

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
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## Attorney Fees

Plaintiff filed an action against a former employee asserting claims for breach of the duty of loyalty and confidentiality, intentional interference with contractual relations and violations of Oregon's Uniform Trade Secrets Act (UTSA), O.R.S. 646.476. The allegations arose out of a separate legal action filed by the plaintiff against Goodyear. Goodyear had contacted the defendant and obtained an affidavit from him that was submitted in support of a summary judgment motion. Defendant was not deposed. Goodyear's motion was granted and the decision was ultimately affirmed on appeal.

Plaintiff alleged that the defendant disclosed confidential information to Goodyear. However, after the summary judgment ruling was affirmed in Goodyear's favor, plaintiff sought to dismiss all claims against its former employee. Judge Garr King granted the motion to dismiss, but allowed defendant's cross-motion for attorney fees under the UTSA to proceed.

Judge King noted that attorney fees under the UTSA could be awarded to a "prevailing party" only in exceptional circumstances and only to deter "specious claims of misappropriation." The court then examined the plaintiff's UTSA claims and found that plaintiff failed to identify any trade secret actually disclosed by the defendant to Goodyear. Judge King found that the defendant was a prevailing party under the UTSA and that the plaintiff had no objectively reasonable basis to assert a UTSA claim. The court held that the defendant had met the burden of demonstrating plaintiff's bad faith and that the circumstances met the "exceptional" case requirement. Thus, defendant was awarded approximately \$20,000 in attorney fees. Telephone Management Corp. v. Gillette, CV 99-1338-KI (Opinion, Feb. 20, 2001).  
Plaintiff's Counsel: Gary Roberts  
Defense Counsel: Jeffrey Edelson

## Social Security

Judge Robert E. Jones remanded a social security claim, finding that the ALJ's decision

regarding two jobs that plaintiff could perform was either inconsistent with the record or insufficiently explained. Plaintiff claimed she suffered a chemical sensitivity to computers and "new" workplace environments; the ALJ accepted this testimony in part and rejected it in part, but failed to explain. The court rejected plaintiff's assertion that the action should be remanded with directions to award benefits based upon a treating physician's determination that plaintiff was "totally disabled." The court held that the doctor's opinion was conclusory and that the ALJ properly rejected it. White v. Apfel, CV 00-425-JO (Opinion, Jan., 2001).

Plaintiff's Counsel:

Tim Wilborn

Defense Counsel:

William Youngman

## Contracts

A securities firm filed an action against its insurer for failing to cover losses sustained as a result of altered and forged checks. Judge Dennis J. Hubel held that as

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to all but one check, there was no question that the losses plaintiff sustained were the result of alterations or forgeries. As to one check, factual issues existed as to whether or not a signature was actually forged. Judge Hubel granted a motion to strike certain of plaintiff's evidence which was not premised upon a declarant's personal knowledge.

The court granted plaintiff's motion for summary judgment in part, rejecting a defense argument that the losses fell within an exclusion for checks not "finally paid." Judge Hubel found that the checks were finally paid within the meaning of Oregon statutes and thus, the exclusion was inapplicable.

Judge Hubel also rejected a defense argument that coverage could be denied based upon the actions of the plaintiff's bank. The court found that the bank did not act improperly in debiting plaintiff's account because plaintiff breached its warranty when it transferred the altered and forged checks to the bank. Thus, the bank was not an intervening or superseding cause of the plaintiff's loss. The court also rejected several affirmative defenses based upon timeliness. Bidwell & Co. v. National Union Fire Ins. Co., CV 00-89-HU (Opinion, Jan. 18, 2001).  
Plaintiff's Counsel: Bruce Cahn

Defense: Jan Kitchel

## Maritime

Judge Janice Stewart held that U.S. maritime law should not apply to claims filed by the personal representative of a ship captain who was seriously injured on board a ship. The captain's employment contract included a Cyprus forum selection clause and, applying the factors set forth in Lauritzen v. Larsen, 345 U.S. 571 (1953), the court held that dismissal on grounds of *forum non conveniens* was appropriate. However, the court conditioned dismissal upon several factors, including: defendant's waiver of any statute of limitations defenses in the foreign forum, defendant's agreement to submit to personal jurisdiction in the foreign forum and defendant's acceptance of depositions obtained in the United States in lieu of live testimony. Ioannidis/Rega v. M/V SEA CONCERT, CV 00-693-ST (Findings and Recommendation, Oct. 12, 2000; Adopted by Order of Judge Owen M. Panner, Jan. 18, 2001).

Plaintiff's Counsel:

Michael Haglund

Defense Counsel:

C. Kent Roberts

## Discovery

The plaintiff in a patent infringement action pending in a

federal court in Massachusetts filed an action to compel a third party to comply with a subpoena. At issue was whether the plaintiff effected proper service under Fed. R. Civ. P. 4(h) by serving a "general agent" of the party to be deposed (a Japanese corporation).

Judge Anna J. Brown held that the company served was a general agent since it served as the exclusive U.S. representative for the subpoenaed party's products and because total U.S. sales comprised 20-25% of the subpoenaed party's overall sales. The court noted that but for the agent's activities, the subpoenaed party would have to perform the same functions itself, thus establishing general agency for purposes of service. The court also rejected personal jurisdiction arguments, finding that the subpoenaed party's presence in the state could be established through its general agent. Judge Brown held that the Hague convention was inapplicable and denied claims that documents located in Japan were not covered by Fed. R. Civ. P. 45. Soitec v. Silicon Genesis Corp., CV 00-59-MISC (Opinion, Jan. 22, 2001).

Plaintiff's Counsel:

Stuart Brown

Third Party Counsel:

John McGrory, Jr.