

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. 5, May 5, 2008

Employment discrimination Jury Trial

Judge Stewart presided over a 5-day jury trial by a current maintenance employee of the Department of Transportation claiming employment discrimination under federal and state laws based on disability (Hepatitis A) and religion, as well as a violation of the FMLA and intentional infliction of emotional distress. The jury returned a verdict for defendant on all claims.

Atwood v. Department of
Transportation

CV 06-1726-S

(Jury Trial, April 8-14, 2008)

Plaintiff's counsel: Kevin Lafky;

Defense counsel: Lianai Reeves

CLERGY SEX ABUSE

In an action brought by a plaintiff proceeding *pro se* against defendant Roman Catholic Archbishop of Portland in Oregon, a corporation sole, Judge Papak denied defendant's motion to dismiss to the extent premised on insufficient service of process, but granted the motion to the extent premised on

plaintiff's failure to state a claim on which relief could be granted. Because plaintiff was proceeding *pro se*, Judge Papak ordered that final judgment would not be entered on plaintiff's claims provided that he file within sixty days an amended complaint curing the deficiencies of his originally filed pleading.

Plaintiff alleged that he was sexually abused at age 15 by a Roman Catholic priest and employee of the Archbishop, and arising out of that incident brought vicarious liability claims against the Archbishop on a theory of *respondeat superior* for sexual battery and intentional infliction of emotional distress, as well as a direct liability claim for negligence. With respect to the motion to dismiss for failure to state a claim, Judge Papak found that plaintiff failed to allege sufficient facts to support a finding of vicarious liability on the sexual battery and intentional infliction claims. Specifically, plaintiff failed to allege, as required by applicable Oregon law, that the priest who abused him was motivated at least in part to serve his employer by carrying out authorized employment-related

duties in his initial interactions with plaintiff, and that the priest's employment-related conduct resulted in the acts that caused plaintiff's injury, as opposed to merely creating an opportunity for those acts to take place.

As to the negligence claim, Judge Papak found that plaintiff's direct liability claim, as alleged, was time-barred by applicable statutes of limitation. Oregon statutory law creates an exception to the applicable limitations period for torts involving child abuse, but that statutory exception is only applicable to torts of negligence involving claims that a defendant knowingly allowed, permitted, or encouraged child abuse, and the plaintiff failed to allege that the Archbishop had actual, contemporaneous knowledge of the child abuse.

Sapp v. Roman Catholic
Archbishop of Portland in
Oregon,

CV 08-68-PK

(Opinion, 04/22/08)

Plaintiff Appearing Pro Se

Defense Counsel: Thomas V.

Dulcich

2 The Courthouse News

Unlawful Trade Practices Act

Plaintiff filed a motor vehicle products liability lawsuit against defendant Kia Motors, Inc. Defendant moved for partial summary judgment on plaintiff's claim pursuant to the Unlawful Trade Practices Act arguing that the claim was untimely under the relevant statute of limitations.

Judge Aiken heard oral argument and found the record contains conflicting testimony regarding the dates of plaintiff's actions, and therefore a question of fact exists as to when plaintiff discovered her harm. The court denied defendant's motion for summary judgment.

Wright v. Kia Motors, Inc.

CV 06-6212-AA

(Opinion, Feb. 26, 2008)

Plaintiff's Counsel: Jeff Mutnick

Defense Counsel: Stuart Brown

Antitrust Litigation

Judge Panner presided over an 8-day jury trial alleging antitrust violations by plaintiff Morelock Enterprises, Inc. against defendant Weyerhaeuser Company. After approximately 1 ½ days of jury deliberation, the jury returned a verdict for the plaintiff and awarded plaintiff \$27,982,020 in damages. That amount was then trebled pursuant to statute to \$83,946,060.00 for a total damages award against

defendant.

Employment Claims

Plaintiff filed several state and federal employment claims against her employer. Plaintiff also filed a claim against her employer pursuant to the Uniform Fraudulent Transfer Act (UFTA). Some of the defendants moved for summary judgment on plaintiff's employment claims and the UFTA claim. The court heard oral argument on these motions and then granted defendants' motions for summary judgment on all claims.

Ford-Torres v. Cascade Valley

Telecom, et al.,

CV 06-914-AA

(Opinion, Feb. 26, 2008)

Plaintiff's Counsel: Kevin Lafky

Defense Counsel: David Sweeney

Attorney Fees

Defendants filed a motion for attorney fees after the court granted a motion to strike plaintiff's complaint filed pursuant to Oregon's anti-SLAPP statute ("Strategic Lawsuit Against Public Participation). Judge Mosman granted the motion for fees in part awarding a total of \$96,870.85 in attorney's fees to defendants.

Schumacher et. al. v. City of

Portland, et al.,

CV 07-601-MO

(Opinion, Jan. 23, 2008)

Plaintiff's Counsel:

Herbert Grey

Defense Counsel: Mark McDougal

Civil Rights - Excessive Force Jury Trial

Judge Mosman presided over a 3-day jury trial brought by plaintiff for excessive force and civil rights violations against the City of Gresham, Oregon. After deliberating for approximately two hours the jury returned a verdict for the plaintiff. Plaintiff was awarded \$80,000 in damages.

MacQuire v. City of Gresham et al.,

CV 07-919-MO

(Jury Trial, April 28, 2008)

Plaintiff's Counsel:

Edward Johnson

Defense Counsel: David Lewis

Interested in a free electronic subscription to this Newsletter? Or do you need to update your email address? Please email: Jolie_Russo@ord.uscourts.gov with your email information and/or any questions about the Newsletter.