

# The Oregonian

## Oregon business cases crowd docket

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From staff and wire reports

### Justices will look at a huge tobacco award, a lumber antitrust issue and consumers' insurance beef

WASHINGTON The Supreme Court is about to plunge into an agenda laden with issues affecting the business sector, including a spate of cases originating in Oregon.

Of the 38 cases the court has agreed to consider so far in the term that begins today, 17 are business-related, "an unusually high fraction of the court's docket," Washington lawyer Roy Englert says.

Chief Justice John Roberts was managing partner of a large law firm that had a sizable portfolio of business clients and is "comfortable with the issues presented in business cases in ways that Chief Justice William Rehnquist" was not, Pepperdine University law professor Douglas Kmiec says.

Philip Morris USA is fighting an \$80 million punitive damage award to the widow of Jesse D. Williams, a former Portland public schools janitor who started smoking Marlboros during the early 1950s when he was serving in the Army during the Korean War.

Williams' family sued after he died of lung cancer, claiming that Philip Morris officials lied about the dangers of smoking. A Multnomah County jury in March 1999 awarded the family \$821,485 in compensatory damages and \$79.5 million in punitive damages. At the time, the \$80.3 million award was the largest in an individual smoker case.

The judge reduced the punitive damage award to \$32 million, saying it was excessively large under the U.S. Constitution, but the Oregon Court of Appeals restored the verdict in June 2002.

If the tobacco company is looking for help from the conservative wing of the court, it may have its work cut out. For example, liberal Justice Ruth Bader Ginsburg and conservative Justice Antonin Scalia are allies when it comes to punitive damages. Scalia says the issue is "the province of state governments," ominous words for Philip Morris' position.

In the area of antitrust law, the Bush administration wants the justices to reverse a \$79 million verdict against lumber industry giant Weyerhaeuser Co. in a lawsuit brought by a smaller competitor.

In 2003, a Portland jury found that Weyerhaeuser had used its market dominance to hoard alder saw logs and drive a small mill out of business. The jury awarded \$26.25 million to the defunct Ross-Simmons Hardwood Lumber Co. of Longview, Wash., a sum that was automatically tripled to \$78.75 million under federal antitrust law.

Weyerhaeuser, based in Federal Way, Wash., is backed by the Bush administration and other corporate giants, who think the verdict was unduly vague for deciding when a company has a monopoly on industrial ingredients.

There is a marked difference in emphasis on antitrust law between the court under Roberts and the late Rehnquist. From 1994 to 2005, the court heard five antitrust cases. There were three in Roberts' first term and two to date this term.

In the realm of consumer rights, two insurance companies, Geico and Safeco, are fighting allegations that they should have notified people about adverse information in their credit reports. The consumers say

Geico and Safeco denied them insurance or increased premiums based on data in the reports.

In one case, Ajene Edo, a Geico Casualty customer from Oregon, sued in 2001, contending that the company didn't give Edo the best insurance rates and didn't disclose why.

Steve Larson, a Portland attorney, argued successfully before the 9th Circuit Court of Appeals that customers should be told when their credit reports affect their premiums, beginning with the first policy purchased. Also, the effect should be specified of what the insurers call an "adverse action," such as rate increases or denial of insurance.

Appealing the ruling, the insurance companies argue that being offered higher rates on a policy is not an "increase" unless a lower price had been offered previously.

If the 2005-06 term is any indication, Roberts may be able to achieve consensus on some business cases. He wrote the 9-0 opinion rebuffing the efforts of a group of taxpayers to challenge nearly \$300 million in tax breaks for DaimlerChrysler AG.

The newest justice, Samuel Alito, comes to the court with a pro-business reputation. But it is uncertain where Alito and Roberts will come down on issues such as punitive damage awards.

As an appeals court judge, Alito sided with companies in employment and discrimination cases.

The Oregonian staff and AP writer Mark Sherman contributed to this report.