Federal Bar Association
Idaho Chapter

Case Summaries, Complaints and Trials Filed in the U.S. District Court, District of Idaho

Edmo v. Corizon Inc., et al., No. 1:17-CV-00151-BLW
§ 1983; Eighth Amendment

- Alexander Chen, Amy Whelan, Julie Wilensky, National Center for Lesbian Rights, San Francisco, CA; Craig Durham, Deborah A. Ferguson, Ferguson Durham, PLLC, Boise, ID; Dan Stormer, Shaleen Shanbhag, Hadsell Stormer & Renick, LLP, Pasadena, CA; Lori E. Rifkin, Rifkin Law Office, Berkeley, CA for Plaintiff
- Brady J. Hall, Maris Swank Crecelius, Moore Elia Kraft & Hall, LLP, Boise, ID; Dylan A. Eaton, J. Kevin West, Bryce C. Jensen, Parsons Behle & Latimer, Boise, ID/Salt Lake City, UT for Defendants

In December 2018, Judge B. Lynn Winmill issued an order requiring the Idaho Department of Correction and its contracted healthcare provider to begin taking steps to prepare Plaintiff, Adree Edmo, who is transgender and a state prison inmate, for gender confirmation surgery. The court ruled that Plaintiff was entitled to the surgery, as she had demonstrated that she had a serious medical need and that denying the surgery constituted deliberate indifference in violation of the Eighth Amendment.

In August 2019, a Ninth Circuit panel largely affirmed the lower court on appeal, holding that in cases with a clear record that demonstrates gender confirmation surgery is medically necessary to treat a prison inmate's gender dysphoria, prison officials who are aware of the situation and deny such treatment violate the Eighth Amendment. The court noted that its holding was tailored to the case at hand and that a fact-specific inquiry would be necessary in future cases to decide whether a transgender prison inmate would be entitled to gender confirmation surgery.

Subsequently, Defendants petitioned the Ninth Circuit for rehearing en banc. Meanwhile, the lower court issued an order requiring Defendants to provide all necessary appointments, consultations, and pre-surgical treatments in preparation for Plaintiff's surgery in a timely manner. On February 10, 2020, the Ninth Circuit denied Defendants' en banc request. The next day, the lower court found the pending motion to stay moot. Finally, on February 19, 2020, the Ninth Circuit denied Defendants' motion to stay the mandate pending the filing of Defendants' petition for writ of certiorari, causing the August 2019 opinion to take full effect.

Friends of Rapid River, et al. v. Probert, et al., No. 3:18-CV-00465-DCN
National Environmental Policy Act; National Forest Management Act; Healthy Forest Restoration Act; Administrative Procedure Act

- Thomas Woodbury, Forest Defense, PC, Missoula, MT; Katheryn Bilodeau, Friends of the Clearwater, Moscow, ID for Plaintiffs

- John P. Tustin, Krystal-Rose Perez, U.S. Department of Justice, Washington D.C. for the Government

U.S. Forest Service projects that address wildfire, disease, and insect infestation threats to forests are conducted pursuant to the Healthy Forests Restoration Act of 2003 ("HFRA"). HFRA allows such projects to bypass some of the burdens imposed by the National Environmental Act (NEPA), which generally requires the U.S. Forest Service to prepare specific reports, provide a period of public comment, and explore reasonable alternatives to proposed projects.

The Agricultural Act of 2014 ("2014 Farm Bill") amended HFRA and explicitly provided an exemption in which the U.S. Forest Service does not have to prepare an environmental impact statement as generally required by NEPA for wildfire, insect, and disease infestation reduction projects of a certain size and in a certain area. The Windy-Shingle Project in the Nez Perce-Clearwater National Forest was one such project that commenced in September 2016, after Idaho Governor, Butch Otter, designated the area for priority treatment. The Windy-Shingle Project authorized timber harvest fuel treatments, prescribed burning, and rehabilitation treatments in certain areas, as well as a fuel break along 29 acres near private land.

In October 2018, Plaintiffs, Friends of Rapid River and Friends of the Clearwater, brought this suit, seeking declaratory and injunctive relief because they alleged the Windy-Shingle Project approval was outside of the U.S. Forest Service's statutory authority and its governing forest plan. Specifically, Plaintiffs alleged that certain aspects of the Project, including a gravel-pit expansion, old-growth tree protection, and failure to supplement an analysis after the Rattlesnake Creek fire, violated NEPA, HFRA, and the National Forest Management Act ("NFMA").

The parties filed competing motions for summary judgment on the issues related to the expansion of the gravel-pit and the old-growth tree protection. Plaintiffs conceded their third claim regarding the supplemental analysis. On December 6, 2019, the court granted Defendants' motion for summary judgment in full. The court also ruled on Plaintiffs' pending motion to supplement extra-record evidence in its decision on summary judgment. The court denied the motion, finding that none of the four narrow exceptions that allow a court to consider extra-record evidence under the APA were met.

The court first held that the U.S. Forest Service's expansion of the gravel pit, which Defendants alleged was for necessary road maintenance, was proper. The court reasoned that HFRA explicitly allows the U.S. Forest Service to conduct road maintenance and expanding the gravel pit was merely an ancillary task to conduct the maintenance, which would ultimately allow the U.S. Forest Service to carry out the underlying approved tasks and was ultimately not a violation of HFRA. Moreover, the U.S. Forest Service examined the impact of the expansion and planned for mitigation efforts, and so it was not arbitrary, capricious, or an abuse of discretion under the Administrative Procedures Act ("APA").

Second, the court held that the Project's treatment of old-growth trees was not a violation of HFRA or NFMA. The court reasoned that the U.S. Forest Service identified and prioritized for inventory old-growth trees, as required by law and that there was no requirement for such prioritization to take a certain form, as argued by Plaintiffs. The court acknowledged that there were potentially more user-friendly methods of taking or publishing its inventory and priority-ranking of old-

growth trees, but that the U.S. Forest Service ultimately complied with all statutory and regulatory requirements related to old-growth tree retention.

On December 16, 2019, Plaintiffs filed an appeal in the Ninth Circuit and subsequently filed an unopposed motion to expedite, which was granted on January 24, 2020. The appeal is set for May 2020.

