

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Free Speech, Due Process

Plaintiff filed suit alleging that Lincoln City's denial of his permit application to install an electronic display on his billboard violated his constitutional rights to free speech, due process, and just compensation for a taking of private property. Plaintiff also alleged breach of contract, fraud, and a state statutory claim under Measure 37. Judge Aiken granted the City's motion for summary judgment on all claims.

Judge Aiken found that City ordinances relied on to deny plaintiff's permit were content-neutral, narrowly tailored to serve a compelling City interest, and left open other opportunities for plaintiff to display speech. Judge Aiken also found that plaintiff had received due process through the City's administrative appeal procedures and state court judicial review. As to plaintiff's taking claim, the court found that plaintiff failed to establish a loss of property value or a reduction in revenues as a result of the permit denial. Finally, Judge Aiken found that the City's denial did not breach a

prior settlement agreement with plaintiff, no City official made fraudulent representations to plaintiff, and plaintiff's Measure 37 claim was rendered moot by Measure 49.

Meredith v. City of Lincoln City,
CV 03-6385-AA
(Opinion, Sept. 25, 2008)

Plaintiff's Counsel: Russell L. Baldwin

Defense Counsel: Richard J. Kuhn

Infringement, Damages, and New Trial

A jury recently returned a verdict in favor of adidas on claims of infringement and dilution of adidas's Three Stripe Mark and Superstar Trade Dress, as well as related claims. The jury awarded actual damages of \$30,610,179, a disgorgement of Payless's profits of \$137,003,578, and punitive damages of \$137,003,578 on the related state claims. In ruling on post-trial motions, Judge King reduced the award to \$30,610,179 in actual damages and \$19.7 million in disgorged profits. He also denied Payless' motion for a new trial, conditioned on adidas accepting a remittitur of the punitive damages award to \$15 million.

adidas America, Inc. v. Payless
Shoesource, Inc.,
CV 01-1655-KI
(Verdict dated May 5, 2008)
Plaintiff's Counsel: Charles
Henn, William Brewster
Defense Counsel: William Rudy

Race Discrimination

Judge King presided over a six-day jury trial in which four African-American plaintiffs alleged defendant Asbury Automotive d/b/a Thomason Toyota subjected them to harassment, discrimination and retaliation based on race or because they complained about racial discrimination. All of the conduct took place between January and November 2005. Judge King granted defendant's oral motion for judgment as a matter of law on plaintiffs' employment discrimination and retaliation claims, but denied the motion with respect to plaintiffs' hostile work environment claims. Judge King also allowed the jury to consider whether punitive damages were warranted. After deliberating for about a day, the jury issued a verdict in favor of

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all the plaintiffs, awarding each plaintiff between \$1.9 and \$2.2 million in emotional distress damages, and punitive damages in the amount of \$2.75 million each.

The defendant has filed a renewed Motion for Judgment as a Matter of Law on the hostile work environment claims and punitive damages claims, as well as a Motion for a New Trial or Remittur. Judge King will hear those motions on November 10, 2008.

Paul, et. al. v. Asbury Automotive Group, LLC d/b/a Thomason Auto Group,
CV 06-1603-KI

Plaintiffs' Counsel: Aaron Baker and William Dozier, Jr.
Defense Counsel: Stephen Rickles.

Attorney Fees in Environmental Case

Three environmental groups brought an action against the United States Forest Service and the Regional Forester. Plaintiffs argues that the federal defendants violated various environmental laws in approving the Mount Ashland Ski Area Expansion Project. The ski area operator was permitted to intervene as a defendant. Judge Paner entered judgment for all defendants. The Ninth Circuit reversed and directed that judgment be entered for plaintiffs. 505 F.3d 884 (9th Cir. 2007). Two of the plaintiffs

then applied for an award of attorney fees and expenses against the federal defendants pursuant to the Equal Access to Justice Act (EAJA). After a thorough analysis, the court granted plaintiffs' motion in part awarding a total of \$108,372.20 in fees and expenses.

ONRC v. Goodman et al.,
CV 05-3004-PA
(Opinion, Aug. 25, 2008)
Plaintiffs' Counsel: Christopher Winter, Marianne Dugan
Defense Counsel: Benjamin Hartman, Robert Maynard

Jury Trial - Employment

Judge Aiken presided over a 3-day jury trial. Plaintiff filed suit alleging employment disability discrimination, retaliation, and hostile work environment under the Rehabilitation Act and retaliation under Title VII, against the U.S. Post Office. The case proceeded to trial. At the close of evidence, Judge Aiken granted defendant's motion for judgment as a matter of law on plaintiff's hostile work environment claim. After deliberations lasting 2 ½ hours, the jury rendered a verdict in favor of defendant on each of plaintiff's remaining claims. The jury found that plaintiff did not prove by a preponderance that defendant failed to provide reasonable accommodation for his disability.

Burst v. Potter,
Civ. No. 06-6314-AA
(Verdict, Oct. 8, 2008)
Plaintiff's Counsel: Kevin Lafky

and Larry Linder
Defense Counsel: Kirk Lusty and Tim Simmons

Motion to Remand

Before the court were plaintiff's motion for remand to state court, and, alternatively, to dismiss counterclaim for negligent misrepresentation pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff argued that the court should adopt the first-served defendant rule which would make untimely defendant's removal of the action nearly one year after plaintiff served defendant with the original complaint. The court noted that the Ninth Circuit has yet to adopt or reject the first-served defendant rule and the judges in this district have split on the issue.

Judge Acosta adopted the first-served defendant rule, acknowledging that exceptions to the rule will be appropriate under certain circumstances. Therefore, the court granted plaintiff's motion for remand and denied as moot its motion to dismiss.

Turner Construction Co. v. Dorn-Platz Properties, Inc.,
CV 08-610-AC
(Findings & Recommendation, Aug. 1, 2008, Adopted by Judge Marsh, August 26, 2008)
Plaintiff's Counsel: Frederic Cann
Defense Counsel: Stuart Brown