

# 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

Plaintiff is a lactation consultant who worked under the supervision of obstetricians at the Women's Clinic. Plaintiff also consulted with new mothers at one of the Legacy hospitals where the obstetricians practiced. Cooperation between plaintiff and the lactation consultants who were Legacy employees deteriorated, polarizing the staff of the birth unit. Eventually, plaintiff's supervising physician withdrew his supervision and shortly thereafter, Legacy banned plaintiff from practicing at any of its facilities. Plaintiff contends that defendants did this to decrease the competition with the Legacy lactation consultants. She alleged various claims, including ones for antitrust violations, defamation, intentional infliction of emotional distress, and Uniform Trade Practices Act violations. Judge King recently granted summary judgment against all claims except for the intentional interference with economic and prospective economic relations. Volm v. Legacy Health System, Inc., CV00-1168-KI (Opinion,

#100, March 8, 2002).

Attorneys for plaintiff: Shelley Russell, Craig Crispin

Attorneys for defendants: Robert Newell, John McGrory, Patricia McGuire

## Employment

A female supervisor was accused of constantly making derogatory remarks about a lesbian employee's sex life, and then terminating the employee for being lesbian and for complaining about the harassment. The employer moved for summary judgment, arguing that Title VII was inapplicable because the alleged discrimination was on the basis of sexual orientation. Judge Jelderks disagreed, ruling that Title VII protects heterosexual and homosexual employees alike. If the supervisor would not have harassed and terminated a male employee for having a relationship with a woman, then the Plaintiff was treated less favorably "because of" her gender.

Judge Jelderks also rejected a challenge to the Portland City

Ordinance that bars discrimination because of sexual orientation, and ruled that non-economic and punitive damages are permissible remedies for violations of that Ordinance. Finally, the court confirmed that ORS 659.030 prohibits discrimination on the basis of an employee's sexual orientation. Heller v. Columbia Edgewater Country Club, CV 01-316-JE

(F&R, January 3, 2002; adopted by Judge Jones on March 5, 2002).

Plaintiff's Counsel:

Craig Crispin, Shelley Russell  
Defense Counsel:

Doug Andres, John Kreutzer

## Civil Rights

A plaintiff with a history of mental disorders was arrested after refusing to submit to a show of authority by local police. The police followed plaintiff into his residence and then pepper sprayed him to subdue him. Plaintiff denied any intent to resist arrest.

Judge Ann Aiken found that genuine factual issues precluded

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defendants' qualified immunity defense. The court rejected defendants' claim that they were entitled to enter plaintiff's residence under the exigent circumstance or "hot pursuit" exception to the warrant requirement. The court also held that the emergency aid doctrine was inapplicable as a matter of law.

Defendants' liability for any damage plaintiff suffered as a result of the arrest was not cut-off by the emergency room doctor's referral since that referral was premised largely upon police reports. However, once the State's Psychiatric Review Board determined that plaintiff should be held, defendant's liability for damages were halted due to that intervening event. Defendants' motion for summary judgment was denied in part and granted in part as follows: summary judgment was denied as to the hot pursuit doctrine, plaintiff's danger to himself, the emergency aid doctrine, resisting arrest, liability for plaintiff's continued seizure after plaintiff's transfer from the hospital emergency room, excessive force, and the City of Lake Oswego's corresponding liability on these claims as well as the City's state law defenses; summary judgment was granted, however, regarding the

defendants' and City of Lake Oswego's liability for claims arising after the October 5, 1998 PSRB hearing date. Lousky v. City of Lake Oswego, CV 99-1130-AA (Opinion, March 2, 2002).

Plaintiff's Counsel:

James Mitchell,  
Spencer Neal

Defense Counsel:

Steven Kraemer

## Product Liability - Jurisdiction

Plaintiffs filed a product liability action against drug manufacturers and a pharmaceutical sales representative. Defendants removed the action based upon diversity and plaintiff moved for remand because the sales representative is also an Oregon resident and thus, complete diversity is lacking. Defendants opposed remand asserting that the sales representative was fraudulently joined.

Judge Anna J. Brown examined each of the claims asserted against the sales rep and determined that none could be sustained as a matter of law. The rep was not strictly liable because he was not a "seller" under the Oregon statute. Professional negligence was not a viable claim

because the rep had no independent duty to investigate drug effects and because the rep had no independent duty to warn physicians of unknown effects. Plaintiffs' fraud claim also failed as against the rep because there was no evidence that the doctor actually relied upon information from the rep; the doctor relied upon information from the manufacturers and from his own independent research and investigation.

The court held that since there were no viable claims against the non-diverse party, those claims against him should be dismissed with prejudice and the court could then retain diversity jurisdiction. DaCosta v. Novartis AG, CV 01-800-BR (Opinion, March 1, 2002).

Plaintiffs' Counsel:

Michael L. Williams

Defense Counsel:

Mark Wagner (Local)  
Paul Fortino