

# COURTHOUSE NEWS

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

A landowner who ultimately succeeded in obtaining the necessary permits to build a mini-storage facility filed an action against two Planning Commissioners and the City claiming his constitutional rights to substantive and procedural due process were violated during the permit process. Plaintiff initially received approval for his building plans from the City Planning Commission but then was unable to obtain a building permit. After attempting to modify his plans to address zoning concerns later raised by a Planning Commissioner, plaintiff was advised that he would not get his permit. Plaintiff filed for mandamus relief in a state Circuit Court and the Court ordered the City to approve plaintiff's building permit.

In his federal court action, plaintiff sought attorneys fees expended in the mandamus action and lost profit damages caused by the delay. On cross-motions for summary judgment, Judge Anna J. Brown held that plaintiff's constitutional claims were not

subject to the claim preclusion doctrine because plaintiff could not have added the claims to his mandamus proceeding. The court noted that ORCP 24 provides for joinder of claims, but held that mandamus proceedings are subject to different rules under O.R.S. 34.210 and case law interpreting that provision. The court concluded that plaintiff's request for attorney's fees relative to the mandamus proceeding were barred, but his prayer for lost profits was not.

Judge Brown granted a defense motion for summary judgment against plaintiff's substantive due process claim as preempted by the Fifth Amendment, since the Fifth Amendment provides specific limitations on the type of government conduct plaintiff challenged in this action.

Plaintiff's motion for partial summary judgment was granted as to his procedural due process claim. Judge Brown held that the City was precluded from re-examining zoning issues when plaintiff filed his application for a building permit that complied with

his conditional use permit. Plaintiff established as a matter of law that he had a constitutionally protectible property interest and defendant's action in denying that permit deprived him of that interest without adequate process as a matter of law. The court awarded plaintiff \$30,000 in lost profit damages. Judge Brown also rejected the individual defendants' claims of qualified immunity, but granted summary judgment to the City, finding no evidence of a policy or custom to sustain municipal liability for the commissioners' actions. Holman v. City of Warrenton, CV 01-1310-BR (Opinion, Sept. 25, 2002).

Plaintiff's Counsel:

Blair Henningsgaard

Defense Counsel:

Michael Lehner

## Jurisdiction

In state court, plaintiffs filed a class action on behalf of all children injured and potentially affected by exposure to mercury contained within a preservative found within various childhood vaccines. Defendants removed

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the action to federal court on grounds that plaintiffs claims were subject to a remedial scheme set forth in the National Vaccine Injury Compensation Act. Judge Anna J. Brown granted plaintiffs' motion to remand. The court noted that plaintiffs challenged a preservative, not the vaccine itself and that the scope of their claims were not subject to the federal act. The court held that plaintiffs' claims were not created by federal law and did not raise substantial federal questions.

Judge Brown also made findings of fact rejecting defendants' alternative claim that diversity jurisdiction existed because plaintiffs fraudulently joined non-diverse parties. Mead v. Aventis Pasteur, Inc. et al., CV 01-1402-BR (Opinion, 6/7/02).

Plaintiffs' Counsel:

Michael L. Williams

Defense Counsel (Local):

George Pitcher; William Crow, Peter Chamberlain,

James Gidley, Margaret Hoffman, Jonathan Hoffman,

James Dumas, Janet Schroer

Steven P. Jones

## Employment

A plaintiff who suffers from a bipolar disorder filed an action against her former employer claiming that she was subjected to a hostile work environment and

terminated without adequately engaging in an interactive process to determine if her disability could be reasonably accommodated.

The plaintiff had worked successfully for three years when she decided to discontinue her medications. Several months later, she began having problems at work and received several written notices of performance problems. Plaintiff was ultimately placed on probation and was terminated while on probation due to insubordination.

Thereafter, plaintiff disclosed her need for treatment and her termination was ultimately converted to paid sick leave. Plaintiff completed a "Request for Reasonable Accommodation" form and was released by her doctor to return to work. However, shortly thereafter, plaintiff experienced a severe episode of mania and was hospitalized; she was terminated days later for failure to address performance concerns outlined in an earlier memo.

Judge Janice M. Stewart granted a defense motion for summary judgment against a hostile work environment claim. The court held that plaintiff's claims of excessive work assignments, criticism and interference with medical treatment failed to constitute the

type of severe and pervasive conduct necessary to sustain such a claim. The court denied the motion as to a federal disability act claim and a state common law wrongful discharge claim finding genuine factual issues as to whether the employer failed to engage in the interactive process in good faith to determine if plaintiff's medical condition could be reasonably accommodated. Lynn v. NE Oregon Housing Authority, CV 01-482-ST (Opinion, July 10, 2002).

Plaintiff's Counsel:

Claud Ingram, Jr.

Defense Counsel: Karen Vickers

## Habeas

Judge Anna J. Brown denied a habeas corpus petition to a state prisoner who claimed he received an unfair trial when he was forced to wear leg, belly and hand shackles throughout his criminal trial for assault on a fellow inmate. The court held that the state post-conviction court's denial of relief was not an unreasonable application of federal law given the trial court's findings that the petitioner posed unique security concerns. Ramsey v. Palmateer, CV 00-259-BR (Opinion, May 26, 2002).

Petitioner's Counsel: Ellen Pitcher

Respondent's Counsel:

Carolyn Alexander