

COURTHOUSE NEWS

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

A former student at an alternative high school for at risk youth filed an action against a governmental council, two program administrators and a program volunteer who allegedly raped her during an after-hours party at his home. Plaintiff obtained a default judgment against the volunteer who allegedly raped her. The volunteer had been terminated from the high school program one month prior to the alleged incident; the alleged assault took place at the volunteer's home during a party that involved drugs and alcohol. The volunteer was a participant in a separate program run by the defendant council that assisted displaced timber workers in establishing new careers.

Plaintiff conceded that she never complained to the council about the volunteer's conduct. Plaintiff asserted claims under Title IX, 42 U.S.C. § 1983 and Title VII. Judge Ancer Haggerty granted summary judgment in favor of the Council and Program administrators. The court found

that the Title IX claim could not be sustained given the absence of any evidence of deliberate indifference on the part of the remaining defendants.

As for the § 1983 claim, the court rejected plaintiff's contention that the federal Job Training Partnership Act altered the standard for assessing the viability of a § 1983 claim. The court found that summary judgment was appropriate on this claim because there was no evidence that the defendants were aware of any specific harm to the plaintiff.

The court declined to grant summary judgment on the Title VII claim based upon defendant's assertion that Title VII had no application to an educational institution given the remedies available under Title IX. The court noted that whether Title VII should apply was questionable under Ninth Circuit authority, but found that summary judgment was otherwise appropriate given the absence of any evidence that defendants knew or should have known of problems involving the volunteer and because there was no evidence of an abusive "work" environment.

Casey v. Central Oregon Inter-governmental Council, et al., CV 98-1246-HA (Opinion, Dec. 2000).

Plaintiff's Counsel:
Donald Oliver
Defense Counsel:
Robert Wagner

Taxes

The IRS disallowed an ordinary pass through loss claimed by a member of a limited liability corporation (LLC). The IRS re-characterized the loss as a passive loss and imposed a penalty. Plaintiff paid the tax and challenged the assessment.

Judge Ann Aiken granted plaintiff's motion for summary judgment and declared the IRS' assessment improper. The court noted that the initial inquiry was one of first impression and hinged upon whether plaintiff should be classified as a general or a limited partner. Judge Aiken held that application of the Treasury Regulation relied upon by the IRS depended upon whether the partner had limited liability under

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state law. The court held that the limited partner test under the treasury regulations was inapplicable to an LLC because an LLC is a distinctly different entity than a limited partnership. The court concluded that the general partnership tests should apply and that under those tests, plaintiff could not prorate time spent in a short year for purposes of meeting the 500 hour/year of work test. However, the court did find that plaintiff could aggregate time worked for a C corporation in a related field with time worked for the LLC for purposes of meeting the 500 hour requirement. The court concluded that the plaintiff was a general partner who met the ordinary loss test and thus, the deficiency and penalties imposed by the IRS were improper. Gregg v. United States, CV 99-845-AA (Opinion, Nov. 2000).

Plaintiff's Counsel:

Marc Sellers

Defense Counsel:

Jian Grant (D.C.)

Insurance

Residential home owners filed an action against their insurer for failure to defend and indemnify them in a negligence action. The tenant in a home previously owned by the plaintiffs filed a negligence action against them for injuries she

sustained when shocked by an electrical subpanel. The underlying action was defendant and a settlement was paid for by another insurance company who retained counsel in the instant case.

Defendant's duty to defend hinged upon construction of a general liability insurance policy. The policy excluded from coverage terms any property that did not constitute an "insured location." The term "insured location" was defined as property owned by the insured on the date of the occurrence. Plaintiffs argued that because they did not own the property on the date of the occurrence, it was not an insured location and thus, not subject to the policy's express exclusion.

Judge Robert E. Jones found the plaintiffs' argument "creative," but inconsistent with the overall text and purpose of the policy and Oregon law. The court held that the only reasonable interpretation excluded previously owned property from coverage. Accordingly, the court granted the defendant's summary judgment motion and denied the plaintiffs' cross-motion. Bush v. State Farm Fire & Casualty Co., CV 00-605-JO (Opinion, November, 2000).

Plaintiffs' Counsel:

Jeffrey Hansen

Defense Counsel:

Dianne Dailey

Negligence

An independent contractor who owned and operated a truck and trailer filed a negligence action against a lumber yard. Plaintiff claimed that he was injured while adjusting a tarp on a load and that defendant owed a duty of care under Washington law because defendant controlled the premises and required plaintiff to place a tarp on the load before weighing.

Defendant moved for summary judgment on grounds that it owed no duty of care. Judge Ann Aiken denied the motion, noting the general rule of non-liability for hiring an independent contractor, but finding that two exceptions to the general rule applied:

(1) where the defendant controls the conditions of the workplace and plaintiff's work performance; and (2) where a statutory duty of care arises from required compliance with state safety regulations. Burtch v. Ross-Simmons Hardwood Lumber Co., Inc., CV 99-946-AA (Opinion, Nov., 2000).

Plaintiff's Counsel:

Thomas D'Amore

Defense Counsel:

Mark Olmstead