

SUMMER 2009

The **TWO & OAK** Legal Beat

- **STOLL BERNE OBTAINS RULINGS ON ELEMENTS OF OREGON SECURITIES LAW CLAIMS**

In two recent decisions in *State of Oregon v. American International Group, Inc.*, Mult. Co. Case No. 0802-03061, Judge Henry Kantor ruled that plaintiffs are not required to plead or prove reliance or scienter to support a claim under ORS 59.137, enacted in 2003. Judge Kantor also ruled that "truth on the market" is not a defense to a claim under ORS 59.137. Judge Kantor denied AIG's motion to dismiss, which asserted that the Oregon Securities Law violates the Dormant Commerce Clause of the U.S. Constitution. In a ruling with application beyond the Oregon Securities Law, Judge Kantor ruled that ORCP 21 E(2) motions to strike are not disfavored, unlike FRCP 12(f) motions to strike, and that the Oregon rule does not require a showing of prejudice.

- **OREGON COLLEGE SAVINGS PLAN'S CLAIMS AGAINST OPPENHEIMERFUNDS REMANDED TO STATE COURT**

Oregon District Court Judge Michael Hogan recently ruled in *Oregon v. OppenheimerFunds, Inc.*, Case No. 09-6135-HO (D. Or.), that an action brought on behalf of the Oregon College Savings Plan Trust against OppenheimerFunds, Inc. is not a covered class action under the Securities Litigation Uniform Standards Act (SLUSA). The Trust filed claims against Oppenheimer in Marion County for improperly managing the Trust's conservative funds in a hedge-fund-like portfolio.

Oppenheimer removed the case to federal court claiming it was a class action for trust beneficiaries that was removable under SLUSA. Judge Hogan held that the Trust is a single plaintiff under SLUSA's counting provision and remanded the case to state court where the litigation continues. This was an important first victory for the Trust (and by extension for the many families and children who ultimately may benefit from the Trust's action).

- **PATENT LITIGATION TEAM SETTLES MAJOR INFRINGEMENT ACTION**

On the eve of trial, Stoll Berne attorneys Tim DeJong, Rob Shlachter and Jake Gill settled *Vanguard Products Group, Inc. v. Merchandising Tech., Inc.*, Case No. 07-1405-BR (D. Or.). Stoll Berne represented the patentee. Prior to the settlement, Stoll Berne obtained summary judgment of infringement and dismissal of several key defenses.



Stoll Berne News:

Stoll Berne is proud to announce that former shareholder David Rees has been appointed by Oregon Governor Ted Kulongoski to be a judge on the Multnomah County Circuit Court. We are sorry to lose David but proud of his accomplishment.

- **FINAL SETTLEMENT REACHED IN PAC EQUITIES LAWSUITS**

Stoll Berne and its co-counsel at Esler Stephens & Buckley recently concluded the settlement of the Pac Equities lawsuits. Pac Equities was a real estate scam started by (the ironically-named) Michael and Phyllis Rich, who were sentenced to federal prison for their actions. The Riches retained a Nevada law firm to do their securities work, and the investors will recover much of their losses as a result of settlement with the lawyers and the work of the receiver, Peter McKittrick.

- **STOLL BERNE OBTAINS FAVORABLE RESULT FOR LOAVES & FISHES IN WILL CONTEST**

Gary Berne and Jen Wagner of Stoll Berne represented Loaves & Fishes in a recent will contest case. The court set aside a will that gave a 90-year-old man's entire estate to a nurse who moved into his home four months before he passed away. The case was a cause célèbre in Portland's Hillsdale neighborhood. Stoll Berne worked with Jan Kitchel and Rick Braun, the lawyers for the children, and is very pleased that Loaves & Fishes will be able to use the money in its charitable work and that family members also will benefit.

Inside Stoll Berne:

- **STOLL BERNE DIRECTS CY PRES AWARDS**

Stoll Berne recently requested that Cy Pres awards of approximately \$30,000 be directed to the National Association of Consumer Advocates (NACA), the National Consumer Law Center (NCLC) and Public Citizen. The court approved these awards. Cy Pres awards are uncollected monies from completed class action matters. Steve Larson, a Stoll Berne shareholder, is on the NCLC Partner's Council which supports consumer rights.

- **STOLL BERNE RECOGNIZED BY CHAMBERS USA AND BEST LAWYERS OF AMERICA**

Stoll Berne was recognized as one of the top four litigation firms in Oregon by Chambers USA, and Stoll Berne attorneys Gary Berne, Keith Ketterling, Rob Shlachter, Robert Stoll, David Lokting, Steve Larson received individual recognition. These same Stoll Berne attorneys, along with Tim DeJong, also were recognized by Best Lawyers in America.

Chambers USA described David Lokting as "an outstanding lawyer" who can "handle any real estate issue" and recognized Stoll Berne litigators for their expertise in business litigation, intellectual property litigation and "bet-the-company" litigation, among other areas.

For more information please visit:

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