

Cases of Note

Securities Law: In *Merck & Co. v. Reynolds* (April 27, 2010), the U.S. Supreme Court held that the statute of limitations in 28 USC 1658(b)(1) (fraud claims under the Securities Exchange Act) begins to run once the plaintiff actually discovered or a reasonably diligent plaintiff would have discovered the facts constituting the violation, including facts showing scienter. The court rejected “inquiry notice” as triggering the limitations period. (www.supremecourt.gov/opinions/09pdf/08-905.pdf)

Employment Law: In *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries* (April 14, 2010), the Oregon Supreme Court held that the provision of the Oregon Medical Marijuana Act that affirmatively authorizes individuals who possess valid “registry identification cards” to use marijuana for medicinal purposes is preempted by the federal Controlled Substances Act. As a result, Oregon’s employment discrimination laws do not require employers to accommodate employees’ use of medical marijuana. Any employer with a true “zero-tolerance” drug policy can strictly enforce that policy and terminate an employee for using marijuana, even if the employee is using marijuana to treat a medical condition that qualifies as a “disability” under ORS 659A.103. Allowing an employee to use medical marijuana is not a “reasonable accommodation” required by Oregon’s disability discrimination laws. (*Thanks to Dan W. Howard for this tip.*) (www.publications.ojd.state.or.us/S056265.htm)

Bankruptcy: In *Milavetz, Gallop & Milavetz v. United States* (March 8, 2010), the U.S. Supreme Court held that, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), attorneys who provide “bankruptcy assistance” are “debt relief agencies” and are subject to the disclosure and identification requirements, as well as the prohibition on advising clients to incur debt before bankruptcy without a legitimate reason. (www.supremecourt.gov/opinions/09pdf/08-1119.pdf)

Civil Procedure: In *McCollum v. Kmart Corp.* (February 19, 2010), the Oregon Supreme Court held that ORCP 64 F(1) requires an order for a new trial to be formally entered into the court’s register (OJIN) – as opposed to merely filing it with the court clerk – within 55 days after entry of the judgment. The court also held that the letter opinion (although entered in the register within 55 days) was not an order and did not incorporate the order by reference. Because the order itself was not entered in the register until after the 55-day period, the order was denied by operation of law. (www.publications.ojd.state.or.us/S057609.htm)

Tax/Bankruptcy: In *Severo v. Comm’r* (November 20, 2009), the Ninth Circuit Court of Appeals held that the 10-year statute of limitations for IRS collection is tolled for the period of the bankruptcy court’s automatic stay, plus an additional six months. (www.ca9.uscourts.gov/datastore/opinions/2009/11/20/08-70817.pdf)

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