

COURTHOUSE NEWS

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

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Credit

A surety filed an action against a bank for failing to honor two letters of credit. The surety had posted bonds for a construction company and the company defaulted on one of its obligations. The bank refused to honor the letter of credit on grounds that it was issued to secure a particular construction project for which the contractor had not defaulted.

Judge Dennis James Hubel granted plaintiff's motion for partial summary judgment. The court noted that under the Uniform Commercial Practices Act, letters of credit are independent of the underlying contract. The court further found that Oregon law provides that an issuing bank may dishonor a letter of credit if the bank believes in good faith that honoring the letter would facilitate fraud. The defendant had failed to assert fraud in its answer, but the court found it could consider the issue as raised in a response to plaintiff's motion for summary judgment. The court found, however, that the bank's reliance upon a conclusory affidavit from a loan officer was insufficient to create a genuine issue of fact. The bank officer's comments were contradicted by correspondence and there was nothing in the record to indicate that

plaintiff had ever made any false representations to the defendant. Western Surety Co. V. Bank of Southern Oregon, CV 98-1109-HU (Opinion, June, 1999 - 10 pages).
Plaintiff's Counsel: John Stewart
Defense Counsel:

William Deatherage

Discovery

Judge Malcolm F. Marsh refused to level sanctions against a defendant for a lost letter allegedly sent to it by facsimile on grounds that a factual dispute existed over whether the defendant ever actually received the letter. The court refused to find a presumption of receipt based upon the testimony of several individuals about the creation and transmission of the letter in light of the absence of the letter itself or a facsimile confirmation sheet. Haley v. Federal Express Corp., CV 98-1000 (Order, June 14, 1999 - 7 pages).
Plaintiff's Counsel: Larry Sokol
Defense Counsel: Michael McGlory

Employment

A plaintiff filed an action against her former employer asserting that she was terminated because of her pregnancy and her sex. The employer argued that her claims should be barred because she was not terminated until after giving

birth. The court noted that although a Seventh Circuit decision found that the status of a new parent was not a protectible classification under Title VII, that plaintiff had stated a claim for sex discrimination. Judge Janice Stewart reasoned that to hold otherwise would permit employers to circumvent the law by waiting to terminate pregnant employees post-birth. However, the court held that plaintiff's claim of discrimination based upon two instances in which her employer refused to allow her breaks to pump breast milk did not constitute actionable discrimination, although they might constitute admissible evidence of an intent to terminate.

The court ultimately granted the employer's motion for summary judgment finding undisputed evidence that plaintiff was failing to perform her job in a satisfactory manner. Judge Stewart also noted that comments made by plaintiff's superiors questioning plaintiff's commitment to the company following the birth of her child constituted stray remarks insufficient to show that the employer's proffered reasons for termination were pretextual. Jacobson v. Regent Assisted Living, Inc., CV 98-564-ST (Findings and Recommendation April 9, 1999 - 30 pages; Adopted by Judge Haggerty by Order dated May 24, 1999).

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Plaintiff's Counsel: Craig Crispin
Defense Counsel: John Acosta

Habeas Corpus

Judge Ann Aiken denied a §2241 petition challenging the Parole Commission's ability to revoke parole on a 1981 conviction and order that the remainder of the sentence be served following the petitioner's twenty year sentence on other charges. The petitioner argued that his detainer had been deleted, that the resulting sentence exceed the statutory maximum and that the warrant had been automatically executed as a matter of law during a 1992 hearing. The court rejected each argument, finding that the deletion was temporary and inadvertent and holding that the Parole Commission may hold a parole revocation hearing without executing its parole violation arrest warrant. Duktel v. Hood, CV 97-1830-AA (Opinion, May, 1999 - 6 pages).
Petitioner's Counsel: Steve Sady
Respondent's Counsel: Ken Bauman

Patents

The plaintiff filed an action for patent infringement and defendant successfully moved to dismiss the action for lack of personal jurisdiction. Judge Ann Aiken first noted that the court must look to Federal Circuit law, rather than the Ninth Circuit, to determine whether the minimum contacts test was met. In support of its contention that the court had specific jurisdiction over the defendant, plaintiff relied upon

defendant's two sales of equipment in 1990 and 1993 and that fact that defendant maintained a website accessible by Oregon residents. Defendant is an Arizona corporation and is not registered to do business in Oregon.

Judge Aiken held that because one of the equipment sales took place before the 6-year statute of limitations period, it could not be counted. The court then found that the single sale of a \$1200 product 6 years prior to the institution of this action was insufficient to demonstrate minimum contacts. She noted that the absence of any established distribution channel was "critical" to the analysis. The court further rejected the plaintiff's reliance upon the website since it had never generated a single sale. Finally, the court found that the fact that the defendant regularly conducted business with a Washington corporation that then resold goods to Oregon was insufficient to establish personal jurisdiction. Hayden v. Shin-Etsu Handotai America, Inc., CV 97-1752-AA (Opinion, June, 1999 - 7 pages).

Plaintiff's Counsel: Michael Essler
Defense Counsel: James Geringer

Election Laws

An unsuccessful Congressional candidate filed an action against the state Attorney General challenging the Constitutionality of Oregon's "sore loser" law. Under O.R.S. § 249.048, no candidate who fails to receive a nomination from a major political party may then refile as an

independent candidate. Plaintiff claimed that the Oregon law violated a federal criminal statute (18 U.S.C. § 245) and the First and Fourteenth Amendments to the U.S. Constitution.

Judge Dennis James Hubel rejected the defendant's argument that the controversy was mooted by the general election since the issue was capable of repetition. The court then analyzed the statute under the balancing test set forth by the Supreme Court in Timmons v. Twin Cities Area New Party, 117 S. Ct. 1364 (1997). Judge Hubel found that Oregon had an interest in avoiding intra-party feuding and that the regulation did not impose any "severe" burden on plaintiff's rights. The court rejected plaintiff's assertion that the statute effectively deprived the Reform Party of ever placing a candidate on the ballot, noting that it only prevented plaintiff from running that year because he had unsuccessfully sought the primary nomination for the Republican Party. Cooley v. Keisling, CV 98-1115-HU (Findings & Recommendation, April 27, 1999 - 10 pages; Adopted by Order of Judge Helen Frye, June 9, 1999).
Plaintiff: Pro Se
Defense Counsel: David Leith

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