

COURTHOUSE NEWS

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

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Constitutional Law

Judge Haggerty held that O.R.S. § 280.070(4) was unconstitutional, both as promulgated and as applied to Yamhill County Ballot Measure 36-55. Because Measure 36-55 authorized a one-year local option tax, it was subject to O.R.S. § 280.070(4), which requires any measure authorizing the imposition of a local option tax, no matter how small, to include in its title a warning that "[t]his measure may cause property taxes to increase more than three percent." O.R.S. § 280.070(4). The court found that, if passed, Measure 36-55 would raise

property taxes by less than one percent. Inclusion of the three percent warning, therefore, impaired the proponents' First Amendment right to communicate to voters. Because the three percent warning applied to all measures authorizing a local option taxes, including those that would raise property taxes by far less than three percent, it was unconstitutionally overbroad. The State of Oregon was permanently enjoined from enforcing the statute for any ballot measure that by itself could not raise property taxes by more than three percent. The statute, as applied to Measure 36-55, was also struck down on due process grounds.

Caruso v. Yamhill County and the State of Oregon,
CV-03-1731-HA
(Opinion, January 14, 2004)
Plaintiffs' counsel:

Linda K. Williams and
Daniel W. Meek
Defense Counsel:
John M. Gray, Hardy Myers
and Stephen K. Bushong

Civil Procedure

The defendant in an antitrust action filed numerous documents under seal, including its motion for summary judgment and virtually of its trial materials. Judge Panner noted that materials may be filed under seal only if the court makes specific findings of compelling reasons that justify sealing, based on articulable facts known to the court. This determination may not be delegated to the parties, nor may materials be sealed as a matter of course.

Judge Panner questioned whether there were compelling reasons to seal most of the documents in question. The court directed that all documents that had been filed with the court be unsealed unless the court made specific findings that a particular document should remain sealed.

Westwood Lumber Co. v. Weyerhaeuser, CV 03-551-PA
(Opinion, February 6, 2004)
Plaintiffs' Counsel:

Mike Haglund
Defense Counsel:
Tom Tongue

Cost Bill

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Judge Stewart ruled that costs were not recoverable under 28 USC § 1920 for a “production set” of documents created for the convenience of defendants’ counsel. Defendants moved for reconsideration, clarifying that it had not copied, but had only Bates stamped the documents in the District Attorney’s file, and that numbering and copying the documents in the Internal Affairs Investigation file was necessary because their client needed to make use of the original documents in that file.

On reconsideration, Judge Stewart continued to disallow the cost of Bates stamping all documents in both files, noting that defendants could have Bates stamped just those documents designated by plaintiff for copying. She also disallowed the cost of copying the entire Internal Affairs Investigation file because defendants failed to explain why the original file could not remain in the custody of their client subject to inspection as needed for discovery purposes.

Barton v. City of Portland, et al., CV 01-361-ST (Opinion, February 5, 2004).
Plaintiff’s Counsel:

Christopher Hilgenfeld
Defense Counsel:
Jenifer Johnston

Jury Trial

In a civil rights case against the City of Portland and six of its

police officers, plaintiff argued that the officers used excessive force when effectuating plaintiff’s arrest on domestic assault charges. Plaintiff brought federal claims of excessive force and civil conspiracy as well as state claims of battery and negligence. Before submitting the case to the jury, plaintiff withdrew all claims except for the federal Fourth Amendment excessive force claim. At the end of the 3-day trial, the jury returned a verdict for defendants.

Pfau v. City of Portland, et al., CV-01-1060-HU. (Jury Trial, Jan. 27-29, 2004).
Plaintiff’s Counsel:

Randall Vogt
Defense counsel:
Mary Danford

Discrimination

Plaintiff alleges violation of his federal constitutional rights and a state claim of unlawful racial discrimination in a place of public accommodation. Defendant moved for dismissal of plaintiff’s claims pursuant to FRCP 12(b)(6). Judge Aiken denied defendant’s motion and held that plaintiff pled sufficient facts in support of his prima facie case pursuant to 42 U.S.C. § 1981, and pled allegations sufficient to state a claim under ORS § 659A.403.

Craig v. US Bancorp, CV 03-1680-AA

(Opinion, April 14, 2004)
Plaintiff’s Counsel:

Martin Dolan
Defense Counsel:
Jeffrey Druckman

Preemption

Plaintiff died when the small plane in which he was flying struck power lines owned by defendant that were strung across the Salmon River, causing the plane to crash. Plaintiff filed a wrongful death action in state court and defendant removed the action to this court. Judge King granted plaintiff’s motion to remand, concluding that although there was extensive federal regulation of air safety and obstructions to the airspace, such as the power lines at issue, Congress did not intend to preempt either field by enacting or amending the Federal Aviation Act. In particular, plaintiff’s claim did not fall within the express preemption clause in the Airline Deregulation Act’s amendment of the FAA. The court held the Act did not preempt the field. Gysin v. PacifiCorp, CV04-62-KI (Opinion, April 5, 2004)

Plaintiff’s Counsel:
Robert Hopkins
Defense Counsel:
Andrew Gardner

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