

COURTHOUSE NEWS

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

In an action brought by providers of free legal services to the indigent and other plaintiffs against the Legal Services Corporation, Judge Papak resolved cross-motions for summary judgment in favor of the defendant. Plaintiffs had initially challenged both the facial and as-applied constitutionality of restrictions imposed by the defendant on the recipients of federal funding; the facial challenges had been resolved in defendant's favor in earlier proceedings, so that only the as-applied challenges were before the court.

Judge Papak determined that under applicable Supreme Court jurisprudence, the dispositive issue was whether the

challenged restrictions left the plaintiffs with an adequate alternative channel for engaging in restricted speech. Defendant argued that because plaintiff was able to maintain an unrestricted non-grantee affiliate organization, and had done so successfully, albeit with less than optimal efficiency, for ten years, the grantee organization necessarily had available to it an adequate alternative channel. Plaintiffs argued that individual attorneys employed full-time by the grantee organization had no such alternative channel available to them, and that under "guidance" promulgated by the defendant, at most 10% of the grantee organization's attorney employees would be permitted to split their time between the grantee organization and its unrestricted affiliate. However,

because the grantee organization has not yet submitted a configuration proposal for review by the defendant pursuant to which some or all attorney employees would split their time between the restricted and the unrestricted legal service providers, the record before the court was void of evidence that the defendant had enforced the challenged restrictions unconstitutionally against any individual attorney plaintiff before the court. Judge Papak granted defendant's cross-motions for summary judgment.

Legal Aid Services of Oregon, v. Legal Services Corp.,
CV 05-1444-PK
(Opinion, 04/07/08)
Plaintiff's Counsel:
Michael B. Hallinan
Defense Counsel: Alan
Levine

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Federal Railroad Preemption

In a negligence and wrongful death action, plaintiff alleged numerous common-law state tort claims against two railroad companies, railroad employees, and the City of Salem. Plaintiff alleged the following claims: (1) warning devices protecting the crossing were inadequate; (2) failure to warn; (3) failure to provide adequate visibility; (4) train operating at excessive speeds; (5) failure to issue a slow order; (6) failure to eliminate a dangerous condition; and (7) train operator's failure to keep a proper lookout. In moving for summary judgment on each claim, defendants argued these claims were preempted by federal railroad law, pursuant to 49 U.S.C. § 20106. This statute, amended and clarified by Congress in August 2007, states that federal railroad law preempts state law if federal law covers the subject matter of the state law unless an exception applies,

such as a local hazard. The clarification made clear the accused party must abide by the federal law if preemption is to apply. To date, only three U.S. District Courts have commented on this new provision.

Judge Aiken found the clarification did not preclude common-law claims from being preempted by federal law and thus did not legislatively overrule the U.S. Supreme Court decisions. Thus, the Court held plaintiff's excessive speed, failure to issue a slow order, inadequate warning devices, and failure to warn claims were all preempted by federal law. Further, the Court held that no local hazard existed and therefore no exception applied. The Court granted summary judgment on those claims. The Court, however, held plaintiff's inadequate visibility, failure to eliminate a dangerous condition, and failure to keep a proper lookout claims are not preempted and genuine issues of material fact existed to survive summary judgment on those issues. The

Court also granted the defendant City of Salem's motion for summary judgment based on discretionary immunity pursuant to the Oregon Tort Claims Act.

Murrell v. Union Pacific Railroad

CV 06-97-AA

(Opinion, 04/04/08)

Plaintiff's Counsel:

J. Randolph Pickett

Defense Counsel: James

L. Hiller

Federal Tort Claims Act

Judge Jones presided over a 4-day court trial involving plaintiff's claim of wrongful death and medical malpractice against the Portland Veteran's Administration Medical Center (VAMC). The court found that the VAMC was not liable under the FTCA for plaintiff's death or for medical malpractice.

Bond v. USA

CV 06-1652-JO

(Order, March 10, 2008)

Plaintiff's Counsel:

Ernest Simmons

Defense Counsel:

Britannia Hobbs