

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Parts of Patriot Act Ruled

Unconstitutional

Plaintiffs' Amended Complaint requested declaratory relief that the Foreign Intelligence Surveillance Act, as amended by the Patriot Act, is unconstitutional.

Judge Aiken concluded that 50 U.S.C. §§ 1804 and 1823, as amended by the Patriot Act, are unconstitutional because they violate the Fourth Amendment of the United States Constitution. The court granted plaintiffs' Amended Complaint for declaratory relief.

Defendants have appealed this decision to the Ninth Circuit Court of Appeals.

Mayfield v. USA,

Cv 04-1427-AA

(Opinion, Sept. 26, 2007)

Plaintiff's Counsel:
Gerry Spence, Eldon Rosenthal

Defense Counsel:
Jeffrey Bucholtz

Jury Trial

After a 2-day trial, the jury returned a verdict in favor of Home Depot on plaintiff's negligence claim. Plaintiff was hit and badly injured by a vehicle while walking through the loading zone in front of the store. The jury concluded that Home Depot did not bear any responsibility for the accident by failing to install bollards or other sort of barrier between the vehicle traffic lane and the pedestrian area.

Stofko v. Home Depot,
Cv 06-321-ST

(Jury Trial: 8/28/07)

Plaintiff's Counsel:

James Hendry

Defense Counsel: Gary Johnson

FLSA Summary

Judgment Motions

Plaintiffs brought wage claims under the Fair Labor Standards

Act (FLSA) and Oregon statutes. Previously, their motions to have the case certified as a collective action under the FLSA were denied. The named plaintiffs moved for summary judgment on three claims. Judge Hubel first recommended that the motion brought by the putative opt-in plaintiff be denied because she was not a named plaintiff and no collective action had been certified. Next, he addressed the motion directed to the overtime claim in which plaintiffs argued that they were misclassified as overtime exempt and thus deprived of overtime wages. Judge Hubel concluded that one plaintiff's summary judgment motion on this claim should be denied because there were issues of fact regarding how many hours per week the plaintiff worked. As

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to the other plaintiff, Judge Hubel recommended that the motion be granted because no reasonable juror could conclude that the employee's duties were exempt from overtime under the FLSA's administrative or executive exemptions. Judge Hubel then addressed a claim regarding timesheets which the plaintiffs alleged required them to calculate their hours and minutes worked by rounding time into tenths of hours, causing them to routinely lose compensation. Judge Hubel found that several issues of fact existed on issues regarding how many hours per week the plaintiff actually worked and whether she was actually paid for all hours worked. He noted that the plaintiff's self-adjustment of her own start and stop times could offset the allegedly truncating effect of the defendant's conversion requirement and that several calculation errors by the plaintiff cast doubt on her credibility and

accuracy as a timekeeper. Finally, Judge Hubel addressed the claim alleging that defendant failed to timely pay plaintiffs upon termination of their employment. Judge Hubel recommended that issues of fact regarding one plaintiff's last day of employment and the other plaintiff's unexplained direct deposit from defendant into her bank account, precluded an award of summary judgment for plaintiffs on the claim.

McElmurry v. US Bank Nat'l Assoc.,
Cv 04-642-HU
(Findings & Recommendation 3/23/07 Adopted 8/14/07)
Plaintiffs' Counsel:
Bud Bailey, David Schuck
Defense Counsel: Carol Bernick, Chris McCracken

Age Discrimination

Plaintiff brought claims for age discrimination under federal and state law, breach of contract, breach of the covenant of good faith and fair dealing, negligent misrepresentation and equitable estoppel, all arising out of the

scoring process that was used in 2003 and 2004 to select new walking bosses for the Port of Portland. The court granted Defendant Pacific Maritime Association's ("PMA") Motion for Summary Judgment against each of plaintiff's claims except those claims alleging disparate treatment for the 2003 scoring process. On plaintiff's claim for disparate impact arising out of the 2003 selection process, the court held that plaintiff had failed to establish a prime facie case because he offered no statistical evidence to prove disparate impact.

Wagner v. Pacific Maritime Assoc.,
CV 05-1729-PK
(Findings and Recommendation 7/20/07; Adopted, 8/22/07)
Plaintiff's Counsel:
Thane Tiensen
Defense Counsel:
Clemens H. Barnes