

Idaho Chapter, Federal Bar Association

Sidebar - December 2010 Newsletter



By Susie Headlee

Executive Director, Idaho Chapter, FBA



Happy holidays! It seems that only yesterday our Chapter was organized, with Larry Westberg serving as our first President. Ted Creason was our next President, who led us from the north, then Trudy Hanson Fouser, Wendy Olson, and now Kim Toryanski. Wendy had to step down a bit early, due to her appointment as U.S. Attorney for the District of Idaho.

Our membership continues to grow and our Chapter is flourishing. Kim has already held an organizational meeting for the Executive Board and she has many ideas that will keep our Chapter moving forward. Our Executive Board focuses on ways that will continue to serve you, our Idaho Chapter members.

For those of you who would like to know a bit more about the structure of the Federal Bar Association (FBA), the organization's headquarters are located outside of Washington, D.C. in Arlington, Virginia. Kim and I traveled there in March to attend Leadership Training.

Founded in 1920, the FBA now has more than 15,000 members nationwide, including lawyers, law students, and judges. As a matter of fact, the President of the Minneapolis Chapter is federal District Judge Donovan Frank.

The FBA is a voluntary, professional organization for attorneys who practice in the federal system, and members of the judiciary. It is committed to strengthening the federal legal system and administration of justice by serving the interests and needs of the federal practitioner, both public and private, the federal judiciary, as well as the public.

We are delighted you have joined our Chapter, and hope you find that the newsletters are interesting, that the CLEs have value, and that our parties are just plain fun!

As we move into 2011, our goals are to continue to provide educational and timely CLEs, invite discussions that spark your interests, and host parties that simply gather us together in friendship and enjoyment. May the New Year bring to you and your family joy and happiness.

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FBA Idaho Chapter 2010 Community Service Project

by Katie Ball



“THE SCHOOL’S MISSION IS TO EDUCATE NATIVE AMERICAN STUDENTS ABOUT THEIR HERITAGE, THEIR RIGHTS AND RESPONSIBILITIES.”

The Federal Bar Association is collecting books, pencils, markers, and crayons for students at the Shoshone-Bannock Junior/Senior High School. Our goal is to provide 100 new books for these junior and senior high students to read over winter break, and at least one box of pencils, markers, or crayons for each student to take home. Many of the students at this school are considered at-risk, and many come from low-income homes. The school’s mission is to educate Native American students about their heritage, their rights and responsibilities, and to prepare them for a lifetime of learning and achievement. More information about the school is available at <http://www.sbd537.org/>

This year’s project is part of a continuing goal to give back to our communities by helping fill a need for those without sufficient resources to obtain reading and educational materials. In the past three years we have collected reading materials for inmates, books for elementary school children in Coeur d’Alene, and school supplies to help children in eastern and southern Idaho. Please help make this year’s project a success by donating a new book for the Shoshone-Bannock Jr./Sr. High School students and/or a new box of pencils, crayons, or markers.

If you have questions about where donations should be left at any of the drop sites, please ask for the contact who is working at that



site. If you do not have time to purchase books or supplies, you can make a cash donation and the school will purchase the items for you. Checks can be mailed to the Idaho Chapter of the FBA, c/o Katie Ball, 550 West Fort Street, 5th Floor, Boise, Idaho, 83724. Checks should be made payable to the Sho-Ban Jr./Sr. High School.

Please direct questions to Katie Ball at ktball@uidaho.edu.

Thank you for your willingness to give back to our community!



Center Charter, LLC v. Sun Valley Aviation, Inc. et. al. CV-10-223-S-BLW

Diversity Jurisdiction

- William A. Fuhrman and Burt R. Willie, Trout Jones Gledhill Fuhrman Gourley, P.A., Boise, Idaho, for the Plaintiff
- Craig L. Meadows, Hawley Troxell Ennis & Hawley, Boise, Idaho for the Defendants

* * *

Center Charter, LLC (Charter) filed this action on April 27, 2010, asserting claims for negligence against Sun Valley Aviation, Inc. and Atlantic Aviation FBO, Inc.

Charter, a limited liability company based out of California, owns and operates a jet that was scheduled to fly out of Hailey, Idaho in route to Burbank, California on January 1, 2010. Sun Valley and Atlantic are in the business of providing a wide range of aviation services, including de-icing, at various airports throughout the United States. Prior to its takeoff on January 1, the flight crew of Charter's jet determined that the Defendants' ground crew should apply de-icing fluid to the jet. Pursuant to a conversation between the ground crew and the flight crew, it was decided that the jet would be de-iced at the departure end of the runway immediately before takeoff. In addition, Charter alleges that the flight crew specifically instructed the ground crew not to perform any de-icing until the engines on the jet had been shut down.

The ground crew towed the jet out of the hanger, and Charter contends that its flight crew received clearance from the Federal Aviation Administration (FAA) to taxi to the departure end of the runway where the ground crew would de-ice the jet. Charter next contends that the ground crew drove its de-icing vehicle in front of the tail of the jet, whose engines were running, and began de-icing activities without communicating with the flight crew and without communicating to any other FAA personnel. While moving the jet forward to the departure end of the runway, the flight crew controlling the jet struck the de-icing vehicle, which caused significant damage to the tail portion of the jet and grounded the damaged jet. Charter asserts claims that Sun Valley and Atlantic breached their duty of care by failing to exercise reasonable care in carrying out their de-icing procedures.

COMPLAINTS FILED IN FEDERAL COURT



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Parish v. United States Liability Insurance Co. - CV-10-219-S-REB

Diversity Jurisdiction

- Eric S. Rossman and Erica S. Phillips, Rossman Law Group, PLLC, Boise, Idaho for the Plaintiff
- Hans A. Mitchell and David W. Knotts, Carey Perkins, LLP, Boise, Idaho for the Defendant

* * *

Michael Parish filed this action on April 12, 2010, asserting claims of a breach of contract, a breach of the implied covenant of good faith and fair dealing, and the tort of bad faith. On April 23, 2010, United States Liability Insurance Company (USLIC) removed the case to federal court.

