

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. VII, No. 10, May 1, 2001

Arbitration

In a dispute between an employer and a Union, an arbitrator held that the employer violated a collective bargaining agreement by failing to pay higher agreed upon wages. The employer filed an action in federal court seeking to vacate the arbitration decision. Judge Anna J. Brown rejected the employer's efforts and entered judgment for the Union. The parties then disputed whether the award should include prejudgment interest and if so, at what rate.

Judge Brown noted the absence of any specific provision in the Labor Management Relations Act (LMRA) governing a pre-judgment interest award. Decisional authority has held that this is an issue within the court's discretion. Judge Brown found such an award appropriate because it would compensate Union members by providing them with the time value of the wages they should have received in 1998. The court rejected the employer's argument that such an award would be unfair given its good faith

position in the litigation. The court reasoned that the employer should have known that its chances of succeeding in an effort to set aside an arbitration award were "slim." The court looked to state law for determining an appropriate rate of interest. USF Reddaway, Inc. v. Teamsters Union, Local 162 AFL-CIO, CV 00-317-BR (Opinion, April 11, 2001).

Plaintiff's Counsel: Carter Mann
Defense Counsel: Paul Hays

Employment

A knee injury that affects the plaintiff's ability to walk, stand and bend may constitute a disability for purposes of federal and state anti-discrimination statutes, even where the duration of the disabling effects are uncertain. Judge Anna J. Brown denied a defense motion for summary judgment in an employment discrimination case filed under the federal ADA and comparable state statutory scheme. The court reasoned that where the full extent of the plaintiff's injury was indeterminate, a jury could find that the plaintiff met the Acts' disability requirement.

The court also rejected the defendant's argument that plaintiff was unqualified for the job based upon evidence proffered tending to show that the employer failed to engage, in good faith, in the ADA's mandated interactive process. Weiss-Clark v. Kaiser Foundation Health Plan of the Northwest, CV 99-1083-BR (Opinion, Feb., 2001).

Plaintiff's Counsel:
Patty Rissberger
Defense Counsel:
John Acosta

Procedure

A dissatisfied mobile home owner filed an action against the seller alleging fraud and related claims for damages in excess of \$800,000. The plaintiff sought to amend her complaint to add a claim for misrepresentation relative to the length of the mobile home. Apparently, the rig exceeded length restrictions in several states and, according to the plaintiff, would frustrate her efforts to tour the country. Judge Aiken denied the motion to amend as futile, noting that Oregon has no length

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restriction and finding that the seller has no obligation to disclose such a fact. Wetterman v. Monaco Coach Corp., CV 00-6257-AA (Order, April, 2001).

Plaintiff's Counsel:

Jerry C. Goodman, III

Defense Counsel:

Charles D. Carlson

William H. Martin

Patents

Judge Ann Aiken conducted a Markman hearing and construed several claims that relate to a ski pole grip device. The court granted plaintiff's motion for summary judgment on the issue of infringement and denied a defense cross-motion for summary judgment on the issue of non-infringement. Within this holding, the court noted that the defendant "used" the accused device by operating the product at a demonstration. The court also found that the sale of infringing equipment could constitute inducement of infringement or contributory infringement under the patent laws. Judge Aiken also denied a defense motion for summary judgment that sought to preclude breach of confidentiality claims due to disclosures within the patent. Wells v. Laki USA, Inc., CV 99-583-AA (Opinion, March, 2001).

Plaintiff's Counsel:

Bruce DeKock

Defense Counsel:

Patrick Kouba (Local)

Jurisdiction

Chief Judge Michael R. Hogan denied a defense motion to dismiss a declaratory judgment action for lack of subject matter jurisdiction. Plaintiff's husband was killed in an auto accident and she filed the action seeking a declaration of insurance coverage and \$900,000 for breach of contract. The insurance company argued that the action was a "direct" action as defined by 28 U.S.C. § 1332(c)(1) and thus, it should be considered to have the citizenship of the insured. Judge Hogan rejected this argument and found the court had diversity jurisdiction since the insurer was a Pennsylvania company. Pilgrim v. Cigna Property & Casualty Ins. Co., CV 01-6028-HO (Opinion, May 1, 2001).

Plaintiff's Counsel:

Joel DeVore

Defense Counsel:

Frank Moscato

Cost Bills

Judge Ann Aiken denied a defense request for costs due to the plaintiff's proof of indigency and the potential "chilling" effect such an award would have against civil rights claimants. The plaintiff had

filed the action against his former employer claiming that he was discriminated against due to his disability in violation of federal and state anti-discrimination laws. Defendant prevailed on summary judgment and sought approximately \$9,500 in costs. Plaintiff presented evidence that he was unemployed, seeking bankruptcy protection and that he anticipated substantial future medical expenses. Vawser v. Fred Meyer, Inc., CV 99-1208-AA (Order, April, 2001).

Plaintiff's Counsel:

Daniel Snyder

Defense Counsel:

Jonathan Harnish

Torts

Judge Janice M. Stewart denied a defense motion to amend an answer to add an affirmative defense of contributory fault. The court rejected the defense argument that Oregon's adoption of a statutory comparative fault scheme in 1971 violated its constitutional right to a trial by jury under the Oregon Supreme Court's ruling in Lakin v. Senco Products, Inc. Phillips v. Monday & Assoc., Inc., CV 00-780-ST (Opinion, March 8, 2001).

Plaintiff's Counsel:

Samuel Hochberg (Local)

Defense Counsel:

Thomas Cooney