

COURTHOUSE NEWS

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

Plaintiff and defendants filed cross-motions for summary judgment relating to plaintiff's challenge of a Forest Service Finding of No Significant Impact (FONSI) and Decision Notice (DN) implementing the Peak Timber Sale in the Rogue River National Forest. Defendant-Intervenors Scott Timber Co. and Helicopters, Inc. joined in defendant's cross-motion. Plaintiff contended that the Forest Service violated the National Forest Management Act (NFMA) and National Environmental Policy Act (NEPA) by failing to give adequate consideration to requirements of the 1994 Northwest Forest Plan relative to: (1) diversity of species; (2) consistency with the Forest Plan's standards for soils; (3) cumulative impacts; and (4) compliance with the Forest Plan's Aquatic Conservation Strategy objectives. Plaintiff contended that the timber sale potentially threatened the Pacific fisher, red-legged frog and gray wolf. Plaintiff also moved to strike extra-record declarations

filed in support of defendant's motion for summary judgment. Defendants contended that the issuance of the FONSI and DN were not arbitrary and capricious and were supported by the administrative record. Defendants further contended that plaintiff failed to exhaust administrative remedies relative to the red-legged frogs, gray wolf, and the issue of cumulative impacts.

Judge James A. Redden granted plaintiff's motion to strike defendant's extra-record declarations and on his motion struck extra-record declarations filed by plaintiff. Judge Redden found that all the declarations were inadmissible because their purpose was solely to justify or attack the Forest Service actions. Judge Redden declined to consider issues relating to the red-legged frog and gray wolf because plaintiff had not raised those issues at the administrative appeal level.

Judge Redden reviewed the extensive administrative record and concluded that defendant had adequately considered and

followed the relevant requirements of NFMA and NEPA, had not acted arbitrarily and capriciously, and had not made a clear error of judgment in the issuance of the FONSI and DN implementing the timber sale. He denied plaintiff's motion and granted defendant's cross-motion for summary judgment. Headwaters v. Forsgren, CV 01-1505-RE (Opinion and Judgment, July 12, 2002).

Plaintiff's Counsel:

Stephanie M. Parent

Defense Counsel:

Thomas L. Sansonetti

Defendant-Intervenors Counsel:

Michael E. Haglund

ERISA

Following a bench trial on an administrative record, Judge Anna J. Brown held that a former anesthesiologist was entitled to long term disability benefits based upon a severe anxiety disorder. The court rejected an insurance company's attempt to disclaim liability based upon plaintiff's statements to examining doctors that anesthesiology was a poor career choice. Judge Brown

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found that all of the doctors, including two doctors hired by the Insurer, determined that plaintiff could not return to his former job and that his condition was unlikely to improve. The court held that the plaintiff was not required to attempt to return to work to prove disability and that such an attempt would be particularly inappropriate given the nature of the plaintiff's profession. The court awarded full disability benefits, attorney fees and prejudgment interest. Forrest v. Unumprovident Corp., CV 00-1752-BR (Opinion, May 24, 2002).

Plaintiff's Counsel:

Thomas Tongue

Defense Counsel: Lori Metz

Employment

A former county employee claimed that she was terminated after admitting that she prepared false accounting reports of operating expenses. Plaintiff admitted that she falsified records, but claimed that she did so under pressure from a Director. Plaintiff asserted three claims: (1) violation of Oregon's Whistleblower statute, (2) common law wrongful discharge; and (3) violation of her first amendment rights under 42 U.S.C. Sec. 1983. Defendants moved for summary judgment against all claims.

Judge Janice M. Stewart held that the Oregon Whistleblower statute does not allow an employee redress where she blows the whistle on her own wrongful conduct, even if her conduct was motivated by another. Judge Stewart noted that plaintiff might have had a viable claim under the Oregon statute if she had reported the Director's intimidation before falsifying records; however, her own wrongful conduct constituted valid grounds for termination and thus, her claim under this theory failed.

Judge Stewart denied defendants' motion for summary judgment against the Sec. 1983 claim, noting genuine issues of material fact existed as to whether plaintiff's protected speech was a substantial motivating factor in defendants' decision to terminate her. The court found no evidence of a policy-wide practice to sustain municipal liability, but noted that there may be evidence to justify holding the municipality liable under a ratification theory.

Finally, the court dismissed the common law wrongful discharge claim based upon the adequacy of other state and federal statutory remedies. Minter v. Multnomah County, CV 01-352-ST (Findings and

Recommendation, Adopted by Order of Judge Ancer Haggerty, June 25, 2002).

Plaintiff's Counsel:

Donald B. Potter

Defense Counsel:

Agnes Sowle

Limitations Bar

A subdivision owner and developer filed a civil rights action against a City and County over several issues involving a construction permit. The allegations against the County were premised upon actions that took place over 20 years ago and were limited to claims that the County wrongfully deferred to decisions made by the City.

Judge Ann Aiken granted the County's motion to dismiss the action against it for failure to state a claim. The court found no indication that the County was involved in any challenged activity within the 2-year limitations period and no claim that the County exercised any control over decisions ultimately made by the City. Eddings v. City of Jefferson, CV 02-6121-AA (Opinion, Sept. 5, 2002).

Plaintiff: Pro Se

Defense Counsel: Jens Schmidt