

# 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. XIII, No. 11, November 6, 2007

## Join Us for the 2007 District of Oregon Conference

Thursday, Nov. 29 -  
Friday, Nov. 30, 2007.  
United States Federal  
Courthouse, Eugene,  
Oregon. The  
Conference title is:  
"The Only Easy Day Was  
Yesterday: The  
Challenges of Legal  
Communication in the  
21<sup>st</sup> Century." The  
Conference will cover  
an interesting variety  
of panel topics  
including: "That's  
Easy for You to Say:  
The Power of the  
Spoken Word in Court,  
in the Hallways, and  
on the Phone;"  
Confessions of a High  
Speed Business  
Professional; and "If  
you Don't Like the  
Law, Change It!:  
Communicating with  
Decision Makers and  
Opinion Leaders."  
For Registration  
information: email  
Jolie Russo at:  
jolie\_russo@ord.uscourts  
.gov

## Breach of Contract

On a motion for  
summary judgment in a  
breach of contract case  
involving a natural  
pipeline construction  
project, Judge Aiken  
found that an indemnity  
provision in the  
pipeline contract  
triggered the  
contractors duty to  
defend enforcement  
actions brought against  
Coos County by the  
United States Army  
Corps of Engineers, the  
Oregon Department of  
Environmental Quality  
and civil claims  
brought by the Sierra  
Club. Further, Judge  
Aiken found that the  
issue of whether a  
settlement offer is  
admissible to show  
failure to mitigate  
damages is properly  
raised in a motion in  
limine rather than a  
summary judgment  
motion. Finally, Judge  
Aiken found that  
questions of fact  
remained as to whether  
Coos County, through

its prior conduct,  
waived its contractual  
right to prior  
notification and  
written approval for  
change orders  
submitted by the  
contractor and  
declined to bar the  
contractors' claims  
against Coos County  
for failure to comply  
with Oregon licensing  
requirements.

MasTec North America,  
Inc. v. Coos County,  
Civ. 04-278-AA

(Opinion, July 9, 2007)  
Plaintiffs' Counsel:  
David Bledsoe, Julia  
Markley  
Defense Counsel: Jay  
Waldron, Carson Bowler

## Employment

Plaintiff was an  
employee relations  
specialist at  
defendant NIKE, Inc.  
who provided training,  
advice, and support on  
employee issues such  
as discrimination and  
harassment complaints,  
leave requests,  
disability  
accommodation, and  
performance

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management. After NIKE terminated plaintiff, she brought an action alleging several statutory claims of discrimination and retaliation as well as common law torts. The court granted NIKE's motion for summary judgment and dismissed all claims except for age discrimination. Plaintiff alleged one unusual claim—that she was retaliated against in violation of the Americans with Disabilities Act after she disagreed with her supervisor on whether NIKE was complying with the ADA in its attempts to find a reasonable accommodation for a disabled employee. Plaintiff herself was not disabled. The court granted summary judgment dismissing the claim after concluding that plaintiff was not engaged in protected activity under the ADA Clemons v. Nike, Inc., CV 06-1209-KI (Opinion, 9-28-07)  
Plaintiff's Counsel: Craig Crispin  
Defense Counsel: Amy Joseph Pedersen

Maritime Law

Plaintiff, a commercial marine salvage business, brought a claim against defendant for maritime salvage, after plaintiff assisted in towing defendant yacht out of harm's way during a boat dock fire. Because firefighters commenced the process of moving the yacht out of its covered boathouse and away from the fire before plaintiff took over from the firefighters, the disputed issue was whether the defendant yacht remained "in peril" at the time plaintiff became involved. Following a court trial, Judge Hubel concluded that the yacht was "in peril," but only marginally so. While this finding entitled plaintiff to a monetary award, Judge Hubel concluded that a reasonable sum was \$3,000, given that the actual danger at the time was minimal. Judge Hubel also rejected the plaintiff's argument for prejudgment interest at a rate higher than that calculated under 28 U.S.C. sec. 1961.

SeaTow/Vancouver v. Yacht HIGH STEAKS, CV 06-985-HU  
(Findings of Fact and Conclusions of Law, Oct. 12, 2007)  
Plaintiff's counsel: Robert Sanders  
Defense counsel: Rod Fonda

## EMPLOYMENT

In an action brought by a former employee against her former employer, Judge Papak recommended that the motion for summary judgment filed by defendant The Christie School be granted as to plaintiff's claims alleging age discrimination, disability discrimination, workers' compensation retaliation in violation of Oregon statutory law, and negligence in violation of Oregon common law.

Garbarino v. Christie School, CV 06-1630-PK  
(Findings and Recommendation, 9/26/07, adopted by Judge King, 10/31/07)  
Plaintiff's Counsel: Glenn N. Solomon  
Defense Counsel: Scott O. Osborne