

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. V, No. 22, September 23, 1999

Jurisdiction

The defendant corporation acquired assignments of secured car loans from car dealers in North and South Carolina. Defendant got the money to purchase these assignments from its customers, including plaintiff, to whom it paid an interest rate well above the market rate. Plaintiff thought that she had the first security interest on the cars, but found out that a bank was ahead of her in line when defendant's business collapsed. She sued the corporation for fraud. Defendant's contacts with Oregon were limited to a letter sent by defendant to Oregon closing out some earlier business and asking plaintiff if she was interested in discussing new loans, telephone calls negotiating the terms of the loans, initial paperwork on the loans mailed by defendant to Oregon, and loan payments mailed by defendant to Oregon. Judge King held that this court did not have personal jurisdiction over defendant and dismissed the case. Rabyor v. L&E Associates, Inc., CV99-561-KI, (Opinion, Sept. 21, 1999).

Plaintiff's Counsel: Steven Marks
Defense Counsel: Steven Claussen

Insurance

Chief Judge Michael Hogan recently denied in part and granted in part defendant insurer's motion for summary

judgment in an action for indemnification under an Umbrella Liability Policy issued to the plaintiff Parker-Hannifin Corp., dba Atlas Cylinders. In the underlying action, following a three-month trial in North Carolina, a jury returned a verdict against Atlas Cylinders on claims of breach of contract, breach of implied warranties, negligence, and negligent misrepresentation. The claims were in connection with Atlas Cylinders' manufacture of faulty cylinders which caused aerial lift booms, attached to a truck chassis or skidder which allows elevated work at heights of up to 50 feet above the ground, to crash to the ground. The jury's verdict was trebled by the court pursuant to state statute, and resulted in a judgment against Atlas in the amount of over \$9 million, plus interest. Atlas and the underlying plaintiff subsequently settled for the sum of \$8.2 million. Atlas then sought coverage from its excess carrier, Allianz Underwriters.

Finding that under the policy consequential damages incurred by the underlying plaintiff on account of "property damage," to which the insured became liable, are covered, Judge Hogan denied Allianz Underwriters summary judgment with respect to coverage for the underlying plaintiff's lost profits and diminution in reputation, and Atlas's attorneys' fees and costs; but granted summary judgment to Allianz Underwriters with respect to

coverage for the underlying plaintiff's recall damages, due to products exclusions in the policy. Judge Hogan also granted summary judgment with respect to attorneys' fees that were charged against Atlas as a sanction for willful misconduct in the underlying suit. Parker-Hannifin Corp. v. Allianz Underwriters, CV 98-6135-HO (Order, Sept. 17, 1999).

Plaintiff's Counsel: Bruce Smith
Defense Counsel: Thomas Christ

Pro Se Pleading

Judge Janice Stewart dismissed an action filed by claimant who argued that the SAIF corporation had caused him embarrassment and mental abuse when SAIF employees tampered with his records and placed him into a special program. Defendant admitted that it had in fact placed plaintiff into a special program based upon plaintiff's telephone threats to SAIF employees. Plaintiff's claim was transferred to a different officer and security personnel were present for his hearing.

Judge Stewart noted that she was unable to determine the legal basis for plaintiff's claims. The court explained several different possibilities, but dismissed the case with leave to replead following her directives. Judge Stewart explained that any tort claims would be barred under the Eleventh Amendment and that possible claims under the ADA

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could be barred by the statute of limitations. The court also expressed doubt about the validity of an ADA claim given that claims under Title II preclude recovery for purely non-economic injuries and further, that plaintiff must plead an intent to discriminate on the basis of a disability. Macy v. SAIF Corp., CV 99-309-ST (Findings and Recommendation, June 28, 1999; Adopted by Order of Judge Owen Panner, Aug. 18, 1999).

Plaintiff: Pro Se

Defense Counsel: Anthony Ridolfo

Immunity

A former Oregon inmate filed an action against the State of Oregon and the Chair of the Parole Board claiming false imprisonment and violation of his constitutional rights under 42 U.S.C. § 1983. Plaintiff was imprisoned in 1994 on sodomy charges and sentenced to 8 years. The parole board set a release date in February of 1997. However, in January of 1997, the Parole Chair rescinded plaintiff's release date based upon the need for a psychiatric evaluation and the absence of a release plan. Plaintiff was erroneously released from prison in January of 1997 and was re-arrested based upon the Board chair's rescission order. Plaintiff filed a state habeas corpus proceeding which was denied at the trial court level but reversed on appeal. The Oregon Court of Appeals held that the Board could not rescind plaintiff's release date without a hearing.

Judge Ann Aiken granted the Parole Board Chairperson's motion for summary judgment on the basis of absolute quasi-judicial immunity. The

court rejected plaintiff's argument that the chair's rescission order should fall outside of the immunity doctrine because her actions deprived him of procedural due process. In addition, the court remanded the remaining claims against the State of Oregon. Beveridge v. Oregon, CV 99-256-AA (Order, Sept. 1999 - 6 pages).

Plaintiff's Counsel: Tom Steenson

Defense Counsel: Thomas Christ

Employment

A truck driver who suffered an on the job injury filed an action against his employer claiming that he was retaliated against for filing a worker's compensation claim. Plaintiff was terminated during his initial 6 month probationary period. He filed an action in state court asserting a statutory claim of discrimination under ORS 659 and a common law wrongful discharge claim. The action was removed based upon diversity.

Judge Aiken found that plaintiff's claim of having overheard negative comments about his medical leave and subsequent light duty restriction was sufficient to make out a triable claim under ORS 659. The court dismissed the common law claim on the basis that the statute provides an exclusive remedy under Oregon law. Kahey v. Wayne-Dalton Corp., CV 98-1360-AA (Opinion, Aug. 20, 1999).

*Note: the case settled and was dismissed on Sept. 9, 1999.

Plaintiff's Counsel: J. William Savage

Defense Counsel: Ralph Rayburn

7 On Sept. 16, 1999, following a 3-day trial, the jury returned a defense

verdict in the sexual discrimination case tried before Judge Owen Panner. May v. City of Lafayette, CV 98-1472-PA.

Plaintiff's Counsel: Steve Brischetto

Defense Counsel: James Martin

Civil Rights

A grandmother filed an action against City of Portland police officers claiming that the officers used excessive force against her 3 year old grand daughter and violated her grand daughter's 5th Amendment rights when they questioned her without an adult family member present and without Miranda warnings.

Judge Ann Aiken dismissed the complaint. She found that plaintiff could not base a § 1983 claim upon violations of the Oregon constitution, that there was no basis under the 14th Amendment for an excessive force claim and that there was no indication that officers were attempting to elicit incriminating statements when they questioned the grand daughter. The court also noted the absence of any authority to require police officers to have a family member present during the interview of a child. Conner v. Barbour, CV 99-740-AA (Order, Sept. 1999 - 5 pages).

Plaintiff's Counsel: Dawna Scott

Defense Counsel: David Lesh

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