

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

Judge Dennis J. Hubel held that federal and state 2-year statutes of limitation would bar recovery of any claimed damages stemming from a defendant's discriminatory housing practices. The plaintiffs, a single mother and her two minor children, filed an action against a rental property owner alleging that over a four-year period, they attempted to rent an apartment and were repeatedly turned away, despite advertised vacancies, because the owner did not want "noisy" children present. The plaintiffs attempted to argue that actions that occurred beyond the limitations period should nevertheless be considered under a continuing violation theory. Judge Hubel recognized the general applicability of the theory to federal housing discrimination act claims, but declined to apply it given evidence that the plaintiffs clearly had notice of the alleged discrimination prior to the commencement of the limitations period. The mother had in fact

filed an administrative complaint of discrimination prior to the 2-year period. The court assumed that Oregon would utilize a similar analysis and thus, similarly limited the claims under the Oregon fair housing statute. The court noted that the prior allegedly discriminatory actions might nevertheless be admissible background evidence at trial.

The court also held that the same time bar that applied to the mother should be imputed to the children as to the federal claims. As to the state claims, the court upheld the limitations bar as to some claims and applied a 5-year tolling provision as to others. Judge Hubel also granted summary judgment against a negligence claim as to two of the plaintiffs, finding that their claims of emotional injury were not cognizable. The court denied summary judgment on the issue of proximate causation, finding the evidence raised a jury question. Sherwood v. Finch, CV 00-349-HU (Dec., 2000).

Plaintiff's Counsel:

Dennis Steinman

Defense Counsel:

Steven Kraemer

Criminal Law

Judge Ann Aiken held that consensual encounters do not trigger Fourth Amendment considerations as there is no "seizure." The court applied a recent holding from the Ninth Circuit in United States v. Cormier, 220 F.3d 1103 (2000) in finding that a casual encounter and questioning about drug activity were permissible investigatory actions. The court also found that the consent of a home owner was voluntary and that a search of a bedroom located near the bedroom of the person giving consent was within the scope of consent given in light of evidence that the owner had free access to that room. United States v. Vasquez-Ortega, CR 00-3044-AA (Opinion, Dec. 2000).
AUSA: Douglas Fong
Defense Counsel: Peter Carini

Product Liability

Judge Janice Stewart granted a defense motion for summary judgment against a plaintiff's

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punitive damage claim. The plaintiff filed the action alleging that he was injured due to the defective design of a ladder and inadequate warnings. Defendant sought summary judgment against punitive damages on grounds that plaintiff could not meet the standards set forth in O.R.S. 18.537 and 30.925. Defendant claimed there was no evidence that it knew or should have known of the alleged defect.

Plaintiff proffered evidence of three prior product liability actions filed against the defendant based upon claims of a defective rung lock. Judge Stewart noted that two of the cases, filed years after the design, manufacture and sale of the ladder at issue were nevertheless admissible as evidence of a continuous course of deliberate indifference to a known danger. However, one of the cases ended in a defense verdict, with the jury rejecting any claim that the rung locks were defective. No evidence regarding the outcome of the other two cases was proffered. Judge Stewart held that this evidence of the prior legal actions, coupled with evidence that the independent labs had approved the defendant's design established that defendant neither knew nor should have known of the claimed defect. The court concluded that summary

judgment against the punitive damage claim was appropriate because no reasonable jury could find clear and convincing evidence that he defendant acted with the requisite reckless and outrageous indifference to a highly unreasonable risk of harm necessary under O.R.S. 18.537.

The court denied the defendant's motion for summary judgment against the claim in its entirety. The defendant had argued that the design could not be found to be defective because it had been approved by two independent testing groups. Judge Stewart found that plaintiff's expert testimony created a jury question on liability for a defective design. Cole v. Builders Square, et al., CV 99-729-ST (Findings and Recommendation, Nov. 8, 2000; Adopted by Order of Judge Owen M. Panner, Jan. 8, 2001).

Plaintiff's Counsel:

Ken Bourne; Michael Bloom
Defense Counsel:

John Holmes; Richard Kuhn

Intellectual Property

Judge Robert E. Jones issued findings of fact and conclusions of law in a case involving claims of trademark infringement, dilution and cybersquatting. Plaintiff owns the internet domain name "epix.com"

and uses the website to display pictures from the Clinton Theatre's Rocky Horror Picture Show Cabaret. Plaintiff also used the site incidentally to promote his services in video image processing and hardware and software design. The court applied the Sleekcraft factors and found that plaintiff's primary use of the site did not infringe defendant's registered trademark for the EPIX name. However, the court found that plaintiff's incidental use of the site to promote his services did infringe. The court found plaintiff selected its mark in good faith and held that initial confusion due to the similarity of the names was not actionable absent evidence of bad faith. To remedy the limited confusion caused by plaintiff's website, the court held that plaintiff could not use its grey wallpaper or the Epix logo without a disclaimer and it had to omit promotion of its technical services. The court denied defendant's counterclaim for dilution absent evidence of an association between defendant's trademark and its products and denied a counterclaim for cybersquatting. Interstellar Starship Services v. EPIX, Inc., CV 97-107-JO (Opinion, January, 2001).
Plaintiff's Counsel:
Mike Ratoza
Defense Counsel: Peter Heuser