

# COURTHOUSE NEWS

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

In Snodgrass v. Lanphere Enterprises, Inc., CV No. 00-700-KI, (August 16, 2001 ), plaintiff claimed that during a job interview in Las Vegas he had been promised employment as the General Sales Manager ("GSM") of Lanphere's Beaverton Infiniti dealership at a minimum salary of \$18,000 per month.

When plaintiff showed up to start work, however, he was given a different position and a lower salary. Plaintiff nevertheless went to work in that different position. He claimed defendant thereafter "strung him along" by continually stating it needed more time to be able to put him into the Infiniti GSM position. Plaintiff admitted he knew he would never get the Infiniti GSM position, and he eventually quit his employment and filed an action for breach of the Las Vegas contract.

Judge King held that, even if the Las Vegas contract had required Lanphere to give plaintiff the GSM position, that contract was modified when plaintiff went to work for Lanphere knowing that the terms of his employment

had changed. Further, even if a jury were to find that plaintiff had been "strung along" such that the starting date of the Las Vegas contract had been delayed, that contract was modified when plaintiff continued to work in the lesser job after he knew he would not be getting the GSM position. The action was dismissed on summary judgment.

Plaintiff's Counsel: Don Willner  
Defense Counsel: David Riewald

## Civil Procedure

A California man claiming to be a descendant of the "Kennewick Man" moved to intervene in the litigation, five years after it was commenced. Judge Jelderks denied the motion as untimely, citing the length of time the case has been underway, the movant's failure to show good cause for the delay in asserting his claim, and the prejudice to the other parties that would result from having to re-open the record and litigate new theories. Bonnichsen v. United States, 96-1481-JE (August 22, 2001).  
Counsel: Alan Schneider  
Defense: Tim Simmons

## Arbitration

Judge Jelderks denied an employer's motion to compel arbitration of a former employee's Title VII and related state law claims. After the employee complained of sexual harassment, the employer purchased a one-size-fits-all arbitration agreement over the Internet, and told the employee to sign it or she would be fired. She signed. The harassment continued, and the employee eventually resigned.

Since Title VII is intended to protect employees against employer misconduct, a coerced waiver of those rights is problematic. In Duffield v. Robertson Stephens, 144 F3d 1182, the Ninth Circuit held that an employer may not force prospective employees to agree to arbitrate Title VII claims. Judge Jelderks concluded that Circuit City Stores v. Adams, 121 S Ct 1302 (2001), did not abrogate Duffield. The latter remains controlling law unless and until the Ninth Circuit determines otherwise.

In addition, both the Federal Arbitration Act and its Oregon

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counterpart permit a court to refuse to enforce an arbitration agreement upon "such grounds as exist at law or in equity for the revocation of any contract." Judge Jelderks was troubled by the employer's actions in coercing the employee into signing an arbitration agreement, with retroactive application, after the employee had complained of harassment. Further, the terms of the agreement were one-sided, favoring the employer. There was no mutuality; she was forced to arbitrate all her claims, but the employer was not similarly bound. The statute of limitations was shortened, and the employee's claims were forfeited if she failed to respond within 14 calendar days to "any communication from [the employer] about the arbitration proceeding." No similar penalty applied to the employer.

The arbitration agreement did not specify what arbitration rules would govern, who would conduct the arbitration, or even how the arbitrator would be selected. The court was unable to determine what powers the arbitrator would have, what remedies would be available, the extent of permitted discovery, or whether a written decision was required. The agreement also required the employee to pay her own costs for

legal representation, which might preclude an award of attorney fees even if she prevailed. She was also obligated to pay one-half of all arbitration costs, which share could easily amount to several thousand dollars, far more than it would have cost her to proceed in federal court.

Defendants offered to waive offending provisions of the arbitration agreement in order to gain the court's approval. Judge Jelderks rejected that proposal, since it would fail to give the employer any incentive to ensure that a coerced arbitration agreement is fair to both sides. LeLouis v. Western Directory Co., CV 00-1719-JE, (Opinion, Aug. 10, 2001).

Plaintiff's Counsel:

Zan Tewksbury

Defense Counsel:

Bonnie Richardson-Kott,

Karen Vickers

## Redistricting

Based on the results of the 2000 Census, Oregon must redraw the boundaries of its congressional districts to meet the constitutional standard of "one person, one vote." The Republican and Democratic Parties of Oregon cannot agree on new congressional district boundaries, and they are now litigating their disputes in both

state and federal court.

As required by 28 U.S.C. § 2284, the U.S. District Court has convened a three-judge panel to preside over the redistricting litigation, consisting of Judges Owen M. Panner and James A. Redden of the U.S. District Court, and Judge Edward Leavy of the Ninth Circuit Court of Appeals. Meanwhile, Multnomah County Circuit Judge Jean Kerr Maurer is presiding over the parallel state court litigation, which raises issues identical to those in the federal litigation.

The Supreme Court has held that a federal court must defer to a state court's efforts to redraw congressional districts, so long as the state court proceedings are timely. The three-judge panel decided to hold a joint hearing with Judge Maurer in the Mark O. Hatfield U.S. Courthouse to determine the issues in dispute and the progress of the state court litigation. After the hearing, the three-judge federal panel decided to defer to the ongoing state court proceedings, which should be resolved soon. Atkinson v. Oregon, CV 01-1063-PA (Sept. 10, 2001).

Counsel: Michael Simon;

John DiLorenzo;

Stephen Bushong