

# COURTHOUSE NEWS

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

A Hong Kong citizen and Qualified Tao Minister was detained by the INS when she attempted to re-enter the country after traveling to Hong Kong for the funeral of a fellow religious leader. Plaintiff filed an action under Bivens, the Federal Tort Claims Act and the Religious Freedom Restoration Act challenging that the INS' refusal to adjust her residency status to permit her travel and re-entry into the U.S. Plaintiff had a petition for permanent resident status pending at the time of her travel and was unsuccessful in obtaining permission for "parole" to travel. When she returned, her parole status was revoked, she was jailed at MDCDC for 5 days and subject to expedited removal.

Judge Janice M. Stewart denied a defense motion to dismiss the action for lack of subject matter jurisdiction and for failure to state a claim. The court rejected plaintiff's argument that she didn't really re-enter the U.S. because she had to travel for religious reasons; the court also rejected plaintiff's attempt to raise

the "Fleuti" doctrine. Wong v. Beebe, CV 01-718-ST (Findings and Recommendation, Adopted by Judge Robert E. Jones, June 25, 2002).

Plaintiff's Counsel:

Beth Ann Creighton

Defense Counsel:

Ken Bauman

## Interpleader

The employer of an employee who partially prevailed in a discrimination action that proceeded to trial in state court sought to deduct payroll taxes from the jury award, reducing the judgment and potentially affecting an attorney lien filed against the judgment. The employer attempted to file an interpleader action in federal court, naming the former employee's attorneys, the state of Oregon and the IRS. Judge Stewart held that, at this point, plaintiff had no viable interpleader claim against the state or the IRS because neither entity had yet made a claim. The court found that plaintiff should file against the employee in state court to seek a declaration regarding the amount of the

judgment. The court denied attorney fee sanctions. East Cascade Women's Group, P.C. v. Tutthill, CV 02-67-ST (Order, May 1, 2002).

Plaintiff's Counsel:

John Berge

Defense Counsel:

Roxanne Farra

## Intellectual Property

Plaintiff is in the business of producing and selling designer glass tile products. Plaintiff received copyright registration for its collection and filed an action against a former employee who allegedly was copying plaintiff's designs. Plaintiff is pursuing claims for trade dress infringement, copyright infringement and unfair competition. On motions, Judge Dennis J. Hubel granted in part and denied in part a defense motion to dismiss the copyright claims.

Defendant admitted to using similar designs, but argued that none were identical to plaintiff's designs in both pattern and color and none of the collections was

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identical to any of plaintiff's collections.

Judge Hubel noted that whether individual tiles within a collection can be copyrighted is a question of law for the court under an "analytic dissection" determination. Judge Hubel found that the geometric shapes alone were not protectable; the colors along were not protectable; the glass alone was not protectable, but that the combination of these elements is protectable. The court made other findings and granted in part and denied in part motions for summary judgment. Down to Earth Products, Inc. v. De Groff, CV 01-1246-HU (Opinion, May, 2002).

Plaintiff's Counsel:

Joseph Makuch

Defense Counsel:

Peter S. Heuser

**7** Judge Janice M. Stewart granted a preliminary injunction in a service mark infringement action after issuing findings and conclusions that the plaintiff was likely to prevail on the merits. Plaintiff sought declaratory relief for the name "Delivery Express" and established defendant's use of the phrase was confusingly similar and that it was likely to prevail. The court found that the "naked license" defense was probably inapplicable and that plaintiff had

sufficient evidence that the defendant was an alter ego of a licensee. Delex, LLC v. Delivery Express, Inc., CV 02-237-ST (Findings and Conclusions, April 25, 2002).

Plaintiff's Counsel:

Julianne Ross Davis

Defense Counsel:

John Anderson (Local)

## ERISA

Judge Ann Aiken granted a defense motion to dismiss an action based upon ERISA preemption. The court rejected the plaintiff's attempt to rely upon two safe harbors: (1) the employee funded exception; and (2) the partner in a partnership exception. The court noted that plaintiff's participation in the plan was mandatory which disqualified him from the first exception. Further, the fact that plaintiff was an owner/shareholder did not alter his status as an ERISA beneficiary. Hanlon v. Hartford Life & Accident Ins. Co., CV 02-6109-AA (Opinion, June, 2002).

Plaintiff's Counsel: Greg Lynch

Defense Counsel: Lori Metz

## Labor

In this Fair Labor Standards Act collective action, plaintiffs work 12-hour shifts in cleanrooms at a silicon manufacturing facility

and wear bunny suits to maintain the clean environment. Plaintiffs brought this action to collect allegedly unpaid overtime wages. After reviewing a very complicated factual record, Judge King concluded that he could not fully decide the case on summary judgment due to discrepancies in accounts of time required to dress and the length of breaks, but he did make some legal rulings. He held that changing into and out of the plant uniform, as distinguished from the bunny suit, and walking from the locker room to the cleanroom gowning area were preliminary and postliminary activities and not compensable under the Portal-to-Portal Act. He also held that the employer could provide two unpaid meal periods of at least 30 minutes during which the employees are relieved of duties to allow a meal. These periods are not compensable. Moreover, plaintiffs are not entitled to be paid more than once for any missed rest breaks but could take the matter to the Bureau of Labor and Industries for enforcement.

Ballaris v. Wacker Siltronic Corp., CV00-1627-KI, (Opinion of May 22, 2002).

Plaintiffs' Counsel:

A.E. Bud Bailey

Defense Counsel:

John Neupert