

# 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. 24, December 11, 2003

## Immigration

Judge Anna J. Brown granted a writ of habeas corpus and ordered the immediate release of a petitioner held in INS custody since his country of origin refused to accept his return. The petitioner is a Laotian national who entered a no contest plea to a drug possession charge in 1997. At the time of his plea, the BIA did not treat drug possession as an aggravated felony. The BIA changed its view in 2002 and when the petitioner applied for a replacement permanent resident card he was arrested and ultimately ordered deported.

Judge Brown rejected the government's arguments that the court lacked jurisdiction to consider the merits because petitioner failed to exhaust administrative remedies. Judge Brown held that the court had jurisdiction to consider constitutional claims under 28 USC § 2241 and that exhaustion would have been futile. The court noted that before the BIA changed its rules, petitioner had a right to seek cancellation of his removal order with the Attorney General. Judge Brown concluded that retroactive application of the BIA decision violated petitioner's 14<sup>th</sup>

Amendment Due Process rights. Von Pradith v. Ashcroft, CV 03-1304-BR (Opinion, November, 2003).

Petitioner's Counsel:

Baolin Chen

Respondent's Counsel:

Ken Bauman

! Judge Robert E. Jones held that a 2003 Immigration statute (8 USC 1227) does apply retroactively under recent US Supreme Court authority. The court held that the Ninth Circuits decision that this provision was not retroactive could no longer stand following the Supreme Court's decision in St. Cyr. The new statute provides that any alien convicted of an aggravated felony after admission to the U.S. is subject to deportation. The petitioner was convicted of an aggravated felony in 1988 and the BIA sought to remove him in 2003 based upon that prior conviction. Judge Jones held that Congress intended that Section 1227 apply retroactively and, thus, petitioner's deportation was lawful. A previously entered temporary restraining order was lifted and the petition for

habeas corpus relief was dismissed. Galicia v. Crawford, CV 03-1316-JO (Opinion, Dec. 9, 2003).

Petitioner's Counsel:

Steve Manning

Defense Counsel:

Ken C. Bauman

## Procedure

A Michigan corporation that solicited bids from the plaintiff for carrier services was subject to specific personal jurisdiction in Oregon. Judge Anna J. Brown held that even though the Oregon based plaintiff performed the contracted work in other states, the parties' contract contemplated ongoing activity and continuing obligations that spanned a two year time frame. The court rejected a claim of general jurisdiction premised upon internet advertising and rejected the assertion that the defendant could be subject to general jurisdiction based upon contacts of its parent corporation. Emert Industrial Corp. v. Artisan Assoc. Inc., CV 02-6341-BR (Opinion, Nov. 12, 2003).

Plaintiff's Counsel:

Michael A. Redden

Vicki L. Smith

## 2 The Courthouse News

Defense Counsel:

John A. Anderson

! A car dealership filed an action against a national oil change company alleging various claims for unfair and unlawful advertising practices. Judge Anna J. Brown granted summary judgment and dismissed the action. Thereafter, the same plaintiff filed another action in state court against several of the original defendant's franchisees. Plaintiff asserted many of the same claims and allegations along with additional claims.

The defendants removed the action to federal court and moved for summary judgment based upon claim and issue preclusion. Judge Brown reviewed the original and the new complaint and held that the first judgment was binding upon the parties to the second action. The court concluded that the franchisees were in privity with the national corporation, at least as to the advertising claims. She also held that the damage allegations were barred by issue preclusion, and she noted an absence of any admissible proof of damages from the first action. Lanphere Ent., Inc. v. Doorknob Ent., LLC, CV 03-273-BR (Opinion, Dec. 10, 2003).

Plaintiff's Counsel:

Craig Nichols

Duane Bosworth

Defense Counsel:

Robert Schlacter

! Plaintiff operates a car wash that recycles much of its water. From 1994-2001, plaintiff claims that the City overcharged him for sewer expenses by failing to account for his recycling process. In 2001, plaintiff began using a sub-meter that cured the problem and he claims that City officials misled him about the efficacy of such a process. Plaintiff asserted numerous state law theories of relief and claims pursuant to 42 USC 1983 for denial of due process and takings. Judge Janice M. Stewart held that plaintiff stated viable constitutional claims that were not time-barred under the discovery rule. However, the court determined that it should not exercise supplemental jurisdiction over plaintiff's state claims because they involved novel issues of state law. The court dismissed the state claims without prejudice and held that the remaining federal claims should be stayed pending an anticipated state action. Spivak v. Marriott, CV 03-523-ST (Opinion, Nov. 21, 2003).

Plaintiff's Counsel:

Kelly W.G. Clark

Defense Counsel:

Nancy E. Ayres

## Insurance

Two insurance companies

filed a declaratory judgment action in response to a letter threatening legal action to secure coverage under liability policies. The insured subsequently filed an action in state court and moved to dismiss the federal court case.

Judge Janice M. Stewart granted the motion after noting that jurisdiction under the Federal Declaratory Judgment Act was discretionary. Considering the factors set forth in Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942), Judge Stewart concluded that allowing the case to proceed would encourage forum shopping and result in unnecessary duplicative litigation. Scottsdale Ins. Co. v. Port of Portland, CV 03-403-ST (Findings & Recommendation, July 17, 2003; Adopted by Order of Judge Marsh, Oct. 21, 2003).

Plaintiffs' Counsel:

Carl R. Rodrigues

James M. Callahan

Defense Counsel:

Richard A. Lee

Julie A. Vacura