

COURTHOUSE NEWS

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

Claims of age and national origin discrimination against an "arm of the state" are barred by the Eleventh Amendment. A pro se plaintiff filed an action against the Oregon Department of Transportation alleging that the Department failed to hire him for one of three positions he applied for based upon his age and/or national origin. After rejecting plaintiff's claims under ORS 659 and the ADEA on 11th Amendment grounds, Judge Robert E. Jones further found that plaintiff could not survive summary judgment on his Title VII claim. The court held that plaintiff failed to meet the McDonnell Douglas test for a prima facie case because the positions did not remain open after plaintiff was rejected. The court also found no evidence to support a prima facie case under the Price-Waterhouse test since plaintiff relied solely upon his subjective belief of discrimination and disagreement with the interviewers' scores. Goberman v. ODOT, CV 99-953-JO (Opinion, Feb. 2000 - 13 pages).

Plaintiff: Pro se
Defense Counsel:
Cynthia Botsios

7 A former employee with the FBI filed a discrimination action. Judge Ann Aiken denied a defense motion to dismiss a claim that the denial of the use of an EEO process helped to create a hostile, abusive work environment. The court also denied a defense motion to dismiss an allegation that opening an administrative inquiry could not constitute an adverse employment action. Kaa v. Reno, CV 97-507-AA (Order, Feb. 1, 2000).

Plaintiff's Counsel:
Terrance Slominski
Defense Counsel: Ron Silver

Habeas

Judge Jones has held that "because of the sharp limitations on second or successive petitions imposed by the (AEDPA), courts should, at the very least, be reluctant to characterize a pro se prisoner's poorly drafted post-conviction motion as a § 2255

motion without first advising the prisoner of the potential effect." Although the court declined to treat the petitioner's action as a successive petition in light of the adoption of this rule, it nevertheless held the petition untimely and found that the petitioner failed to identify any applicable exception. United States v. Lomax, CR 92-158-1-JO; CV 99-21-JO (Order, Feb. 3, 2000 - 6 pages).

AUSA: Gary Sussman
Defendant: Pro Se

Patents

Judge Ann Aiken granted a defense motion to stay a patent infringement case pending a Patent and Trademark Office Reexamination proceeding instituted by the defendant. The court noted that the stay would be limited through this Summer and that the outcome could moot the case. Wells v. Leki USA, Inc., CV 99-583-AA (Opinion, Jan. 27, 2000 - 3 pages).

Plaintiff's Counsel:

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Bruce DeKock
Defense Counsel:
Patrick Kouba

7 Judge Donald Ashmanskas denied a plaintiff's motion to stay a patent infringement action pending a Patent and Trademark Office reexamination procedure. The court found that such a stay was inappropriate given the age of the case (2 years), the fact that significant discovery had taken place, the existence of pending, potentially dispositive motions which were not dependent upon the outcome of the reexamination proceeding, the existence of a separate tort claim and potential prejudice to the defense given plaintiff's refusal to toll damages and dimming witness memories. Whatley v. Nike, CV 98-963-AS (Opinion, Feb. 9, 2000).

Plaintiff's Counsel:
Regina Houser (local)
Defense Counsel:
Jonathan Harnish (local)

Procedure

Judge Janice Stewart *sua sponte* dismissed a *pro se* action filed against several insurance companies for non-compliance with Fed. R. Civ. P. 4 based upon plaintiff's failure to serve summonses. The court found it lacked personal jurisdiction over

two Assistant United States Attorneys from the Eastern District of California and the Eastern District of Louisiana. Plaintiff claimed that defendants conspired to commit witness tampering and suborn perjury in violation of RICO in connection with plaintiff's prosecution for mail fraud. The court liberally construed plaintiff's complaint as stating a claim against the U.S. government, and then dismissed the claims for lack of waiver of sovereign immunity. The court further found that the nature of plaintiff's allegation failed to fall within the scope of the FTCA. Specifically, the court noted that the FTCA does not cover constitutional claims, civil RICO, malicious prosecution, deceit or false arrest. In the alternative, the court also found plaintiff's claims fell within the discretionary function exemption. Wright v. Linhardt, CV 98-1555-ST (Findings and Recommendation, Sept. 15, 1999; Adopted by Order of Judge Panner, Jan. 2000).

Plaintiff: *Pro se*
Defense Counsel: Craig Casey

Small Claims comes to Federal Court

A U.S. postal employee traveling on I-5 was cited for

speeding and failure to carry registration and contested the ticket. The United States government removed the action from the North Marion County Justice Court. Judge Ann Aiken granted the federal government's motion to dismiss the failure to carry registration violation since Oregon statutes provide that federal vehicles need not be registered. The court then remanded the speeding ticket back to the County Justice Court. Oregon v. Peterson, CV 99-6286-AA (Order, Jan. 2000).

Civil Rights

A prisoner who claimed that the conditions of a bus transport from Houston, Texas to Pendleton, Oregon were unduly harsh failed to convince Judge Anna Brown of an Eighth Amendment violation. The court found that a hot bus, cigarette smoke and some swelling from his restraints failed to satisfy the cruel and unusual standard under either the subjective or objective tests. The court also rejected a deliberate indifference to medical needs claims. Barker v. Fugazzi, CV 98-279-BR (Opinion, Jan. 2000).

Plaintiff: *Pro se*
Defense Counsel: Jan Londahl