Parish worked for Integra Information Technologies from March of 2005 through May 25, 2007. During this time Parish was paid a base salary plus a commission based on sales. Prior to his termination, Parish booked three orders each for an amount of \$125,000. On the day of his termination, Parish signed a memorandum with a representative of Integra regarding the payment of the commissions due on those three orders, but by August 29, 2007, he had still yet to be paid. At the time of the unpaid commissions, Integra owned an Employment Practices Liability Policy issued by USLIC. On September 21, 2007, USLIC notified Integra that it was denying Parish's claim for

coverage under the policy between USLIC and Integra. On November 6, 2008, Parish reached a settlement with Integra for his claims against it in the sum of \$62,000. On the same day, Parish also settled with Integra for his claims against it for front pay damages relating to wrongful termination in the sum of \$138,000. This settlement included an assignment of any and all of Integra's claims against USLIC resulting from the denial of coverage for claims asserted by Parish.

Parish asserts claims that USLIC breached its contract with Integra by refusing to pay claims submitted by Integra according to the terms of the policy. Parish also asserts claims that USLIC acted in tortious bad faith by negligently, intentionally, and unreasonably denying payment on the claim. USLIC responded to this complaint on May 6, 2010, and asserted several affirmative and other defenses. USLIC asserts that Parish is not the real party in interest in respect to his claim for breach of

contract and breach of the implied covenant of good faith and fair dealing. USLIC contends that it owed Integra no duty to cover loss or defense cost because the claim that forms the basis of this litigation was not covered under the policy. USLIC also asserts that because Parish received compensation from collateral sources for the damage of which he complains, he is barred from recovery of such sums from USLIC pursuant to Idaho Code § 6-1606. USLIC further asserts that it owes Parish no duty in tort.

COMPLAINTS FILED IN FEDERAL COURT

Powers v. Elmore County et al. -CV-10-232-S-REB

Federal Question Jurisdiction

- Robert C. Huntley, The Huntley Law Firm, Boise, Idaho for the Plaintiff
- Kirtlan G. Naylor, Bruce J. Castleton, and Eric F. Nelson, Naylor & Hales, Boise, Idaho for the Defendants

* * *

Alvin Powers filed this action on May 4, 2010, asserting a violation of the Employee Retirement Income Security Act of 1974 (ERISA). Defendants have not yet responded to the Complaint.

Powers retired after twenty two years of employment for Elmore County, Idaho. Powers alleges that he was employed with Elmore County under an employment relationship that provided that employees of the county who retire after twenty years of service shall continue to receive health insurance benefits paid by Elmore County for the balance of their national lives. Powers contends that the provision, or Resolution No. 62-86, became effective on May 1, 1986.

On December 23, 1991, the then existing board of commissioners for Elmore County enacted a purported amendment to Resolution No. 62-86. Powers contends that the amendment repealed the right to “a continuation of health insurance benefits,” and substi-

tuted it with language that tied the payments to employees retiring prior to age 65 to a contribution toward the cost of a COBRA or other program capped by the amount that had been provided by the County for insurance at the date of termination.

On August 31, 2009, the Board of Commissioners of Elmore County addressed a letter to Powers advising that on the basis of the attempted amendment, the County had been overpaying for his insurance. The letter further stated that effective October 1, 2009, Powers would be responsible for reimbursing the difference between the premium cost at the time of his termination and the current premium cost effective October 1.

Additionally, the letter stated the Commissioners have attempted to make the retired employees responsible for a \$3,000 deductible amount under the current County Group Insurance Policy.

Powers asserts that the attempted amendment, which changes the monthly contribution, and changes the deductible provisions, violates both the ERISA statute and the contract of employment. Additionally, Powers requests a declaratory judgment rendering the 1991 attempted amendment void or inapplicable to Powers relative to both past and future insurance benefits.

Shoemaker v. United Parcel Service, Inc., CV-10-185-S-EJL-CWD

Federal Question Jurisdiction

- Daniel E. Williams, Kim J. Dockstader, and William H. Thomas, Thomas, Williams & Park, LLP, Boise, Idaho for the Plaintiff
- A. Dean Bennett, and B. Newal Squyres, Holland & Hart, Boise, Idaho; Benjamin B. Strong and Elena R. Baca, Paul Hastings Janofsky & Walker, LLP, San Francisco, California, Los Angeles, California for the Defendant

* * *

Gerald Shoemaker, individually and on behalf of all others similarly situated, filed this action on April 7, 2010. Shoemaker asserts that United Parcel Service, Inc. (UPS) unlawfully failed to pay required overtime wages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 (FLSA).

Shoemaker contends that he, and other similarly situated on-road supervisors, are required by UPS to work a minimum of fifty hours per week. Despite their fifty hour work weeks, UPS pays Shoemaker and other on-road supervisors a salary based on a forty hour work week. Shoemaker contends that UPS does not compensate on-road supervisors for work in excess of forty hours.

UPS on road-supervisors' primary duty is to train UPS delivery drivers. On-road supervisors use a UPS-prepared packet to train UPS delivery drivers, and are not allowed to deviate from

the packet. Shoemaker asserts that on-road supervisors have no discretion in how training is conducted or what materials are taught. When on-road supervisors are not on the road with delivery drivers, they spend additional hours doing routine UPS-required paperwork. Furthermore, Shoemaker contends that on-road supervisors do not set or adjust UPS employees' rate of pay or the hours they work, nor do the supervisors have the authority to hire or fire employees. Shoemaker also contends that on-road supervisors do largely similar labor and duties associated with the job duties of delivery drivers, but delivery drivers are paid on an hourly basis and receive premium overtime pay. Additionally, Shoemaker asserts claims that at no time in the relevant statute of limitations period did he or other on-road supervisors assume any managerial or supervisory responsibilities, nor did they contribute to the general business operations of UPS. Ultimately, Shoemaker contends

that UPS operated under and continues to operate under a common policy and plan of willfully, regularly and repeatedly failing and refusing to pay on-road supervisors overtimes compensation at rates required by the FLSA.