Hilliard v. Murphy Land Company, LLC, No. 1:18-CV-00232-DCN
Declaratory Relief; Justiciable Controversy; Breach of Contract

- James L. Dawson, Gates Eisenhart Dawson, San Jose, CA; Martin J. Martelle, Martelle Bratton & Associates, PA, Eagle, ID for Plaintiff
- Dane A. Bolinger, John F. Kurtz, Hawley Troxell Ennis & Hawley LLP, Boise, ID for Defendant

In 2010, Plaintiff, James Hilliard, entered into a real estate purchase agreement with Defendant, Murphy Land Company, LLC, in which Plaintiff had the option to purchase certain real property in Owyhee County solely for locating a nuclear power plant facility. The agreement required Plaintiff to exercise this option by December 30, 2016. The agreement further provided that the purchase price would be $13,680,000, unless Defendant erected capital improvements on the property and provided documentation on such improvements to Plaintiff. The agreement also stated that Defendant was entitled to retain profits from crops located on the property prior to any ownership transfer. In May 2016, Hilliard requested documentation related to any capital improvements and Defendant responded by requesting documentation from Plaintiff about his nuclear power plant development plans. In July 2016, Plaintiff gave notice to Defendant that he was going to exercise the option, but the parties stopped communicating in September 2016 and never exchanged any documentation. Further, Plaintiff never put any purchase money into escrow or remitted any sort of payment to Defendant. Defendant then sold the property to a third party in April 2017.

Subsequently, Plaintiff commenced this action in May 2018, seeking declaratory relief. Plaintiff alleged that he successfully exercised the option through his July 2016 correspondence and that Defendant failed to provide the requested documentation related to the property and its purchase price. Plaintiff specifically requested declarations that he had properly exercised the option, that the purchase price of the property was $13,680,000 and that Defendant was not entitled to an increase in that price, and that Plaintiff is entitled to the value of all crops on the property between September 2016 and the present. Plaintiff did not seek specific performance or damages and did not specifically allege a breach of contract claim. Defendant subsequently moved for summary judgment.

On December 9, 2019, the court granted summary judgment in full in favor of Defendant. The court did not evaluate the purchase agreement, instead ultimately holding that there was no justiciable controversy for the court to decide. First, even if Plaintiff requested specific performance and the court declared that Plaintiff successfully exercised the option and that the purchase price of the property was $13,680,000, the court could not settle the actual dispute between the parties because ownership of the property was lawfully transferred to a third party.

Second, the court addressed Plaintiff's request for a declaration that he was entitled to the value on all crops on the property. The court premised its discussion on the fact that Plaintiff did not seek damages for any breach of contract claim. Even if the court gave leave to allow Plaintiff to amend his complaint, such amendment would be futile because the purchase agreement unambiguously gave Defendant the sole right to retain profits related to the crops. Further, the purchase agreement was clear in granting Plaintiff the option only for location of a nuclear power plant facility. Therefore, any loss suffered by Hilliard would be related to the loss of using the property for location of a nuclear power plant facility, not crop value. As such, any damages that could result even if Plaintiff asserted a breach of contract claim would not be related to the crops.

The court concluded by holding that Plaintiff was unable to show good cause in order to be granted leave to amend, therefore the court awarded Defendant summary judgment and dismissed Plaintiff's complaint with prejudice. On February 3, 2020, the court amended its judgment to award attorney fees to Defendant in the amount of $27,295.

On January 2, 2020, Plaintiff filed an appeal in the Ninth Circuit and briefing is due in April and May 2020.

NAVEX Global, Inc. v. Stockwell, No. 1:19-CV-00382-DCN
Breach of Contract; Idaho Trade Secrets Act

- Andrew E. Moriarty, Christine Salmi, William K. Miller, Perkins Coie, LLP, Seattle WA; and Boise, ID for Plaintiff
- Joseph C. Miller, William L. Mauk, Mauk Miller, PLLC, Boise, ID for Defendant

Defendant, Richard Stockwell, was employed by Plaintiff, NAVEX Global, Inc., in late 2016. Pursuant to this employment relationship, the parties executed an agreement, which provided that the parties agreed to deal with any future disputes through arbitration, that Defendant was prohibited from disclosing Plaintiff's confidential information, and that Defendant could not work with any of Plaintiff's direct competitors within a pre-determined region for 18 months after Defendant's employment was terminated. In September 2019, Defendant announced that he planned to resign and work for Whispli, an alleged direct competitor. Plaintiff filed this action seeking injunctive relief shortly after and sought a temporary restraining order to prevent Defendant from working for Whispli. The court granted the temporary restraining order, enjoining Defendant from working for Whispli for 28 days.

On November 25, 2019, the court issued a decision on Defendant's motion to dismiss and Plaintiff's motion for preliminary injunction. Plaintiff argued that the court did not have subject matter jurisdiction over the case because the amount-in-controversy requirement was not met, and the agreement previously executed by the parties required them to go through arbitration to settle their disputes. The court first held that the amount-in-controversy requirement was satisfied because Defendant himself asserted that his salary with Whispli would exceed $100,000. Therefore, there was no obvious facial issue with the complaint that made it obvious the action could not involve the required minimum amount. Next, the court held that while the arbitration clause in the parties' agreement was broad, it nevertheless contained clear language about Plaintiff's ability to seek injunctive relief through the judicial process to preserve the status quo

while arbitration proceedings were pending. The court found that it could properly grant injunctive relief to Plaintiff in light of this language.

As to Plaintiff's motion for preliminary injunction, the court found that Plaintiff met all elements of the applicable test on its breach of contract claim. As a result, the court did not analyze whether Plaintiff was entitled to a preliminary injunction on its misappropriation of trade secrets claim. The court ultimately held that issuing a preliminary injunction would ensure the arbitration process would be meaningful, but it granted a limited form of what Plaintiff originally requested. The court ordered that Defendant could not disclose or use any of Plaintiff's confidential information, solicit business from Plaintiff's customers, or be employed by Whispli in Washington, Oregon, British Columbia, and the greater San Jose area. The court clarified that Defendant could work for Whispli in other areas as long as he complied with the other terms of the preliminary injunction. The court further stated that nothing in its decision should be binding or persuasive in arbitration.

Harmon v. City of Pocatello, et al., No. 4:17-CV-00485-DCN

§ 1983; Fourth Amendment; Excessive Force

- Kyle R. May, Bron M. Rammell, May, Rammell & Thompson, Chtd., Pocatello, ID for Plaintiff
- Blake G. Hall, Hall, Angell & Associates, LLP, Idaho Falls, ID for Defendants

In 2017, Plaintiff, Kerry Harmon, brought a 42 U.S.C. § 1983 action against the City of Pocatello, the Pocatello Police Department, as well as four individual officers employed by the Pocatello Police Department ("Defendants"). Plaintiff alleged six causes of action under the Constitution: (1) unlawful entry, seizure, and arrest; (2) failure to communicate a legal justification for arrest; (3) use of excessive force; (4) malicious prosecution; (5) failure to intervene; and (6) failure to train. Additionally, Plaintiff brought a *Monell* claim based on the practices and policies of the Pocatello Police Department.

