

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 former employee filed an action against his previous employer and supervisor alleging various state common law claims arising out of his termination. Judge Dennis J. Hubel granted a defense motion to abate and refer the action to arbitration based upon an arbitration clause included in an employment contract signed at the inception of plaintiff's employment. The court rejected plaintiff's arguments that the clause should not be enforced as a contract of adhesion. Judge Hubel contrasted this case to an earlier decision of Judge Jelderks' refusing to enforce an employment arbitration decision. Judge Hubel noted that Judge Jelderks' case was distinguishable for several reasons, including the fact that the plaintiff in that case was compelled to sign the arbitration provision after she complained of sex harassment. Further, Judge Jelderks found numerous "one-sided" provisions that were not present in the case before Judge Hubel.

Judge Hubel also held that the claims against the former supervisor were subject to arbitration and that

any factual disputes as to whether the supervisor was actually acting within the course and scope of employment were best resolved by the arbitrator. Moore v. McDonald Investments, Inc., CV 02-814-HU (Opinion, Dec. 3, 2002).

Plaintiff's Counsel:

Roger Hennagin

Defense Counsel:

Andrew R. Gala

Torts

A Tribal clinic employee, who was driving a GSA vehicle from a training session back to his hotel when he was involved in an auto accident with the plaintiff, was acting within the course and scope of his employment for purposes of the Federal Tort Claims Act (FTCA). Judge Anna J. Brown granted the U.S.' motion to substitute as a party upon receipt of certification from the government. The court noted that such a certification regarding the employee's status at the time of the accident is presumed accurate. Judge Brown rejected plaintiff's arguments to the contrary, noting that the federal

employee was required to attend the training by his employer. The action was dismissed for lack of subject matter jurisdiction for failure to exhaust all FTCA administrative remedies. State Farm Mutual Automobile Ins. Co. v. Swan, CV 02-521-BR (Opinion, Aug. 22, 2002).

Plaintiff's Counsel:

George Shumsky

Defense Counsel:

Timothy Simmons

Sanctions

An attorney who filed a certification pursuant to Local Rule 7.1 that he had conferred with opposing counsel prior to filing a summary judgment motion was given a public reprimand and directed to study the local rules and submit a written confirmation to the court attesting that he had in fact studied the rules. Judge Anna J. Brown found that the certification was frivolous and that the attorney violated Rule 11 because no pre-filing discussions with other counsel had ever taken place. The court noted that the attorney's position had shifted throughout the proceedings; at one

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point he claimed not to have known of the rule and later he claimed that he knew of the rule, but felt that it could be satisfied by pre-litigation conferences. Judge Brown held that the attorney's interpretation of Local Rule 7.1 was unreasonable. Altamont Summit Apts., LLC v. Wolff Properties, LLC, CV 01-1260-BR (Opinion Aug. 21, 2002).

Plaintiff's Counsel:

Richard S. Yugler

Defense Counsel:

Richard T. Stone

3rd Party Defense Counsel:

Joel Wilson

RICO

Following an amended complaint and a renewed motion to dismiss, Judge Anna J. Brown dismissed RICO claims with prejudice. The court held that 7 months of alleged racketeering activity (in the form of false and misleading statements regarding construction deals and leases) did not constitute a "substantial period of time" to satisfy the close-ended continuity requirement. The court also found no open-ended continuity because there was no threat of continuing racketeering activity where the party responsible admits the fraud and discloses the truth.

Judge Brown also found an insufficient pattern alleged to sustain

an ORICO claim, noting that the pattern requirement could not be satisfied by a single transaction with multiple predicates. In reaching this conclusion, Judge Brown expressly adopted Judge Robert E. Jones' reasoning from Newman v. Comprehensive Care Corp., 794 F. Supp. 1513 (1992). Judge Brown noted that no attorney fees were available to a defendant under RICO; however, she denied the defense request for fees under ORICO with leave to re-raise upon entry of final judgment. Altamont Summit Apts., LLC v. Wolff Properties, LLC, CV 01-1260-BR (Opinion Aug. 21, 2002).

Plaintiff's Counsel:

Richard S. Yugler

Defense Counsel:

Richard T. Stone

3rd Party Defense Counsel:

Joel Wilson

Arbitration

Defendant corporation hired the plaintiff as a sales representative on an independent contractor basis. At the corporation's urging, the plaintiff formed a company to do business with the defendant. The contract between the parties was executed between the defendant corporation and plaintiff's company. Judge Anna J. Brown

held that the plaintiff was not individually bound by the arbitration agreement which he executed on behalf of his company and, thus, he could maintain an individual claim for retaliatory discharge. A defense motion to dismiss and compel arbitration was denied. Clausen v. Watlow Electric Mnf. Co., CV 02-1146-BR (Opinion, Nov. 26, 2002).

Plaintiff's Counsel:

Daniel Keppler

Defense Counsel:

Caroline Guest