

Cases of Note

Insurance: In *Vogelin v. American Fam. Mut. Ins. Co.* (July 16, 2009), the Oregon Supreme Court construed ORS 742.502 and 742.504 and held that Oregon law permits insurers to calculate underinsured motorist (UIM) benefits by subtracting the tortfeasor's liability payment from the uninsured motorist (UM) liability limit of the insured's policy, instead of by subtracting that payment from the amount of the insured's total damages. (www.publications.ojd.state.or.us/S056655.htm)

Bankruptcy: In the case of *Batlan v. Bledsoe (In re Bledsoe)* (June 25, 2009), Trustee tried to avoid a transfer made pursuant to an Oregon state court judgment dissolving the marriage of the debtor, based on either §544(b)(1) or §548(a)(1)(B) of the Bankruptcy Code. The Ninth Circuit Court of Appeals held that, under Oregon law, a party who challenges a judgment must allege and prove "extrinsic fraud" – including claims under the Uniform Fraudulent Transfer Act – which Trustee did not do. The Ninth Circuit also held that a dissolution judgment that follows from a regularly conducted, contested divorce proceeding conclusively establishes "reasonably equivalent value" in the absence of actual fraud. Both of Trustee's arguments failed, and the district court's rulings were confirmed. (www.ca9.uscourts.gov/datastore/opinions/2009/06/25/07-35567.pdf)

Securities: In *Warfield v. Bestgen* (June 24, 2009), the Ninth Circuit Court of Appeals held that the charitable gift annuities sold in this case met the three-part *Howey* test to qualify as "investment contracts" subject to regulation under the Securities Act of 1933 and the Securities Exchange Act of 1934. (www.ca9.uscourts.gov/datastore/opinions/2009/06/24/07-15586.pdf)

Consumer Protection: In *Barrer v. Chase Bank USA* (May 19, 2009), the Ninth Circuit Court of Appeals held that although Chase made appropriate disclosure of the annual percentage rate with a change-in-terms provision, Chase did not, as a matter of law, meet the "clear and conspicuous" standard under Regulation Z of the Truth in Lending Act, because the provision was buried five pages deep in fine print. (www.ca9.uscourts.gov/datastore/opinions/2009/05/18/07-35414.pdf)

Statutory Interpretation: In *State v. Gaines*, 346 Or. 160 (April 30, 2009), the Oregon Supreme Court held that "contrary to this court's pronouncement in *PGE*, we no longer will require an ambiguity in the text of a statute as a necessary predicate to the second step – consideration of pertinent legislative history that a party may proffer. Instead, a party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute's text, where that legislative history appears useful to the court's analysis."

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