

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. IX, No. 19, September 29, 2003

Civil Rights

Plaintiffs, a group of protesters who were allegedly injured by the police during President Bush's August 22, 2002, Portland visit, filed an action against the Cities of Portland and Beaverton, as well as various police officers and city officials alleging police brutality. Chief Judge Ancer Haggerty denied defendants' Motion to Dismiss, except as to plaintiff's prayer for relief seeking an injunction requiring the City of Portland to install a citizen review board. Judge Haggerty found that plaintiffs lacked standing to obtain the relief sought. The court also resolved a discovery dispute and allowed plaintiffs' counsel access to self-critical internal reports authored by defendants. Marbet v. City of Portland, CV 02-1448-HA (Opinion Sept. 8, 2003).

Plaintiffs' Counsel:

Alan Stuart Graf

Defense Counsel:

William W. Manlove

Elections

In an action involving Multnomah County Ballot Measure

26-52, Chief Judge Ancer L. Haggerty granted in part defendants' Motion to Dismiss. Oregon statutes require the inclusion of a warning in the ballot title stating that the measure may increase property taxes by more than three percent. Finding that Measure 26-52 would increase taxes by far less than one percent, the court found plaintiffs had sufficiently alleged claims for constitutional violations. However, the court dismissed those parts of the complaint that would require it to review determinations already made by the Multnomah County Circuit Court. Horton v. Multnomah County, CV 03-1257-HA (Opinion Sept. 19, 2003).

Plaintiffs' Counsel:

Linda K. Williams &

Daniel W. Meek

Defense Counsel:

Agnes Sowle

Intervenor's Counsel:

Charles F. Hinkle

Criminal Law

A former pension trustee who plead guilty to misconduct

arising out of the collapse of Capital Consultants, Inc. filed a petition to modify his restitution obligation. At the time of his initial sentencing, the parties had stipulated to the restitution amount and formula; however, since that time, several pension funds had entered into a class action settlement with several insurers over investment losses. Defendant argued that those settlements should be used to offset his obligation to avoid double recovery to the victims under 18 U.S.C. § 3664(j). The government argued that no offset was warranted because the restitution award was distinct from the underlying investment losses. The government further reasoned that the insurance proceeds from the class action settlement did not compensate the victims for defendant's receipt of illegal gratuities.

Judge Anna J. Brown noted that who ultimately bore the burden of establishing the offset was a matter within the court's discretion under the statute. Looking to analogous civil law provisions, the court held that the

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defendant should bear the burden of proof in this instance. Judge Brown found insufficient evidence in the record to determine if adherence to the original restitution amount would double the victims' compensation; in the absence of sufficient proof, defendant's request for modification was denied.

United States v. Abbott, CV 01-70-BR (Opinion, Sept. 24, 2003).
AUSA: Lance Caldwell
Defense Counsel: John C. Moore

Personal Injury

Under ORS 18.580, A plaintiff seeking to recover medical expenses for an injury he suffered when a ladder collapsed, may seek the full amount charged by his health care provider, without offset or reduction for any reduced amount negotiated by his insurer through a preferred provider program. Cole v. Builder's Square, Inc., CV 99-729-PA (Order, Sept. 8, 2003).

Plaintiff's Counsel:

Kenneth D. Bourne
Michael H. Bloom

Defense Counsel:

John H. Holme
Richard J. Kuhn
Stephen P. Rickles

Personal Jurisdiction

Plaintiffs filed an action against

numerous companies alleging that they were injured by an international price fixing conspiracy. One defendant is a German corporation with no offices or direct connection to the United States. Plaintiffs sought to invoke personal jurisdiction over the German corporation under the Ninth Circuit's "effects test." Plaintiffs argued that the German corporation took part in price fixing meetings in Europe and Asia, and thereafter, directed their U.S. subsidiary to follow those prices when delivering product to U.S. consumers.

Judge Malcolm F. Marsh held that in the absence of any direct injury caused by the foreign defendant's conduct directed towards the forum, personal jurisdiction could only be satisfied under the alternative, alter ego test. Plaintiffs conceded that they could not establish that the U.S. subsidiary was an alter ego of the German parent, and thus, the motion to dismiss for lack of personal jurisdiction was granted..

Judge Marsh also held that a forum selection clause (in a contract with a U.S. corporation) was inapplicable under the UCC 2-207 "battle of the forms" provision and affirmed all of Magistrate Judge

John Jelderks other findings. Northwest Aluminum Co. v. Hydro Aluminum Deutschland, CV 02-398-JE (Opinion, Sept. 23, 2003; Findings and Recommendation, August 19, 2003).

Plaintiffs' Counsel:

Craig D. Bachman

Defense Counsel:

John F. McGrory; Jeff Pitzer

Limitations

A salvage worker injured when he was lowered onto the M/V NEW CARISSA by a Coast Guard helicopter filed an FTCA action to recover personal injury damages. Judge Ann Aiken held that because the accident occurred on navigable waters, had a potential impact on maritime commerce and because the alleged wrongdoing bore a significant relationship to traditional maritime activity, the plaintiff's claim was governed by Admiralty law, rather than the FTCA. As such, plaintiff's claims were barred by the 2 year statute of limitations period set forth in the Suits in Admiralty Act, 46 U.S.C. § 741, et. seq. Sluijmers v. United States, CV 02-6152-AA (Opinion, Sept. 2003).

Plaintiff's Counsel:

Michael R. Stebbins

Defense Counsel:

Herbert C. Sundby