

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

A Finance and Insurance manager filed an action against her former employer for failure to pay overtime and wages due upon termination. Judge Dennis J. Hubel held that a defense expert affidavit submitted on summary judgment was irrelevant and should be stricken. The former investigator for the U.S. Department of Labor opined that the defendant was not required to pay overtime as a matter of law, an opinion excludable as unhelpful under Fed. R. Evid. 702.

Judge Hubel granted plaintiff's motion for partial summary judgment on her claim that defendant violated the FLSA overtime provision. The court concluded that defendant qualified as a "retail and service establishment" and that plaintiff was most involved in a part of the business which would not otherwise be exempt. The court declined to award FLSA liquidated damages on summary judgment given evidence of the employer's good faith. However, defendant's non-payment was "willful" under Oregon's wage penalty statutes requiring imposition of state statutory wage

penalties. Bennett v. SLT/TAG, Inc., CV 02-65-HU (F&R, Feb. 10, 2003; Adopted by Judge Robert E. Jones, May 8, 2003).

Plaintiff's Counsel:

David Paul

Defense Counsel:

Christopher Koback

Sanctions

Plaintiffs filed an action against their employer claiming that they were subjected to a racially hostile work environment. One plaintiff claimed that he discovered a noose at his work station. The parties settled the case last October. After the settlement was entered, plaintiffs learned from a non-party of evidence of an incident of workplace harassment that had not been disclosed during discovery. The undisclosed incident involved a Caucasian who left a noose at the work station of another Caucasian employee at an Oregon facility during the relevant time period. The company had disclosed evidence of similar incidents involving nooses in facilities in other states.

Plaintiffs then filed a motion

seeking an evidentiary hearing and ultimately, sanctions for the defendant's alleged willful violation of discovery rules and an order compelling production that had been entered by the court prior to the settlement.

Judge Janice M. Stewart rejected defendant's claim that plaintiffs waived any objection by waiting 3 months to file their motion for sanctions; the court found that plaintiffs engaged in a reasonable period of investigation and verification and noted the absence of any prejudice to the defendant. The court also determined that the undisclosed evidence was relevant to the plaintiffs' claims and that discovery would have been compelled by the terms of the discovery requests and order on discovery. Finally, there was evidence that defense counsel was aware of the incident at least two months prior to the case settlement. Judge Stewart concluded that the failure to disclose evidence could well have lead plaintiffs to settle the case for a "discount" as alleged.

The court granted plaintiffs' request for a full evidentiary hearing to determine if defendant willfully violated discovery obligations. The court noted that

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it could, consistent with its inherent authority and civil contempt remedies, impose monetary sanctions and attorney fees since plaintiffs were not seeking to set aside the settlement. Hill v. UPRR, CV 01-1554-ST (Opinion, April 22, 2003).

Plaintiffs' Counsel:

Alexander S. Wylie

Cecil C. Gill

Eric J. Neiman

Defense Counsel:

John P. Ashworth (Local)

Creditor Law

Judge Anna J. Brown entered summary judgment and dismissed claims filed under the Fair Credit Reporting Act (FCRA) against a defendant who was not a "person" who took an adverse action against any consumer. The court rejected plaintiffs' attempt to confer liability against a company who collected premiums and provided some degree of direction regarding underwriting and rating of insurance premiums. The court concluded that a reinsurance agreement did not alter the essential nature of the parties' relationship.

The court also granted in part and denied in part plaintiffs' motion to file an amended complaint asserting FCRA claims against individual insurers. Spano v. Safeco Ins. Corp. of America, CV 03-363-BR (Opinion, April 21, 2003).

Plaintiffs' Counsel:

Steve D. Larson

Charles A. Ringo
Defense Counsel:

John A. Bennett (Local)

Civil Rights

Police responded to a report of an altercation involving drugs and alcohol. When they arrived, one of the combatants was uninjured; the other had locked himself into a residence. Officers heard loud crashing noises and growling sounds. When they forced entry through the front door, the suspect jumped through a 2nd story window in the back of the house. The suspect was visibly injured and writhing on the ground; he refused to comply with officers' requests that he lie prone. The officers then shot him 10 times with bean bags and emptied 5 cans of pepper spray in an effort to place the suspect in handcuffs. After placing the cuffs on, officers contend the suspect continued to struggle and lunged towards an officer; the officers hit the suspect with steel batons and physically stepped on him until he could be secured to an ambulance gurney. The suspect died at the scene. An autopsy revealed that death was caused by numerous sharp force injuries to his neck.

The suspect's family filed a civil rights action claiming excessive force in violation of 42 U.S.C. § 1983. Judge

Janice M. Stewart denied a defense motion for summary judgment. The court rejected the individual officers' claims of qualified immunity, finding that no reasonable police officer would believe that the force used was reasonable under the circumstances, particularly given that the suspect was severely injured and unarmed when the officers took the challenged action to subdue him. The court granted the City's motion for summary judgment against the claim that the City had ratified the officer's conduct; however, the court denied the City's motion relative to claims of inadequate training. Marsall v. City of Portland, CV 01-1014-ST (Opinion, April 14, 2003; Order Denying Reconsideration, May 23, 2003).

Plaintiffs' Counsel:

Joseph A. Grube

M. Christian Bottoms

Defense Counsel:

Mary T. Danford

REMINDER

RSVPs are due for the FBA/Oregon District Court Historical Society Summer Associate Program taking place Wednesday, June 18, 2003.

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