

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
Vol. IX, No. 6, March 31, 2003

Employment

A former employee filed an action against his employer and the CEO of his employer alleging race, national origin and religious discrimination. Plaintiff's claims under Title VII, 42 U.S.C. § 1981 and various state and federal wage act claims proceeded to a five-day jury trial. In answers to special interrogatories, the jury returned a verdict in favor of the plaintiff on his claims of intentional discrimination, racially hostile work environment in violation of § 1981 and awarded plaintiff \$30,000 in compensatory and punitive damages on that claim. The jury also found in plaintiff's favor on a state wage law violation and awarded an additional \$17,000 in past due wages and penalties.

On post-judgment motions, Judge Anna J. Brown held that plaintiff was entitled to a judgment against both his former employer and the CEO on his § 1981 hostile environment claim. The court found sufficient evidence to support the jury's verdict as to the CEO and held that the CEO could be individually liable for intentional misconduct.

Judge Brown also determined that there was an error in the verdict form, but that the company was nevertheless vicariously liable for the CEO's acts and damages awarded under the § 1981 claim. Accordingly, the court held that plaintiff would be entitled to judgment as a matter of law on that claim against the company defendant. El-Hakem v. BJY Inc., CV 01-663-BR (Opinion, March 19, 2003).

Plaintiff's Counsel:

Craig Crispin

Defense Counsel:

Krishna Balasubramani

Ethics

A police officer who filed an action against his former City employer sought to disqualify the City's law firm. Plaintiff argued that the City's law firm had represented him individually, in his capacity as a police officer, in several legal actions over the preceding years. Plaintiff further indicated that he disclosed confidential, personal information that might be used

against him in his action against the City. The City's defense attorneys objected and provided affidavits indicating that they had received no secrets or confidential information that would be harmful to the plaintiff.

Judge Ann Aiken granted plaintiff's motion to disqualify the law firm. The court held that plaintiff had an expectation of confidentiality when he worked with the City's law firm in defending the prior actions. Judge Aiken was particularly concerned about the absence of any prior warning or notice or discussion with the plaintiff, at the time of his representation, of potential future conflicts with the City. The court determined that the "appearance of professional impropriety cannot be ignored," and noted that it must err on the side of caution.

Swanson v. City of Eugene, CV 02-6323 (Opinion, March 17, 2003).

Plaintiff's Counsel:

Gregory Skillman

Defense Counsel:

Jens Schmidt

Environment

An environmental organization filed an action against the Forest Service challenging defendant's management of the Canada lynx in the Wallowa-Whitman National Forest. Judge Anna J. Brown held that the defendant's adoption of a Lynx Conservation Assessment and new mapping directions constituted major, final agency actions triggering procedural requirements under the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA). Based upon these procedural flaws, the court held that defendant's determination of species viability (in reliance upon procedurally invalid documents) was unreasonable. Judge Brown found that the Forest Service must provide for public involvement under the NFMA and must prepare an Environmental Assessment or an Environmental Impact Statement under NEPA. Plaintiff's challenge to one other specific timber project was rejected for lack of subject matter jurisdiction based upon plaintiff's failure to exhaust administrative remedies. ONRC v. Forsgren, CV 02-368-BR (Opinion, March 11, 2003).

Plaintiff's Counsel:

Marc D. Fink

Defense Counsel:

Jeffrey K. Handy

Defendant-Intervenor:

Scott Horngren

Procedure

After successfully defending a criminal prosecution for resisting arrest, plaintiff filed an action against several police officers and the City of Portland claiming excessive force in violation of 42 U.S.C. § 1983 and various state law claims. The parties proceeded before a settlement judge and ultimately reached an accord that was placed on the record. During the court proceeding, plaintiff attested to understanding and fully agreeing with the terms of the settlement. The clerk entered an order of dismissal. Shortly thereafter, plaintiff attempted to repudiate the settlement and fire his attorney; the attorney filed a notice of lien against the settlement proceeds. Plaintiff obtained new counsel and filed a motion to set aside the judgment based upon his original lawyer's alleged gross negligence in handling the settlement and because the settlement had been repudiated. Plaintiff argued that his attorney failed to inform him that attorney fees would not be separately funded by the City as part of the settlement.

Judge Anna J. Brown held that plaintiff's motion for relief

under Fed. R. Civ. P. 60(b) was timely since it was filed within one year of the entry of a judgment of dismissal. However, the court held that plaintiff was entitled to no relief. Judge Brown acknowledged that attorney misconduct may justify relief, but found no misconduct alleged that would be sufficient to justify relief. The court further rejected plaintiff's argument that his own attempted repudiation of the settlement could constitute grounds to set aside the judgment. Bonneau v. Clifton, CV 00-466-BR (Opinion, Feb. 24, 2003).

Plaintiff's Counsel:

Judson Carusone

Defense Counsel:

Jeffrey L. Rogers