

# 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. 3, March 1, 2007

## Failure to Warn

Judge Hubel granted defendant's motion for summary judgment where plaintiff brought negligence and intentional infliction of emotional distress claims arising out of plaintiff's purchase of alcohol at defendant's store in Redding, California. Plaintiff bought over \$1,000 of wine and distilled spirits at the Redding Costco store and drove north on I-5 with the alcohol in plain view in the back of his pickup truck. He was stopped for speeding and was cited for violating an Oregon Liquor Control Commission statute prohibiting the importation into Oregon of more than a certain amount of alcohol into the state. Plaintiff sued Costco for failure to warn its customers about the law of other jurisdictions. Judge Hubel agreed with

defendant that it breached no duty to plaintiff because the hazard was obvious and plaintiff failed to show that defendant breached the standard of care. Judge Hubel also granted summary judgment to defendant on the intentional infliction of emotional distress claim, concluding that as a matter of law, the lawful sale of consumer goods does not support such a claim. Finally, Judge Hubel denied plaintiff's motion to amend to add a common law indemnity claim, concluding that plaintiff failed to establish any of the elements of that claim. Mayorga v. Costco, CV 06-882-HU Opinion, Jan.24, 2007  
Plaintiff's Counsel:  
Michael Mendelson  
Defense Counsel:  
Steven Olson

## Statute of Limitations

In this employment lawsuit where plaintiff alleges race discrimination, Judge

Panner held that a claim for violation of ORS 659A.406 was not time-barred by ORS 659A.875(4). The latter provision applies only to claims arising after January 1, 2006, while the events at issue occurred in 2004. Judge Panner denied defendants' motion to dismiss plaintiffs' claim. Hua et al. v. Doe, CV 06-3031-PA Opinion, 2/20/07  
Plaintiff's Counsel:  
Morgain McCaughey  
Defense Counsel:  
Edward Talmadge

## Discovery

Judge Stewart quashed subpoenas issued by the defendant to various medical providers to obtain psychological records of a plaintiff who sought "garden-variety" emotional distress damages on his claims for employment discrimination. Noting the conflict among other courts, Judge Stewart adopted

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the narrow approach to a waiver of the federal psychotherapist-patient privilege which requires an affirmative reliance on the psychotherapist-patient communications. She also concluded that defendant was entitled to obtain plaintiff's medical records concerning the nature of his injury which would be relevant to defending against plaintiff's discrimination claim for taking family and medical leave. However, the subpoenas were quashed as being unnecessarily broad. Thomas v. UPS Ground Freight, Inc., CV 06-1281-ST Opinion Feb. 15, 2007. Plaintiff's Counsel: Thomas Spaulding Defense Counsel: Adrienne Conrad

### Criminal Jury Trial

Judge Hogan concluded a 7-day fraud trial in which defendant was convicted of 19 counts of mail fraud, 4 counts of interstate transportation of money taken by fraud, 3 counts of money laundering, and 3

counts of failure to file a corporate tax return related to a pyramid scheme defendant marketed. USA v. Dompier CR 05-60074-HO Verdict, 2/21/07 Govt Counsel: Christopher Cardani Defense Counsel: Bryan Lessley

The court noted that due, in part, to the improved technology available in the Eugene Federal courthouse, the time required to try the case was drastically reduced. On Day Two of trial, for example, the court ran through 12 witnesses. The electronic presentation of exhibits allowed the court to move efficiently and quickly in this document intensive case.

### Jurisdiction/ Patent

Plaintiff builder of interactive retail displays for hand-held consumer electronic devices, sought declaration that it had not infringed defendants' patent or that patent was invalid. Defendants filed a motion to dismiss arguing court lacks subject matter jurisdiction because an actual controversy does not exist and plaintiff

fails to state a claim for monopolization under § 2 of the Sherman Act.

Judge Brown agreed the court did not have jurisdiction, and plaintiff failed to state a claim of monopolization. Merchandising technologies, Inc. v. Telefonix, Inc. CV 05-1195-BR Opinion, 2/1/07 Plaintiffs' Counsel: Paul George Defense Counsel: Jeremy Sacks

### Environmental

In a 36-page opinion, Judge Panter denied plaintiff Oregon Natural Resource Council's challenge to an expansion of a ski resort at Mt. Ashland. ONRC et al. v. Goodman CV 05-3004-PA Opinion, 2/9/07 Plaintiff's Counsel: Marianne Dugan Defense Counsel: Steve Odell