

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

A crane manufacturer filed an action against a contractor claiming that plaintiff had been wrongfully removed from defendant's standard equipment supplier list and from defendant's designated vendor list for Coast Guard contracts. Plaintiff also asserted several claims for breach of contract. Defendant moved to abate the case and for an order compelling arbitration in Wisconsin. Defendant relied upon an arbitration clause in its subcontract with plaintiff. Plaintiff argued that the clause should not be enforced because of a subsequent settlement agreement that failed to include an arbitration clause and based upon waiver.

Magistrate Judge Janice Stewart noted that while the settlement agreement did not specifically incorporate the terms of the prior subcontract, the settlement referenced the subcontract and the subcontract was an integral part of the settlement documentation. Accordingly, the court held that the disputes were arbitrable. The court also rejected the plaintiff's waiver argument, finding that prior litigation did not overcome the presumption favoring arbitration. Allied Systems Co. V. Marinette Marine Corp., CV 99-368-ST (Findings and Recommendation, July 2, 1999; Adopted by Order of Judge

Redden, August 20, 1999).

Plaintiff's Counsel: John Purcell
Defense Counsel: S. Ward Greene

Environment

Several individuals and environmental groups filed an action against the U.S. Forest Service claiming that plans for 21 timber sales violated NEPA, NFMA and the Rescission Act. Plaintiffs claimed that the timber harvesting plans were inconsistent with Forest Plans, that defendants failed to consider cumulative effects, failed to adequately address mitigation measures, failed to discuss reasonable alternatives and that defendants should have prepared a more formal and detailed environmental impact statement (EIS) rather than the more informal environmental assessment (EA) and Finding of No Significant Impact (FONSI).

Judge Garr King held that plaintiffs lacked standing to pursue claims under the Rescission Act because they fell outside of the zone of interests for that legislation. The court noted that the Rescission Act was adopted by Congress to ensure adequate timber substitutes for sales delayed by litigation. Because plaintiffs had no interest in timber harvestings, they lacked standing under the Act via the

APA.

Plaintiffs also argued that the timber plans were inconsistent with the Aquatic Conservation Strategy. Judge King adopted the project-by-project approach recently formulated by the Third Circuit and concluded that plaintiffs failed to exhaust administrative remedies as to 7 categories of projects. As for the other 5 categories for which plaintiffs established exhaustion, the court held that plaintiffs failed to demonstrate that defendants had been arbitrary or capricious.

The court rejected the remainder of the plaintiffs' challenges on the merits, concluding that a review of the administrative record supported the Forest Service's actions. American Lands Alliance v. Kenops, CV 99-80-KI (Opinion, August 25, 1999 - 33 pages).

Plaintiffs' Counsel: Robert Pierce;
Mark Lehinger
Defense Counsel: Albert Lin
Intervenor's counsel: Mark Rutzick

Labor

An injured employee filed an administrative claim against his employer and an insurance carrier under the Longshore & Harbor Workers Compensation Act (LHWCA). The administrative claim

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was settled with a lump sum payment, but the injured worker received the checks late. The District Director for the Office of Workers' Compensation Programs (OWCP) entered an order imposing a 20% late penalty. The employer and carrier filed an appeal with the U.S. District Court challenging the supplemental penalty order. Appellants claimed that they were given the wrong address by the employee and thus, the late payment should be excused.

Judge Robert Jones noted that the district court's standard of review of such an order is extremely narrow. The court found that the District Director lacked any discretion under the statute to deny the penalty since the statute allowed for no equitable considerations. The court held that the award was in accordance with the law and thus, denied the appeal and directed that the supplemental order be enforced. Zea v. West State, Inc., CV 3-99-13-MISC (Opinion, August, 1999).

Employment

A plaintiff who pursues a claim for disability discrimination under the ADA may not proceed under a "perceived" disability with no impairment theory in the alternative if the evidence is unrefuted that the employee in fact suffers from physical impairments. In so holding, the Ninth Circuit upheld a judgment entered by Judge John Jelderks following a jury trial.

The Court also affirmed Judge Jelderks' exclusion of several witnesses proffered by the plaintiff for the purpose of showing that the

employer generally acted unfavorably towards employees' medical leaves. The Appeals Court declined to extend the law allowing for "other acts" evidence that relates to a clearly defined group (such as gender) to such an "amorphous" group as employees seeking medical absences. Hostility towards an undefined group is inadmissible.

The Court also ruled that a BOLI determination of insufficient evidence to support a discrimination claim is not per se admissible in the same manner as an agency's probable cause determination. Instead, admission must be considered on a case-by-case basis under the Fed. R. Evid. 403 weighing process. Beachy v. Boise Cascade Corp., No. 98-35321 (slip op. Sept. 8, 1999). ***Note: this opinion is not available via e-mail. You may obtain copies on Westlaw, LEXIS or on the internet at www.washlaw.edu**

Patents

Judge Ann Aiken granted a defense motion for summary judgment finding that a plaintiff's claims for patent infringement were limited under the doctrine of laches. In 1987, plaintiff sent a letter to the defendant claiming infringement and demanding that defendant cease and desist. Defendant responded three weeks later with a denial and heard nothing more from the plaintiff until 11 years later when the federal court action was filed. Judge Aiken noted that the doctrine of laches does not bar a patent infringement claim outright, but rather limits damages to post-filing of the

complaint. The court found that 11 years constituted a presumptively inexcusable delay and that defendant demonstrated significant prejudice through the loss of key witnesses and pertinent documents and the economic injury of reliance upon plaintiff's lack of response. The court noted that plaintiff's argument that his poverty kept him from pursuing the claim further was not a valid excuse under Federal Circuit authority.

Judge Aiken denied the defense motion for summary judgment on its defense of equitable estoppel, finding that plaintiff's silence failed to constitute a misleading statement. Hayden v. Shin-Etsu Handotaiamerica, Inc., CV 97-1752-AA (Opinion, Sept. 1999 -12 pages).

Plaintiff's Counsel: Michael Essler
Defense Counsel: Keith Ketterling

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