The basis of Plaintiff's suit stemmed from an interaction with police officers who were investigating a complaint that Plaintiff was engaging in telephone harassment. Through the course of the investigation, officers learned that Plaintiff had an outstanding warrant from 2015 for telephone harassment as well. After unsuccessfully trying to communicate with Plaintiff over the phone, officers went to Plaintiff's residence to follow up on the telephone harassment complaint and to serve the outstanding warrant. As officers allegedly stood outside Plaintiff's door, Plaintiff stood inside with the door open, and at some point, indicated that she did not wish to speak to the officers. She also attempted to close the door and officers responded by placing a foot in the doorframe and allegedly telling Plaintiff she was going to be arrested and taken to jail that evening. At that point, Plaintiff contended that one of the officers grabbed Plaintiff's wrist to attempt to handcuff her, but Plaintiff pulled away. However, Defendants alleged that this interaction occurred while Plaintiff was standing outside of her residence. Additionally, officers were unaware that Plaintiff had recently undergone surgery to her wrist and alleged Plaintiff was not wearing any sort of splint, while Plaintiff alleged that she was wearing such a splint and suffered an extended recovery time due to the incident.

During this interaction, Plaintiff's husband called their attorney. Plaintiff then spoke to the attorney and retreated into the home. A sergeant arrived on scene, spoke with the attorney over

the phone, and made arrangements for Plaintiff to voluntarily meet officers at the courthouse the following day. Officers also warned Plaintiff to avoid communicating with the party that had complained of telephone harassment before leaving the scene. The following day, Plaintiff voluntarily went to the courthouse to sort out the warrant and complaint against her. As a result, the charge underlying the outstanding warrant was dismissed and Plaintiff was never charged with any offense related to the more recent complaint of telephone harassment.

In addressing several competing motions, including cross-motions for summary judgment, the court granted summary judgment in full to Defendants. In their briefing, Defendants first argued that the claims of unlawful entry, seizure, and arrest, as well as failure to communicate a legal justification for arrest could not overcome summary judgment because they had a valid arrest warrant for Plaintiff and never even arrested her in the end. The court ultimately agreed, finding that Defendants had probable cause at the time of the incident and had a reasonable belief that the arrest warrant was valid, therefore they were permitted to execute it. Plaintiff asserted that she requested to see the arrest warrant and that Defendants refused to show it or explain the arrest, which she argued was a violation of her rights. The court found that it was unclear from the record whether Plaintiff had actually asked to see the warrant. Moreover, Plaintiff was never arrested on that warrant or on any other charge during the incident. The court further found that Plaintiff was not under any sort of control by Defendants when one of the officers made physical contact with her because shortly after, Plaintiff went inside her residence, spoke with her attorney, and eventually went to bed.

As to Plaintiff's malicious prosecution claim, the court found that Defendants were entitled to summary judgment because Plaintiff was never prosecuted on either the incident that gave rise to the arrest warrant or the more recent complaint of telephone harassment. The court reasoned that even if it broadly interpreted what could constitute "prosecution," the fact that Plaintiff was never even arrested on either the warrant or as a result of the more recent complaint was enough to show that Defendants did not pursue Plaintiff with malice, without probable cause, or for the purpose of depriving Plaintiff of her constitutional rights. Next, the court held that Defendants were entitled to summary judgment on Plaintiff's excessive force claim because the force used was objectively reasonable under all circumstances. The court reasoned that Plaintiff was not acting physically violent or aggressive and that the officer who grabbed her wrist tailored that action to the circumstances. Furthermore, the court reasoned that even if Plaintiff suffered some minimal injury due to the incident, Defendants were unaware of her preexisting condition and a minor injury cannot, on its own, support an excessive force claim. Overall, the court held that Plaintiff failed to show that Defendants violated a clearly established right, so they were entitled to qualified immunity. The court reasoned that even if the Defendants erred in some form, Defendants were not plainly incompetent or knowingly engaging in a violation of the law.

With respect to Plaintiff's *Monell* claim against the Pocatello Police Department, the court found that the Department was entitled to summary judgment. The court reasoned that at best, Plaintiff might have been able to show that the Department mistakenly or recklessly obtained her arrest warrant and/or the supporting affidavit, but she could not show that there was a policy or custom of doing so in other cases. In a similar vein, the court also held that the Department was entitled to summary judgment on Plaintiff's failure to train and intervene claims because there was no link between Defendants' actions in this case and a Department policy or custom to not train or supervise its officers.

On February 4, 2020, Plaintiff filed an appeal in the Ninth Circuit. Plaintiff and Defendants' briefs must be submitted in May and June, respectively.

Planned Parenthood of the Great Northwest and the Hawaiian Islands, et al. v. Wasden, et al., No. 1:18-CV-00555-BLW

§ 1983; Due Process; Equal Protection

- Hannah Brass Greer, Planned Parenthood of the Great Northwest and the Hawaiian Islands, Seattle WA; Alice Clapman, Planned Parenthood Federation of America, Washington D.C.; Nicole Hancock, Jill D. Bowman, S. Julia Collier, Vanessa Soriano Power, Stoel Rives, LLP, Boise, ID and Seattle, WA; Kim C. Clark, Legal Voice, Seattle, WA for Plaintiffs
- Cynthia Yee-Wallace, Megan A. Larrondo, Idaho Attorney General's Office, Boise, ID for Defendants

Idaho Code § 18-608A ("Physician-Only Law") makes it unlawful for anyone other than a physician, including advanced practice clinicians, to perform an abortion in Idaho. Therefore, the Physician-Only Law prohibits nurse practitioners, physicians' assistants, and nurse midwives from performing abortions. In 2018, Plaintiffs, Planned Parenthood of the Great Northwest and the Hawaiian Islands and Mary Stark, a nurse practitioner licensed to practice advanced nursing, brought this action against Defendants, Lawrence Wasden (Idaho Attorney General), Jan Bennetts (Ada County Prosecutor), Grant Loebs (Twin Falls County Prosecutor), the Idaho State Board of Medicine, and the Idaho State Board of Nursing.

Plaintiffs challenge the constitutionality of the Physician-Only Law, as applied to advanced practice clinicians who perform medication and aspiration abortions, as well as their patients. First, Plaintiffs specifically allege that the Physician-Only Law violates patients' substantive due process rights to liberty and privacy because it imposes an undue burden on their right to seek an abortion. Second, Plaintiffs specifically allege that the Physician-Only law violates the advanced practice clinicians' equal protection rights by unjustifiably treating them differently than physicians, which are similarly situated. Finally, Plaintiffs specifically allege that the Physician-Only Law violates the patients' equal protection rights by unjustifiably imposing stricter regulations for abortion as compared to other comparable healthcare services.

In March 2019, Defendants filed a motion to dismiss. As to the undue burden claim, Defendants argued that the claim was foreclosed by binding Supreme Court precedent as established in *Mazurek v. Armstrong*, 520 U.S. 968 (1997). As to the equal protection claim, Defendants argued that Plaintiffs incorrectly asserted that advanced practice clinicians are similarly situated to physicians and that the Physician-Only Law passes rational basis review.

