

COURTHOUSE NEWS

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

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Environment

Plaintiffs filed petitions under the Endangered Species Act, seeking protection for three animals and a plant. Due to budget constraints, the Fish and Wildlife Service had failed to meet the deadlines specified in the Act by as much as three years. Judge King held that the Listing Priority Guidances, promulgated by the FWS in an effort to deal with the budget constraints, were valid and that the FWS' implementation of the deadline for the 90-day finding was reasonable, even though the findings were being made well beyond the 90-day period. He also held that the deadline for the 12-month finding is a mandatory, nondiscretionary one, even in light of the budget problems. The Secretary was enjoined to complete 12-month findings for the species which had a positive 90-day finding by dates provided by the FWS, giving the species top priority except for emergency listing actions and other court-imposed deadlines. Biodiversity Legal Foundation v. Badgley, CV98-1093-KI (Opinion, Nov. 18,

1999)

Plaintiffs' attorneys: Stephanie Parent, Daniel Rohlf
Defense attorneys: Richard Monikowski, Jean Williams

Criminal Law

Judge Ancer Haggerty granted a defense motion to suppress evidence seized from an automobile. The government argued that the search should fall within the inventory search exception to the 4th Amendment's warrant requirement. Judge Haggerty held that the search was unconstitutional due to the absence of standard criteria to guide the police officers' decision to impound a vehicle or to permit the driver to take personal property out of the car prior to the inventory. The court found that the Portland City Code and Oregon Revised Statutes provided unbridled discretion to the police officers and hence, could not be relied upon to justify the search. United States v. Abbit, et al., CR 98-208-HA (Opinion, Nov,

15, 1999 - 7 pages).

AUSA: Pamala Holsinger
Defense Counsel: Thomas Coan

Employment

A milk hauler for a creamery association was an independent contractor and thus, could not invoke the protections of the Americans with Disabilities Act (ADA). Judge Robert Jones held that the economic realities test should apply to the determination of the plaintiff's status, rejecting the alternative common law agency test. Under either test, the court held that the plaintiff fell squarely within the definition of an independent contractor. The court granted a defense motion for summary judgment against the ADA and analogous ORS 659 claim and dismissed the remaining supplemental claims. Norberg v. Tillamook County Creamery Ass'n, CV 98-909-JO (Opinion, Nov. 1999 - 16 pages).

Plaintiff's Counsel:

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Leonard DuBoff
Defense Counsel:
James Edmonds

7 A former store manager filed an action against his employer asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing and intentional infliction of emotional distress. The parties agreed that plaintiff was an at-will employee, the issue was whether company practice and/or oral statements of a district manager modified that status.

Plaintiff was terminated following the discovery that one of his employees was involved in a foreign buyer kick-back scheme. Plaintiff claimed that the company's practice of progressive discipline and his manager's statement that he would try to assist in keeping plaintiff's job modified his at-will status. Judge Ann Aiken granted a defense motion for summary judgment against all claims. The court found that it was undisputed that the company's progressive discipline policy was discretionary, an employee's belief is insufficient to create contractual rights and that custom and practice, standing alone, do not create implied contractual rights. The court found that there is no implied right relative to

discharge for an at-will employee and that the defendant's conduct was not "outrageous" to sustain an intentional infliction of emotional distress claim. Morse v. Venator Group Retail, Inc., CV 98-1228-AA (Opinion, Nov. 1999 - 9 pages).

Plaintiff's Counsel:
Kirk Emmons
Defense Counsel:
Caroline Guest

Patents

A plaintiff who sent a demand letter regarding a claimed infringement and who then failed to respond to defendant's offer to purchase or license the invention for a 10 year period was not equitably estopped from asserting patent infringement claims as a matter of law. Judge Ann Aiken held that genuine issues of material fact precluded summary judgment on each element of the equitable estoppel defense: (1) whether plaintiff's actions constituted a misleading communication; (2) defendant's substantial reliance; and (3) whether defendant suffered prejudice beyond the fact of infringement itself. Hayden v. Shin-Etsu, CV 97-1752-AA (Opinion, November, 1999 - 9 pages).

Plaintiff's Counsel:
Michael Esler
Defense Counsel: Jeffrey Spere

ADA

A plaintiff who applied for section 8 housing filed an action against the Portland Housing Authority alleging claims of disability discrimination under state and federal statutes. Plaintiff sought housing for herself and her two assistant animals-- a dog and an opossum. The authority refused to allow the opossum on grounds that it was not a domesticated animal.

Judge Robert Jones dismissed the action as time barred. The court noted that plaintiff was denied housing over 2 years prior to filing the action and held that the delay could not be excused under the continuing violation doctrine because no new discriminatory acts had taken place within the limitations period. Judge Jones granted a defense motion for summary judgment on the federal and state discrimination act claims and remanded the rest of the claims to state court. LaFore v. Housing Authority of Portland, CV 99-827-JO (Opinion, Nov., 1999 - 9 pages).

Plaintiff's Counsel:
Dennis Steinman

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Defense Counsel: Doug Andres

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