

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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## Arbitration

Plaintiffs who unsuccessfully attempted to refinance their mortgage with the defendant filed an action claiming violations of the Unfair Trade Practices Act, the Truth in Lending Act and negligent misrepresentation. Defendant moved to stay the action pending arbitration. Judge Janice M. Stewart denied the motion to stay because the contract's arbitration clause was unconscionable and unenforceable. The court determined that clauses limiting damages, requiring plaintiffs to pay the arbitration costs and a confidentiality restriction "permeated" the agreement and rendered the entire arbitration provision unenforceable.

In reaching this conclusion, the court rejected plaintiffs' alternative arguments that the arbitration clause itself had been procured by fraud, that it was an unenforceable contract of adhesion or that the contract was unconscionable because some of the provisions were one-sided. Torrance v. Ames Funding Corp., CV 02-592-ST (Amended Findings and

Recommendation, Aug. 29, 2002; Adopted by Order of Judge Ancer L. Haggerty, Nov. 25, 2002).

Plaintiffs' Counsel:

Carl Crowell

Defense Counsel:

Carter M. Mann

## Procedure

In a class action asserting violations of the Fair Credit Reporting Act, defendant moved to dismiss for lack of personal jurisdiction. Judge Anna J. Brown denied a motion to strike exhibits attached to an affidavit submitted by plaintiffs' counsel, finding them sufficiently authenticated to be admissible. The court then held that while there was no general jurisdiction, specific jurisdiction was established based upon defendant's interactive website and because plaintiff's claims arose out of the defendant's forum related activities - either directly or through defendant's four subsidiaries. Sams v. Geico Corp., CV 01-1458-BR (Opinion, Nov. 27, 2002).

Plaintiffs' Counsel:

Steve Larson

Defense counsel: Jan Kitchel

**7** Judge Ann Aiken entered a vexatious litigation order barring a pro se plaintiff from any future attempts to file a legal action against the U.S. Attorney's office over an altercation she allegedly had in a natural foods store. Judge Aiken noted that by filing 5 equally frivolous cases involving the same subject matter justified entry of the order under Ninth Circuit authority. The court also outlined the steps taken to give the plaintiff fair notice. DeFord v. The Kiva and The United States Attorney's Office, CV 02-6267-AA (Opinion, Jan. 2003).

## Torts

A vendor under contract with Multnomah County to provide weatherization services alleged that the contract was unfairly administered in retaliation for his testimony on behalf of a former county employee who alleged that his termination was caused by discrimination. Judge King granted summary judgment against the vendor's 1983 First

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Amendment claim after ruling that the speech was not a matter of public concern. He also granted summary judgment against tort claims of false light and the intentional interference with contractual relations and business advantage. Alpha Energy Savers, Inc. v. Multnomah County, CV01-1363-KI, Opinion, Jan. 21, 2003.

Plaintiffs= counsel:

Daniel Snyder

Defense counsel:

Thomas Sponsler,  
Susan Dunaway

## Employment

Three former employees claimed that their termination in a Reduction of Force was a pretext for age discrimination. Plaintiffs asserted claims under federal and state anti-discrimination statutes. Judge Ann Aiken granted a defense motion for summary judgment based upon her finding that plaintiffs failed to establish a prima facie case. The court found no evidence of age discrimination and ample evidence that the RIF was bona fide. Judge Aiken rejected plaintiffs' reliance upon statistics tending to show that the RIF had a greater impact on older workers since most of the salaried workers at the mill were within the protected age group. Buss v. Weyerhaeuser Co., CV 00-6141-AA (Opinion, Jan. 2003).

Plaintiffs' Counsel:

Robert Miller,  
Lynn R. Nakamoto

Defense Counsel:

Robert E. Maloney, Jr.

**7** An employee who must wear tinted corrective lenses is not "disabled" within the meaning of federal and state anti-discrimination statutes. Judge Janice M. Stewart rejected alternative "regarded as" disabled claims and held that the employer acted well within its discretion in prohibiting dark glasses as a safety measure. The court also found the employer could not be liable for a co-employee's assaultive conduct in the absence of any evidence that the conduct was sanctioned or ratified. Judge Stewart held that the court would retain jurisdiction over supplemental state claims against the co-worker, citing concerns over possible shut-downs to the County civil trial docket. Ponce v. GM Corp., CV 01-56-ST (Findings and Recommendation, Nov. 13, 2002; Adopted by Judge Redden, January, 2003).

Plaintiff's Counsel:

Terrance J. Slominski

Defense Counsel:

Donna M. Cameron (Local)

## Environment

Judge Robert E. Jones

dismissed an Endangered Species Act claim challenging the U.S. Army Corps of Engineers' salmon transportation program at the partially completed Elk Creek Dam. Judge Jones held that ESA section 7(a)(1) applies to agency programs, while 7(a)(2) applies to specific agency actions. Because the transportation constituted an agency action, not a program, plaintiff's could not maintain claim for failure to conserve wild salmon under section 7(a)(1). ONRC v. U.S. Army Corps of Engineers, CV 00-431-JO (Jan. 2, 2003).  
Plaintiff's Counsel: Peter Frost  
Defense Counsel: Tom Lee

## Contracts

A lessee could not terminate its lease because the City enforced a noise ordinance where the contract expressly permitted termination only for zoning changes. Judge Anna J. Brown granted a defense motion for partial summary judgment, finding that the plain language of the agreement precluded the lessee's argument. Griffin Oaks Business Park LLC v. Hertz Equipment Rental Corp., CV 02-369-BR (Opinion, Jan. 27, 2003).  
Plaintiff's Counsel: Greg Miner  
Defense Counsel: Ed Perry