In July 2019, the court denied the motion to dismiss. The court acknowledged that the Supreme Court in *Mazurek* held that the Ninth Circuit's determination that Montana's equivalent of the Physician-Only Law was an undue burden was clearly erroneous. However, the court also acknowledged that whether an abortion regulation constitutes an undue burden is a fact-specific inquiry and the extent of the burden balanced against the justification for that burden depends on the context. In making this assertion, the court relied on *Whole Woman's Health v. Hellerstedt*,

136 S. Ct. 2292 (2016), and its interpretation and application of the standard for analyzing whether an abortion regulation constitutes an undue burden as set forth in *Planned Parenthood of Southeast Pennsylvania v. Casey*, 505 U.S. 833 (1992). The court further noted that the context and facts in the instant case varied significantly from what occurred in *Mazurek*. For example, Montana's law only impacted a single non-physician who was licensed to practice only with a physician present. Here, Plaintiffs had alleged that Planned Parenthood of the Great Northwest and the Hawaiian Islands alone had six advanced practice clinicians who could, notwithstanding the Physician-Only Law, perform abortions without the presence of a physician. Additionally, the court noted that Plaintiffs alleged that the FDA had approved medication abortion and explicitly allowed it to be provided by advanced practice clinicians since the *Mazurek* case in 1997. Finally, the court acknowledged that Idaho had broadened and expanded advanced practice clinicians' scope of practice in the recent past, making the balancing test much different than the one conducted in *Mazurek*.

The court went on to address Defendants' argument that advanced practice clinicians are not similarly situated to physicians for purposes of the equal protection claim. Despite many differences between physicians and advanced practice clinicians, the court said that Plaintiffs adequately alleged that for the purposes of providing abortions the two classes are similarly situated, at least at this stage of the litigation. Moreover, the court stated that while Defendants were correct in stating that the Physician-Only Law would be subject to rational basis review, Defendants did not set forth any reason or justification for the restriction imposed by the law, and therefore, the case could move forward.

Defendants then filed a motion to certify the court's order denying the motion to dismiss for interlocutory appeal. Specifically, Defendants sought an interlocutory appeal to address whether *Mazurek* "established a bright line rule precluding Plaintiffs' substantive due process claim" because states may mandate that only physicians provide abortions in order to ensure the procedure is safe.

In October 2019, the court denied Defendants' motion. The court first stated that Defendants failed to point to any case law that would suggest there is any sort of substantial debate about what role *Mazurek* plays in light of *Whole Woman's Health v. Hellerstedt*. The court also stated that an interlocutory appeal would not materially advance the ultimate termination of the case, as it had already stayed discovery two separate times and would have to continue to reset deadlines in the case.

On February 18, 2020, the parties submitted, and the court approved a stipulated protective order. Pursuant to the court's scheduling order that was issued in November, the parties are to complete discovery by the end of April and dispositive motions are due by the end of July. The parties must also participate in a settlement conference by July 15, 2020.

Jones v. Infinity Management and Investments, LLC, No. 4:19-CV-00513-DCN
Employment; ADA

- Amanda E. Ulrich, DeAnne Casperson, Ryan S. Dustin, Casperson Ulrich Dustin, PLLC, Idaho Falls, ID for Plaintiff
- Defendant has not yet responded.

In 2015, Plaintiff, Eric Jones, began working as a maintenance person in Idaho Falls for Defendant, Infinity Management and Investments, LLC ("Infinity"), which owns various residential rental properties. According to Plaintiff, shortly after he was employed, he informed Infinity that he had a disability and managing the disability required ongoing medical attention. In February 2018, Infinity sent Plaintiff to Wyoming to work on one of its properties. Plaintiff alleges that during this trip, he increasingly struggled with his disability because of long work hours, being away from family, and not being told by Infinity when he would return to Idaho Falls. Despite allegedly asking to return home, Infinity asked Plaintiff to stay and complete work in Wyoming and Plaintiff ended up staying there two days longer than expected.

Shortly after Plaintiff returned to Idaho Falls, Plaintiff's fiancé allegedly informed Plaintiff's supervisor that Plaintiff required medical attention and would be seeking treatment the following week. She did this for purposes related to seeking Family and Medical Leave Act ("FMLA") leave, short-term disability, or reasonable accommodations. After Plaintiff began a five-day inpatient treatment program, Plaintiff's fiancé again contacted the supervisor to inquire about medical leave and was allegedly told that Plaintiff should seek unemployment benefits. Plaintiff's fiancé allegedly informed the supervisor that Plaintiff intended to continue working.

In April 2018, Plaintiff was instructed by Infinity's human resources manager to submit relevant FMLA documentation. However, just days later, Plaintiff was informed by his health insurance company that his employer-sponsored insurance coverage was canceled at the end of March. Plaintiff's coverage was then reinstated, and Infinity allegedly told Plaintiff the cancelation was due to a technological failure; however, the insurance company said the cancelation was due to the employer canceling the coverage.

After Plaintiff's coverage was reinstated, Plaintiff submitted the relevant FMLA documentation and his medical provider's work restrictions. Infinity's human resources manager and Plaintiff then agreed that Plaintiff would work part-time starting on April 23, 2018, until Plaintiff was cleared to work full-time by his medical provider. However, Plaintiff alleges that his supervisor appeared to be upset with him, his medical leave, and part-time schedule. Additionally, according to Plaintiff, when he attempted to start his part-time work all of his tools were missing, and Infinity had hired a full-time employee to replace him back in March. This allegedly caused Plaintiff great distress and he told his supervisor that he needed to leave but would call the human resources manager to address his schedule. However, according to Plaintiff, he was unable to reach the manager despite leaving multiple messages. Plaintiff also alleges that his subsequent absence from work was authorized medical leave under the FMLA.

On May 16, 2018, Plaintiff was again informed by his health insurance company that his coverage would be canceled on May 31, 2018. According to Plaintiff, this led him to believe that Infinity had terminated him despite not receiving any communication from Infinity one way or another. However, on May 22, 2018, Plaintiff's fiancé emailed the human resources manager to inform him that Plaintiff's medical provider cleared him to work part-time beginning on June 6, 2018, and then to work full-time beginning on June 20, 2018. The human resources manager allegedly never responded, and Plaintiff did not report to work on June 6, 2018, allegedly believing he had been terminated. Soon after Plaintiff filed a discrimination complaint with the Idaho Human Rights Commission ("IHRC") and the Equal Employment Opportunity Commission ("EEOC").