COMPLAINTS FILED IN FEDERAL COURT

Hillenbrand v. Coldwater Creek, Inc., CV-10-455-S-REB

Employment: Whistleblower, Retaliation; Federal Question Jurisdiction

- Kail Queen Seibert, Seibert Law Offices, Boise, Idaho; and Lynn R. Nakamoto, Markowitz Herbold Glade & Mehlhaf, P.C., Portland, Oregon for the Plaintiff.
- Defense counsel has not yet appeared.

* * *

Plaintiff Hillenbrand was hired by Defendant Coldwater Creek, Inc. (“Coldwater”) in June of 2004 as a Tax Manager. She received raises and promotions during her tenure and eventually became the Tax Director. Plaintiff believed the Tax Group was understaffed and would cause problems with Coldwater’s internal controls and financial statements. She observed what she believed to be violations of the SEC’s rules and regulations and provisions of federal law relating to fraud against shareholders.

She alleges that she reported her concerns to her superiors on numerous occasions. She also reported in an SEC filing, among other things, what she believed to be deficiencies in the tax rate Coldwater used in the fourth quarter of the 2006 fiscal year. She alleges that Coldwater retaliated against her for reporting the alleged deficiencies by relieving her of her duties

through hiring a new employee to be responsible for tax compliance and tax accounting — the two primary responsibilities held by Plaintiff. Plaintiff understood that this was her job, but with a new title, and came to the conclusion that she had been effectively terminated. She submitted a letter of resignation.

Plaintiff brought this suit for damages and injunctive relief under the whistleblower provisions of the Sarbanes-Oxley Corporate and Criminal Accountability Act of 2002 (“SOX”), codified in 18 U.S.C. § 1514A. She claims Coldwater retaliated against her for having engaged in formal and informal whistleblower activities regarding the company’s internal controls and financial statements and that her employment was constructively terminated.

Plaintiff seeks to be reinstated to the position of Divisional Vice

President of Tax or its current equivalent and requests that Coldwater be prohibited from retaliating against her. In the alternative, she seeks an award of front pay.



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United Team Mechanical, LLC v. CNA Insurance Co., CV-10-342-E-REB

Insurance; Declaratory Judgment; Diversity Jurisdiction

- Eric S. Bailey and Nathan T. Gamel, Bowen & Bailey, LLP, Boise, Idaho, for the Plaintiff
- Robert T. Wetherell and Megan Rose Goicoechea, Brassey, Wetherell & Crawford, Boise, Idaho, for the Defendant

* * *

Plaintiff United Team Mechanical (“UTM”) worked as a contractor on a hospital construction project, Mountain View Hospital, in Idaho Falls. The owner of Mountain View Hospital and the general contractor, Sahara, Inc., have disputes about the project that have resulted in the hospital filing suit against Sahara. Sahara has filed a third-party complaint seeking recovery from UTM, alleging that UTM is responsible for certain alleged construction defects on the project.

any policies it issued to UTM provide for coverage in relation to claims arising out of UTM’s work on Mountain View Hospital and alleging, among other things, that UTM failed to provide timely, appropriate written notice of any claims.

UTM seeks an order in the instant suit declaring that Defendant CNA is obligated by insurance policies UTM purchased to provide coverage and defense to UTM in the Mountain View Hospital versus Sahara matter. CNA has declined to provide a defense or indemnify to UTM because of a “know and continuous endorsement on the policy.” CNA has filed an Answer denying that

COMPLAINTS FILED IN FEDERAL COURT

Wicklund v. Huntsman & Sexual Offender Classification Board, et al., CV-10-341-S-LMB

Civil Rights: Section 1983; Federal Question Jurisdiction

- Jacob Dennis Deaton, Law Office of Jacob D. Deaton, PLLC, Eagle, Idaho, for the Plaintiff.
- Phillip J. Collaer, Anderson Julian & Hull, Boise, Idaho, for the Defendants.

* * *

The Sexual Offender Classification Board (“Board”) was created by the Idaho legislature in 1998 to establish guidelines for determining whether a sex offender is a violent sexual predator presenting a high risk of re-offense. Individuals designated as violent sexual predators are subject to heightened sex offender registration requirements and cannot ever petition for removal of the duty to register.

Plaintiff was designated a violent sexual predator in 2007 and sought judicial review of that decision. In 2009, the Idaho Supreme Court found that the statutory scheme underlying the violent sexual predator designation process violated the Due Process Clause of the U.S. Constitution. *See Smith v. State*, 146 Idaho 822, 203 P.3d 1221 (2009). Plaintiff’s appeal of his designation was pending when the *Smith* case was decided, and his violent sexual predator designa-

tion was vacated. Plaintiff alleges that the Board did not act to correct his violent predator designation after that designation was vacated in March of 2009, and that it was six months before any notice was posted on the registry that his designation had been vacated. Plaintiff challenges this delay and that his designation still appears on the registry, with a notation that it was vacated pursuant to a court order.

Plaintiff’s suit names the Board and its individual members in this suit brought under 42 U.S.C. § 1983 for violations of his due process rights. He seeks damages of \$5,000,000 and to have the notations about his previous designation removed from the public record.

The Defendants have filed an answer denying many of the allegations and asserting that Plaintiff’s allegations does not

rise to the level of a deprivation of a federally protected right. They also assert they are entitled to qualified immunity for their actions, and that the statute of limitations and Eleventh Amendment bar Plaintiff’s claims.

