

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

In an employment action alleging hostile work environment, Judge Aiken found that plaintiff's claim against the Oregon Department of Corrections was barred after she entered into a settlement agreement with respect to her workers' compensation claim and agreed to release ODOC "from any claim or legal action of whatever kind arising out of the claimed injury or disease." Thus, Judge Aiken granted summary judgment in favor of ODOC.

Cervantes v. Oregon Department of Corrections,
CV 05-1496-AA
(Opinion, June 14, 2007)
Plaintiff's Counsel: R. Adian Martin
Defense Counsel:
Kenneth Crowley

COVENANTS NOT TO COMPETE

In an action brought by former employers against their former employee to enforce various restrictive

covenants contained in the parties' employment agreement, Judge Papak issued Findings and Recommendations recommending that the motion for partial summary judgment filed by defendant Nancy L. Jacob be granted as to each of plaintiffs' claims against her. Jacob's counterclaims against defendants remain to be resolved.

With respect to a covenant restricting post-employment solicitation of Jacob's former clients, Judge Papak found that the covenant was enforceable against Jacob under applicable Oregon law, and that plaintiffs were not estopped from seeking to enforce it, but also found that Jacob did not breach the nonsolicitation provision when she performed services for former clients who initiated contact with her and affirmatively requested her services following the termination of her

employment by plaintiffs. With respect to plaintiffs' claim for breach of a covenant restricting post-employment use of confidential information, Judge Papak found that summary judgment was appropriate in Jacob's favor where there was no evidence in the record that Jacob ever used plaintiffs' information, despite evidence that she retained files containing such information on her personal laptop following her departure from plaintiffs' employ. With respect to plaintiffs' claim for unjust enrichment, Judge Papak found that Oregon contract law provided the exclusive remedy available to plaintiffs, precluding them from bringing the claim. Judge Papak further found no merit to plaintiffs' claims for breach of a contractual provision requiring Jacob to

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devote substantially all of her business time to plaintiffs during the term of her employment, for breach of the implied covenant of good faith and fair dealing, for breach of fiduciary duty, intentional interference with contractual relations, or intentional interference with prospective business advantage.

Judge Papak's Findings and Recommendation were adopted without modification.

Lydian Wealth Management Co., LLC and Windermere Investment Assoc., LLC v. Jacob,
CV 06-1796-PK
(Opinion, 01/25/08)
Plaintiff's Counsel:
Anthony L. Leffert
Defense Counsel: Alyssa N. Benjamin

Environment

Plaintiffs Friends of the Columbia Gorge, Inc., and In Defense of Animals filed a Complaint challenging a plan to release Rocky Mountain goats (Reintroduction Plan) in the Columbia River Gorge National Scenic Area (Scenic Area) developed by the Oregon Department of Fish and Wildlife (ODFW) with the

assistance of Defendant U.S. Forest Service (USFS). Plaintiffs alleged State Defendants violated the Columbia River Gorge National Scenic Area Act (Scenic Area Act), by approving ODFW's Reintroduction Plan without ensuring it was reviewed for consistency with the Scenic Area Act. Plaintiffs asserted a similar claim against USFS. In addition, Plaintiffs alleged USFS violated the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). All parties filed motions for summary judgment as to each of Plaintiffs' claims.

The Court dismissed Plaintiffs' claims against State Defendants for lack of subject-matter jurisdiction and, in the alternative, State Defendants have Eleventh Amendment immunity from actions in federal court.

The Court granted USFS's Motion for Summary Judgment as to Plaintiffs' NFMA claim against USFS on the ground that USFS did not fail to take a discrete, legally required action to protect sensitive plants in accordance with the Mt. Hood Forest Plan. The Court, however, granted Plaintiffs' Motion for Summary Judgment as to Plaintiffs' claim that USFS violated NEPA when

it failed to analyze the environmental impacts of the Reintroduction Plan.

Finally, addressing a question of first impression in the Ninth Circuit, the Court granted Plaintiffs' Motion for Summary Judgment as to Plaintiffs' claim that USFS violated the Scenic Area Act when it invoked the Scenic Area Act savings-clause exemption for hunting and fishing regulations to exempt the Reintroduction Plan from review for consistency with the Scenic Area Act and Scenic Area Plan.

Friends of the Columbia Gorge v. Moore,
CV 05-646-BR
(Opinion, 12/27/07)
Plaintiffs' Counsel:
Gary K. Kahn and Peggy Hennessy
Defense Counsel:
Stephen J. Odell and
Kathryn A. Cottrell

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