

COURTHOUSE NEWS

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

Having prevailed at trial, plaintiff sought compensation, under a fee shifting statute, for reasonable attorney fees and expenses. Defendant filed extensive objections. Plaintiff moved to compel defendant to produce records "showing hours and amounts billed by each lawyer [for defendant] per month during this litigation, rates at which such time has been billed, and expense billings/reports and receipts for this case alone."

Judge Panner found that plaintiff failed to show the requested information would significantly assist the court in evaluating the pending fee petition. Therefore, the court denied plaintiff's motion to compel disclosure of defendant attorneys' fees and costs.

Morelock Enterprises v. Weyerhaeuser Co.,

CV 04-583-PA

(Order, July 10, 2008)

Plaintiff's Counsel: Stephen Crew

Defense Counsel: Thomas Tongue

ERISA

Judge Brown granted plaintiff's Amended Motion for Summary Judgment and denied defendants' Motion for Summary Judgment in an ERISA action in which plaintiff sought reversal of the disability insurance administrator's denial of total disability benefits for plaintiff.

Plaintiff was a commercial litigator at the law firm of Sussman Shank and was insured under the Sussman Shank LLP Long Term Disability Plan (LTD Policy). Plaintiff filed a claim for long-term disability benefits pursuant to the LTD policy after suffering a mild traumatic brain injury when he fell from a ladder while working at his home. As a result of his injury, plaintiff suffered from increasing imbalance, fatigue, headaches, and nausea, which led him to discontinue his work as an attorney with Sussman Shank.

The LTD Policy defined total disability as "unable to perform all of the material and substantial duties of [the insured's] occupation on a full-time basis because of a disability," but it did not define any terms in the phrase "all of the material and substantial

duties of [the insured's] occupation." The Ninth Circuit has not interpreted the term "all" in the context of this policy language. Several other circuits, however, have interpreted similar language, but those courts are split as to whether plaintiff has the burden to prove that he could no longer perform any one of the material and substantial duties or whether he had to prove he could no longer perform each and every one of the material and substantial duties of his occupation.

On *de novo* review of the record, Judge Brown concluded the medical evidence supported plaintiff's contention that he suffered from reduced cognitive endurance, impaired high-level executive functioning, and the inability to rapidly process auditory information in real-time. Judge Brown held that under either the qualitative or quantitative interpretation of the term "all," these impairments are so detrimental to plaintiff's ability to satisfy the high professional and ethical standards necessary to practice law that he is totally disabled under the LTD Policy. Teicher v. Regence Health and Life Ins. Co.,

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CV 06-1821-BR
(Opinion issued May 21, 2008)
Plaintiff's Counsel: Megan E. Glor and Richard A. Kasson
Defense Counsel: Eric A. Lindenauer and Joy Ellis

Removal and Arbitration Agreement

The dispositive question before the court was whether a failure to notify the state court that a matter has been removed constituted a mere procedural defect - which is subject to the 30-day limitation in 28 U.S.C. § 1447(c) - or if it constitutes a jurisdictional defect that may be raised at any time. The court found it was a procedural defect and denied plaintiff's motion to remand to state court. The court further rejected plaintiff's assertion that the 30-day period did not commence to run until he discovered the procedural defect.

The court next considered defendant's motion to compel arbitration. The court found that certain terms were unconscionable and therefore declined to enforce the arbitration agreement, leaving in place the underlying employment contract between the parties.
Miller v. Aqua Glass, Inc.,
CV 07-3088-CL
(Opinions, July 21, 2008 and August 11, 2008)
Plaintiff's Counsel: Craig Crispin
Defense Counsel: Amy Alpern

42 U.S.C. § 1983

Defendants filed a motion for summary judgment asserting entitlement to judgment as a matter of law on plaintiff's claims for violation of 42 U.S.C. § 1983, 42 U.S.C. § 1985, false arrest, malicious prosecution, invasion of privacy, assault and battery, fraud, defamation and defamation per se, intentional infliction of emotional distress, and negligence. Plaintiff filed a cross-motion for summary judgment on the issue of probable cause.

Judge Aiken granted in part and denied in part defendants' motion, and denied plaintiff's cross-motion. The court granted defendants' motion as to plaintiff's claims pursuant to 1983 and 1985, and denied defendants' motion as moot as to plaintiff's remaining claims.

Tamburri v. City of Stayton,
Cv 06-6305-AA
(Opinion, 12/11/07)

Plaintiff's Counsel: Samuel Stanki
Defense Counsel: Gerald Warren

Court Trial - Admiralty

S.D.S. Lumber filed an action under the Limitation of Liability Act, 46 U.S.C. §§ 30501-30512, seeking exoneration from or limitation of liability arising when a paddlewheel cruise ship, the Empress of the North, ran aground on the Columbia River to avoid a collision with a flotilla of a tug boat and two empty chip barges owned

by S.D.S. Lumber. The masters of the two boats agreed to a port-to-port passing but the tug boat flotilla was not able to keep to its side of the channel in a narrow part of the river near Washougal. After a court trial, Judge King decided that S.D.S. Lumber was 70 percent at fault and that it had privity and knowledge of the negligence or conditions of unseaworthiness leading to the grounding. Consequently, liability was not limited to the value of the tug boat.

In re S.D.S. Lumber Co.,

Cv 06-1423-KI

(Findings and Conclusions, July 14, 2008)

Attorneys for S.D.S. Lumber Co.:
Michael Haglund, Philip Lempriere
Attorneys for American West Steamboat Company, LLC:
Daniel Knox, Noah Jarrett

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**Email Jolie Russo at:
jolie_russo@ord.
uscourts.gov**