

COURTHOUSE NEWS

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

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Constitutional Law

Plaintiffs were collecting signatures in Pioneer Courthouse Square regarding the use of medical marijuana. Plaintiff Yeakle was carrying a sign in support of her cause. She decided to go to the nearby Starbucks to get a cup of coffee and placed the sign on the "Rain Man" statute in the Square. When Yeakle returned, Portland Police Officers issued Yeakle a citation for violating PPC 20.12.030 ("Advertising and Decorative Devices"). An officer then issued plaintiffs Notices of Exclusion from Pioneer Courthouse Square, O'Bryant Park, and the South Park Blocks for thirty days under PCC 20.12.265. Plaintiffs were excluded from the Square, Ankeny Plaza, and the South Park Blocks for thirty days. Plaintiffs allege that these exclusions prevented them from collecting signatures and having their message heard in these public places in violation of their rights under the First and Fourteenth Amendments.

The court ruled that PCC 20.12.265 violated the First Amendment on its face and as

applied to plaintiffs. Also that the ordinance violated substantive due process and procedural due process under the Fourteenth Amendment. Defendants are liable to plaintiffs for compensatory damages.

Yeakle and Sheffer v. City of Portland and Pioneer Courthouse Square,
CV 02-1447-HA

(Opinion, February 26, 2004)
Plaintiffs' Counsel:

Edward Johnson and Marc Jolin

Defense Counsel:

Harry Auerbach

Attorney Fees/Cost

Plaintiff filed suit under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq., alleging that defendant failed to pay severance benefits under the terms of plaintiff's employment agreement. Plaintiff asserted that he terminated his employment with defendant for "good reason" as defined in his employment agreement, because defendant materially and adversely altered the conditions of his employment.

On cross-motions for summary judgment, the court found that plaintiff failed to establish that defendant was an "acquirer" under the employment agreement, which would have triggered the "good reason" provision of the agreement. Accordingly, on October 17, 2003 the court granted defendant's motion for summary judgment and dismissed plaintiff's complaint.

Defendant moved for an award of attorney fees in the amount of \$61,843. Defendant claimed entitlement to fees as a prevailing party pursuant to the terms of plaintiff's employment agreement, which allowed recovery of reasonable attorney fees "as fixed by the trial court." The court found that this language did not mandate an award of fees or alter the court's discretionary authority to award fees under ERISA. The court reasoned that pertinent factors under ERISA weighed against awarding fees, and the court denied defendant's motion for attorney fees.

Defendant also sought costs in the amount of \$2,230.26 pursuant to Federal Rule of Civil Procedure 54(d). The court denied costs for attorney travel

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expenses, legal research fees, long distance facsimile transmission charges, postage, and delivery charges, finding that such costs were not authorized under 28 U.S.C. § 1920. The court also found that defendant failed to provide adequate documentation to support claimed costs for photocopying, witness fees, and service of process. The court thus awarded \$250.00 in photocopying costs with reconsideration of these costs upon submission of additional documentation.

Lay v. TreeSource Industries, Inc., CV 02-1410-AA (Opinion, Feb. 5, 2004)

Plaintiff's Counsel:

Lynn Reiko Nakamoto

Defense Counsel:

Carter Mann

Employment

The manager of Konecranes' Portland branch departed, and started a competing company servicing construction cranes. Plaintiff sought a TRO, alleging violation of a non-compete agreement. The court denied relief. The non-compete agreement wasn't signed at the commencement of employment, as Oregon law requires, nor was it sufficiently limited in duration and scope. The court rejected the employer's request to apply Ohio law. ORS 653.295(1) unequivocally states that a non-compete agreement is void, and shall not be enforced by any court

in this state, unless it meets the listed requirements. An Oregon employer cannot circumvent Oregon laws designed to protect Oregon workers simply by decreeing, in the non-compete agreement, that the laws of another state will apply.

The court further concluded that plaintiff was unlikely to prevail on its trade secrets and conversion claims. An account is merely a relationship and cannot be "converted." Nor was the identity of plaintiff's customers a trade secret if, as it appeared, the universe of local construction crane owners is small and readily determinable by someone in the industry.

Konecranes, Inc. v. Sinclair, CV 03-1782-PA

(Opinion, January 5, 2004)

Plaintiff's Counsel:

Elizabeth Schleuning

Defendant: Pro Se

Section 1983

Plaintiffs, members of a class of low-income, former recipients of Medicaid under the Oregon Health Plan (OHP), argued that the federal and state officials responsible for administering OHP as part of the Medicaid program were violating 42 USC § 1396o(b)(1) by imposing Medicaid premiums unrelated to the recipient's income and 42 USC § 1396o(b)(3) by

imposing more than nominal Medicaid co-payments. The court held that a private right of action exists under 42 USC § 1983 for alleged violations of §§ 1396o(b)(1) & (3). Additionally, the court rejected the argument by the state officials that plaintiffs could not seek to enforce regulations under § 1983.

Spry v. US Dept Health and Human Services, CV 03-121-ST (F&R, December 8, 2003, adopted 1/28/04 by Judge King)

Plaintiff's Counsel:

Lorey Freeman

Defense Counsel:

Craig Casey

Announcement

The Young Lawyer's Division of the FBA is hosting its Sixth Annual Professionalism in Federal Practice Workshop. This weekly CLE provides a unique opportunity for lawyers to discuss practical issues with experienced lawyer panelists and federal judges. Held on Wednesdays, April 14-May 12, 2004, Noon - 1:15 p.m. \$100.00 for the entire series, including weekly lunch. 6.5 CLE credits pending. To register, contact: seth.row@bullivant.com

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