

COURTHOUSE NEWS

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

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Labor

Three of four plaintiffs prevailed on their overtime claim under the Fair Labor Standards Act after a brief trial. They were awarded their full attorney fees, after deductions by plaintiffs for time spent on the nonprevailing plaintiffs' claim and on an issue which was withdrawn immediately before trial. The court was not persuaded by defendants' argument that it was unreasonable for plaintiffs to proceed to a jury trial on the issue of the number of overtime hours worked in spite of an informal offer to settle for close to the same number of hours which the jury found. Chaloupka v. SLT/TAG, Inc., CV 02-743-KI (lead case) (Opinion, January 16, 2004).

Plaintiffs' Counsel:

David Paul, Richard Vangelisti
Defense Counsel:
Christopher Koback, Kathleen Dent

ERISA/Class Cert.

Plaintiffs brought this proposed class action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") to remedy defendants' alleged breaches of fiduciary duty.

Plaintiffs alleged that defendants restricted their investment choices and failed to disclose adequate information about Louisiana-Pacific Corporation's financial condition which deprived plaintiffs of the opportunity to make informed judgments about their investments in LP stock in their Plan accounts.

Before the court was plaintiffs' motion for class certification pursuant to Fed. R. Civ. P. 23. Judge King held that plaintiffs met the requirements of numerosity, commonality and adequacy of representation; however, the requirement of typicality was not met. Judge King therefore denied plaintiffs' motion for class certification. In re Louisiana-Pacific Corp., ERISA Litigation, CV 02-1023-KI (Opinion, December 24, 2003).

Plaintiffs' Counsel:

William Lerach
Liaison Counsel:
Gary Grenley
Defense Counsel:
Stephen English, H. Douglas Hinson

Jury Trial

Plaintiffs alleged claims for relief based on two contracts that defendant entered into with plaintiffs. Defendant alleged three counterclaims against one of the two plaintiffs for (1) breach of express warranty; (2) breach of contract; and (3) indemnity. The action was filed in federal court based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). After a three-day jury trial, the jurors returned a verdict awarding plaintiff ADP Leasing \$70,525.68 for defendant's breach of the Loan Agreement. The jurors also awarded the defendant \$245,023.89 for breach by plaintiff ADP Leasing of its obligations under the Data License Agreement. Finally, the jurors found that defendant was entitled to indemnity from plaintiff ADP Leasing for the \$70,525.68 in damages plaintiff was awarded. ADP Context, Inc. and ADP Leasing v. Qmedtrix, Inc., CV 02-783-AA (Jury Trial, January 21-23, 2004).

Plaintiffs' Counsel:

Joel Leonard
Defense Counsel:
Eric Neiman

Attorney Fees

On August 19-22, 2003, this

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case was tried to a jury on plaintiff's claims for race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. The jury returned a verdict in favor of defendant on the theory of race discrimination and in favor of plaintiff on the theory of retaliation, awarding plaintiff \$100,000.00 for compensatory damages, \$140,465.09 for back pay, and \$81,786.63 for front pay. Accordingly, on September 15, 2003, the court entered judgment in favor of plaintiff in the sum of \$322,251.72.

Pursuant to 42 U.S.C. § 1988, plaintiff moved for an award of attorney fees in the sum of \$157,935.00, and costs and expenses in the sum of \$11,314.50, for a total award of \$169,249.50. The court allowed the motion in the reduced amount of \$158,063.07.

Robert L. Brown v. Oregon State University, CV 02-938-ST (Opinion, December 3, 2003).

Plaintiff's Counsel:

Thomas Spaulding

Defense Counsel:

David Landrum

-- Plaintiff, pro se, filed a civil rights action alleging that he was subjected to unlawful employment discrimination on the basis of his race, national origin, and other grounds. Pursuant to 28 U.S.C. § 1915(e), the Clerk of the Court asked plaintiff's counsel to

undertake plaintiff's representation. Ultimately, plaintiff voluntarily filed a motion to dismiss the case without prejudice. Plaintiff's motion was granted, and the matter was dismissed.

Defendant asserted that it was entitled to attorney fees as a prevailing party under 42 U.S.C. § 1988(b) and Or. Rev. Stat. 659A.885(1). The court held that even assuming that defendant met the threshold test for "prevailing party," the court found no evidence that plaintiff's discrimination claim was frivolous, unreasonable or without foundation. The court, therefore, denied defendant's motion for attorney fees.

Denge Lemo Gahano v. Evans Metal Fabricators, Inc., CV 02-1718-AA (Opinion, January 27, 2004)

Plaintiff's Counsel:

Paul Ostroff

Defense Counsel:

Roman Hernandez

Bill of Costs

Plaintiff, a former police officer with defendant, City of Portland, alleged that defendants City of Portland, its mayor, Vera Katz, and its Chief of Police, Mark Kroeker, violated his due process rights by terminating him following an investigation of leave and overtime pay practices in the Portland Police Bureau.

On November 27, 2002, the court entered a judgment in favor of defendants and dismissed all of plaintiff's claims. Defendants then filed a Bill of Costs in the amount of \$7,590.69, to which plaintiff objected. Although the parties reported the case as settled in February 2003, the settlement later fell through.

After considering each of defendants' listed expenses, and plaintiff's objections - including excessive costs, plaintiff's limited financial resources, and any "chilling effect" a cost award might have on future civil rights lawsuits - the court awarded costs in the reduced amount of \$1,976.50.

Richard A. Barton v. City of Portland, Hon. Vera Katz, and Mark A. Kroeker, CV 01-361-ST (Opinion, December 16, 2003).

Plaintiff's Counsel:

Bernard Jolles

Defense Counsel:

Jenifer Johnston