

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
Vol. VIII, No. 9, June 9, 2002

Announcement

Amended Local Rules of Practice have been adopted by the court and will become effective on June 1, 2002. Of note is new Local Rule 100 which addresses CM/ECF procedures in the district.

A compiled set of Local Civil, Admiralty and Bankruptcy Rules, and Forms in PDF format may be viewed and downloaded from our web site at www.ord.uscourts.gov.

Paper copies of the compiled set of rules may be purchased at our Intake Counters for \$5.00. There will be no charge for paper copies of the Amendments only.

Update & Correction

Last issue's report of a decision from Judge Jones in Hall Street Associates, L.L.C. v. Mattel, Inc., CV 00-355-JO erroneously listed the date of the decision as May, 2002. The correct date was May, 2001.

On April 29, 2002, Judge Jones issued a new decision based upon the plaintiff's objections to

the Arbitrator's December 2001 decision generally favoring the defendant's position.

The underlying dispute relates to a tenant's obligations under a lease agreement for environmental cleanup and third party litigation costs. Plaintiff owns the property and defendant is a successor in interest to the tenant. An arbitrator determined that the tenant was not obligated to indemnify the land owner for cleanup costs or for the costs incurred relative to third party legal action; the arbitrator also awarded the tenants fees and costs of approximately \$450,000.

Judge Jones noted the substantial deference typically accorded arbitration awards. The court determined that certain procedural provisions within the arbitration agreement were ambiguous and thus, the court would have to consult extrinsic evidence to determine the parties' intent.

On the merits, the issue was whether the tenant complied with environmental laws during the term of the lease. The arbitrator concluded that the tenant was in

compliance; Judge Jones disagreed, finding that the tenant violated applicable environmental laws when it failed to test the water for contaminants. Jones concluded that the Oregon Drinking Water Quality Act is an applicable environmental law within the meaning of the lease. Factual issues remained as to whether there were any losses sustained as a result of the tenant's violations and the court remanded the case to arbitration for further findings; the arbitrator's fee award was vacated.

Plaintiff's Counsel:

James M. Finn,

Michael A. Cohen

Defense Counsel:

Marc D. Blackman (Local)

Taxes

Winners of the 1991 Oregon Lottery received annual distributions for five years and then assigned their rights to future payments for a lump sum. The taxpayers filed a return treating the lump sum payment as ordinary income and paid the tax; thereafter, they sought to file an amended return treating the lump

2 The Courthouse News

sum payment as long term capital gains. The IRS agreed and issued a refund. The government challenged this decision and sought to recoup the refund.

On cross-motions for summary judgment the parties agreed that the single, legal, issue for the court was whether the lump sum payment received six years following the award constituted ordinary income or long term capital gains. Judge Garr M. King noted that the case presented an issue of first impression. The court granted the government's motion for summary judgment holding that the payment was most analogous to gambling winnings. Judge King reasoned that, had the taxpayers chosen the lump sum option at the outset, the payment clearly would have constituted ordinary income. The court found that the later assignment should not alter the essential character of the payment. United States v. Maginnis, CV 01-368-KI (Opinion, May 28, 2002).

Plaintiff's Counsel:

Michael W. Mosman (Local)

Defense Counsel:

David G. Hosenpud (Local)

Insurance

The spouse of a mountain climber who perished from high altitude edema suffered during a climb filed an action challenging

her insurer's failure to pay an additional \$100,000 on a life insurance claim for "accidental injury."

Judge Anna J. Brown noted that no Oregon cases offer direct guidance as to the meaning of "accidental injury" as applied to a situation in which the decedent voluntarily engaged in a recreational activity that directly resulted in his death without any intervening causes. The court concluded that the appropriate test was whether the death was unforeseeable and inadvertent. While unexpected, the insured failed to produce any evidence that the death was an unforeseeable consequence given the well known risks associated with mountain climbing activity. Because no reasonable jury could find that the death was unforeseeable, the court granted the insurance company's motion for summary judgment. Chale v. Allstate Life Ins Co., CV 01-1622-BR (Opinion, May 31, 2002).

Plaintiff's Counsel:

Jeffrey S. Mutnick

Defense Counsel:

Douglas G. Houser

Bankruptcy

The petitioner in a Chapter 11 bankruptcy filed an adversary proceeding against the defendant

seeking to recover fees owed under permits issued by an Alaskan Railroad company. The bankruptcy judge recommended that the district court withdraw reference, which the district court accepted. Thereafter, defendant moved to dismiss for lack of subject matter jurisdiction based upon Eleventh Amendment immunity. The bankruptcy court denied the motion and defendant appealed. Plaintiff then moved to dismiss the appeal as a non-final, interlocutory order.

Judge Anna J. Brown denied plaintiff's motion to dismiss, ruling that the bankruptcy court's jurisdictional decision was an immediately appealable collateral order. WCI Cable, Inc. v. Alaskan Railroad Corp., CV 02-179-BR (Opinion, June, 2002).
Plaintiff's Counsel:

Fred Granum (Local)

Defense Counsel:

Lee Nusich (Local)

E-Mail Addresses

Missing your newsletter? Please check to ensure that you have updated your address. Old addresses that generate error messages have been deleted; your current address must be registered to continue service. Contact: kelly.zusman@ord.uscourts.gov