Firkins, et al. v. Bank of the Cascades, CV-10-414-S-LMB

Contract: Breach of Fiduciary Duty; Conversion

- Geoffrey Bestor, The Bestor Law Firm, Chevy Chase, Maryland; and Philip Gordon, Gordon Law Offices, Boise, Idaho, for the Plaintiffs
- Eugene A. Ritti and Jason D. Scott, Hawley Troxell Ennis & Hawley, Boise, Idaho, for the Defendant

* * *

This case relates to the bankruptcy proceedings of DBSI, Inc., and its affiliated entities (“DBSI”). DBSI invested in commercial and residential real property and raised funds from investors through bond offerings to finance real estate acquisition and development activities. Plaintiffs allege that for each bond issued, DBSI created a separate wholly-owned funding company whose sole purpose was to issue bonds for the specific issue and that, in turn, investment of the bond proceeds were made in the form of loans from the funding company to individual DBSI limited partnerships.

Plaintiffs filed this class action against Bank of the Cascades (“the Bank”) on behalf of bondholders who allegedly lost \$23.5 million invested in bonds issued by DBSI entities (for the “2001 Funding Corporations”) in three offerings in 2001. The bondholders argue that they lost their

investments because the Bank, the trustee for the bondholders in the bond issue, failed to fulfill its obligations to the bondholders. Specifically, Plaintiffs assert that, instead of insuring that the bond proceeds were invested in individual income-producing real estate projects in accordance with the bond offering documents, the Bank disbursed the entire \$23.5 million in bond proceeds to a single company, DBSI Realty Corporation, a corporation Plaintiffs allege had no assets, no investments, no independent income, and was prohibited from receiving bond proceeds under the terms of the offering documents. Plaintiffs further allege that Bank of the Cascades obtained “security” in a number of leases to which DBSI Realty was not even a party.

DBSI and its affiliated entities, including the 2001 Funding Corporations for which the bonds were issued, filed for bankruptcy in November 2008, and bond-

holders allege they lost over \$23.5 million in principal and accrued interest invested in the 2001 Funding Corporations. Plaintiffs claim that the Bank, by disbursing bond proceeds improperly, committed multiple breaches of its obligations to the bondholders and that those breaches directly and proximately caused damage to the bondholders. Plaintiffs allege that the Bank was permitted to disburse loan amounts only upon the Bank’s receipt of all of the required loan documentation and the Bank’s verification that the documentation and proposed loans conformed in all material respects to the corresponding indentures and offering circulars.

Plaintiffs also state a claim for conversion, arguing that the Bank, by seizing money that was in the bond proceeds accounts of

(Continued on next page).

Firkins, et al. v. Bank of the Cascades, cont'd.

each of the three 2001 Funding Corporations, converted the bondholders' property because the Bank took or exercised dominion over that property without a right to do so and that bondholders were deprived of that property, causing them damage.

The Plaintiffs assert standing to bring a class action on behalf of all bondholders in the 2001 bond issuances at issue in this case. Plaintiffs submit the court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregated claims of the individual class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, there are members of the class who are citizens of different states from Defendant, and this is a class action in which less than one-third of the members of the proposed class are citizens of the state of Idaho.

Aston v. Stevenson & Minidoka County, et al., CV-10-391-E-LMB

Title VII; 42 U.S.C. § 1983; Breach of Contract; Federal Question Jurisdiction

- Cynthia J. Woolley, Law Office of Cynthia J. Woolley, PLLC, Ketchum, Idaho, for the Plaintiff
- James J. Davis, Boise, Idaho, for the Defendants

* * *

Plaintiff, a female attorney, worked part-time for Defendant Minidoka County as a deputy county prosecutor from October 2006 until she was terminated on or about August 31, 2009. Defendant Lance Stevenson is the elected Minidoka County Prosecutor for whom Plaintiff worked, and the other named Defendants are elected commissioners of Minidoka County.

Plaintiff asserts claims related to the termination of her employment for violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983, and pendent state claims under the Idaho Human Rights Act and the Idaho Protection of Public Employees Act, as well as claims for intentional and negligent infliction of emotional distress and negligent supervision. The allegations underlying these claims follow.

Plaintiff asserts that Defendant Stevenson treated the male attor-

neys in his office differently than he treated Plaintiff, including that he often took male attorneys to lunch but never took Plaintiff to lunch; excluded Plaintiff from staff meetings with male attorneys; and did not discipline male attorneys who told office personnel that they were “inspecting real estate” when in fact they were playing golf. She also alleges that she was replaced by a male with less experience than she had. These allegations are made in connection with her claim that Minidoka County discriminated against her on the basis of her gender in the terms, privileges, and conditions of her employment.

Plaintiff also claims that her due process rights were violated with regard to the employment termination process, and that Defendants breached their contract with her. She states that she was placed on probation about four months before her employment

was terminated, but that it was for a criminal charging decision that Defendant Stevenson subsequently agreed with her about and, yet, he did not lift the probation. She also challenges the asserted reason for her termination, i.e., that she did not go to work two days in August, when she had notified the office that she might not be in because of a severe headache. She alleges that the decision to terminate her employment was made without notice or a fair hearing. She seeks monetary damages and to be reinstated to her position of deputy prosecuting attorney.

Defendants filed an Answer to the Complaint, asserting there was no policy or custom that deprived Plaintiff of a constitutional right and stating defenses for qualified immunity, failure to mitigate, and failure to comply with the Idaho Tort Claims Act.

Bain v. Pfizer Inc., CV-10-409-N-CWD

Products Liability; Diversity Jurisdiction

- Craig K. Vernon, James Vernon & Weeks, Coeur d'Alene, Idaho, for the Plaintiff
- Michael E. Ramsden, Scott Atkinson Gingras, Ramsden & Lyons, Coeur d'Alene, Idaho; and Mark S. Cheffo, Skadden Arps Slate Meagher & Flom, LLP, New York, N.Y., for the Defendant

* * *

Plaintiff Mary Bain filed this products liability action against Pfizer, alleging that she was injured as a result of her using Pfizer's prescription medication, Lipitor. In January 2004, Plaintiff was prescribed Lipitor. She alleges that, as a result of taking Lipitor, she "suffered side effects including burning sensations and numbness in her feet, cognitive dysfunction, memory loss, confusion, disorientation, problems with language production, fatigue, loss of energy, and depression."