On May 31, 2018, Plaintiff sought unemployment benefits from the Department of Labor ("DOL"). When the DOL sent Plaintiff a Personal Eligibility Determination, it also enclosed a copy of a letter from Infinity, which indicated it had terminated Plaintiff's employment on May 9, 2018. According to Plaintiff, he never received this letter prior to receiving the copy from the DOL.

After receiving notices of right to sue from the IHRC and the EEOC, Plaintiff brought this action on December 30, 2019. Plaintiff alleges discrimination and failure to accommodate in violation of the Americans with Disabilities Act ("ADA"), the Idaho Human Rights Act ("IHRA"), and the Rehabilitation Act. Plaintiff also alleges interference and retaliation in violation of the FMLA. Plaintiff's complaint seeks general, compensatory, liquidated, and punitive damages, as well as attorney fees.

Farm Bureau Mutual Insurance Company of Idaho v. United States, No. 2:20-CV-00018-REB
Federal Tort Claims Act; Negligence; Vicarious Liability

- R. William Hancock, Ryan B. Peck, Farm Bureau Mutual Insurance Company of Idaho Pocatello, ID for Plaintiff
- Government has not yet responded.

In December 2016 in Sandpoint, Martin and Lisa Rodriguez were traveling together when their vehicle was rear-ended by Larry Hartman, who was operating a U.S. Forest Service truck. The accident allegedly occurred when traffic came to a stop at a pedestrian crosswalk, but Mr. Hartman was driving negligently and failed to stop in a timely manner. Plaintiff contends that the collision resulted in both physical damage to the Rodriguez vehicle and personal injuries to the Rodriguez's that required medical attention. At the time, the Rodriguez's and their vehicle were insured under a policy issued by Plaintiff. Pursuant to that policy, Plaintiff alleges that it paid for the Rodriguez's medical expenses and vehicle damage.

Plaintiff's first two causes of action set forth negligence and negligence per se claims. As to the negligence per se cause of action, Plaintiff alleges that, at the time of the collision, Mr. Hartman was following too closely, traveling at a speed that was too great under the conditions, and his conduct was inattentive, all in violation of Idaho traffic laws. Vicarious liability on the part of the United States is Plaintiff's third and final cause of action. According to Plaintiff, the Government is vicariously liable for Mr. Hartman's alleged negligence because it employed Mr. Hartman through the U.S. Forest Service and he was acting in the course and scope of that employment when the collision occurred.

Plaintiff alleges that it complied with the Federal Tort Claims Act by serving a claim for damages on the U.S. Forest Service in December 2018. This suit followed after the claim was denied in July 2019. Plaintiff seeks money damages as compensation for the amount Plaintiff paid to the Rodriguez's.

The Government's response is due by March 16, 2020, and a telephonic scheduling conference is currently set for April 15, 2020.

Triple T Enterprises, Inc. v. KFC Corp., et al., No. 1:19-CV-00511-REB
Trademark Infringement; Lanham Act

- Meredith Addy, AddyHart PC, Atlanta, GA; Scott A. Tschirgi, Scott A. Tschirgi, Chtd. Boise, ID for Plaintiff/Counter-Defendant
- Alexandra S. Grande, B. Newel Squyres, Holland & Hart, LLP, Boise, ID; David E. Armendariz, William G. Barber, Pirkey Barber PLLC, Austin, TX for Defendants/Counterclaimants KFC Corp. and Grubhub, Inc.; Jaren N. Wieland, Steven P. Wieland, Mooney Wieland, PLLC, Boise, ID for Defendant Postmates, Inc.

Plaintiff, Triple T Enterprises, Inc., has provided restaurant, catering, and food delivery services in Idaho through restaurants known as "Smoky Mountain" since 1992. As part of this operation, Plaintiff contends that it has obtained several trademarks related to the name of its restaurants and their accompanying logo and that it has used these trademarks to advertise its business on product packaging, menus, signs, delivery vehicles, and various print, radio, and online sources. Plaintiff brought this action against three Defendants—KFC Corp., Grubhub, Inc., and Postmates, Inc.—alleging trademark infringement, as well as Lanham Act violations for false designation of origin and unfair competition.

According to Plaintiff, Defendant KFC Corp. has recently begun advertising and selling a new line of food products under the name "Smoky Mountain BBQ" with a logo that is "confusingly similar" to Plaintiff's trademarked logo. Plaintiff further alleges that Defendant KFC Corp.'s parent company, Yum! Brands, Inc., has an agreement and strategic partnership with Defendant Grubhub, Inc. for online ordering and delivery support for Defendant KFC Corp. Plaintiff claims that such agreement and partnership illustrates Defendant Grubhub, Inc.'s willful trademark infringement alongside that of KFC Corp.'s. As for Defendant Postmates, Inc., Plaintiff alleges that it has sought to directly compete with Plaintiff's delivery services by delivering food bearing Defendant KFC Corp.'s "Smoky Mountain BBQ" branding.

Plaintiff requests an account of Defendants' sales and profits related to this line of products, as well as a permanent injunction, compensatory damages for unjust enrichment and Plaintiff's alleged losses, treble damages for alleged willful, deliberate, and malicious conduct, and punitive damages.

Defendants KFC Corp. and Grubhub, Inc. have filed counterclaims against Plaintiff, along with their answer, seeking cancelation of Plaintiff's trademark registrations on fraud and mere descriptiveness grounds under the Lanham Act. An initial telephonic scheduling conference is currently scheduled for March 10, 2020.

Johnson v. Law Property Management, LLC, et al., No. 1:19-CV-00317-NDF
Fair Housing Act (Being heard by Visiting Judge Nancy Freudenthal, District of Wyoming)

- Eileen R. Johnson, Brian A. Ertz, Ertz Johnson LLP, Boise, ID for Plaintiff
- Anne Sullivan Magnelli, Robert A. Anderson, Robert A. Mills, Anderson Julian & Hull, Boise, ID for Defendants Law Property Management, LLC and Bobbie Vaughn; Raymond D. Powers, William D. Charters, Powers Farley, PC, Boise, ID for Defendant Randy Hoffer

Plaintiff, Renee Johnson, is the mother and guardian of K.G., an incompetent adult that is allegedly handicapped as defined by the Fair Housing Act ("FHA"). Plaintiff alleges that Defendants' policies and practices regarding vehicle parking in the mobile home park violate the FHA. Defendants are Law Property Management, LLC, which leases a lot in the mobile home park to Plaintiff, as well as the company's owner, Randy Hoffer, and one of its employees, Bobbie Vaughn.

