

# COURTHOUSE NEWS

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

Judge King held a court trial in a case alleging claims of unfair competition, breach of the fiduciary duty of loyalty, violation of the Trade Secrets Act, and intentional interference with contract and with present and future economic relations. The terminal manager of a Eugene branch of a trucking company was hired by a competitor who wanted to open a terminal in Eugene. Rather than immediately quitting without notice, the manager gave two weeks notice and continued to work for Eagle Systems. By her first day on the new job, which immediately followed her last day at Eagle Systems, all employees, all owner-operator drivers, and the four largest accounts had switched to the new company after discussions with the manager and the owner of the new company. These discussions occurred while the manager was still working for Eagle Systems. Eagle Systems business dropped to zero within a single month. The court found for Eagle Systems on all claims and awarded \$28,794 in

compensatory damages and \$5,000 in punitive damages. Eagle Systems, Inc. v. Black, CV00-669-KI, (Findings and Conclusions, May 9, 2001).  
Plaintiff's Counsel: Ed Harnden  
Defense Counsel:  
Andrew Ostitis

## Civil Rights

Judge Ann Aiken granted a defense motion to dismiss excessive force and malicious prosecution claims filed under 42 U.S.C. § 1983 because the claims were untimely under Oregon's 2-year statute of limitations. The court noted that the plaintiff was 17 years old when the claims accrued which tolled the limitations period until the plaintiff turned 18. However, the federal action was not filed until more than 2 years after the plaintiff turned 18. Rollins v. City of Albany, et al., CV 00-1427-AA (Opinion, April, 2001).  
Plaintiff's Counsel:  
Greg Veralrud  
Defense Counsel: James Martin;  
Robert S. Wagner

## Procedure

Judge Anna J. Brown granted a pro se plaintiff's request to submit handwritten pleadings; however, she denied his motion for relief from a prior judgment against certain defendants and denied his motion to reconsider a prior opinion. The court held that plaintiff could not rely upon the fraud exception to the relief from judgment rules under Fed. R. Civ. P. 60(b) since he had a full opportunity to litigate his fraud claims in a prior state action. Judge Brown also rejected plaintiff's request for an oral hearing, noting that he had no right to one and she refused to consider allegations in the complaint raised on behalf of unrepresented corporate entities. Bogart v. Daley, CV 00-101-BR (Opinion, July 6, 2001).

## Personal Jurisdiction

A Portland company entered into an exclusive distribution agreement with a Texas company. A dispute arose regarding

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performance under the contract and plaintiff filed an action in Oregon several days before defendant filed a parallel action in Texas. Judge Garr M. King denied a defense motion to dismiss the action for lack of personal jurisdiction. Noting that a single contract was insufficient to create personal jurisdiction, the court found that the parties' contracts created an ongoing relationship and series of obligations that made the exercise of personal jurisdiction reasonable. Dr. Martens Airwair USA, LLC, Civ. No. 00-481-KI (Opinion, July 3, 2001).

Plaintiff's Counsel:

Stephen English

Defense Counsel:

Rodney Lewis, Jr.

## Civil Rights

Judge Hogan granted in part defendants' motion to dismiss, and granted plaintiff's motion to dismiss without prejudice. Liberally construed, the complaint attempted to state causes of action for criminal racketeering or conspiracy, and violations of 42 U.S.C. §§ 1983, 1985, and the Uniform Commercial Code. The court noted that a basis for subject matter jurisdiction was not apparent on the face of the complaint, and the complaint failed to state a claim under sections

1983 and 1985, or the Uniform Commercial Code. The court dismissed the action without prejudice to allow the pro se plaintiff to attempt to cure the deficiencies. Ault v. Rooney, 01-3001-HO (Opinion, June 5, 2001).

## Employment

Judge Robert E. Jones granted a defense motion for summary judgment against a claim that plaintiff's former employer interfered with his rights under the Family Medical Leave Act (FMLA). The court found that even if plaintiff could establish that the interference had occurred, there was no relief available because plaintiff never took leave without pay and did not suffer any out of pocket expenses associated with a family-based medical leave. Price v. Multnomah County, CV 99-1593-JO (Opinion, June 8, 2001).

Plaintiff: Pro Se

Defense Counsel: Agnes Sowle

## Insurance

An insurance company filed a declaratory judgment action to determine the meaning of an omnibus clause. The insured lent a car covered by defendant's policy to her son for several weeks. The insured claimed that she expressly told her son that only he could drive

the vehicle. The son loaned the car to his girlfriend and she was in an accident in which another person was injured. In a separate state action, a judgment was entered against the girlfriend and the insurer asked that the court declare that it had no duty to defend or pay the judgment.

Judge Janice Stewart held that the loan of the car to the girlfriend was beyond the scope of the insured's express permission. The court then considered whether there was implied permission; the plaintiff produced evidence that others believed that the son owned the car, that the son had loaned the car to others in the past and that the girlfriend thought she had the owner's permission to use the car. The court admitted this evidence over the defendant's objection, but held that it was largely irrelevant because it did not address the insured's intent. The court held that there was no coverage and granted the insurer's motion for summary judgment. Allstate Insurance Co. v. Lupoli, CV 99-1531-ST (Findings & Recommendation, Adopted by Judge Garr M. King by Order of July 1, 2001).

Plaintiff's Counsel:

Thomas Brown

Defense Counsel:

Jeffrey Long