

THE MARK O. HATFIELD
COURTHOUSE NEWS

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

Judge Anna J. Brown

dismissed, without prejudice, 43 counts of a superseding indictment filed against several former pension trustees who allegedly influenced pension investment decisions relative to the now defunct Capital Consultants Corporation. The indictment charged that one trustee offered gifts and other items of value to other trustees to influence their decisions relative to continuing to make plan investments in Capital Consultants. Judge Brown found that the allegations failed to meet requisite pleading standards for offenses under 18 U.S.C. § 1954 as set forth in U.S. v. Sun Diamond Growers of California, 526 U. 398 (1999). The court observed that: "vague references to total investment amounts and increased investment funds of some Plans" were insufficient to demonstrate the requisite nexus between the trustee's action and the gratuity at issue. United States v. Kirkland, CR 02-350-BR (Opinion, July 7, 2003).

AUSA: Neil J. Evans
Defense: Lisa A. Maxfield

Stephen A. Houze
James G. Rice

! The relative ease of applying for a telephonic warrant does not undermine a police claim of exigent circumstances. Judge Robert E. Jones denied a motion to suppress evidence where police approached the defendant at his home for a "knock and talk." Judge Jones found this action permissible since police lacked probable cause to effectuate an arrest prior to the knock and talk. Once at the residence, defendant's nervous demeanor and the fact that he quickly walked away from the officers with something small gripped in his hand, gave the officers probable cause to believe that the defendant was likely to destroy evidence without their intervention.

The fact that the officers had arrived at the residence with a canine drug alerting dog and with the intent of seeking defendant's consent to search did not undermine the officers' good faith belief that exigent

circumstances justified their warrantless intrusion. United States v. White, CR 02-338-KI (Opinion, June 25, 2003).
AUSA: Fred Weinhouse
Defense: James Glover

Intellectual Property

Plaintiffs own trademarks and copyrights on numerous well-known software products designed to protect the security of personal computers. It came to plaintiffs' attention that defendants were selling alleged versions of plaintiffs' software to end users over the Internet, minus the box and manuals, for less than plaintiffs' wholesale price. Plaintiffs purchased some of the software at issue, examined the CDs, and found that the software was not manufactured by authorized replicators. Judge King granted summary judgment of liability on copyright and trademark infringement claims. The amount of damages still needs to be resolved. Symantec Corp. v. CD Micro, Inc., CV02-406-KI, Opinion, July 8, 2003.

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Plaintiffs= Counsel:

Ariana Seldman Hawbecker

Defense Counsel: John Carr

Experts

A car dealership filed an action against a national chain of lube and oil shops alleging false advertising in violation of Oregon's UTPA and asserting a claim for tortious interference with business relations. Plaintiff claimed that defendant's advertising falsely insinuated that dealership service centers were not open during convenient times and that defendant's technicians were all fully certified. Plaintiff claimed that it had suffered over \$400,000 in lost revenues because of the false ads.

In support of its claims, plaintiffs submitted several expert reports and surveys. Judge Anna J. Brown carefully reviewed the experts' submissions and determined that they were inadmissible because there was "too great an analytical gap" between the experts' conclusions and the underlying data on which the experts relied. Judge Brown found that the opinions involved unsupported assumptions and that their surveys included questions which were "imprecise, confusing and vague." The court also concluded that even if the surveys themselves were not flawed, the results did not tend to prove that plaintiff suffered any

losses because of defendant's allegedly unlawful conduct.

Without the expert reports, plaintiff's claims failed for lack of proof of damages or causation and defendant's motion for summary judgment was granted in its entirety. Judge Brown also held that plaintiff lacked standing under the UTPA because it is not a consumer. Lanphere Enterprises, Inc. v. Jiffy Lube Int'l, Inc., CV 01-1168-BR (Opinion, July 9, 2003).

Plaintiff's Counsel:

Craig A. Nichols

Duane A. Bosworth

Defense Counsel:

Randolph C. Foster

Labor

Pension trustees filed an action against a contractor seeking to recover trust contributions and union dues for a three year period. Defendants claimed that they signed the agreements with the understanding that they would only have to pay CBA expenses for public works projects. Judge Janice M. Stewart held that defendants could not vary the written terms of the agreement with any oral representations without violating the parol evidence rule. However, the court held that genuine factual issues existed

relative to whether defendants could establish fraud in the execution. Trustees of the OR-WA Carpenters, CV 00-1681-ST (Findings & Recommendation, Jan. 31, 2003; Adopted by Judge Robert E. Jones, April 4, 2003).

Plaintiffs' Counsel:

Paul Dodds

Defendants: Pro se

Picnic

The free Annual U.S. District Court of Oregon Historical Society Picnic will take place this year on Sunday, August 3, 2003 at the Family Farm of Judge Edward Leavy. The event features an old fashioned barbecue, music, pony rides and lots of children's activities. The Leavy Farm is located at 22675 Butteville Road, NE – Take I-5 south to exit 278, turn west on Ehlen Road and turn right on the first crossroad, Butteville Rd. The farm is two miles down Butteville. RSVP with the number in your party to Linda Sherry at: linda.sherry@ord.uscourts.gov