

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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ATTORNEY FEES

In an ERISA action, Judge Papak issued Findings and Recommendations recommending that the prevailing plaintiff receive an award of her reasonable attorney fees. Judge Papak recommended reducing the number of hours for which compensation was requested by approximately 10%, including hours excluded from the lodestar calculation due to the connection with administrative proceedings rather than litigation, as well as excluding hours for clerical tasks, duplicative work, and inadequately specified tasks. The court further recommended finding that the hourly rates requested by plaintiff's counsel were reasonable despite falling above the range of rates provided in the Oregon State Bar 2002 Economic Survey, because the record contained affirmative evidence that the requested rates were reasonable and there was no evidence to the contrary. The recommended fee award included compensation for hours spent preparing plaintiff's fee petition.

Strand v. Automotive Machinists Pension Trust,
CV 06-1193-PK
(Opinion, 7/11/07)
Plaintiff's Counsel: Daniel M. Ricks
Defense Counsel: A. Bruce McKenzie

State Law Claims Filed in Federal Court

Plaintiff filed an action against defendants containing a federal law claim under 42 U.S.C. § 1983, along with five claims arising under Oregon law. Defendants moved for summary judgment against the state law claims on the ground the claims were not commenced within the period provided by the applicable statute of limitations.

Judge Panner granted defendants' motion for partial summary judgment and dismissed plaintiff's five state law claims as time-barred.

Foster v. County of Lake, et al.,
CV 06-3020-PA
(Opinion, July 23, 2007)
Plaintiff's Counsel: Morgain Faye McGaughey
Defense Counsel: Gerald Warren

FAIR CREDIT REPORTING ACT

In an FCRA action, Judge Papak issued Findings and Recommendations recommending that the motion for summary judgment filed by defendant Trans Union, LLC, be granted as to plaintiff's claims alleging negligent and intentional violation of 15 U.S.C. § 1681e(b) (obliging consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" of consumer reports) and denied as to plaintiff's claims alleging negligent and intentional violation of 15 U.S.C. § 1681i (obliging consumer reporting agencies to "conduct a reasonable reinvestigation" of information contained in a consumer report once that information has been disputed by a consumer).

In recommending that the motion for summary judgment be granted with respect to plaintiff's § 1681e(b) claims, Judge Papak found that the Ninth Circuit's decision in *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329 (9th Cir. 1995) does not

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place the burden on a FCRA defendant to establish the reasonableness of its accuracy-assuring procedures once an inaccuracy has been identified in the defendant's credit report, and further found that continued inaccuracy of a credit report once the inaccuracy has been disputed by a customer is properly addressed by an action under § 1681i rather than under § 1681e(b). In recommending that the motion for summary judgment be denied with respect to plaintiff's § 1681i claims, Judge Papak found that exclusive reliance on an automated consumer dispute verification procedure is not reasonable as a matter of law where such exclusive reliance prevents a consumer reporting agency from complying with its statutory obligations. Judge Papak further found that such exclusive reliance created a question of fact as to whether Trans Union's alleged violation was willful. Saenz v. Trans Union, LLC, CV 05-1206-PK (Opinion, 8/15/07)
Plaintiff's Counsel: Michael C. Baxter
Defense Counsel: Donald E. Bradley

Remand to State Court

Plaintiff moved to remand the action to state court pursuant to 28 U.S.C. § 1447. After plaintiff initially filed her action

in state court, defendant removed pursuant to 28 U.S.C. § 1441(b). Plaintiff argued that because state law predominates, pursuant to 28 U.S.C. § 1441(c), the court should exercise its discretion and remand to state court.

Judge Aiken disagreed and found that § 1441(c) was not applicable as plaintiff's federal claim was not a "separate and independent claim or cause of action." Therefore, the court found it had original jurisdiction over plaintiff's § 1983 claim and chose to exercise supplemental jurisdiction over plaintiff's state law claim. Plaintiff's motion to remand to state court was denied. Fancher v. City of Albany, CV 07-6100-AA (Order, August 10, 2007)
Plaintiff's Counsel: Dennis Messolino
Defense Counsel: David C. Lewis

Attorney Fees

After a 2-day jury trial, judgment was entered for plaintiff. Plaintiff sought costs and attorney fees from the court. Defendants objected. Judge Panner awarded plaintiff \$3,096.40 in costs and \$80,761 in attorney fees (plaintiff initially requested a total of \$88,409.61 in attorney's fees). Jackson & Perkins v. Smith Rose Nursery, Inc., CV 03-3091-PA (Order, August 24, 2007)
Plaintiff's Counsel: Joseph Kellerman

Defense Counsel: Michael Mullen

Breach Contract

On a motion for summary judgment in a breach of contract case involving a natural pipeline construction project, Judge Aiken found that an indemnity provision in the pipeline contract triggered the contractors duty to defend enforcement actions brought against Coos County by the United States Army Corps of Engineers, the Oregon Department of Environmental Quality and civil claims brought by the Sierra Club. Further, Judge Aiken found that the issue of whether a settlement offer is admissible to show failure to mitigate damages is properly raised in a motion in limine rather than a summary judgment motion. Finally, Judge Aiken found questions of fact remained as to whether Coos County, through its prior conduct, waived its contractual right to prior notification and written approval for change orders. MasTec North America, Inc. v. Coos County, CV 04-278-AA (Opinion, July 9, 2007)
Plaintiffs' Counsel: D. Bledsoe
Defense Counsel: Jay Waldron