

COURTHOUSE NEWS

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

Several corporations filed an APA action challenging a highway improvement plan. The State of Oregon planned to improve a section of road in Medford by altering and enlarging an interchange. The State's plans would completely or partially displace several businesses. Because the project included some federal funding, the state agency had to comply with NEPA. Plaintiffs claimed that the government agencies failed to adequately comply with NEPA. Defendants moved to dismiss the action for lack of subject matter jurisdiction because plaintiffs lacked standing.

Judge Ann Aiken granted the defendants' motion to dismiss. The court agreed that plaintiffs' claims were not within the NEPA "zone of interests" because their concerns were entirely economic. Judge Aiken rejected plaintiffs' attempt to rely upon environmental, aesthetic or recreational interests asserted by corporate officers and managers. Rogue Regency Inc., et al. v. Mineta, CV 02-3041-AA (Opinion, Dec. 12, 2002).

Plaintiffs' Counsel:

Per A. Ramfjord

Defense Counsel:

Jeffrey K. Handy (U.S.)

David H. Bowser (OR)

Administrative Law

A corporation and its founder filed an action challenging the INS' decision to revoke the individual's "multi-national executive" visa. Plaintiff has lawfully resided in the U.S. since 1994. When he filed a petition to adjust his status to that of a lawful permanent resident alien, the INS conducted an investigation and determined that plaintiff did not qualify for the executive visa. Plaintiff pursued an administrative appeal which was unsuccessful; he thereafter sought relief in federal district court under the court's general federal question jurisdiction, the APA and/or the federal Declaratory Judgment Act. The United States moved to dismiss the action for lack of subject matter jurisdiction because the Immigration and Naturalization

Act (INA) precludes judicial review of a discretionary INS decision.

Judge Anna J. Brown held that the INS' decision to revoke plaintiff's visa was a discretionary one and, as such, the INA precluded judicial review. The court noted a split of authority on the issue. ANA International, Inc. v. Way, CV 02-479-BR (Opinion, December 6, 2002).

Plaintiffs' Counsel:

Timothy R. Volpert

Defense Counsel:

Craig Casey

Procedure

Judge Robert E. Jones entered an injunction against a Minnesota court prohibiting that court from entering judgment on a portion of a jury award that was encompassed in and precluded by a class action settlement agreement in Oregon. Judge Jones presided over a complex settlement of consumer claims against Louisiana Pacific for defective siding. The court approved a national settlement in 1996 and entered judgment with an express reservation of jurisdiction to enforce the terms

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of the settlement agreement.

The plaintiff in the Minnesota action obtained a multi-million dollar jury verdict based upon claims related to the defective L-P siding. Judge Jones determined that a portion of the jury verdict was expressly precluded by the terms of the national settlement executed in 1996. The court rejected plaintiff's arguments that the court lacked personal jurisdiction, or that injunctive relief was barred by the Anti-Injunction Act, 28 U.S.C. Sec. 2283, the Rooker-Feldman doctrine, or the Full Faith and Credit Act. In Re Louisiana Pacific Inner Seal Siding Litigation, CV 95-879-JO (Opinion, Dec. 13, 2002).

Local Counsel:

Jennifer Oetter,
Michael Simon

| Judge Anna J. Brown certified a class of prisoners who claim that the Oregon Department of Corrections has violated their civil rights by failing to adequately test and treat Hepatitis C victims. The court determined that plaintiffs met the requirements under Fed. R. Civ. P. 23(a) and (b)(2), but not 23(b)(3). Judge Brown also held that the class certification would be limited to liability and injunctive relief. Defendant's request that any ruling on class certification be deferred until

after defendant filed a summary judgment motion was denied.

Anstett v. Oregon, CV 01-1619-BR (Opinion, December 19, 2002).

Plaintiffs' Counsel:

Michelle Burrows

Defense Counsel:

Lynn D. Rennick

Sanctions

Judge Anna J. Brown rescinded the *pro hac vice* admission of attorneys who failed to comply with discovery requirements in an international products liability dispute. The court granted re-admission after reviewing detailed affidavits submitted by the attorneys; Judge Brown determined that although discovery violations occurred, there was no indicia of bad faith. Da Costa v. Novartis AG, CV 01-800-BR (Opinion, June 18, 2002).

Civil Rights

Plaintiff filed an action against City and State workers claiming that her constitutional rights were violated during the course of an investigation into claims that her husband had sexually abused her minor daughter. Plaintiff's children were removed from the home pending an investigation.

Judge Brown granted an individual City defendant's

motion to dismiss since there were no allegations that he personally participated in any claimed deprivation. The court also noted that plaintiff could not assert seizure claims on behalf of her children.

In a separate opinion, Judge Brown held that a State Office for Services to Children and Families (SOSCF) worker was absolutely immune from liability for damages because all of the challenged actions were performed in her quasi-prosecutorial role. Injunctive and declaratory relief were also unavailable because plaintiff failed to plead facts sufficient to demonstrate a credible threat of future harm. Finally, the court dismissed the abuse of process claim because plaintiff herself was never seized. Carson v. Rogers, CV 01-867-BR (Opinions, Aug. 12, 2002).

Plaintiff's Counsel:

Herbert G. Grey (Local)

Defense Counsel:

John Clinton Geil
Robert S. Wagner