

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
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## Attorney Fees

A jury found for plaintiff on her 42 U.S.C. § 1983 claim (violation of First Amendment rights) and awarded her \$4,853.30 in economic damages and \$360,000 in non-economic damages. The court ordered a new trial unless plaintiff accepted a remittitur to \$60,000 on the non-economic damages. Plaintiff declined that offer. At the second trial, the jury awarded plaintiff \$40,000 in non-economic damages. The parties stipulated to economic damages in the amount of \$4,853.30. Plaintiff's parallel state law claim was tried to the court, which awarded her the same \$4,853.30 in economic damages. Both sides have appealed. Judge Panter considered plaintiff's request for attorney fees in

the amount of \$72,325. Plaintiff was ultimately awarded \$53,650 in attorney fees and \$2,616.13 in costs.  
Longfellow v. Jackson County,  
CV 06-3043-PA  
(Opinion, July 5, 2007)  
Plaintiff's Counsel:  
Thad M. Guyer  
Defense Counsel:  
Michael D. Jewett

## EAJA FEES, SSA actions

After counsel obtained a reversal and remand from the United States Court of Appeals for the Ninth Circuit in an action challenging the Social Security Administration's denial of his client's applications for disability benefits and Supplemental Security Income benefits, counsel sought an award of attorney fees, expenses and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. §

2412, et seq. The government opposed an EAJA fee award. Judge Haggerty denied the EAJA request, concluding that although the Ninth Circuit ruled that the agency's credibility finding was not supported by substantial evidence, the Commissioner's position in defending that ruling was substantially justified.  
Robbins v. SSA,  
CV 03-615-HA  
(Opinion 6/25/07;  
Amended Ruling  
7/11/07)  
Plaintiff's Counsel:  
David B. Lowry  
Defense Counsel:  
David Blume

## NOVEL CLAIM NOT RECOGNIZED

In an action brought by a former student of chiropractic medicine against his former educational institution, alleging

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breach of contract, fraud, and intentional spoliation of evidence, Judge Papak recommended that defendant educational institution's motion to strike and dismiss be granted in part and denied in part. Defendant moved for dismissal of plaintiff's claims for fraud and for intentional spoliation of evidence, and that specified language in plaintiff's amended complaint be stricken. Judge Papak recommended that the motion to strike be denied, but that the motion to dismiss be granted, on the grounds that plaintiff's complaint failed to state a cause of action for fraud and that the Oregon courts would be unlikely to recognize the novel intentional spoliation tort. Blincoe v. Western States Chiropractic College, CV 06-998-PK (F&R, 6/12/07, Adopted, 7/16/07) Plaintiff's Counsel: Lisa R. Johnston-Porter Defense Counsel: Frank A. Moscato

AMEND PLEADINGS

Defendant City of Salem sought to amend or "correct" its previously Amended Answer to add the affirmative defense of "direct threat" in an Americans With Disabilities Act action brought by a terminated employee who had served as an Emergency Dispatch Operator. Leave to amend was denied Judge Haggerty. The court found that the amendment was proposed after undue delay, and allowing it would unfairly prejudice plaintiff. The court further deemed the proposed amendment to be futile. Although defendant's request for leave to plead the affirmative defense of direct threat was denied, defendant was permitted to introduce relevant and otherwise admissible evidence at trial regarding its public safety concerns related to plaintiff's employment. Brown v. City of Salem, CV 04-1541-HA (Opinion 7/12/07) Plaintiff's Counsel: Thomas K. Doyle Defense Counsel: John E. Pollino

## Admiralty Court Trial

Judge Aiken presided over a 2-day court trial where plaintiff brought an action against the U.S. Coast Guard alleging negligent rescue for injuries sustained aboard his sailboat. The court held as a matter of law that the defendant was not negligent in any regard, nor did defendant's actions cause or contribute to plaintiff's injury. Powell v. USA, CV 05-6193-AA (Finding of Fact and Conclusions of Law, August 6, 2007) Plaintiff's Attorney: Daniel Dziuba Defense Attorney: Michael Underhill

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