

THE MARK O. HATFIELD
COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Judge Shopping

Parties to a dispute arising out of a Federal District Court in Chicago involving claims of trespass and landowner rights sought approval of a settlement. Several intervenors slowed the process by seeking a transfer through application with the Judicial Panel on Multi-district litigation. The federal judge in Chicago referred the matter to a special master for further review. The settling parties then filed a separate federal action in Oregon seeking approval of their proposed settlement. Intervenors asked Judge Ann Aiken to dismiss the action for improper judge shopping.

Judge Aiken applied a five-factor test adopted by the Ninth Circuit and found that every factor pointed to impermissible judge shopping warranting dismissal. The court held that the fact that the settling parties were unhappy because the Chicago judge refused to rush the approval process would “not be sanctioned.” Zografos v. Qwest Communications, CV 00-6201-AA ((Opinion, July, 2002).

Plaintiffs’ Counsel: Dan Clark
Intervenors’ Counsel:
Joel DeVore
Defense Counsel:
John Nusbaum (Local)

Injunctions

Judge Malcolm F. Marsh granted a motion for a preliminary injunction in an action filed by a sportswear distributor against an athlete. The plaintiff claimed that the athlete was under a 2-year exclusive endorsement contract with it pursuant to a Right of First Refusal clause in an earlier contract. The athlete argued that the parties never agreed upon terms because, although plaintiff agreed to match all written terms of a third party offer, plaintiff never matched oral terms of that offer.

After an evidentiary hearing, the court found that plaintiff demonstrated a high likelihood of success on the merits of its claims for breach of contract since the third parties’ oral terms were too vague to be matched. The court noted that there was little evidence of irreparable harm given the large number other

athletes plaintiff has under endorsement contracts, but found some threatened harm to plaintiff’s good will sufficient to merit the relief sought. Nike v. Culpepper, CV 02-868-JE (Opinion, July 24, 2002).

Plaintiff’s Counsel:
Jon P. Stride
Defense Counsel:
William A. Drew (Local)

Employment

Following a bench trial, Judge Anna J. Brown entered a judgment in favor of plaintiffs who established claims under federal and state Equal Pay Acts. The court rejected, in part, a defense that the pay disparities could be explained based solely upon merit. The court noted that the defendant failed to establish its affirmative defense of merit based pay disparity given the lack of objective criteria governing performance reviews and the employer’s failure to specify performance standards in any written handbooks, policies or guidelines. The court also rejected the defense assertion that training opportunities rather than

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discrimination were the gateway to advancement because the defendant had no system in place to assure equal access to training opportunities.

Judge Brown held that defendant did establish specific merit based defenses as to certain elements of individual plaintiff's claims, but deferred ruling on damages and separate claims for retaliation.

Defendant also moved to dismiss the action as a sanction where one of the plaintiffs allegedly attempted to urge co-workers to testify falsely on her behalf with an offer that she would "make it worth while." Judge Brown conducted a separate evidentiary hearing on these allegations and determined that while there was evidence that plaintiff made some ill-advised angry and frustrated comments in the work place, there was no evidence of wilfulness, fraud or bad faith behavior sufficient to justify the sanction of dismissal. Jenson v. PCC Structural, Inc., CV 01-162-BR (July 22, 2002).

Plaintiffs' Counsel:

Donald B. Potter;

Bart A. Brush

Defense Counsel:

Courtney W. Wiswall

7 Judge Anna J. Brown denied a motion to dismiss filed by the State

of Oregon in an action asserting Equal Pay Act claims against the state. The court adopted the analysis of six other federal Circuit Courts of Appeals in holding that Congress properly abrogated states' 11th Amendment sovereign immunity under section 5 of the 14th Amendment. Kusjanovic v. Oregon, CV 02-472-BR (Opinion, June 23, 2002).

Plaintiff's Counsel:

Judy Snyder, Dana L. Sullivan

Defense Counsel:

Patricia B. Urquhart

7 A City Council's adoption of an employee handbook designating city police officers as "at will" employees did not conflict with an earlier ordinance directing the City Council to establish equitable and uniform personnel procedures to provide a reasonable degree of job security. Judge Janice M. Stewart rejected a motion for partial summary judgment by a former police officer pursuing wrongful termination claims against the City that the handbook was invalid and unenforceable. DeFrancesco v. City of Mt. Angel, CV 00-480-ST (F & R, May 10, 2002; Adopted June 20, 2002).

Plaintiff's Counsel:

William Stark

Defense Counsel:

Robert Franz

7 A former employee filed an action for breach of contract, misrepresentation, and related state law claims arising out of his abrupt termination following a move from France. Judge Janice M. Stewart granted a defense motion for summary judgment finding that plaintiff's execution of a written contract specifying that his employment was "at-will" precluded any claim for breach of an alleged oral promise that his tenure would be for at least 2-3 years. The court also rejected plaintiff's claims of misrepresentation premised upon alleged promises regarding job stability and duration. Plaintiff's claim for negligent misrepresentation was rejected due to the absence of a special relationship between the parties at the time the alleged misrepresentations were made. Objections to an intentional infliction of emotional distress claim were sustained for lack of proof of intent to cause harm. Arboireau v. adidas-Salomon AG, CV 01-105-ST (March 19, 2002).

Plaintiff's Counsel:

George L. Kirklin

Defense Counsel:

Caroline R. Guest