

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Cost Bill

Plaintiff filed several claims under federal and state law against her former employers. Plaintiff's claims included sex discrimination, retaliation, hostile work environment, wage claim discrimination, wrongful discharge, reckless and intentional infliction of emotional distress, intentional injury of employee by employer, willful and unprovoked aggression, battery, and violations of Oregon's Fraudulent Transfers and Conveyances Act.

The court ultimately granted defendants' two motions for summary judgment. Plaintiff has appealed to the Ninth Circuit Court of Appeals. Defendants filed a Bill of Costs to which plaintiff objected.

Judge Aiken denied defendants'

Cost Bill pursuant to Fed. R. Civ. P. 54(d)(1) finding economic disparity between the parties, that the issues in the case were close and difficult, plaintiff's case was brought in good faith, and noting the possible chilling effect of awarding costs against an unsuccessful civil rights plaintiff.

Ford-Torres v. Cascade Valley Telecom, et al.,
CV 06-914-AA

(Order, June 17, 2008)
Plaintiff's Counsel:
Larry Linder
Defense Counsel: David
Sweeney, Paul Dodds

Fair Credit Reporting Act

Plaintiff insureds filed against their automobile and/or personal lines insurers alleging violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681. Plaintiff insureds alleged when they initially applied for or renewed their

insurance policies with defendants, their premiums increased based on information in their consumer-credit reports.

The 2003 Fair and Accurate Credit Transactions Act (FACTA), which amended FCRA, does not apply retroactively to bar a class action against FICO and FGI based on their failure to comply with FCRA's adverse-action notice requirement; plaintiffs' misidentification of FICO in their Complaint as a "subsidiary" of FGI rather than an "affiliate" did not mislead, confuse, or otherwise prejudice defendants for purposes of determining whether the statute of limitations was tolled because FGI as managing agent for FICO knew the case involved FICO insureds from the outset; defendants did not act in an objectively unreasonable manner

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when they decided which new insureds suffered adverse actions based on their consumer-credit scores, and, therefore, defendants were not liable as a matter of law for statutory damages to new insureds.

The content of the adverse-action notice that defendants sent to renewal insureds whose premiums increased because of information in their consumer-credit reports was objectively unreasonable in part because the notice failed to state that the premium increases were adverse actions as to those insureds. Accordingly, defendants "ran a risk of violating the law substantially greater than the risk associated with a reading [of FCRA's adverse-action notice requirements] that was merely careless." *Safeco v. Burr*, 127 S. Ct. at 2215. In this context related to renewal insureds, Judge Brown found genuine issues of material fact existed as to whether defendants' FCRA

violation was willful, thereby entitling plaintiffs to statutory damages.

Ashby v. Farmers Group,
CV 01-1446-BR
(Opinion, 6/20/08)
Plaintiffs' Counsel:
Charles Ringo, David
Rees
Defense Counsel:
Barnes Ellis

Attorney Fees

Defendant filed a motion for attorney fees and costs. The court granted in part, and denied in part her fee petition, and awarded her costs.

Plaintiffs brought this action against defendant alleging that she used her personal computer and the Internet to download and share sound recordings, thereby infringing plaintiffs' rights under the Copyright Act. Defendant denied the allegations and asserted several counterclaims against plaintiffs. Defendant then filed a motion for summary judgment. The date plaintiffs' opposition was due, nearly two years after filing the case against defendant, plaintiffs opted to voluntarily dismiss, with prejudice, their

claims against the defendant.

The court awarded defendant attorney fees and costs. Notably, defendant was awarded fees for time spent on counterclaims that were not adjudicated; a multiplier was not awarded as factors relied upon by defendant for a multiplier, such as the "undesirability: and "risk" of representation, were already accounted for as part of the lodestar computation; and finally, the court relied on the Oregon State Bar Economic Survey rather than the American Intellectual Property Law Association survey, as requested by defendant, to set hourly rates in this copyright infringement case. Atlantic Recording Corp. et al., v. Andersen,
CV 05-933-AC
(F&R, May 14, 2008,
Adopted, June 24, 2008)
Plaintiffs' Counsel:
Kenneth Davis
Defense Counsel:
Benjamin Justus