

COURTHOUSE NEWS

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

Reviewing the Findings and Recommendations of Judge Ashmanskas in an action involving an IBM sales woman who allegedly experienced unlawful workplace discrimination, Judge Haggerty found the plaintiff did not offer evidence of disability discrimination and granted summary judgment. The court further held that plaintiff's claim for negligent infliction of emotional distress failed as a matter of law, however, the court found that plaintiff's misrepresentation claim survived summary judgment.

Reeder-Kangail v. IBM Corp.,

CV 02-1180-AS

(Opinion, February 17, 2004)

Plaintiffs' Counsel:

Richard Busse

Defense Counsel:

Calvin Keith

42 U.S.C. 1983

Plaintiffs, members of a class of low-income, former recipients of Medicaid under the Oregon Health Plan (OHP), argued that the federal and state officials responsible for administering

OHP as part of the Medicaid program were violating 42 USC 1396o(b)(1) by imposing Medicaid premiums unrelated to the recipient's income and 42 USC 1396o(b)(3) by imposing more than nominal Medicaid copayments. In response to defendant's motion to dismiss, Judge Stewart held that there exists a private right of action under 42 USC 1983 for alleged violations of those statutes.

Spry v. United States

Department of Health & Human Services., CV 03-121-ST

(F&R Adopted, January 28 2004).

Plaintiff's Counsel:

Spencer Neal

Defense Counsel:

Andrea Gacki

Remand

Judge Hubel stayed a ruling on a motion to remand in a products liability case pending its transfer to the multi-district litigation (MDL) court in Pennsylvania. The case, involving the "fen-phen" diet drugs, was originally filed

in Multnomah County Circuit Court and defendants removed to federal court. Plaintiffs moved to remand. The court granted defendants' request to stay resolution of the motion noting that the MDL Court had addressed the recurring issues of fraudulent joinder in the fen-phen litigation in prior decisions. Judge Hubel determined that the interests of judicial efficiency and uniformity of decision demonstrated that the MDL Court should resolve the remand motion.

Mason v. Wyeth, et al., CV-03-1752-HU.

(Opinion, March 1, 2004).

Plaintiff's Counsel:

Michael Williams

Defense counsel:

Margaret Hoffman

Procedure

Plaintiff alleges claims of race-based hostile work environment and discrimination under Title VII, 42 USC 1981 and ORS 659A.030, and workers' compensation discrimination under ORS 659.040.

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Defendant moved for partial summary judgment arguing that plaintiff's complaint was not timely filed within the 90-day period as specified under ORS 659A.875(2). Judge Aiken disagreed and applying ORCP7(D) found that plaintiff's complaint was timely filed.

Rivera v. Treesource Industries, Inc., et al.,

CV 03-6279-AA

(Opinion, April 23, 2004)

Plaintiff's Counsel:

Marianne Dugan

Defense Counsel:

Carter Mann

Due Process

A probationary police officer brought an action under 42 USC 1981, 1983 and 1985 against the City of Hillsboro alleging the City violated her Fourteenth Amendment due process and equal protection rights when it terminated her employment. Plaintiff alleged she was the victim of sex and sexual orientation discrimination, she also brought common law claims for wrongful discharge and intentional infliction of emotional distress (IIED). Plaintiff did not bring an action against any individual employee of the City or its police department.

Judge Brown granted summary judgment to defendant on plaintiff's claim under 1981, and granted summary judgment on plaintiff's claims under 1983

and 1985 under Monell. Finally, the court denied defendant's summary judgment motion on plaintiff's claims of wrongful discharge and IIED.

Dier v. City of Hillsboro,

CV 02-24-BR

(Opinion, March 19, 2004)

Plaintiff's Counsel:

Victor Calzaretta

Defense Counsel:

Karen O'Kasey

ERISA

Plaintiffs created an ERISA plan and funded it through Voluntary Employees' Beneficiary Associations with insurance policies, on the recommendation of financial advisors. Plaintiffs filed suit against advisers and policy issuers under ERISA.

Plaintiffs alleged that defendants fraudulently induced them to create and fund an ERISA plan under terms that did not comport with plaintiffs' expectations. Plaintiffs sought rescission of the entire benefits plan and requested that plan assets traceable to plaintiffs be held in constructive trust. On defendant's motion to dismiss, Judge Aiken held that plaintiffs failed to state a claim under 29 USC 1132(a)(3). The court also held that ERISA does not apply to a fraud claim in the

inducement, which occurs before the establishment of a benefits plan and may be redressed under state common law principles.

Ram Technical Services, Inc. v.

Koresko et al., CV 03-6163-AA

(Opinion, April 15, 2004)

Plaintiff's Counsel:

Adren Olson

Defense Counsel:

Scott Kaplan

Insurance Coverage

An insurance company refused to provide coverage for a petroleum pollution incident resulting in environmental contamination and property damage. The insured learned of the contamination almost 60 days after the pollution incident occurred and promptly notified the insurance company. Judge Mosman granted the insurance company's summary judgment motion because coverage was plainly predicated on the insurer receiving notice of the pollution incident within 30 days of its occurrence, not 30 days after learning of the pollution incident as the insured argued.

Konell Construction &

Demolition Corp. v. Valiant

Insurance Co., CV 03-412-MO

(Opinion, April 12, 2004)

Plaintiff's Counsel:

James McDermott

Defense Counsel:

David Rossmiller

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