

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Jones Act, Negligence Claims

Plaintiff alleged he was aboard the F/V Migrator as an employee on March 24, 2006, when he fell through an open hatch and suffered a knee injury. At the time of Plaintiff's injury, the F/V Migrator was owned by Defendant Bluefin, Inc., whose sole shareholder was Dan Ahart. In July 2006, Bluefin, Inc. sold the F/V Migrator to F/V Stillwater LLC. In March 2007, Plaintiff filed an action in this Court in which he brought *in personam* claims against Defendants Dan Ahart; Bluefin, Inc.; and F/V Migrator alleging claims for negligence under the Jones Act, 46 U.S.C. § 688, unseaworthiness, and maintenance and cure. Plaintiff also brought *in rem* claims against the F/V Migrator and two Crab Permits allegedly associated with the vessel. After the matter was tried to the Court on October 16, 2008, Judge Brown found Plaintiff proved all elements of his Jones Act negligence claim against Defendants Bluefin, Inc., and F/V Migrator; these Defendants have

proven Plaintiff's own negligence was also a cause of his injury; and the proportionate responsibility between Plaintiff and these Defendants is 30% to Plaintiff and 70% to these Defendants.

Judge Brown directed the parties to file supplemental briefing on the remaining issues. In her February 25, 2009, the Court issued Findings of Fact and Conclusions of Law, Judge Brown found in favor of Plaintiff and against Defendants Ahart and Bluefin, Inc., on Plaintiff's claim for negligence under the Jones Act; in favor of Defendants Ahart and Bluefin, Inc., on their affirmative defense of comparative negligence as to Plaintiff's negligence claim; in favor of Plaintiff against Defendants Ahart and Bluefin, Inc., on Plaintiff's claim for unseaworthiness; in favor of Defendants and against Plaintiff on Plaintiff's Third Claim for maintenance; in favor of Plaintiff and against Defendants on Plaintiff's claim for cure including a lien on the F/V Stillwater; and in favor of Plaintiff and against Defendant Ahart on Plaintiff's claim for piercing the corporate veil of

Bluefin, Inc. On May 19, 2009, a Final Stipulated Judgment was entered.

Offenbacher v. Ahart,
CV 07-326-BR

(Opinion, Feb. 25, 2009)

Plaintiff's Counsel: Gorden
Carey, Jr.

Defense Counsel: Noah Jarrett,
Dean Dechaine, Michelle Barton

Breach Contract/Warranty

Plaintiff filed suit against defendant alleging breach of contract, breach of warranty of merchantability, and breach of implied warranty of fitness for a particular purpose. Defendant moved for partial summary judgment arguing that plaintiff's claims are product liability claims cast as contract claims and should be dismissed because the damages sought are purely economic. Alternatively, defendant requests summary judgment arguing that the Terms and Conditions on the bills of lading and invoices apply to the parties' transactions and the Limitations of Liability contained within the Terms and Conditions are valid and enforceable.

Judge Aiken denied

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defendant's motion for partial summary judgment as well as defendant's alternative motion. RTT Corp. v. Brenntag Pacific, Inc., CV 08-6291-AA (Opinion, May 11, 2009) Plaintiff's Counsel: Jonathan Basham Defense Counsel: Leta Gorman

Contract Law

This action arose over plaintiff's purchase of a custom yacht costing over \$15 M. The shipyard delivered the yacht late and some of the workmanship was unsatisfactory to plaintiff. Based on Washington law, Judge King granted summary judgment and dismissed part of the fraud claims, the claim for rescission of the contract amendment, the negligent misrepresentation claims, the claims for punitive damages, and the Washington Consumer Protection Act claim. Remaining for trial are numerous breach of contract claims, part of the fraud claims, the issue of whether the contract is completely integrated, and the issue of whether consequential damages are available when there is a contractual provision excluding them.

Yacht West, Ltd v. Christensen Shipyards, Ltd., Cv 07-1547-KI (Opinion, May 14, 2009) Plaintiff's Counsel: Scott Kaplan, Douglas Baldrige

Defense Counsel: Dan Knox, Noah Jarrett, James Finn, William Ohle

Telecommunications Act

Plaintiff brings a complaint for declaratory and injunctive relief pursuant to the Telecommunications Act of 1996. 47 U.S.C. 252(e)(6). Defendants Qwest and the Oregon Public Utility Commission (PUC) moved to dismiss plaintiff's second cause of action alleging that Qwest failed to negotiate in good faith because the PUC had not addressed this claim as required by the Ninth Circuit in Western Radio Servs. Co. v. Qwest Corp., 530 F.3d 1186 (9th Cir. 2008).

Judge Aiken granted defendants' motion to dismiss plaintiff's second cause of action.

Western Radio v. Qwest et al., CV 05-159-AA (Opinion, May 5, 2009) Plaintiffs' Counsel: Marianne Dugan Defense Counsel: Gregory Monson

Jury Trials:

Johnson v. Hanada et al
CV 06-1206-BR
Civil Rights, 4-day Jury Trial
Defense Verdict: May 12, 2009

Slaughter v. Portland Public Schools,
CV 08-268-MO
Employment Discrimination,
3-day Jury Trial
Defense Verdict: May 14, 2009

Grain Millers, Inc. v. Pacific Flexpak Co.,
CV 07-1065-TC
Breach of Contract,
3-day Jury Trial
Plaintiff's Verdict
(\$1,101,999.10): May 7, 2009

Valentine v. Portland General Electric,
CV 06-1012-HA
Employment Discrimination,
5-day Jury Trial
Defense Verdict: April 29, 2009

Of Interest:

Judge Perris, Chief U.S. Bankruptcy Judge for the District of Oregon will speak at the Federal Bar Association's monthly lunch scheduled, Thursday, June 18, 2009, at the University Club, 1225 SW 6th Ave, Portland. Judge Perris will offer a view of the current economic crisis from the bankruptcy bench and will discuss how a party's bankruptcy affects an ongoing civil proceeding. Registration to Ann Fallihee, afallihee@barran.com, 503-276-2129, or you may simply show up!