

COURTHOUSE NEWS

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

Thursday, May 1, 2003, at 4:00 p.m., 16th Floor of the Hatfield Courthouse: "Famous Federal Cases – Arguing before the United States Supreme Court," with Dr. Stephen Wasby, Judge James A. Redden, David Frohnmayer, and Timothy Volpert. CLE credit is pending.

Verdict

At the conclusion of a 2-week jury trial, The Confederated Tribes of Siletz won a \$26,256,406 verdict in an anti-trust case involving lumber supplies. The jury found that there was a relevant market for alder saw logs and that defendant monopolized the market. With statutory trebling, the award will increase to \$78,769,218. Judge Owen M. Panner denied defendant's request, pursuant to LR 48.4, for leave to conduct post-trial interviews of the jurors. Confederated Tribes of Siletz, et al. v. Weyerhaeuser Co., CV 00-1693-PA (Verdict, April 18, 2003).
Plaintiffs' Counsel:

Julie A. Weis
LeRoy Wilder
Michael E. Haglund
Defense Counsel:
Julia E. Markley

Environment

Judge Ancer L. Haggerty ruled that he had jurisdiction to consider a complaint filed under the Clean Water Act (CWA) pursuant to the statute's citizen suit provision. The court held that the action challenged involved a non-discretionary duty of the EPA to promptly promulgate new water quality standards after the State of Oregon failed to do so. The state submitted proposed temperature criterion for salmon migration and rearing in the lower Willamette River; the EPA rejected that proposal and then took no action for the next 3 years. Judge Haggerty held that in failing to act, the EPA violated both the CWA and the Endangered Species Act, especially given that a biological opinion had already determined that the state's temperature

criterion was likely to adversely affect listed species. The EPA was ordered to prepare and publish revised water quality criterion.

NW Environmental Advocates v. US EPA, et al., CV 01-510-HA (Opinion, March 31, 2003).

Plaintiffs' Counsel:
Aaron Courtney;
Bart Bush
US Defense Counsel:
G. Scott Williams
OR Defense Counsel:
Karen L. Moynahan
Defense Intervenors:
Jay T. Waldron
Scott Kaplan

7 Judge Anna J. Brown found that several environmental groups could proceed with an action seeking injunctive relief for claimed violations of the Endangered Species Act. Plaintiffs seek to challenge the state Forrester's decision to allow clearcut logging operations in forests that will adversely affect protected coastal coho populations. The court rejected a defense motion to dismiss on grounds of ripeness, standing, 11th

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and 12th Amendment bars and failure to state a claim. Pacific Rivers Council v. Brown, CV 02-243-BR (Opinion, Dec. 23, 2002).
Plaintiffs' Counsel:

Arthur C. Johnson

Defense Counsel:

Hardy Myers

Defense Intervenors:

Scott Horngren

Timothy Dolan

David Bledsoe

Employment

Judge Ann Aiken granted a defense motion for summary judgment against an Equal Pay Act Claim. The plaintiff had been employed as a business office supervisor up until her resignation; she claimed violations of the federal pay act because she was paid less than a Technician Supervisor. Examining the actual job performance and content of the two positions, Judge Aiken held that they were not comparable as a matter of law. The court noted that the Technician Supervisor job required far more education and special training, involved work on-call on a 24/7 basis and that the person holding that position had significantly more job related experience than the plaintiff. The fact that both positions involved mid-level management of the same number of employees was insufficient to consider the jobs

comparable for Equal Pay Act purposes. The court declined to exercise supplemental jurisdiction over remaining state law claims.

Babb v. Gervais Telephone Co., CV 02-6007-AA (Opinion, April 4, 2003).

Plaintiffs' Counsel:

Kim E. Hoyt

Defense Counsel:

Michael J. Apenes

7 A pharmaceutical sales rep was promoted and transferred to her company's Portland office. Thereafter, she began to suffer from depression and various sleep-related disorders. Eventually, she was placed on disability leave and resigned from the company. She filed an action against her former employer claiming disability discrimination, leave act violations, sex discrimination and wrongful constructive discharge under federal and state theories. Judge Dennis J. Hubel denied a defense motion for summary judgment against plaintiff's federal and state disability act claims. The court concluded that genuine issues of material fact existed on the question of whether plaintiff's fatigue and sleep disorders substantially limited a major life activity. The court interpreted state disability

discrimination law consistent with the federal law, rejecting plaintiff's contention that Oregon's analysis is now different following Evans v. Multnomah County Sheriff's Office, 184 Or. App. 733 (2002).

After reaching this conclusion, Judge Hubel refused to consider defendant's alternative grounds for summary judgment raised for the first time with its reply brief.

The court granted defendant's motion for summary judgment against plaintiff's claims of sex discrimination relative to a promotion and transfer request; plaintiff failed to establish a prima facie case of differential treatment. However, the court denied defendant's motion for summary judgment against plaintiff's state and federal family leave act claims; Judge Hubel held that defendant violated the law when if forced plaintiff to use short term disability benefits instead of permitting her to use her 3 weeks of accrued vacation leave. Romo v. Pfizer, Inc., CV 02-246-HU (Opinion, March 18, 2003).

Plaintiff's Counsel:

Mary Ellen Page Farr

Defense Counsel:

Ronald E. Bailey