

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Securities Exchange Act, Hawaii

In April and May of this year, Judge Jones, sitting by designation in Hawaii, conducted a month-long bench trial in a shareholders' suit for insider trading under section 10(b) of the Securities Exchange Act of 1934. Plaintiffs' claims arose out of a privately negotiated transaction in which, during December 2000 and January 2001, plaintiffs sold 100 percent of their shares in Grove Farm Co., Inc., a closely-held property management and development company on Kauai, to defendant Stephen Case and his companies, ALPS Investment and ALPS Acquisition Sub, for \$152 per share (approximately \$26 million). As part of the transaction, Case also took on \$60-65 million in existing debt and made emergency repairs to a shopping center and other structures, for a total commitment of about \$100 million. Plaintiffs alleged that in connection with the sale and merger, Case, an outsider, obtained and used material non-public insider information about the true value of Grove Farm's

holdings not known to the plaintiffs at the time of the transaction. Plaintiffs sought between \$750 million to \$2.5 billion in damages and other relief, including rescission.

Judge Jones tried the case in phases. In phase one, he heard evidence on defendants' statute of limitations defense, and ruled in favor of plaintiffs. Phase two focused on liability, with phase three, damages, deferred. In the Opinion and Order issued September 17, 2008, Judge Jones ruled in favor of the defendants, concluding that plaintiffs failed to prove both primary liability and the elements of their insider trading claim. Specifically, Judge Jones held that plaintiffs failed to prove the 10(b) element of scienter for primary liability, and failed to establish that Case, an outsider, assumed a fiduciary duty to the Grove Farm shareholders under Dirks v. S.E.C., 463 U.S. 646 (1983), because plaintiffs failed to prove the prerequisite for such a duty: that Case or his agents knew or should have known that there had been a breach of duty by an insider in disclosing information to them. Guy St. Clair Combs et al. v. Stephen M. Case, et al.,

Civil No. 05-00741 REJ-KSC
(Opinion, D. HI Sept. 17, 2008).

Due Process, Fourth Amendment

Judge King issued an Opinion and Order upholding the designation of Al Haramain Islamic Foundation, located in Ashland, Oregon, ("AHIF-Oregon") as a Specially Designated Global Terrorist under the International Emergency Economic Powers Act and Executive Order 13,224. Judge King held, however, that defendants' notice to AHIF-Oregon of the proposed designation was insufficient to give the organization a basis to properly defend itself. Judge King has requested additional briefing about whether the due process violation was harmless given his conclusion that the defendants properly designated the organization. Additionally, Judge King concluded that the "blocking" order, prohibiting AHIF-Oregon from using any of its own funds, constituted a "seizure" for purposes of the Fourth Amendment. He has requested additional briefing from

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the parties about whether the seizure was “unreasonable.”

Al Haramain Islamic Foundation, Inc., et al. v. United States Department of Treasury, et al.
CV 07-1155-KI

(Opinion Nov. 6, 2008)

Plaintiffs' Counsel: Thomas Nelson, J. Ashlee Albies, David Cole, Lynne Bernabei and Alan Kabat

Defense Counsel: Jeffrey Bucholtz, Jonathan Eli Zimmerman, Eric Joseph Beane, Sandra Schraibman, and Anthony Copolino.

Subject Matter Jurisdiction

Plaintiff brought suit against three defendants in a medical malpractice action. Plaintiff alleged subject matter jurisdiction through the Federal Torts Claims Act. Defendants Benton County Health Department and Lincoln Family Medicine/Lincoln Health Center moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) on the grounds that there is no subject matter jurisdiction and plaintiff's Amended Complaint fails to state a claim upon which relief can be granted. The defendants asserted that plaintiff's exclusive remedy was against co-defendant United States of America. The court denied defendants' motion to dismiss.

Sierra v. Lincoln Family

Medicine, et al.

CV 08-6165-AA

(Opinion, Nov. 24, 2008)

Plaintiff's Counsel: Bruce Mowery

Defense Counsel: Britannia Hobbs

Measure 37 Waivers

Plaintiffs owned property in defendant Jackson County. Following the requirements of Ballot Measure 37, Jackson County agreed to waive zoning restrictions that were imposed after plaintiffs acquired their property. However, in 2007, when Oregon voters passed Ballot Measure 49 which superseded Ballot Measure 37, Jackson County decided that it would not honor the Measure 37 waivers.

Following a court trial, Judge Panner concluded that plaintiffs' Measure 37 waivers are valid, constitutionally protected contracts with Jackson County and must be honored by Jackson County. Alternatively, Judge Panner found that plaintiffs' Measure 37 waivers are valid, final quasi-judicial orders, which are not nullified or otherwise affected by Measure 49.

Citizens for Constitutional Fairness et al. v. Jackson County et al.

CV 08-3015-PA

(Findings of Fact and Conclusions of Law, Nov. 12, 2008)

Plaintiffs' Counsel: Robert

Robertson, Jack Swift

Defense Counsel: Allie O'Connor, Michael Jewett

Of Interest:

Judge Janice Stewart, will speak at the January 16, 2009 FBA Lunch. She will speak about her work with the District of Oregon's Pro Bono Panel, a program that works to provide better judicial access for pro se litigants. Registration/RSVP to Ann Fallihee, afallihee@barran.com