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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FMLA/Workers' Compensation

On December 15, 2004, Judge Haggerty denied defendant's motion for summary judgment and granted plaintiff's cross-motion for partial summary judgment. Plaintiff alleged that defendant, her former employer, discriminated and retaliated against her for invoking the workers' compensation system, opposing unlawful employment practices, and interfering with her right to leave under FMLA. The court found that material questions of fact existed regarding plaintiff's discrimination and retaliation claims, but found as a matter of law that plaintiff's injuries from a car accident and her subsequent physical therapy appointments qualified as a "serious medical condition" under FMLA and that she was therefore entitled to FMLA leave. The court further found that questions of fact remained as to whether defendant interfered with plaintiff's FMLA rights by failing to characterize the leave she took after the accident and for her appointments as protected FMLA leave.

Thompson v. New Tech Electric
CV 03-1634-HA
(Opinion, Dec. 15, 2004)
Plaintiff's Counsel: Dana Sullivan
Defense Counsel: David Hosenpud

Patent & Attorney Fees

Nike brought a preemptive action seeking a declaratory judgment *inter alia* that Nike did not infringe on a shoe patent owned by Dixon and that Dixon was not entitled to trade-secret protection for his shoe design because he took no steps to protect the secrecy of the design. Dixon, in turn, counterclaimed inter alia for fraud and misappropriation of trade secrets. Following motions for summary judgment, the Court resolved all claims and counterclaims in favor of Nike and entered a Final Judgment in favor of Nike.

Nike then moved for an award of attorneys' fees pursuant to 28 U.S.C. § 1927 on the ground that Dixon's attorneys unreasonably and vexatiously multiplied the proceedings. The Court denied Nike's motion. The Court held that sanctions awarded pursuant to § 1927 must be based on a finding that the sanctioned attorney acted in subjective bad faith.

Nike v. Dixon,
CV 01-1459-BR
(Opinion, Jan. 6, 2005)
Plaintiff's Counsel: Barbee Lyon
Defense Counsel: Maria Sperando

Breach Contract Magnuson-Moss Warrant Act

Plaintiffs sought to recover damages allegedly resulting from water intrusion to their residences which allegedly stemmed

from improper installation of an exterior stucco siding system (EIFS) and defective components. After settling with the siding installer, they pursued their claim against the manufacturer, defendant Dryvit Systems, Inc.

After staying several constitutional issues pending certification to the Oregon Supreme Court, Judge Stewart ruled on the non-constitutional issues raised by plaintiffs' claims, including, among others, claims for breach of implied warranties, violation of the Magnuson-Moss Warranty Act ("MMWA"), and strict liability.

Judge Stewart ruled that privity of contract was not necessary for plaintiffs to recover on their implied warranty claim because plaintiffs were seeking to recover property damage to their homes caused by the leaking EIFS system, not simply economic damages in the form of the cost of replacing the siding. Moreover, Judge Stewart found that Oregon courts would permit a plaintiff within the normal distribution chain to recover property damages from a seller with whom he is not in privity based on breach of an implied warranty. Judge Stewart also found that plaintiffs' MMWA claim was valid because an EIFS system was a "consumer product" under the Act.

Finally, Judge Stewart ruled that plaintiffs can recover in strict liability because they are seeking to recover for damages to "other property," namely the damage to their homes caused by the leaking EIFS system, not merely economic loss.

McFadden v. Dryvit Systems, Inc.
CV 04-103-ST
Findings and Rec., Oct. 8, 2004,Adopted Dec. 10, 2004
Plaintiffs' Counsel: Dean Aldrich
Defense Counsel: Jennifer Tran

Constitutional Law Defamation

Plaintiff, a member of the Oregon bar, was elected to the bar's Board of Governors while he had a formal disciplinary charge pending. Because the BOG oversees some of the bar entities involved in the disciplinary process, the BOG considered policy issues that arise when one of its members faces a disciplinary charge. This resulted in the BOG enacting a bylaw which suspends members of the BOG and of some of the committees involved in the disciplinary process until the charges are resolved. The new bylaw caused the immediate suspension of plaintiff from his BOG position. Plaintiff alleged several constitutional violations, along with some tort claims, in this case against the bar, some of the bar staff, and some of the other members of the BOG. Judge King granted in part defendants' motion to dismiss, leaving some of the constitutional claims and a defamation claim in the case. Judge King also denied plaintiff's motion for a preliminary injunction rescinding his suspension.

Paulson v. Carter
CV 04-1501-KI
(Opinion, Jan. 6, 12, 2005)
Plaintiff: Pro Se
Defendants: Susan Eggum

** Remember to register for the 2005 O'Connell Conference on March 10, 2005 at the Knight Law Center, Univ of Oregon. Contact: Pam Peake at 541-485-0220 or pamela.peake@harrang.com