

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Employment

A University residence hall manager filed an action against her former employer and a former student alleging sexual harassment, wrongful discharge and intentional infliction of emotional distress. Plaintiff was involved in several disciplinary actions against the former student and he retaliated by vandalizing her apartment and making threats. Plaintiff reported the incident to University security and local police. The University investigated, served a no contact order upon the student and, after a further incident, suspended the student and allowed him on campus only with several security restrictions. The student was later denied re-admission. Plaintiff argued that the student should have been expelled and that the University's failure to do so forced her to resign.

Judge Dennis J. Hubel granted the University's motion for summary judgment, holding that the school took prompt, effective remedial action. The court also rejected plaintiff's intentional infliction of emotional distress

claim as against the University given the undisputed fact that the student was never re-admitted.

The former student sought summary judgment against the intentional infliction claim under a statute of limitations bar since the vandalism incident occurred more than 2 years prior to plaintiff's filing. Plaintiff attempted to rely upon the continuing tort theory and the discovery rule to avoid the limitations bar. Judge Hubel rejected the continuing tort theory and precluded the vandalism incident from the claim. The court rejected plaintiff's discovery argument since the evidence established that plaintiff was aware of a substantial probability that the student was responsible for the acts of vandalism prior to the limitations period. The court held that the remaining allegations that took place within the limitations period were sufficient to sustain the claim, denying the student's motion for summary judgment in part. Dolman v. Willamette University, CV 00-61-HU (Opinion, April 18, 2001). Plaintiff's Counsel:

Kevin Lafky  
Defense Counsel:

Robert Lane Carey  
Carl Amala

## Social Security

A social security claimant who submitted a disability opinion from her treating physician after all deadlines had passed was entitled to a remand for further proceedings, but not a remand for a payment of benefits. Judge Anna J. Brown held that it was error for the Appeals Council not to have considered plaintiff's late evidence, but that the ALJ should have an opportunity to address that evidence before a disability determination is finally made. The court also found that the ALJ erred by violating SSR 83-14 because she failed to include in her decision a statement of other work available to the claimant in the region in which the claimant resides or in several regions in the country. Tomson v. Halter, CV 00-3028-BR (Opinion, April, 2001).

## Disability Law

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Judge Garr M. King rejected claims that wheelchair movie theatre seating violates Title III of the ADA and Oregon's Public Accommodations law. Plaintiffs argued that federal guidelines mandate that wheelchair patrons enjoy a line of sight to a movie screen that is comparable to non-disabled patrons and that seating provided in the front of the theatres was inferior and provided uncomfortable viewing angles. Plaintiffs asked that the court follow an interpretation of the regulations that was adopted by the Department of Justice in a Fifth Circuit case, even though that interpretation was ultimately rejected.

Judge King followed the Fifth Circuit's reasoning and held that the applicable federal regulation does not mandate a particular viewing standard. The court also rejected state statutory and negligence claims and granted summary judgment for the group of theatre defendants. Oregon Paralyzed Veterans of America v. Regal Cinemas, CV 00-485-KI (Opinion, May 1, 2001).

Plaintiff's Counsel:

Robert Pike, Kathleen Wilde,  
David Gray

Defense Counsel:

Karen O'Casey (Local)

## Environment

Seven environmental groups filed an action against the U.S. Forest Service (USFS) claiming that aerial pesticide spraying to control the Douglas Fir Tussock Moth violated NEPA and the Clean Water Act (CWA). Plaintiffs claimed the spraying constituted a discharge from a point source into waterways, which is illegal under the CWA in absence of a permit. It was undisputed that the USFS did not have a permit. Plaintiffs also claimed the environmental impact statement (EIS) violated NEPA by failing to adequately consider impacts on other wildlife, potential human health effects, cumulative effects, the beneficial role of the tussock moth's natural enemy, and site-specific impacts.

On summary judgment, Judge Redden held that aerial spraying did not violate the CWA because pest control is a "silvicultural activity" under EPA regulations and, as such, is exempted from the CWA's definition of point source. Further, no cases have held that the silviculture regulation is unenforceable or inconsistent with the plain meaning of the CWA's definition of point source.

Judge Redden also dismissed plaintiffs' NEPA claims regarding the inadequacy of the EIS, noting that the court's review under NEPA

is very limited and deferential to the agency's expertise. The administrative record and EIS are extensive and contain discussions of virtually all issues plaintiffs raised. Judge Redden held that NEPA requires the USFS to justify its decisional process, not its substantive decisions, and that plaintiffs had failed to show that the EIS failed to contain a reasonably thorough discussion of the substantial issues raised by the project. League of Wilderness Defenders v. Forsgren, CV 00-1383-RE (Opinion, May 7, 2001).

Plaintiffs' Counsel: Marianne Dugan; Lauren C. Regan  
Defense Counsel: Tom Lee

## Jurisdiction

Judge Robert E. Jones denied a motion to dismiss for lack of personal jurisdiction by a former national account manager for the plaintiff. All sales were processed in Portland, all commissions were paid from Oregon and defendant made 8-9 trips to Oregon over the course of the parties 9 year contractual relationship. Shedrain Corp. v. Bonvi Sales Corp., CV 00-1586-JO (Opinion, Feb., 2001).

Plaintiff's Counsel:

Steven Wilkes

Defense Counsel:

Judy Danelle Snyder