Plaintiff alleges that in August 2017, Defendants sent written correspondence to tenants in the mobile home park, informing them that parking within the mobile home park was only allowed for vehicles with a permit issued by Defendants and that all other vehicles would be towed. Plaintiff alleges that after this letter was distributed, Defendants, among other things, made it difficult to obtain the required permits, failed to post applicable parking signs, and did not explain that any vehicle without a permit would be required to park on the main roads outside of the park without exception. Additionally, Plaintiff contends that Defendants do not provide parking spaces dedicated to disabled individuals, maintain sufficient exterior lighting, repair deteriorating parking spaces, maintain surrounding landscaping, or provide for snow or ice removal. According to Plaintiff, all of this compromises the safety of tenants, especially Plaintiff's disabled daughter, as well as invitees, specifically those invitees that provide necessary in-home care to Plaintiff's daughter.

After receiving the August 2017 correspondence, Plaintiff alleges that she requested a reasonable accommodation on multiple occasions by asking Defendants to provide an exemption to the parking policy for those caregivers that would be visiting her daughter but that such requests were routinely denied. Additionally, Plaintiff claims that she and other tenants sent a written notice to Defendants, informing them of their rights under the FHA and requesting accommodation. This request was ignored completely according to Plaintiff.

As a result of the policy and Defendants' alleged refusal to provide an exemption, Plaintiff claims that several caregivers have had their vehicles booted and some have quit providing in-home care because of the policy. Defendants allegedly issued one permit for Plaintiff's property that had to be shared among several caregivers and traded among their shifts. When the caregivers have forgotten to transfer the permit, Plaintiff and her daughter have been fined repeatedly. Additionally, due to Plaintiff's daughter's disabilities, Plaintiff alleges that this disruption to her routine has exasperated her medical conditions and caused her to become highly agitated and physically harm herself. Plaintiff seeks various forms of declaratory and injunctive relief, as well as actual, compensatory, treble, and punitive damages. The parties are expected to complete discovery and file dispositive motions by August 2020.

Brandstetter v. Muse Event Management, LLC, et al., No. 4:19-cv-00473-WGY

Negligence; Personal Injury

(Being heard by Visiting Judge William G. Young, District of Massachusetts)

- Donald F. Carey, Lindsey R. Romankiw, Carey Romankiw, PLLC, Idaho Falls, ID for Plaintiff
- David S. Perkins, Perkins Mitchell, LLP, Boise, ID for Defendants

Plaintiff, Carter Brandstetter, filed this diversity action against Defendants, Muse Event Management, LLC ("Muse"), a Utah company, and William Davies ("Davies"), a resident of Utah, seeking general and special damages related to an incident that occurred in December 2017. At such time, Plaintiff worked as a technical coordinator for the University of Idaho. As part of his duties, Plaintiff alleges that he was working in the Kibbie Dome, installing a stage ramp near an audio speaker that was installed by Defendant Muse, through its employee, Defendant Davies.

According to Plaintiff, without warning, Defendants negligently performed a sound check at full volume. Specifically, Plaintiff claims that Defendants breached their duty of care owed to Plaintiff by failing to, among other things: (1) warn Plaintiff about the sound check; (2) ensure that Plaintiff was not in close proximity to any of the speakers; (3) notice that Plaintiff was in close proximity to the speaker; (4) ensure that Plaintiff and others were wearing hearing protection; and (5) conduct the sound check with a clear field of vision of all of the speakers. Plaintiff alleges that this breach resulted in permanent damage to Plaintiff's ears and hearing, including bilateral tinnitus.

United States v. Oprins, No. 1:19-CV-00474-REB
Contract; Student Loans

- Robert B. Firpo, U.S. Attorney's Office, Boise, ID for the Government
- Nichole Oprins, *pro se*

The Government brought this civil action on behalf of the U.S. Department of Health and Human Services ("HHS") against Defendant, Nichole Oprins, seeking both a judgment and damages for Defendant's alleged breach and default on a student loan repayment contract. The contract was allegedly executed under the National Health Service Corps Loan Repayment Program. This program empowers HHS to pay eligible persons' student loans in exchange for providing certain healthcare-related services at pre-approved "service sites" and was established to address healthcare professional shortages in specific areas.

According to the Government, in 2012, Defendant, a licensed clinical social worker, applied to participate in this program. HHS accepted Defendant into the program and designated her employer at the time as an approved service site. The parties thereafter executed a contract, under which HHS disbursed $44,000 to Defendant for purposes of paying off her student loans in full. Pursuant to the contract and in exchange for this disbursement, Defendant was required to, among other things, report changes in her employment and ultimately complete four years of half-time clinical service with her then-employer. After fulfilling one month of service under the contract, the Government alleges that Defendant's employer terminated her for cause, which ultimately led Defendant to breach the contract. Thereafter, according to the Government, Defendant did not inform HHS that she had been terminated, but merely requested a site transfer. In response, HHS contacted Defendant's previous employer to gather additional information and, as a result, learned that Defendant had been terminated for unethical conduct. HHS ultimately denied Defendant's request.

The Government alleges that HHS then notified Defendant of the breach, informed her that she owed over $243,000 in damages pursuant to the contract and 42 U.S.C. § 254o, and sent Defendant a repayment agreement. In January 2014, Defendant signed the agreement, acknowledging the breach and subsequent indebtedness and agreed to make monthly payments. Defendant made nine

regularly monthly payments of $300 each, but failed to make any additional payments, despite HHS allegedly sending various notices. As of December 3, 2019, the date of the complaint, the Government alleges that it is owed in excess of $364,000 in unpaid debts, damages, and interest related to Defendant's alleged breach of both the original contract and the subsequent repayment agreement.

In her answer, Defendant alleges that her employment was wrongfully terminated and that she was cleared of any wrongdoing by the state licensing board. As a result, the Defendant argues that she was entitled to a site transfer. Defendant further alleges that she made multiple attempts to communicate with a program representative to address the repayment agreement but never received a response. The court has ordered the parties to complete discovery and file dispositive motions by July 2020.

Thornton, et al. v. Perfection Traffic Control, LLC, et al., No. 2:19-CV-00490-REB
Employment; Title VII; Idaho Human Rights Act

- April M. Linscott, Owens McCrea & Linscott, PLLC, Coeur D'Alene, ID for Plaintiffs
- Thomas W. McLane, Randall Danskin, PS, Spokane, WA for Defendants

Plaintiffs, Kelli Thornton, Caroline Grimes, and Tina Lee, filed suit against their former employer, Perfection Traffic Control, LLC ("Perfection"), its managers, Patrick and Misti Borgen, and one of its employees, Richard Forrest II. Among other common law causes of action, Plaintiffs claim that Defendants subjected them to gender discrimination, hostile work environment, disparate treatment, retaliation, and constructive discharge in violation of Title VII and the Idaho Human Rights Act.

