

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

RUSSELL GIBSON and WILLIAM
WEILLER, DDS, individually and on
behalf of all other similarly-situation
individuals,

Plaintiffs,

v.

PROVIDENCE HEALTH SYSTEM-
OREGON, an Oregon non-profit
corporation,

Defendants.

Case No. 0601-01059

ORDER GRANTING DEFENDANTS'
ORCP MOTIONS TO DISMISS

*This case has been specially assigned to
Judge Marilyn Litzenberger*

Defendant Providence Health System-Oregon's ("Providence") Motion to Dismiss pursuant to ORCP 21A (8) and Motion to Strike Class Allegations under ORCP 32I and 32E (4) came before the Honorable Marilyn E. Litzenberger for hearing on November 3, 2006. The parties presented oral argument to the Court through their attorneys of record. Providence appeared by and through its attorneys, John F. McGrory, Jr. and Gregory A. Chaimov. Plaintiffs Russell Gibson and William Weiller, DDS, appeared by and through their attorneys David Paul, David F. Sugerman, Michael Williams and Brian S. Campf. Thereafter, on February 27, 2007 and February 28, 2007, and the parties submitted supplemental briefing with additional points and authorities for the Court's consideration.

On May 3, 2007, the Court conducted a hearing and announced its rulings on Providence's ORCP 21A (8) motion to dismiss Plaintiffs' claims for relief in the form of money damages. The Court advised counsel of the basis for its ruling and conclusion that the damages prayed for were not compensable under Oregon law. *See Lowe v.*

ORDER GRANTING DEFENDANTS' C

Philip Morris USA, Inc., 207 Or App 532 (2006), *rev allowed* 342 Or 503(2007).

Plaintiffs asked the Court to prepare a written opinion setting forth the reasons for its decision. The Court and counsel then discussed whether the Court's ruling effectively operated to moot Defendant's motion to strike the class allegations in Plaintiff's complaint. The Court agreed to consider and announce its ruling on that issue in its written opinion.


The parties met with the Court again on September 11, 2007, for a status conference and it was agreed that counsel would confer on a proposed order of dismissal reflecting the Court's prior ruling. The Court has considered the positions of the respective parties and now being fully advised as to those matters,

IT IS HEREBY ORDERED:

1. Providence Health Systems-Oregon's Motion to Dismiss the plaintiff's first claim for relief for negligence and negligence *per se*, brought pursuant to ORCP 21A (8), is GRANTED.
2. Providence Health Systems-Oregon's Motion to Dismiss the plaintiff's second claim for relief (violation of Unlawful Trade Practices Act) is GRANTED.
3. Providence Health Systems-Oregon's Motion to Strike the plaintiffs' class claims for damages is GRANTED, the Court having concluded that Providence has met its burden under ORCP 32 I to show that all potential class members similarly situated have been identified, that those identified have received notice that upon their request Providence will afford them reasonable compensation, correction or remedy of their alleged wrong, that such compensation, correction or remedy was given in a reasonable time, and that

Providence has ceased from engaging in the acts or practices alleged to have damaged potential class members.

Dated: November 7, 2007


Hon. Marilyn E. Litzzenberger
Circuit Court Judge

cc: David Sugerman
David Paul
John F. McGrory, Jr.
Brian Campf