She further alleges that she "lost the best job she had ever held due to her Lipitor-related injuries, and her earning capacity has been significantly diminished ever since she took the drug." Plaintiff requests compensation for her injuries under various tort theories, including fraud, failure to warn, and design defect, and seeks attorneys' fees.

Although this action was initially filed in the District Court of the Second Judicial District for the State of Idaho, Defendant removed the case to federal court. Defendant has asserted the following affirmative defenses: The Food & Drug Administration has exclusive or primary jurisdiction over the matters asserted in the Complaint, adequate warnings were given to learned intermediaries, Plaintiff assumed the risks alleged in the Complaint, the claims are barred by the statute of limitations and failure to provide timely notice, and Plaintiff's alleged injuries were the result of intervening or superseding events for which Defendant is not liable.

Scott, et al. v. St. Jude Medical, Inc., et al., CV-10-363-E-CWD

Products Liability; Diversity Jurisdiction

- David H. Maguire, Maguire & Penrod, Pocatello, Idaho, for the Plaintiffs
- John A. Bailey, Jr., Racine Olson Nye Budge & Bailey, Pocatello, Idaho, for the Defendants

* * *

Plaintiffs allege that Defendants were engaged in the business of manufacturing, designing, constructing, assembling, inspecting, servicing, marketing, and advertising (among other things) the St. Jude Spinal Cord Stimulator System and its component parts (collectively, the “Stimulator”) for resale and for implantation into members of the general public.

Stimulator was defective in design and manufacturer and Defendants failed to warn Mr. Scott or health care providers of the risk associated with implantation and utilization of the Stimulator.

Plaintiffs allege that Defendants intended for the Stimulator to be used as an implant device for medical procedures designed and intended to alleviate pain. The Stimulator was implanted in Plaintiff Bryan Scott to alleviate pain in certain areas of his body. Plaintiffs allege that the Stimulator increased and intensified Mr. Scott’s pain and that Defendants knew or should have know the Stimulator was not working correctly. Plaintiffs assert claims for strict product liability, negligent product liability, and breaches of implied and express warranties, alleging that the

Automated Solutions, Inc., et al. v. Fadal Machining Centers, LLC, CV-10-344-S-MHW

Declaratory Judgment; Trademark; Federal Question Jurisdiction

- Bradlee R. Frazer and Ryan McFarland, Hawley Troxell Ennis & Hawley, Boise, Idaho, for the Plaintiffs.
- Counsel for Defendants has not yet appeared.

* * *

Plaintiffs Automated Solutions and CNCPROS.NET, Inc. sell replacement parts for computer numerically controlled machines manufactured by Defendants Fadal Machining Centers, LLC, and MAG Industrial Automation Systems, LLC. Plaintiffs' sales are made over the Internet through websites registered to and operated by Plaintiffs.

On or about June 28, 2010, Plaintiffs received a demand letter from Defendants stating that Plaintiffs have registered and are using a domain name "fadalcnc.com" (the "Domain Name") containing a Fadal trademark. Plaintiffs' Domain Name links to Plaintiffs' website, which displays Defendants' trademarks, are thereby infringing on those trademarks; Plaintiffs' website contains false advertising; Plaintiffs' website posts and offers for sale Defendants' copyrighted material; and, by virtue of these alleged trademark and copyright infringe-

ments, Plaintiffs have breached contractual obligations.

Plaintiffs allege that their website operation does not infringe Defendants' trademarks or copyrights, does not constitute false advertising or unfair competition, and is not in breach of any contract. In short, Plaintiffs deny that they have in any way violated Defendants' rights. Plaintiffs request a declaratory judgment on these issues. Defendants have not yet responded to the Complaint.

Land O'Lakes Purina Feed LLC v. Vander Schaaf, et al., CV-10-354-S-MHW

Contract; Diversity Jurisdiction

- Jennifer Reinhardt, Stoel Rives, LLP, Boise, Idaho, for the Plaintiff.
- Counsel for Defendant has not yet appeared.

* * *

Plaintiff produces and distributes animal feed and Defendant Vander Schaaf Farms LLC (“VSF”) operates a dairy farm. VSF purchased animal feed on credit from Plaintiff and agreed to timely pay all invoices and to pay late charges on any past-due amounts at the rate of 18% per year.

Plaintiff alleges that Defendant Theodore Vander Schaaf executed a personal guaranty of payment for all amounts due or to become due. Plaintiff further alleges that, in 2009, VSF stopped paying for animal feed that it purchased and received from Plaintiff and that it owes Plaintiff the principal sum of \$137,590.48. Plaintiff filed this action for breach of contract and seeks to recover from VSF the purchase price of the animal feed. Plaintiff also seeks to recover from Mr. Vander Schaaf under the terms of the Guaranty. Defendants have not responded to the Complaint.

COMPLAINTS FILED IN FEDERAL COURT

Covert v. ITT Educational Servs., Inc., CV-10-393-S-EJL

Fair Labor Standards Act; Federal Question Jurisdiction

- James M. Piotrowski and Marty Durand, Herzfeld & Piotrowski, Boise, Idaho, for the Plaintiff
- B. Newal Squyres and Scott E. Randolph, Holland & Hart, LLP, Boise, Idaho for the Defendant

* * *

Plaintiff brought this suit under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, to recover wages. Plaintiff was employed by Defendant ITT at its Boise campus as a recruiter/ admissions representative. He alleges that he was paid wages on an hourly basis and worked a variety of hourly shifts, including a shift on Saturdays. During his shifts, Plaintiff dealt with, among other things, telephone calls and walk-ins from prospective students or enrolled students and appointments with prospective students or enrolled students.

