

COURTHOUSE NEWS

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

Plaintiffs filed an action against the Forest Service for timber losses sustained in a wildfire. Judge Robert E. Jones granted a defense motion for summary judgment. The court engaged in a step-by-step analysis of the defendant's challenged actions and concluded that the fire, starting by a lightning strike was not a management decision and that the defendant's response to the fire fell within the discretionary function exemption to liability under the Federal Tort Claims Act (FTCA). Judge Jones held that the Forest Service carried its burden of establishing that its actions did not violate any specific, mandatory directives. McDougal v. U.S. Forest Service, CV 99-1038-JO (Opinion, April 15, 2002).

Plaintiffs' Counsel:

Gary Bullock

Defense Counsel:

James Sutherland

7 An ATV rider was injured in a trench dug by BLM employees on BLM property. The "tank trench" was designed to deter unlawful

vehicles and illegal dumping on forest land. Plaintiffs claimed the government was negligent in failing to post warnings. Defendant argued it was immune under Oregon's Recreational Use Statute (ORUS).

Judge Ann Aiken rejected plaintiffs' challenge to the constitutionality of ORUS under Article I, § 10 of the Oregon Constitution. The court further rejected the ATV driver's attempt to characterize himself as a licensee or invitee simply because he had purchased an ATV permit. Judge Aiken concluded that such a permit did not constitute a direct charge for access to land.

To the extent plaintiffs attempted to characterize their claims as intentional torts, the court granted the defense motion for summary judgment. However, the court found genuine issues of material fact existed as to whether the road on which the injury occurred was open or closed at the time of the accident; if closed, ORUS would be inapplicable. Accordingly, Judge Aiken denied that portion

of the defense motion for summary judgment. Williams v. United States, CV 00-62227-AA (Opinion, April, 2002).

Plaintiffs' Counsel:

Ron Sayer; Jack Stewart

Defense Counsel:

James Sutherland

Damages

A jury found that Local 48 unlawfully retaliated against a member of the union because of his protected speech and political activities, and awarded him \$400 in economic damages and \$300,000 in punitive damages. In post-trial motions, Local 48 argued that this 750:1 ratio was impermissibly high. Judge Jelderks noted that higher ratios have been upheld, e.g., an award of \$1 in compensatory damages and \$25,000 in punitive damages. However, reliance upon ratios is problematic when compensatory damages are this low. In addition, the principal purpose of the statute violated was not to provide compensatory damages but to safeguard the rights of union members. After considering a

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range of factors, such as the actual sum of punitive damages awarded, awards in other cases, and comparable criminal and civil penalties, Judge Jelderks reduced the punitive damages award to \$200,000.

Remittiturs are couched in the form of a conditional new trial order because, with limited exceptions, the Seventh Amendment prohibits re-examining facts determined by a jury. A recent Supreme Court decision states that a reduction in punitive damages, in accordance with BMW v. Gore, is not a re-examination of a fact determined by the jury. Moreover, under the facts of this case the jury could not award more than \$400 in compensatory damages, so a re-trial would be pointless. Judge Jelderks therefore entered an amended judgment directly reducing the punitive damages award, without requiring the plaintiff to elect between accepting the reduction or a new trial. In a separate opinion, the court awarded Plaintiff \$79,232 in attorney fees and costs. **Jacobs v. Local Union 48, IBEW**, CV 94-1544-JE (Opinions, March 21, 2002).

Plaintiff's Counsel:

George Fisher

Defense Counsel: Paul Hays,
James Marsh

Procedure

Chapter 11 bankruptcy debtors filed an adversary proceeding seeking to recover fees due under permits from Alaskan Railroad interests. Defendants moved to dismiss the proceeding on 11th Amendment grounds and the bankruptcy court denied that motion. The bankruptcy judge then referred the case to the U.S. District court for withdrawal of reference. Once accepted, defendants moved for a stay pending the appeal of the 11th Amendment issue.

Judge Anna J. Brown rejected the defense claim that a stay was mandated because the court lost jurisdiction with the appeal. The court instead held that a stay was discretionary and should be guided by the same principles that govern preliminary injunction motions. Applying these standards, Judge Brown found that defendants failed to demonstrate a likelihood of success on the merits of their appeal given the probability that any sovereign immunity had been waived. The court further found no evidence of prejudice that defendants might suffer if the case were to proceed. Based upon these conclusions, Judge Brown denied the motion to stay. WCI

Cable, Inc. v. Alaska Railroad Corp., CV 02-179-BR (Opinion, March 22, 2002).

Plaintiffs' Counsel:

Fred Granum (Local)

Defense Counsel:

Lee Nusich (Local)

Preemption

Judge Ashmanskas held that the Federal Crop Insurance Act's regulation requiring arbitration provisions in all crop insurance policies preempts Oregon's constitutional right to a jury trial. Hoelt v. Rain & Hail, LLC, CV 01-581-AS (Findings and Recommendation; Adopted by Order of Judge Ancer L. Haggerty, Oct. 31, 2001).

Plaintiff's Counsel:

Daniel O'Leary

Defense Counsel:

Laura Schroeder