

COURTHOUSE NEWS

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

After a Union Pacific train derailed in Umatilla County, the company concluded that the derailment was caused by a load of oriented strand board shifting within one of the cars. Union Pacific filed an action against the related Forex companies, who manufactured the lumber, and Groupe Goyette, the company who loaded the railcar. All defendants are based in Quebec. Judge King dismissed the claims against Groupe Goyette after allowing some discovery and then determining that the court lacked personal jurisdiction over the company. This was in spite of shipping documents from which Groupe Goyette knew that the final destination of the railcar was Oregon. He refused to dismiss the claims against the Forex companies on grounds of forum non conveniens because of this state's interest in the chemical spill caused by the derailment and the importance of testimony from witnesses located at the site of the derailment. Union Pacific Railroad Co. v. Forexport, Inc., CV99-

917-KI, Opinion, Dec. 14, 1999.

Plaintiff's attorneys: Steven Corey, Patricia Sullivan, Rexanne Gibson, Sarah Hall
Defense attorneys: Todd Baran, Charles Harms, Thomas Tongue, Kathryn Pratt

Habeas

Judge King granted a state prisoner's petition for a writ of habeas corpus. The petitioner had been convicted of Rape I for raping his niece, who was 13 at the time of the rapes. Several years later, the niece recanted but petitioner remained incarcerated. The judge held an evidentiary hearing to view the niece's testimony in person, and found that it was more likely than not that no reasonable juror would convict petitioner in light of the new evidence. This allowed the court to consider the merits of petitioner's claims even though he had procedurally defaulted them. Petitioner alleged that he had received ineffective assistance of his trial counsel for two reasons, including that she had failed to

object when the state introduced character evidence about the niece's reputation for truthfulness before her reputation was attacked. Due to the nature of the evidence at petitioner's trial, Judge King concluded that trial counsel fell below the objective standard of reasonableness and that the error was prejudicial to petitioner. Jose v. Johnson, CV97-500-KI, Opinion, Dec. 7, 1999.

Petitioner's attorney:
Wendy Willis
Respondent's attorney: Lynn Larsen

Bankruptcy

A bankruptcy court sua sponte dismissed a Chapter 13 bankruptcy petition which then allowed a creditor to proceed with the sale of the debtor's property. The debtor appealed. Judge Ann Aiken held that the bankruptcy court had authority to dismiss the petition for filing in bad faith. The court further found that sufficient notice was given to creditors and that in any event, the debtor lacked standing to challenge notice

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to creditors. Judge Aiken also held that the bankruptcy court was not clearly erroneous in finding that the debtor's filing was in bad faith and for the sole purpose of staying enforcement of a state court judgment. In Re Howard, CV 99-1292-AA (Opinion, December, 1999 - 5 pages).

Debtor's Counsel:

Magar E. Magar

Creditor's Counsel:

Janet Briggs

Trustee's Counsel:

Mark Block

Attorney Fees

A successful social security claimant sought an enhanced attorney fee rate. Judge Ann Aiken denied the request, allowing only the statutory amount as adjusted for cost of living. The court also denied fees for time spent at the administrative level, finding that it lacked the authority to award such fees. Couch v. Apfel, CV 99-574-AA (Order, December 1999 - 3 pages).

Plaintiff's Counsel:

Kevin Lafkey

Defense Counsel:

William Youngman

ERISA

Judge Ann Aiken granted a defense motion for judgment on the

pleadings in a case involving a negligence claim relative to a stop-loss insurance policy. the court held that because the stop-loss insurance policy was purchased by the plaintiff to fund, in part, a health insurance plan, the policy was an integral part of a comprehensive employee welfare plan and therefore governed by ERISA. Accordingly, plaintiff's state law negligence claim was preempted. Litho Development & Research, Inc. v. Security Life of Denver Ins. Co., CV 99-1119-AA (Order, Dec. 9, 1999 - 3 pages).

Plaintiff's Counsel:

Gerald Wygant

Defense Counsel: Lori Metz

Environment

Judge Janice Stewart issued a comprehensive opinion in a case involving disputed ground water/discharge clean-up. The court held that the plaintiff was a potentially responsible party (PRP) under O.R.S. 465.255(1)(a) & (b), finding that the statute broadly defined PRPs to include property owners who own property on which discharges have "leached." The court rejected the plaintiff's argument that PRPs should be limited to property owners who own or operate facilities from which releases occur.

The court then analyzed the facts of three different discharge

sites and granted in part and denied in part plaintiff's claims for contribution for clean-up costs. Port of Portland v. UPRR, CV 98-886-ST (Findings and Recommendation, Sept. 30, 1999 - 42 pages; Adopted by Order of Judge Panner, Nov. 30, 1999).

Plaintiff's Counsel:

Eric Todderud

Defense Counsel:

Robert Maloney, Jr.

Employment

A claim of sex discrimination under O.R.S. 659 lodged against the Oregon Department of Education is barred under the Eleventh Amendment and dismissed without prejudice. Evans v. Oregon Dept. of Education, CV 99-54-ST (Opinion, April 13, 1999).

Plaintiff's Counsel:

Margie Schweitzer

Defense Counsel:

David Landrum

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