

CASES *of* NOTE

WORKERS' COMPENSATION: In the case of *Gadalean v. SAIF Corp.*, 364 Or 707 (April 18, 2019), the Oregon Supreme Court was presented with an issue of statutory construction to decide whether the definition of “worker” in ORS 656.005 in the Workers’ Compensation Law encompasses a claimant injured during a preemployment drive test that consisted of an actual delivery for an employer. The court held that because the claimant had been told by the employer that he was to perform the test and to do so without remuneration, the claimant did not qualify as a “worker” under ORS 656.005(3) for the purpose of the Workers’ Compensation Law.

RESTITUTION: In the case of *State v. Gutierrez-Medina*, 365 Or 79 (June 6, 2019), the Oregon Supreme Court allowed review to consider whether the trial court erred in refusing to apply the civil law defense of comparative fault to reduce the amount of economic damages that defendant would be required to pay as restitution. The court concluded that “defendant’s conviction for third-degree assault establishes a degree of culpability for which the defense of comparative fault would be unavailable in a civil action. Thus, the trial court correctly refused to reduce the amount of restitution by the victim’s alleged comparative fault.”

EMPLOYMENT LAW: In the case of *McLaughlin v. Wilson*, 365 Or 535 (September 12, 2019), the Oregon Supreme Court was asked to decide the scope of the antiretaliation provision in ORS 659A.030(1)(f). After looking at legislative history, the court concluded that the word “person” includes an “individual” such as defendant. “In addition, ‘otherwise discriminate against’ is not limited to acts that take place inside the workplace. The acts alleged by plaintiff in her complaint have a nexus to her prior employment and fall within its scope. The trial court therefore erred in dismissing plaintiff’s retaliation claim.”

BANKRUPTCY: In the case of *Concienne v. Asante*, 299 Or App 490 (September 18, 2019), the Oregon Court of Appeals was presented with the issue whether plaintiff’s bankruptcy estate was the owner of plaintiff’s medical malpractice claim because plaintiff was or reasonably should have been aware of the potential claim when he failed to list it as an asset in an earlier Chapter 7 bankruptcy proceeding. The court concluded as a matter of law, “plaintiff was or reasonably should have been aware of the claim when he failed to list it with the bankruptcy court and, therefore, the bankruptcy estate owns and controls the claim.”