Perfection employs traffic control flaggers and supervisors to provide traffic control services to construction projects. Plaintiffs and Defendant Forrest were four of Perfection's employees. Plaintiffs allege that they were isolated at their job sites and that management did not directly supervise employees or know what went on in the field. Plaintiffs allege that each of them worked in isolation with Defendant Forrest, who sexually harassed them for over a year by allegedly sending them lewd photos of himself, engaging in unwanted touching, making sexual remarks, requesting sexual favors, exposing himself, and threatening harm if Plaintiffs refused his advances or otherwise complained. Plaintiffs allege that they were initially afraid to report the alleged harassment because Defendant Forrest is the brother of an individual that is in upper-management at Perfection. In February 2018, Plaintiffs contend that they learned of their common experiences with Defendant Forrest and each complained separately to Perfection's management.

Plaintiffs contend that, despite reporting Defendant Forrest's alleged conduct, they continued to be harassed and that Perfection's management refused to schedule the Plaintiffs separately from Defendant Forrest, began scheduling them less, and continued to schedule Defendant Forrest. Additionally, Plaintiffs allege that management told them that there had been an investigation into their claims of sexual harassment, that Defendant Forrest admitted to sending the women lewd photos of himself and flirting with them, but that he claimed they flirted back, so management found their claims to be unsubstantiated. Management then told each of the Plaintiffs that they needed to inform management about whether they planned to quit or remain with the company, but that if they chose to remain, no changes would be implemented. Plaintiffs allege that because

they chose to terminate their employment, under the circumstances alleged, they were constructively discharged. Plaintiffs contend that the alleged harassment and Perfection's subsequent response amount to various violations of Title VII and the Idaho Human Rights Act.

Furthermore, Plaintiffs claim that Perfection negligently hired, retained, and failed to supervise Defendant Forrest because Perfection and its managers knew or should have known that Perfection's female employees' health and safety was at risk because Defendant Forrest was hired after serving a lengthy prison sentence for leading a large drug-trafficking ring, in which he engaged in violent and tortuous behavior towards others.

An initial telephonic scheduling conference is currently scheduled for April 15, 2020.

Snow v. Pocatello Hospital, LLC, et al., No. 4:19-CV-00279-BLW
Employment; Title VII; Idaho Human Rights Act

- Sam Johnson, Johnson & Monteleone, LLP, Boise, ID for Plaintiff
- Jennifer A. Nelson, Carlie E. Bacon, Ogletree, Deakins, Nash, Smoak & Stewart, Portland, OR for Defendants

Plaintiff, Natalie Snow, brought this employment discrimination action against Pocatello Hospital, LLC, which is known as Portneuf Medical Center ("Medical Center"), as well as LHP Hospital Group, Inc. and various unidentified parties associated with the named Defendants. In 2014, Plaintiff was hired by Defendants to serve as the Medical Center's Chief Nursing Officer, a direct-report to the CEO. Plaintiff alleges that in September 2017, the CEO engaged in humiliating and intimidating behavior towards Plaintiff in a meeting that involved several of Plaintiff's peers. Shortly after, Plaintiff contends that she addressed her concerns about that meeting directly with the CEO. Just days later, Plaintiff alleges that the CEO directed the Medical Center's Vice President of Employee Relations to launch an investigation about Plaintiff based upon staff concerns.

In early October 2017, Plaintiff alleges that she was interviewed as part of the investigation and was subsequently sent home, only to be called back in on the same day, at which point her employment was terminated by the CEO. The stated reason for the termination was that Plaintiff violated the Medical Center's code of conduct. Plaintiff contends that prior to her termination, she had never been a party to any sort of disciplinary action in the course of her employment. Plaintiff alleges that her termination was inconsistent with the disciplinary action taken against male counterparts. Additionally, Plaintiff claims that Defendants agreed to investigate the CEO related to Plaintiff's report about his conduct but failed to do so.

Plaintiff alleges gender discrimination in the form of disparate treatment, sexual harassment and hostile work environment, and retaliation in violation of Title VII and the Idaho Human Rights Act. Plaintiff seeks back pay, future compensation, and compensatory damages for emotional distress.

The court has ordered the parties to complete discovery by September 2020 and file dispositive motions by October 2020.

Short, et al. v. United States, No. 1:18-CV-00074-BRW

Federal Tort Claims Act; Wrongful Death

(Being heard by Visiting Judge Bill R. Wilson, Eastern District of Arkansas)

- Brett S. Bustamante, Hunter J. Shikolnik, Napoli Shikolnik, PLLC, New York, NY; Christina J. Weidner, Mark S. Northcraft, Aaron D. Bigby, Northcraft Bigby, PC, Seattle, WA for Plaintiffs
- Debra Fowler, U.S. Department of Justice, Washington D.C. for the Government

This case arises out of a fatal airplane crash that occurred in 2015, just outside of Challis, Idaho. The pilot, John H. Short, and his three passengers, Russell Cheney, Aaron Linnell, and Andrew Tyson all died after Mr. Short's aircraft allegedly collided with a dead tree in the Salmon-Challis National Forest after taking off from the Upper Loon Creek U.S. Forest Service Airport. The Plaintiffs, all surviving spouses, parents, or children of the decedents, alleged that the Government failed to comply with federal regulations by not removing the dead tree that the aircraft collided with. Plaintiffs contended that this alleged failure resulted in the wrongful deaths of the decedents.

After the 2015 airplane crash, the estates and survivors of the three passengers filed a state court wrongful death suit in Utah against Mr. Short's wife, Plaintiff Mary Short, his estate, a revocable trust in his name, and a revocable trust in Plaintiff Mary Short's name. Plaintiff Short, a defendant in the state court suit, settled—without conceding fault—with the estates and survivors of the passengers for $3.2 million in late 2017. Defending the state court wrongful death claims resulted in $2.1 million in fees and costs. Plaintiff Short subsequently filed an administrative tort claim with the U.S. Forest Service in her capacity as the personal representative and trustee of Mr. Short's estate and trust, seeking the full amount of the state court settlement and the fees and costs incurred in defending those claims. Plaintiff Short alleged that the Government had a duty to indemnify her for the settlement amount and the associated fees and costs because it was solely liable for the deaths of Mr. Short and his three passengers. The U.S. Forest Service denied Plaintiff Short's claim in August 2018 and this action followed.

The matter was originally scheduled for a bench trial this spring, but the parties filed competing dispositive motions in late December 2019. On February 12, 2020, the court granted the Government's motion for summary judgment in full and dismissed the case. The Government first argued that the discretionary function exception to the Federal Tort Claims Act ("FTCA"), which bars claims against the Government arising out of its performance or failure to perform a discretionary function, applied to this case. The court generally agreed.

