

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Statute of Limitations

In a case that has a complicated history, Judge Haggerty granted summary judgment to Philip Morris and other defendants in a case involving an exploding cigarette lighter. The plaintiff was blinded in her right eye when the lighter, which was included for sale with two packs of cigarettes as a promotion, exploded moments after the plaintiff used it. Judge Haggerty initially dismissed Philip Morris as a defendant on grounds that plaintiff's attorney failed to serve the corporation within the two-year statute of limitations. On reconsideration, however, the court concluded that the statute of limitations is tolled in cases in which the plaintiff is unaware of the identity of the tortfeasor. The service of Philip Morris just after the expiration of two years was deemed sufficient, in light of the plaintiff's affidavit that she was hospitalized after being blinded and required several weeks of recuperation. The case was re-

opened, and discovery ensued. The defendants sought summary judgment on grounds that despite her convalescence, the plaintiff was able to collect the pieces of the exploded lighter and could see "Your Basic Lighter," "Djeep" and "made in France" on the fragments the day after the accident, she had prepared photographs of her injuries in anticipation of litigation, she saw an attorney within six weeks of the accident, and she testified in deposition that recalled seeing the words "Your Basic Lighter" on the lighter before the accident. Defendants produced uncontroverted evidence that plaintiff knew, or should have known, about the existence of her claims much sooner than she suggested in her affidavit filed in support of her motion for reconsideration. The court concluded that even under the "discovery rule" relied upon in granting the motion to reconsider, the plaintiff is barred from bringing a claim after the running of the statute of limitations if the plaintiff should have known of her claims in the exercise of due diligence. The court would have also granted

summary judgment on the alternative grounds that the statute of limitations began to run on the date that the plaintiff retained an attorney related to the dispute at issue.

Cook v. Sibjet, et al., Cv. 98-669; amended Opinion and Order filed December 15, 2000.

Plaintiff's Counsel:
Steven P. Wandro

Defense Counsel:
David A. Ernst,
John T. Kaempf

Employment

In Wilson v. Tarr, Inc., et al., CV 99-1412, plaintiff brought federal and state medical leave act claims and federal and state pregnancy discrimination act claims. The federal claims were tried to the jury and the state claims were tried to the court. The jury verdict was for plaintiff on the FMLA claim based on its determination that, following a three-month pregnancy leave, defendants failed to reinstate plaintiff to her former position or

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to an equivalent position. The jury verdict was for defendants on the federal pregnancy discrimination act claim. Judge Dennis J. Hubel issued an opinion finding for plaintiff on the Oregon family leave claim and for defendants on the state pregnancy discrimination claim. Based on the agreement of the parties, the court was to determine damages for both the state and federal claims so the jury itself did not award any damages. The parties then settled the case before presenting the damages evidence to the court.

Plaintiff's Counsel:

Alvin Bailey, Craig Crispin

Defense Counsel:

Clarence Belnavis

7 Four current and former legal secretaries and legal assistants filed an action against their employer asserting various claims for fraud, negligence, overtime compensation and wrongful discharge. Plaintiffs claimed that the defendant wrongfully attempted to treat them as independent contractors, that he overworked them, causing physical injuries, and that he generally engaged in tirades and abusive conduct such that he intended to inflict severe emotional distress.

Judge Dennis J. Hubel granted

a defense motion to dismiss fraud claims on the basis that plaintiffs had failed to comply with Fed. R. Civ. P. 9(b) relative to when the allegedly fraudulent statements were made, whether they were made to a single plaintiff or the group and whether the alleged fraud was oral or written. The court also granted, with prejudice, a motion to dismiss gross negligence claims, rejecting plaintiffs' argument that federal and state statutory requirements created a duty of the employer to comply with social security and tax reporting requirements relative to treatment of employees.

Judge Hubel denied the defense motion to dismiss gross negligence claims premised upon allegations that defendant caused injuries relative to overuse of computer equipment. The court granted dismissal of claims under Oregon's Employer Liability Act (ELA) on grounds that a law office is not "inherently dangerous" within the meaning of the statute. The court granted plaintiffs leave to replead the ELA claim but only if they could allege inherently dangerous activities.

Plaintiffs' complaint included a litany of 18 allegations in support of an intentional infliction of emotional distress claim. The court rejected all but two assertions as insufficient as a matter of law: (1) that the

defendant caused plaintiff to assist in billing clients for work not actually performed; and (2) that the defendant knowingly directed plaintiffs to engage in tasks causing them physical injuries.

Finally, the court granted in part and denied in part defendant's motion to dismiss plaintiffs' wrongful discharge claims. The court concluded that plaintiffs' wrongful discharge claim was precluded to the extent it relied on allegations in support of an O.R.S. 659.410 claim and a FLSA retaliation claim under 29 U.S.C. § 215(a)(3) and that the common law claim was not precluded to the extent it was premised upon allegations of whistleblowing under O.R.S. 659.550 and on retaliation for asserting certain wage-related rights under O.R.S. 653.060. In reaching this conclusion, Judge Hubel explained that he was either distinguishing or disagreeing with Judge Ashmanskas' holding in Underhill v. Willamina Lumber Co., 1999 WL 421596 (D. Or. 1999). Travis v. Knappenberger, 00-393-HU (Findings and Recommendation, Adopted by Judge James Redden, Dec. 13, 2000).

Plaintiffs' Counsel:

Craig Crispin

Defense Counsel:

Paul Buchanan

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