

COURTHOUSE NEWS

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

An FBI memo regarding a criminal investigation of the plaintiff that allegedly was disseminated before ascertaining its accuracy may form the basis for a Privacy Act Claim, 5 U.S.C. § 552(a), where the memo was kept by the agency within a system of overseas U.S. embassy records. Judge Janice Stewart held that issues of fact on whether the document was maintained within a record system precluded both parties' motions for summary judgment. The court did dismiss another federal agency based upon undisputed facts that the persons involved were not acting on behalf of the agency relative to the alleged dissemination. Stewart v. FBI, Cv. 97-1595-HA (Findings and Recommendation, Dec. 10, 1999; Adopted by Order of Judge Haggerty, March 15, 2000).

Plaintiff's Counsel: Chris Kent
Defense Counsel:
Judith Kobbervig

Civil Rights

Whether a state anti-stalking order violates the First Amendment of the U.S. Constitution cannot be decided by a federal court under the Rooker-Feldman doctrine. Judge Janice Stewart held that even though the plaintiff raised federal constitutional claims, his challenge essentially sought review of the state court decision and only the U.S. Supreme Court can decide such issues following exhaustion of appellate relief in the state courts. Fairly Honest Bill v. City of Portland, CV 99-1580-ST (Findings and Recommendation, Feb. 10, 2000; Adopted by Order of Judge Haggerty, March, 2000).
Plaintiff's Counsel:

Donald Dartt
Defense Counsel:
William Manlove, III

Procedure

Plaintiffs attempted to invoke the Oregon state procedural statute governing punitive damage pleadings (O.R.S. 18.535) to justify their last minute prayer for a punitive damage award for an

intentional interference with economic relations claim. The plaintiffs' request to amend to add the prayer was raised for the first time at a pretrial conference and plaintiffs argued that they could not have included the prayer in their initial complaint under the Oregon statute.

Judge Panner held that the statute was inapplicable in federal court and that under Fed. R. Civ. P. 15(a), the request for amendment was simply too late. The court noted that the plaintiffs were well aware of the conduct giving rise to the prayer for many months. Orlando v. Pacific Office Automation, Inc., CV 99-1207-PA (Order, March 24, 2000).
Plaintiffs' Counsel:

Mark Morrell
Defense Counsel:
David Sweeney

Intellectual Property

Is the term "postal service" entitled to protection under federal trademark law or is it generic as a matter of law? Judge Malcolm F. Marsh held that a counter claimant

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in a declaratory judgment action had sufficiently alleged claims for trademark infringement to survive a motion to dismiss. The court held that genericness is a factual issue dependent upon buyer understanding. The court also held that the counter claimant had sufficiently alleged continuous use, even though it had used the challenged phrase in connection with other wordings. Finally, the court found that registration of a domain name could constitute "commercial use" depending upon the factual circumstances. Zipee Corp. v. United States Postal Service, CV 99-1290-MA (Opinion, March 27, 2000).

Plaintiffs' Counsel:

Gary E. Rhoades (Local)

Defense Counsel:

William Youngman (Local)

Preemption

After a court trial, Judge Garr M. King concluded that solid waste control ordinances for unincorporated Washington County and the City of Beaverton were preempted by the Federal Aviation Administration Authorization Act of 1994 but that the ordinances did not violate the Commerce Clause. Plaintiff hauls loads of mixed solid waste from commercial sites to a material recovery facility where recyclable materials are separated and then

sold to recycling facilities. The remainder of the load is sent to the landfill for disposal. Approximately half of the materials in the loads are recycled. Plaintiff had been cited by the county and city for hauling these loads without obtaining a franchise certificate from them. The geographic areas had been divided into exclusive franchise territories more than twenty years ago and no new franchises had been awarded since then except when a hauling business was sold. Judge King held that the mixed solid waste loads were property as the term is used in the act. Consequently, the ordinances were preempted.

A.G.G. Enterprises, Inc. v. Washington County, Oregon, CV99-1097-KI, Opinion, April 6, 2000.

Plaintiff's Counsel:

Larry Davidson, Russell Allen
Defense & Intervenors' Counsel:
John Junkin, Barnes Ellis, James Herald

Procedure

In Ford v. GST Telecommunications, Inc., 00-160-HU, Judge Hubel addressed the issue of whether a defendant's notice of removal, based upon diversity jurisdiction, was timely in light of the fact that it was filed within 30 days of the amendment of plaintiff's complaint dropping the nondiverse defendant, but more

than 30 days from the date defendants had reason to know that the nondiverse defendant had been fraudulently joined. In concluding that the removal notice was untimely, Judge Hubel rejected the defendants' contention that their subjective knowledge of the fraudulent joinder was irrelevant and that the time for removal was not triggered until plaintiff formally amended his complaint to create diversity. In addition, Judge Hubel applied the "first-served defendant" rule which provides that the 30 day time limitation for removal begins in run with service on the first defendant thereby extinguishing the right of the later-served defendant to petition for removal.

Plaintiff's Counsel:

Dennis Rawlinson

Defense Counsel:

Richard Matson; Peter Glade

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