

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Breach Contract - Insurance

This case involves a diversity action by plaintiffs against their homeowners' insurance policy carrier for breach of insurance contract and breach of the covenant of good faith and fair dealing. Plaintiffs alleged a contractor caused lead-paint damage to personal property in their home while performing window remodeling work. Defendant denied it owed any insurance coverage on the grounds that the claim was barred by the policy's "two-year suit-limitation provision," and, in any event, there was no coverage in the absence of evidence that the contractor intended to cause "willful or malicious" damage to plaintiffs' personal property so as to bring plaintiffs' claim

within the "Vandalism and Malicious Mischief" coverage of the policy.

Defendant moved for summary judgment on both grounds. Judge Brown found genuine issues of material fact exist as to whether defendant's insurance agent led plaintiffs to understand that their insurance claim would remain open beyond the two-year suit-limitation provision. Judge Brown, however, found plaintiffs failed to present any substantive evidence to establish a genuine issue of material fact existed as to whether the property damage was caused willfully or maliciously. The only evidence presented by plaintiffs as to the contractor's intent was a purported declaration against interest that the contractor made in a meeting with plaintiffs. The contractor allegedly admitted lead paint would cause damage and that his company did

not take precautions because they were "not economically justified." Judge Brown found the statement was inadmissible as a declaration against interest because plaintiffs failed to present sufficient evidence to establish that the contractor was unavailable to testify at trial. Judge Brown concluded the contractor's failure to recall making the statement did not constitute a "loss of memory" sufficient to establish unavailability because the contractor remembered the general subject matter of his conversation(s) with plaintiffs but did not recall (in fact, denied) making it.

Accordingly, Judge Brown granted defendant's Motion for Summary Judgment. (1986).

Till v. American

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Family Mutual Insurance Company,
CV 06-1376-BR
(Opinion, June 27, 2007)
Plaintiff's Counsel:
John Spencer Stewart
Defense Counsel:
Ronald J. Clark

Employment

Plaintiff brought three claims against the defendant for workers' compensation retaliation; failure to reinstate; and intentional infliction of emotional distress (IIED). Plaintiff withdrew his fourth claim pursuant to the Fair Credit Reporting Act. Defendant filed a motion for summary judgment on plaintiff's three remaining claims. The court granted in part and denied in part defendant's motion. The court granted summary judgment and dismissed plaintiff's claims for failure to reinstate and IIED. The court denied summary judgment as to plaintiff's claim for workers' compensation retaliation.

Dickison v. Wal-Mart, Stores, Inc.,
CV 06-108-AA
(Opinion, 7/2/07)
Plaintiff's Counsel:
Kerry Smith

Defense Counsel:
Jenna Mooney

PATENT INFRINGEMENT

In cross-motions for summary judgment as to defendant's counterclaim alleging patent infringement, Judge Papak denied plaintiff Columbia Sportswear North America's motion and granted defendant Cerf Brothers Bag Company's motion. Columbia argued, as an affirmative defense to liability, that it was the beneficiary of an implied license to use Cerf's patented invention, and on that basis sought dismissal of the counterclaim. Cerf sought summary judgment on the narrow question of whether Columbia's use infringed specified claims of Cerf's patent, without regard to patent validity or other affirmative defenses to liability.

The court found that Cerf's grant to Columbia of "right, title, and interest in . . . artwork" constituted a grant of rights under copyright rather than patent law, and therefore could not

create an implied license to use an invention depicted in the artwork conveyed by the grant. Moreover, the facts of the case did not give rise to an implied license under the "shop right" doctrine.

The court further found that where Columbia's product was manufactured using precisely the same molds used to manufacture the commercial embodiment of Cerf's patented invention, the specifications for the commercial embodiment were identical to the preferred embodiment of the patent, and analysis of the claim language disclosed no evidentiary basis for excluding the preferred embodiment from the patent claims, Columbia's product necessarily infringed the patent.

Columbia v. Cerf,
CV 05-1960-PK
(Opinion, 6/19/07)
Plaintiff's Counsel:
Philip Van Der Weele
Defense Counsel:
Stephen English

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