Plaintiff alleges that, on a regular basis, he worked over his lunch hour and after his regularly-scheduled shift to accommodate prospective students' schedules, and that he worked an average of 50-55 hours per week during busy times of the year. Plaintiff further alleges that he was told to keep track of his extra hours and that he would be paid in comp time during less

busy times of the year; however, ITT did not allow him to take more than one day of comp time in a row. Plaintiff asserts that he also was directed to remove overtime hours from his time-card or his supervisor would not sign it and he would not be paid. Plaintiff seeks an award for unpaid or underpaid wages and an accounting.



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Fehrenbach v. Dept. of Air Force, et al., CV-10-402-S-EJL

Injunction; Federal Question Jurisdiction

- Bradley J. Dixon, Stoel Rives, LLP, Boise, Idaho; Mark Andrew Woodmansee, Aramide O. Fields, James J. Cekola, and Jessica A. Roberts, Morrison & Foerster, LLP, San Diego; Aaron D. Tax and John M. Goodman, Servicemembers Legal Defense Network, Washington, D.C., for the Plaintiff
- Jean Lin, U.S. Department of Justice, Civil Division, Federal Programs Branch, Washington, D.C. for the Defendants

* * *

Plaintiff Lieutenant Colonel Victor J. Fehrenbach filed this action to restrain Defendants from discharging him from the United States Air Force (“Air Force”), or undertaking actions otherwise burdening or restricting his military career. He claims that Defendants have violated his substantive and procedural due process rights, his right to equal protection, and his First Amendment rights. He also claims Defendants violated the Administrative Procedure Act. Plaintiff’s claims relate to the colloquially-known “Don’t Ask, Don’t Tell” federal policy concerning gay, lesbian, and bisexual armed forces service members.

Plaintiff was accused of sexual assault by a private, male citizen. In the course of the Boise Police Department’s Investigation, Plaintiff revealed that he had engaged in sexual conduct

with the citizen, but it had been consensual. The accusation of sexual assault was later found to be meritless. Four months after this investigation, however, plaintiff was notified that administrative discharge proceedings had been initiated against him for engaging in homosexual conduct.

On December 8, 2008, the Air Force ordered that Board of Inquiry (“BOI”) be convened to recommend whether Plaintiff should be retained on active duty. Plaintiff filed a motion for declaratory judgment with the legal advisor presiding over the BOI proceeding on the ground that the discharge action violated his substantive due process rights because the discharge was initiated contrary to the standard established by the Ninth Circuit in *Witt v. Department of the Air Force*, 527 F.3d 806 (9th Cir. 2008). The motion was denied.

On April 15, 2009, the BOI recommended that Plaintiff be discharged. Nearly two years after the Air Force initiated discharge proceedings and more than one year after the BOI recommended that he be discharged from the Air Force, Plaintiff continues to serve on active duty at Mountain Home Air Force Base.

Counsel for Defendants has appeared in this case and the parties have resolved a motion for temporary restraining order by stipulating to preserve the status quo and proceed with briefing on a motion for preliminary injunction. Defendant’s have not yet filed an answer or otherwise responded to the Complaint.

COMPLAINTS FILED IN FEDERAL COURT

U.S. Securities & Exchange Comm'n v. PCS Eventures!.com, Inc., et al., CV-10-433-S-BLW

Securities/Commodities; Federal Question Jurisdiction

- Cheryl M. Mori and Daniel J. Wadley, and Thomas M. Melton, Securities & Exchange Commission, for the Plaintiff
- Erik F. Stidham and Brian C. Wonderlich, Holland & Hart, LLP, Boise, Idaho, and Holly Stein Sollod, Holland & Hart, Denver, Colorado, for Defendant Shannon M. Stith
- Briane Nelson Mitchell, Mauk and Burgoyne, Boise, Idaho, for Defendants PCS Edventures!.com, Inc. and Anthony A. Maher

* * *

Plaintiff Securities and Exchange Commission (the "SEC"), filed a Complaint and then an Amended Complaint in this action, alleging that PCS Edventures!.com, Inc. ("PCS") and its officers, Chief Executive Officer Anthony A. Maher, and Chief Financial Officer Shannon M. Stith issued materially false and misleading press releases and filed materially false and misleading reports with the SEC.

The SEC brings claims for (1) fraud, violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5; (2) false filings with the SEC and aiding and abetting with false filings; and (3) false certification of an annual report, violating Section 13(a) of the Exchange Act.

PCS is an Idaho corporation headquartered in Boise, Idaho, that develops and markets edu-

cational learning labs and curricula and related software and technology. On March 28, 2007, PCS announced a purported sale to its Middle East distributor, Global Techniques a/k/a PCS Middle East ("PCS Middle East"). The press release stated that PCS had entered into a license agreement with PCS Middle East for a fixed license fee of \$7.15 million. The SEC alleges that this announcement was materially false and misleading, because PCS Middle East did not have the ability to pay \$7.15 million without first obtaining a contract and receiving funds from the Kingdom of Saudi Arabia ("Saudi Arabia"). The SEC further alleges that PCS Middle East did not, however, have a contract with Saudi Arabia and that PCS officers knew there was no contract with Saudi Arabia.

Defendants have not yet appeared or responded to the Amended Complaint.



Larry Westberg receives prestigious Ninth Circuit John P. Frank Award

Larry Westberg was presented with the prestigious John P. Frank Award by Ninth Circuit Judge N. Randy Smith at the Ninth Circuit Judicial Conference this past summer. This is the highest accolade bestowed by the Ninth Circuit, which oversees the federal courts in nine western states (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) and two Pacific Island jurisdictions (Guam and the Northern Mariana Islands).



Larry Westberg (L); Judge N. Randy Smith, Ninth Circuit Court of Appeals

The John P. Frank Award was established in 2003, and is presented annually to a lawyer who has demonstrated outstanding character and integrity; dedication to the rule of law; proficiency as a trial and appellate lawyer; success in promoting collegiality among members of the bench and bar; and a lifetime of service to the federal courts of the Ninth Circuit.

