

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Unlawful Debt Practices Act

Plaintiff filed suit against Qwest Corporation alleging violations of the Oregon Unlawful Debt Practices Act and the federal Common Carrier regulation. Defendant moved to stay the action and compel arbitration based on arbitration clauses contained in internet and wireless agreements. Judge Aiken denied the motion, finding that defendant failed to establish the existence of a valid arbitration agreement between the parties.

Burgess v. Qwest Corp.

CV 07-6321-AA

(Opinion, 4/2808)

Plaintiff's Counsel:

Keith Karnes

Defense Counsel:

Lawrence Reichman

Patent Jury Trial

Judge Mosman presided over a seven-day jury trial in a case brought by a former orthopedic surgeon and his licensee against another medical device company. The plaintiffs claimed the defendant indirectly infringed their patent, which covered a method of inserting a suture anchor into bone. After deliberating for approximately six hours, the jury returned a verdict for the plaintiffs. The jury further found that the defendant's conduct was willful, and awarded the plaintiffs almost \$15,000,000 in lost profits and royalty damages. The case had previously ended in a hung jury in June 2007. Of note for lawyers who serve as local counsel: On day 5 lead counsel for defendant was sanctioned for

misconduct, with local counsel required to be present at counsel table for the remainder of trial. On day 7 *pro hac vice* status was revoked for lead counsel.

Smith & Nephew, Inc., and John O. Hayhurst, M.D. v. Arthrex, Inc.

CV 04-29-MO

(Verdict: June 11, 2008)

Plaintiffs' Counsel:

John Skenyon, Mark Hebert, and Gregory Booker, with Brenna Legaard as local counsel.

Defendant's Counsel:

Rodger Young, Steven Susser and Anthony Cho, with Peter Heuser as local counsel.

Employment - Retaliation

Defendant filed a motion for summary judgment alleging it was entitled to judgment as a matter of law on plaintiff's claims for retaliation.

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Judge Aiken heard oral argument and granted defendant's motion. The court found that even assuming plaintiff could establish a prima facie case of discrimination, the defendant had numerous, legitimate non-discriminatory reasons for terminating her. Further, the court found that the objective evidence in the record supported defendant's position that plaintiff's job performance was deficient, and therefore did not find evidence of pretext sufficient to survive defendant's motion for summary judgment. The court dismissed plaintiff's state and federal claims for retaliation as well as plaintiff's wrongful discharge claim based on retaliation.

White v. TA Operating Corp.

CV 06-1747-AA

(Opinion, 6/19/08)

Plaintiff's Counsel:

Benjamin Rosenthal

Defense Counsel:

Edward Tylicki

SSA - Attorney Fees

The Court held that plaintiff's Motion for Attorney Fees under 42 U.S.C. § 406(b) was not filed within a reasonable time because plaintiff did not file his Motion for five months following the Commissioner's issuance of the Notice of Award. Nevertheless, the Court granted plaintiff's Motion for Attorney Fees in this matter because the Commissioner did not object to the § 406(b) application as untimely, the Court had not previously addressed the timeliness of an application for attorneys' fees pursuant to § 406(b), and this issue is undecided in the Ninth Circuit. The Court noted, however, it intends to apply a reasonableness standard pursuant to Federal Rule of Civil Procedure 60(b)(6) to petitions for attorneys' fees under 406(b) in the future.

Masset v. SSA,

CV 05-1006-BR

(Opinion, 6/30/08)

Plaintiff's Counsel:

Tim D. Wilborn

Defense Counsel:

David M. Blume

Attorney Fees

Plaintiff sought an award of attorney's fees in the amount of \$192,567.50 and costs in the amount of \$5,720.01 from defendants. Plaintiff brought this action originally pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

The court thoroughly examined calculation of the "lodestar" figure as adjusted by the "Kerr factors." The court looked specifically at the degree of plaintiff's success and the quality of fee records kept by plaintiff and submitted to the court in support of plaintiff's fee request.

The court ultimately awarded plaintiff a total of \$72,360 in attorney fees and \$2,634.45 in costs.

Clark v. Capital Credit & Collections Services,

2008 WL 2404940

(Jelderks)

(Opinion, June 11, 2008)

Plaintiff's Counsel:

Danny Gerlt

Defense Counsel:

Christine Coers-

Mitchell