

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. XII, No. 5, May 5, 2006

Motion to Remand

Defendant Elliott Turbomachinery removed this action to federal court, but it did not obtain consent from all of the Defendants either before or after removing the matter. Plaintiff filed a Motion to Remand, and the parties stipulated to a Remand of the matter to state court. Plaintiff moved for attorneys' fees incurred in bringing the Motion to Remand. The Court held removal was improper and Plaintiff was entitled to reasonable attorneys' fees and costs. The Court, however, decreased Plaintiff's counsel's requested rates and hours finding both the rates and hours excessive. Fredrickson v. Consolidated Supply Corp., CV 05-1704-BR (Opinion, March 21, 2006) Plaintiff's Counsel: Charles Siegel Defense Counsel: Steven Rizzo

Arbitration

Plaintiff alleged claims for negligence and breach of contract, seeking damages arising out of the storage of frozen bananas at defendant's cold storage facility. Defendant filed a motion for summary judgment and alternative motion for stay on the basis that the parties' contract provided for mandatory arbitration of any disputes. Both motions were denied.

For each delivery of frozen bananas made by third-party carriers for storage at defendant's facility, defendant issued a warehouse receipt, the reverse side of which contained, in small light grey text, a mandatory arbitration provision.

Judge Stewart concluded that a mandatory arbitration provision is not a manner of presenting claims and instituting actions, but instead is an alternate way of resolving a claim that has already been presented or an action that has already been

instituted. She also found that the mandatory arbitration clause was not specifically bargained for, expressly pointed out, or conspicuous and, therefore, was not enforceable.

Oregon Freeze Dry, Inc. v. Americold Logistics LLC
CV 05-1119-ST
(Finding & Recommendation Jan. 12, 2006, adopted by Judge Marsh Feb. 21, 2006)
Plaintiff's Counsel: Frank Langfitt
Defense Counsel: Christine Coers-Mitchell

Section 1983

After receiving information regarding sexual abuse allegations, a Child Protective Services (CPS) caseworker interviewed plaintiff's nine-year-old daughter for over an hour at her school in the presence of a deputy sheriff. Subsequently, both of plaintiff's daughters were temporarily removed from her custody and underwent medical examinations. Plaintiff filed suit under 42 U.S.C. 1983 on

2 The Courthouse News

behalf of herself and her daughters, alleging violation of their rights against unreasonable familial interference under the Fourteenth Amendment and violation of her daughters' rights against unreasonable seizure under the Fourth Amendment. Plaintiff also alleged state law claims of false imprisonment and intentional infliction of emotional distress. On defendants' motions for summary judgment, Judge Aiken found that the interview of plaintiff's daughter at her school constituted a seizure under the Fourth Amendment, but that the seizure was reasonable in light of information obtained by defendants suggesting abuse of the daughter. Judge Aiken also found no violation of plaintiff's or her daughters' right against familial interference. Further, Judge Aiken found that the CPS caseworker was entitled to quasi-judicial immunity for his actions. Finally, Judge Aiken held that plaintiff failed to establish a genuine issue of material fact to support her claims of intentional infliction of emotional distress and false imprisonment. Accordingly, Judge Aiken granted defendants' motions for summary judgment.

Greene v. Camreta, et al.,
CV 05-6047-AA
(Opinion, March 23, 2006)
Plaintiff's Counsel: Mikel Miller

Defense Counsel: David L.

Kramer

Jury Verdicts:

The plaintiff was a 63 year old bus driver with multiple health problems resulting in frequent absences from work.

Judge Panner directed a verdict for the defendant on plaintiff's ADA claims, because plaintiff failed to identify any reasonable accommodation that would have addressed his problems.

Regarding plaintiff's FMLA claim, the jury found that TriMet had violated the FMLA. The case ultimately went to the jury on two damage theories. The jury awarded plaintiff \$1,110 which was then doubled per the "liquidated damages" provision in the FMLA.

Farrell v. Tri-Met,
CV 04-296-PA
(Verdict, April 28, 2006)
Plaintiff's Counsel: Dan Snyder
Defense Counsel: Jana Toran

In response to the September 11, 2001, airport security breakdown Congress created the Transportation Security Administration ("TSA"), and delegated to it the task of federalizing the security screening of passengers and baggage. TSA developed a testing process to assess applicants for the new federal security screener positions, and hired defendant, NCS Pearson,

to administer the testing. TSA guaranteed jobs for the incumbent airport security screeners so long as they passed all of the portions of the assessment. A number of incumbent screeners did not pass one or more of the selection tests, and were thereby disqualified from employment with TSA.

At trial, twenty-three individual plaintiffs, who were disqualified incumbent airport security screeners, sought economic and non-economic damages for the state common law claim of intentional interference with a prospective employment relationship, based on defendant NCS Pearson's alleged failure to administer the physical capacities portion of the testing in a fair and objective manner at its Oregon assessment centers. The jury found NCS Pearson liable with respect to twenty-two of the plaintiffs, and awarded a total of \$664,916.73 in damages (\$444,916.73 economic, \$220,000 non-economic).
Sharr v. NCS Pearson,
CV 02-1513-JO
(Verdict, April 19, 2006)
Plaintiffs' Counsel: Mary Ellen Page-Farr
Defense Counsel: Louis Santiago