Mr. Westberg's legal career spans four decades. While with the U.S. Attorney's Office, he gained a reputation as one of the most skilled litigators and acted as a mentor to many young attorneys regarding proper case preparation and trial technique. Larry could zealously prosecute a case, and at the same time, ensure that the rights of the accused were never abused or disregarded. Larry is widely regarded as one of the premier criminal defense attorneys in Idaho.

Larry has a keen understanding of the criminal justice system and has participated in efforts to improve the fair and efficient administration of justice. He is recognized by his colleagues as a born leader, exceptionally hard-working, always collegial and genuinely committed to public service.

Mr. Westberg received his J.D. degree in 1968 from the University of Idaho, College of Law and is admitted to practice before the Idaho State and Federal Courts, the Ninth Circuit Court of Appeals and the United States Supreme Court.

After serving as a law clerk for the Honorable Fred M. Taylor, U. S. District Court, District of Idaho, Mr. Westberg served as Attorney for the U.S. Small Business Administration and as an Assistant U.S. Attorney for the District of Idaho.

Since 1977, he has been actively engaged in private practice as a partner in the Boise law firm of Westberg, McCabe & Collins, specializing in civil and criminal defense litigation. Among his numerous affiliations, Mr. Westberg is a member of the Idaho State Bar Association, the American Bar Association, the National Association of Criminal Defense Lawyers and had previously served on the CJA Panel for the District of Idaho over thirty years.

Additionally, Mr. Westberg is a founding member and past president of the Boise Inn of Court, the Idaho Chapter of the Federal Bar Association, the Idaho Legal History Society, and the Federal Defender Services of Idaho. He has served as a Lawyer Representative to both the District of Idaho and the Ninth Circuit, and for the past three years, has served as Chair of the Government Relations Committee of the Federal Bar Association.

Larry Westberg epitomizes the very best the federal bar has to offer. His distinguished record, as both a practicing attorney and a bar leader, exemplifies precisely what the John P. Frank Award was created to honor.

Pro Bono Attorneys in Federal Court



The United States District Court for the District of Idaho is committed to the fair and efficient resolution of pro se cases. In order to assist in the administration of justice, the Court funds litigation costs incurred by attorneys, legal interns, and law students appointed in prisoner, and civil (non-prisoner) pro se matters. The funding is used exclusively to cover Court-appointed counsel's out-of-pocket expenses. Pro bono attorneys are located by Susie Headlee, the Court's ADR / Pro Bono Coordinator. Any member of the bar who is interested in serving on the Pro Bono Panel should contact Ms. Headlee at (208) 334-9067.

The list has grown extensively this past year, and those who have registered to participate as pro bono counsel are as follows:

- Dennis Benjamin
Nevin Benjamin McKay
- Erika Birch and Lauren Scholnick
Strindberg & Scholnick
- Bruce Bistline
- Richard Boardman
Perkins Coie
- Erik J. Bolinder
Givens Parsley
- Brook Bond and Lane Chitwood
Zarian Midgley & Johnson
- Eric Boyington
Idaho Law Group
- John Bush
Comstock & Bush
- Edwynne "Skip" Carter
Skip Carter Law Office
- Trevor Castleton
- Jay Clark
- Gary Lee Cooper
Cooper & Larsen
- Lea Cooper
- Pat Costello
Legal Aid Clinic, U of I
- Jennifer Dempsey
Banducci Woodard Schwartzman
- Allen R. Derr
Allen Derr Law Office
- Kelly Duke
Hall Farley Oberrecht & Blanton
- Marty Durand, ACLU
- Mark EchoHawk
EchoHawk Law Offices
- Debra Ellers
- Trudy Hanson Fouser
Gjording & Fouser
- David Paul Gardner
Moffatt Thomas
- Leo Griffard
- Mark James Guerry
Webb Webb & Guerry
- Nicole Hancock
Stoel Rives
- Lowell N. Hawkes
- Ryan Lynn Holdaway
- James D. Holman
Thomsen & Stephens
- Fred Hoopes
Hopkins Roden Crockett Hansen & Hoopes
- James D. Hugeli
Hugeli Arbitration & Mediation
- Larry C. Hunter
Moffatt Thomas
- Ron Jarman
- Soo Yong Kang
Greener Burke & Shoemaker
- Tyler Anderson
Moffatt Thomas
- Kent Wade Bailey
Office of the Attorney General
- Jeanne Cornell Baughman
Washington Group
- Fred Belzer

Pro Bono Attorneys cont'd.



- Ron Kerl
Cooper & Larsen
- Karl Thomas Klein
Office of the Attorney General
- Kelly Kumm
- Maureen Laflin, U of I
Legal Aid Clinic
- Reed W. Larsen
Cooper & Larsen
- Ryan Scott Lewis
Lowell N. Hawkes, Chtd.
- John C. Lynn
- David H. Maguire
Maguire & Kress
- Mia Mazza
Morrison & Foerster
- Matthew James McGee
Moffatt Thomas
- Jason Montelone
- Mark Moorer
- Ted Murdock
Holland & Hart
- Lori A. Nakaoka
Law Office of Andrew Parnes
- Justin Oleson
Blaser Sorensen & Oleson
- Stephen Pevar
Senior Staff Counsel, ACLU
- James P. Price
Office of the Attorney General
- Bron Rammell
Dial May & Rammell
- Gregory Richard Rauch
Magyar Rauch & Thie
- Ben Ritchie
Moffatt Thomas
- James D. Ruchti
Ruchti Law Offices
- M. Anthony Sasser
EchoHawk Law Offices
- Lance J. Schuster
Beard St. Clair Gaffney
- Ronald Robert Shepherd
Hamilton Michaelson & Hilty
- Ellen Smith
Jones Gledhill Hess Fuhrman
& Eiden
- Ellen Nichole Smith
Smith Horras
- Jerry Smith
- Joshua Lange Smith
Madison County
- Marvin K. Smith
Smith & Banks
- Peter J. Smith, IV
Lukins & Annis
- Thomas Daniel Smith
- Curt Robert Thomsen
Thomsen Stephens Law
Offices
- Aaron N. Thompson
May Rammell & Thompson
- Val Thornton
Thornton Law Office
- Jack Van Valkenburgh
Van Valkenburgh Law Office
- Robert A. "Bob" Wallace
- Bryan P. Whitaker
- Kenneth F. White
- Jason Wood
Thomsen Stephens Law
Offices

