

COURTHOUSE NEWS

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

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ADA

The disparate impact theory of liability for employment discrimination is unavailable for claims under the federal Age Discrimination Act (ADA) held Judge King. The EEOC filed the action against a school district asserting that a policy limiting salary credit to employees with extra college credits earned after 1972 had a disparate impact on older teachers. The EEOC conceded that the case was based solely upon the disparate impact theory and that there was no evidence of discriminatory intent. The EEOC relied upon Ninth Circuit decisions recognizing disparate impact claims under the ADA.

The court recognized the Ninth Circuit authority, but found the case law no longer valid following the Supreme Court's decision in Hazen Paper and numerous recent decisions from other Circuits limiting ADA liability to disparate treatment claims. EEOC v. Forest Grove School Dist. No. 15, CV 98-497-KI (Opinion, Feb. 3, 1999 - 9 pages).

Plaintiff's Counsel: Claire Gordon
Defense Counsel: Nancy Hungerford

Elizabeth McKanna

Procedure

In a sex discrimination case arising out of actions which occurred at a carnival fairgrounds in Georgia in 1996, Judge Aiken denied a defense motion to dismiss for lack of personal jurisdiction. Although the defendants were primarily a carnival operators who conducted fairs exclusively in states east of the Mississippi, defendants owned 55 pieces of equipment which were all licensed in Oregon and purchased equipment and parts from Oregon on a regular basis for the preceding three years. The court found that plaintiff had made a prima facie case of general jurisdictional facts sufficient to defeat defendants' motion. However, plaintiff conceded that Oregon was not the most efficient forum and the court granted the defendants' alternative motion to transfer the action to Georgia. Hall v. Drew, CV 97-1127-AA (Order, Jan. 1999 - 12 pages).

Plaintiff's Counsel: Kerry Smith
Defense Counsel: Eugene Buckle

Environment

Plaintiffs filed an action seeking to enforce Clean Water Act restrictions against an Irrigation District. On motions for summary judgment, Judge Aiken found that plaintiffs had standing to pursue their claims under the CWA's citizen suit provision. The court further held that irrigation canals constitute "waters of the United States" so as to fall within the CWA's jurisdiction.

Judge Aiken also found that the herbicide acrolein constituted a pollutant even though it was ostensibly added to the water for beneficial purposes. However, the court found that application of acrolein was adequately regulated by FIFRA and the EPA and thus, further regulation by the CWA was unnecessary. Headwaters, Inc. v. Talent Irrig. Dist., CV 98-6004-AA (Opinion, January, 1999 - 28 pages).

Plaintiffs' Counsel: Charles Tebutt
Defense Counsel: Robert Cowling

Civil Rights

A real estate developer filed an action against a City claiming that the City's decision to delay permission to develop a second plot violated its first, fifth and fourteenth

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amendment rights. Plaintiffs alleged that one member of the City Council was operating under a conflict of interest given his role as an officer in a home owner's association. Plaintiffs claimed that they refused to require that new subdivision home owners join the association, while another developer who agreed to require home association membership received more favorable treatment. Defendants moved to dismiss the action under Fed. R. Civ. P. 12(b)(6).

Judge Hubel began his analysis by noting that plaintiffs could not maintain a substantive due process claim since the 5th Amendment takings claim adequately addressed their needs. As for the 5th claim, the court held that plaintiffs failed to allege that their state remedies were inadequate. The court also found that the delay in obtaining a permit, standing alone, failed to justify an inverse condemnation claim.

The Equal Protection claim was also dismissed since plaintiffs were not members of a suspect class, failed to allege the burden of a fundamental right and failed to allege an invidious discriminatory purpose. State and federal anti-trust claims were dismissed for failure to allege an anti-trust injury.

Judge Hubel allowed a claim for breach of the covenant of good faith and fair dealing to stand, even in the absence of an actual contract, on ground that plaintiffs had alleged the existence of an implied contract.

North Annex Real Estate Business Trust v. City of Independence, CV 97-1341-HU (Opinion, Jan. 28, 1999 - 33 pages).

Plaintiffs' Counsel:
William Hoelscher
Defense Counsel: Erich Hoffman
Jens Schmidt

Employment

Plaintiff worked in the City's Affirmative Action Office until she went on a medical leave in December 1995. She was released to part-time work in May 1996 but was unable to reach an agreement with her manager about necessary accommodations, thus delaying her return to February 1997. After a brief return to work, plaintiff took another medical leave until May 1997. City-wide budget cuts caused the elimination of her job effective July 1, 1997. Plaintiff alleged claims of sex and disability discrimination and violations of § 1983, among others. After two BOLI complaints and two Multnomah County Circuit Court actions, Judge King granted summary judgment against all but two state law claims, for which he declined to exercise supplemental jurisdiction. Among other rulings, he concluded that plaintiff was not disabled under the ADA because her physical impairments were not severe and long-lasting enough to fall within the statutory definition. Durham v. City of Portland, CV98-138-KI, (Opinion & Order, Feb. 3, 1999).

Plaintiff's Counsel: Thane Tienson
Defense Counsel: Jennifer Johnston
Agnes Sowle

Habeas

Judge Aiken denied a state prisoner's petition challenging the validity of a disciplinary hearing. The inmate was identified as one of many who was planning a work stoppage protest of EOCI's then recent smoking ban. Plaintiff was placed in segregation and his sentence was extended by 2 years. Plaintiff claimed he was denied the ability to call witnesses at the hearing in violation of the due process clause.

The court found nothing in the record to corroborate petitioner's claim that he ever requested the opportunity to call witnesses and found no evidence that the defendants ever thwarted his efforts. Judge Aiken also found that there was nothing to indicate that the proposed witnesses could have altered the outcome. Accordingly, she dismissed the petition. Wells v. Thompson, CV 97-1839-AA (Opinion, Feb. 1999).

Petitioner's Counsel: Dennis Balske
Defense Counsel: Lynn Larsen

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