

COURTHOUSE NEWS

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

A former bank employee filed an action alleging mistreatment and wrongful termination based upon her disability. Plaintiff suffers from Type I diabetes and while it is "uncomplicated," her blood glucose levels swing high and low with rapidity and are difficult to control. Judge Robert E. Jones granted a defense motion for summary judgment against the federal and state disability act claims based upon his finding that plaintiff was not "disabled." The court noted that the Supreme Court has held that a court's determination of whether a person is disabled must be made on a case-by-case basis with consideration given to available mitigative measures. Judge Jones found that the undisputed facts regarding plaintiff's condition and its impact upon her ability to function failed to show that plaintiff was substantially limited in any major life activities: "I decline to accept that in crafting the language of the ADA, Congress intended the functioning of a person's internal bodily systems, without more, to qualify as a 'major life activity.'" Fraser v. U.S. Bancorp, CV 00-543-JO (Opinion, Sept. 28, 2001).
Plaintiff's Counsel:

Craig Crispin
Defense Counsel:
Jeff Druckman

Environment

In an action challenging an aerial pesticide spray program designed to address the Douglas Fir Tussock Moth in Oregon and Washington forests, Judge James A. Redden extensively reviewed the administrative record of the Forest Service and determined that an Environmental Impact Statement and Record of Decision adequately addressed potential negative effects of the program and adopted mitigation measures to lessen those impacts. The court also concluded that the federal agencies adequately addressed potential cumulative impacts and thus, plaintiffs failed to establish any violations of the National Environmental Policy Act and defendants were entitled to summary judgment.

The court also granted a motion to strike several exhibits and declarations that were outside of the administrative record and/or beyond the expertise of the person submitting the declaration.

Plaintiffs' claim that defendants violated the Clean Water Act (CWA) by failing to

obtain a NPDES permit was also rejected. Judge Redden held that the challenged spray activity constituted a non-point source silvicultural pest control program and, thus, was exempt from the CWA's permit requirements. League of Wilderness Defenders v. Forsgren, CV 00-1383-RE (Opinion, May 7, 2001).
Plaintiffs' Counsel:
Marianne Dugan
Defense Counsel: Tom Lee

Labor

Judge Ann Aiken granted a defense motion to dismiss claims under federal and state labor laws for unpaid vacation and holiday pay. The court held that plaintiff was never "terminated" to trigger the need to pay vacation time under ORS 652.140 when she was simply re-classified from a salaried non-union to an hourly union position. Plaintiff's claim for holiday pay was preempted by § 301 of the Labor Management Relations Act because it required interpretation of a collective bargaining agreement. Wilson v. Pope & Talbot, CV 01-6186-AA (Opinion, Sept. 2001).
Plaintiff's Counsel:
Donna Matthews
Defense Counsel:

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Andrew Altschul

Attorney Fees

A former Oregon State Police officer brought a civil rights action against his superiors for terminating his employment in violation of the First, Fifth and Fourteenth Amendments. Defendants' were granted summary judgment, and the State filed a claim for attorney fees.

Judge Haggerty granted the State's request because of the unique circumstances of the case. Plaintiff's alleged misconduct, which resulted in criminal charges filed against him in state court, was so egregious that any reasonable police officer would have known that such behavior was improper, illegal, and would result in the termination of a police officer's employment. Plaintiff was unable to present any evidence to raise a genuine issue of fact in response to the defendants' overwhelming evidence of his misconduct. Therefore the plaintiff, as a former police officer, clearly should have known that his claims were frivolous or without foundation.

Judge Haggerty did not award the full amount of attorney fees requested by the state. A careful review of the records of time spent resulted in a reduction of fees because the total number of hours spent on the case appeared to be excessive. Lam v. Schloegel, CV 00-1626-HA (Opinion, July 26, 2001).

Plaintiff's Counsel:

Bernard Jolles
Defense Counsel:
Patricia Urquhart

7 A plaintiff filed an action against a federal agency alleging violations of the Administrative Procedures Act (APA). Plaintiff succeeded, in part, on summary judgment; a defense motion for summary judgment was also granted in part and denied in part. The court's decisions were affirmed by the Ninth Circuit. There-after, plaintiff petitioned for attorney fees pursuant to the Equal Access to Justice Act.

Judge Dennis J. Hubel found that plaintiff was a prevailing party because he succeeded on several significant issues in the case. The court overruled the defendant's contention that plaintiff should be awarded no fees for time spent when the case was still pending in a D.C. district court. Although plaintiff's opposition to the transfer was unsuccessful, this procedural dispute did not detract from plaintiff's status as a prevailing party on the merits. Judge Hubel also found that the defendant's position on an APA issue relative to an agency's discretion to consider an appeal was not substantially justified and was contrary to congressional intent. Thus, plaintiff's petition for fees was granted in part and plaintiff was awarded approximately \$25,000, plus costs. Oberdorfer v. Glickman, CV 98-1588-HU (Order, Sept. 17, 2001).

Plaintiff's Counsel: Paul Merrell
Defense Counsel: Tom Lee

Procedure

Defendant removed an action from state court on grounds of diversity and with a claim that one named defendant was a "sham." Plaintiff moved to remand on grounds of incomplete diversity and because defendant failed to present adequate claims of fraudulent joinder.

Judge Anna J. Brown noted that in considering fraudulent joinder, she was not limited to the allegations in the complaint. A defense affidavit was evidence that there was no liability as to the one non-diverse defendant and plaintiff failed to offer counter-proof. The court held that plaintiff could not simply rely upon speculative future discovery in seeking remand and thus, denied plaintiff's motion.

DaCosta v. Novartis AG, CV 01-800-BR (Opinion, Aug. 31, 2001).

Plaintiff's Counsel:

Michael Williams

Defense Counsel:

Mark Wagner