Jury Trials in the District of Idaho



US v. Kelly J. Polatis, CR-08-304-N-EJL

Jury Trial April 13, 2010 . Coeur d'Alene, Idaho

- Nancy Cook, Assistant U.S. Attorney, Coeur d'Alene, Idaho for the Government
- Gabriel L. Grasso, Gabriel L. Grasso, PC, Las Vegas, Nevada and Christopher David Schwartz, Palmer George, PLLC for the Defendant

Verdict:

Not Guilty on all Counts of (1) Conspiracy to Manufacture Marijuana; (2) Manufacture Marijuana; and (3) Drug Forfeiture

O Bar Cattle v. Owyhee Feeders, CV-08-149-S-EJL

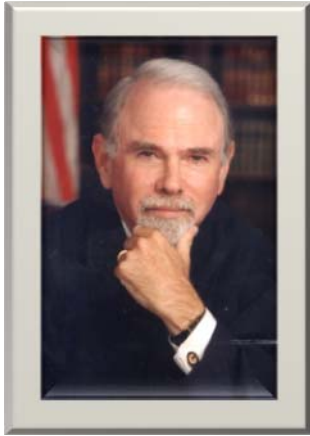
Jury Trial June 15, 2010 . Boise, Idaho

- Judson Tolman, Weiser, Idaho; Stephen Quesenberry and Bryan Quesenberry, Hill Johnson & Schmutz, Provo, Utah; for the Plaintiff
- Andrew J. Waldera and Nancy Jo Garrett, Moffatt Thomas Barrett Rock & Fields for the Defendant

Verdict:

(1) Plaintiff awarded \$74,543.00 on its breach of contract claim and \$75,600.00 on its negligence claim; (2) Defendant awarded \$190,134.38 on its counterclaim of dishonor of check; and (3) The Court entered Judgment in favor of Defendant and against Plaintiff in the amount of \$39,991.38.

Jury Trials in the District of Idaho



US v. Roberto Ruiz-Marin, CV-09-102-S-BLW

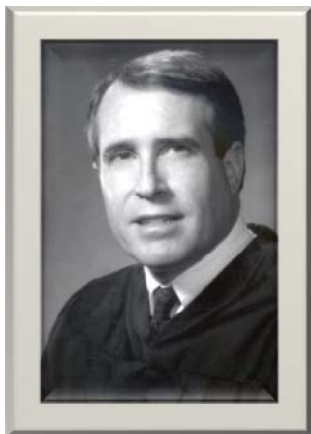
Jury Trial: June 7, 2010 . Boise, Idaho

Trial Conducted by Judge William B. Shubb

- Paul R. Taber, III, for the Defendant
- Aaron Lucoff, Assistant United States Attorney for the Government

Verdict: Guilty of Some Counts to Distribute Methamphetamine and Cocaine; and Not Guilty of Other Counts Criminal Distribution

Jury Trials in the District of Idaho



Mueller v. Auker, CV-04-399-S-BLW

Jury Trial: June 7, 2010 . Boise, Idaho

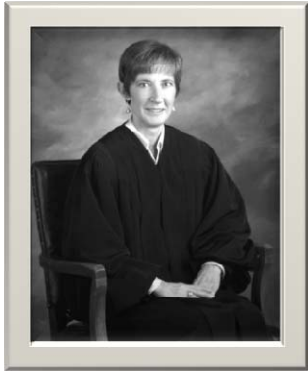
Trial Conducted by Judge B. Lynn Winmill

- John Runft and Jon Steele, Runft & Steele Law Offices, Boise, Idaho; and Michael Rosman, Center for Individual Rights, Washington, D.C. for the Plaintiff
- Marcus Nye, Racine Olson Nye Budge & Bailey, for Defendants April Auker, Kimberly Osadchuk, Janet Fletcher, Barbara Harmon, Linda Rosenbach, Karl Kurtz and Den Diebert
- Kirtlan Naylor and Bruce Castleton, Naylor and Hales, for Defendants City of Boise, Officers Dale Rogers, Ted Snyder and Tim Green
- Richard Hall and Keely Duke, Hall Farley Oberrecht & Blanton for Defendant Richard MacDonald
- Walter Sinclair and Nicole Hancock, Stoel Rives for Defendant St. Lukes Regional Medical Center

Verdict

Jury ruled in favor of the defendants

Jury Trials in the District of Idaho



US v. 45.43 Acres of Land, CV-08-463-S-BLW

Jury Trial: October 26, 2010 . Boise, Idaho

Trial Conducted by Judge Candy Wagahoff Dale

- Joanne P. Rodriguez, Assistant United States Attorney, for the Government
- Walter H. Bithell, Ted S. Tollefson, and Steven C. Bowman, Holland & Hart, for Defendant Orchard Land

Verdict:

Jury found in favor of the Defendant in the amount of \$109,000

Jury Trials in the District of Idaho



US v. Ricardo Daniel Rodriguez, CV-010-120-N-MHW

Jury Trial: November 15, 2010 . Coeur d'Alen, Idaho

Trial Conducted by Judge Mikel H. Williams

- Traci Jo Whelan, Assistant United States Attorney, for the Government
- Bryan P. Whitaker, CJA Panel Attorney, Spokane, Washington, for the Defendant

Verdict:

Jury found Defendant Guilty of Assault

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