouse News. Jolie has

graciously volunteered to take over this project in addition to all of her regular duties. Inquiries about subscriptions and opinions should be directed to her at

Jolie.Russo@ord.uscourts.gov

You may also send Jolie suggestions for Newsletter items as well as proposed case summaries. All case summaries must ultimately be approved by the authoring judge, but a busy law clerk appreciates your assistance with identifying those cases of general interest to federal practitioners.

I will be leaving the court and Judge Malcolm F. Marsh in January for a position in the Civil Division of the U.S. Attorney's Office. It has been a real pleasure corresponding with all of you over the last nine years. Many thanks to the law clerks who have contributed to this publication and to all of the practitioners and librarians who have taken the time to send along comments and kind words. Special thanks to the FBA for its support and recognition.

Best Wishes –

Kelly A. Zusman