

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. XIV, No. 1, January 11, 2008

Court Trial

After a trial to the court, Judge Aiken issued Findings of Fact and Conclusions of Law and found that the defendants, officers and shareholders of a cattle corporation, could not rely on the business judgment rule to avoid liability for decisions outside the normal course of business that irretrievably altered the nature and profitability of the cattle operation and that were made without the authorization of the president and equal shareholder of the closely-held corporation. Accordingly, the defendants would be held accountable for losses suffered as a result of those decisions when the court adjusted the shareholder equities in enforcing the parties' agreement to divide the

corporation. Additionally, Judge Aiken found that the plaintiff was liable to the corporation for a previous disbursement. Colvin v. Colvin, CV 05-409-AA (Opinion, 8/1/07)
Plaintiffs' Counsel: Robert Mautz
Defense Counsel: Craig Bachman

Endangered Species Act

Plaintiff Institute for Wildlife Protection filed a complaint on March 9, 2007, alleging defendants U.S. Fish and Wildlife Service and Dirk Kempthorne, Secretary of the Interior, violated their statutory duties as mandated by the Endangered Species Act, 16 U.S.C. §§ 1531-1544, when they failed to designate critical habitat for the Oregon chub (which was listed as an endangered species) and failed to perform a status review at least once every

five years since listing the chub. Defendants did not dispute their 13-year failure to comply with the ESA, but moved to dismiss plaintiff's claims on the ground that they were barred by the applicable statute of limitations, 28 U.S.C. § 2401(a), because plaintiff did not file its claims "within six years after the right of action first accrue[d]."

This is a question of first impression in the Ninth Circuit. Judge Brown held when an agency fails to comply with an ongoing, mandatory statutory duty, each day of the agency's noncompliance resets the statute of limitations. Thus, plaintiff brought a timely cause of action pursuant to the ESA citizen-suit provision to challenge defendants' ongoing violation of the ESA. "The principles that underlie the purpose of a statute of

2 The Courthouse News

limitations are not advanced by and do not support barring claims that seek to hold an agency accountable for actions it is required by statute to perform for the benefit of the public."

Institute for Wildlife Protection v. U.S. Fish and Wildlife Serv
CV 07-358-PK
(Opinion, 11/16/07)
Plaintiff's Counsel:
Don Webb
Defense Counsel: James Sutherland

Fair Credit Reporting Act

In an action alleging violations of the Fair Credit Reporting Act, Judge Aiken found that the defendant credit reporting agency did not act willfully when it failed to contact the creditor and provide it with information given by plaintiff in support of his dispute that a credit card account had been "paid in full," when the information provided by plaintiff was not plainly relevant to his account. However, Judge Aiken found that questions of fact remained as to whether the defendant acted

willfully after plaintiff submitted a second dispute along with pertinent information indicating that the account had been paid.

Karmolinski v. Equifax Info. Services,
CV 04-1448-AA
(Opinion, 8/29/07)
Plaintiff's Counsel:
Michael Baxter
Defense Counsel:
Donald Bradley

Indictment Dismissal

Defendant was charged with knowingly possessing an alien registration receipt card that Defendant knew was procured by means of a false claim and statement in violation of 18 U.S.C. § 1546(a), paragraph one. Defendant moved to dismiss on the ground that the facts alleged did not constitute an offense subject to prosecution under federal law, among other things. Judge Brown concluded under the circumstances that § 1546(a), paragraph one, criminalizes possession of an alien registration receipt card that was knowingly procured by means of a false claim or

statement only if it was also knowingly forged, counterfeited, altered, or falsely made. Accordingly, Judge Brown dismissed the Superseding Indictment.

United States v. Krstic,
CR 07-47-BR
(Opinion, 12/10/07))
Govt Counsel: David Atkinson
Defense Counsel:
Christopher Schatz

EAJA - Environmental Case

The government withdrew a proposed timber sale and agreed to conduct further environmental review, as the plaintiffs had demanded. The case was then dismissed as moot. Despite the dismissal, Judge Panner ruled the court had subject matter jurisdiction to award fees and costs, and the plaintiffs were "prevailing parties" for purposes of EAJA. Klamath-Siskiyou Wildlands Center v. BLM,
CV 05-3094-CL
(Opinion, 11/9/07)
Plaintiffs' Counsel:
Erin Madden
Defense Counsel:
Beverly Li