First, the court determined that the challenged conduct—alleged failure to comply with federal regulations by not removing the dead tree—involved a judgment call or choice. The court reasoned that the U.S. Forest Service properly determined and took note that the terrain could be a presumed hazard, but that determining which hazards mandated removal was at its discretion. Second, the court found that the judgment call or choice involved a policy-driven analysis, which Congress intended to shield from liability. The court reasoned that choices regarding opening or closing the airstrip to the public and the maintenance involved required social, economic, and safety policy considerations, which it interpreted to be the exact kind of decisions Congress sought to shield from liability.

Second, the court determined that Idaho Code § 36-1604, the Recreational Use Statute, applied to the case. The Recreational Use Statute limits liability for landowners who make their property available for public recreation without charge. The court analyzed the exceptions to the Recreational Use Statute and found that there was no special relationship between the Government and Mr. Short and his passengers that would render the Recreational Use Statute inapplicable. As such, the Government merely owed Mr. Short and his passengers the limited duty to refrain from willful or wanton acts that might result in injury, which the court found the Government fulfilled.

Torres v. Sugar-Salem School District #322, et al., No. 4:17-CV-00178-DCN
Title IX

- Amanda E. Ulrich, DeAnne Casperson, Casperson Ulrich Dustin, PLLC, Idaho Falls, ID; Laurie Baird Gaffney, Banks Gaffney & McNally, PLLC, Idaho Falls, ID for Plaintiff
- Bret Allen Walther, Brian K. Julian, Scott W. Marotz, Anderson, Julian & Hull, LLP, Boise, ID for Defendant Sugar-Salem School District #322; Defendant Bryce Owen, *pro se* (Motion to Withdraw by Daniel J. Skinner, Cantrill Skinner Lewis Casey & Sorensen, LLP, Boise, ID, granted on February 6, 2020)

In 2017, Plaintiff, Miriam Torres, filed this action against Sugar-Salem School District #322 ("School District") and Bryce Owen ("Owen"), a former employee of the School District, alleging sexual harassment and equal protection violations under Title IX and 42 U.S.C. § 1983, as well as various common law negligence claims against both Defendants.

Plaintiff alleges that Owen, a former counselor employed by the School District, committed sexual harassment, assault, and abuse against Plaintiff while she was a high school student. More specifically, Plaintiff contends that Owen used his position as a School District employee to groom Plaintiff and eventually engage in sexual relations with Plaintiff after she turned eighteen. According to Plaintiff, beginning just one week after she turned eighteen, Owen regularly pulled Plaintiff out of class to have sex with her at school until she graduated several months later. Plaintiff further alleges that while she was still a minor, Owen continually violated School District policy by texting her, despite her mother's repeated requests to School District officials that Owen cease all contact with Plaintiff. Further, according to Plaintiff, Owen elicited graphic details from Plaintiff about her sexual history, including a previous sexual relationship with an adult man, but failed to ever notify Plaintiff that such relationship constituted sexual abuse.

In September 2019, Judge David C. Nye issued a Memorandum Decision and Order addressing both the School District's and Owen's respective motions for summary judgment. The court denied Owen's motion in full, while granting in part and denying in part the School District's motion. Six claims against the School District—Title IX, equal protection under 42 U.S.C. § 1983, negligence, negligent infliction of emotional distress, and intentional infliction of emotion distress—survived summary judgment. The court also found that whether Plaintiff's claims are barred by the applicable statutes of limitations presented a question of fact and therefore reserved such question for a jury. The court granted summary judgment in favor of the School District on two claims against the School District—negligence per se, as well as assault and battery.

On December 5, 2019, and February 11, 2020, the School District filed motions for reconsideration, which are currently pending, arguing that several controlling cases that came out

shortly after the court's decision clarified existing law on the statutes of limitations and show that the School District is entitled to summary judgment on the remaining claims against it. A jury trial is currently scheduled to begin on August 31, 2020.

Regan v. HDR Engineering, Inc., No. 1:17-CV-00342-CWD
Fair Labor Standards Act

- Richard R. Friess, Thomsen Holman Wheiler, PLLC, Idaho Falls, ID for Plaintiff
- Tyler J. Anderson, Peter E. Thomas, Stephen R. Thomas, Hawley Troxell Ennis & Hawley Boise, ID for Defendant

Plaintiff, Helen Regan, was employed by Defendant, HDR Engineering, Inc., between 2015 and 2017 before she brought this action, in which she alleges that HDR refused to pay overtime wages and wrongfully discharged her in retaliation for reporting unpaid overtime wages in violation of the Fair Labor Standards Act ("FLSA"). HDR provides various engineering services to clients and employees track their work hours by entering billing codes associated with specific projects and clients. Regan alleges that her supervisors pressured her and her fellow employees to underestimate their work hours when entering time in order to stay within a project's estimated costs, regardless of the time employees spent working on the project. Additionally, Regan states that employees attended compulsory meetings and performance reviews that they could not bill for. Regan contends that this resulted in her working hours for which she was not compensated.

Regan states that she raised these concerns in August of 2016 to HDR's vice president for Idaho, who, in turn, reported Regan's claim of unpaid overtime wages to her supervisors. At that point, Regan alleges that her supervisors began engaging in negative, unfair, and retaliatory behavior towards her. Regan claims that she reported this behavior to HDR's human resources department in January 2017. HDR discharged Regan from her employment in May 2017 and this action followed.

HDR sought partial summary judgment on Regan's retaliatory discharge claim, arguing that she could not establish that reporting her overtime wage concerns to HDR's vice president was a but-for cause of her termination, as required under FLSA. HDR argued that Regan's termination was too remote in time from her complaint to the vice president to establish causation. The court disagreed, finding that Regan established a prima facie case by pointing to evidence of her supervisor's conduct, which started immediately after her complaint and continued until her termination. This constituted adverse employment action under the FLSA and, accordingly, her complaint could be reasonably found to be a but-for cause of that conduct.

Under the burden-shifting framework used at the summary judgment stage of cases alleging retaliatory discharge, the court found that HDR set forth a sufficient, non-discriminatory reason for Regan's termination—overstaffing and lack of work—and therefore, the burden shifted back to Regan to establish pretext. Ultimately, the court found that there were genuine issues of material fact regarding whether HDR's proffered legitimate reason for terminating Regan was merely pretext for retaliation.

Oral arguments will be heard on the parties' motions in limine in on May 1, 2020. A jury trial is currently scheduled to commence on May 11, 2020.

Evans v. Hepworth, et al., No. 1:19-CV-00380-DCN
RICO, Abstention

- Matthew T. Christensen, Branden M. Huckstep, Angstman Johnson, Boise, ID for Plaintiff
- Matthew L. Walters and Thomas J. Lloyd III, Elam & Burke, Boise, ID for Defendant James Hepworth; Kevin E. Dinius, Sarah Louise Hallock-Jayne, Dinius & Associates, PLLC, Boise, ID for Defendants Michela Swarthout, Swarthep, LLC, HZ Global, LLC, Luxe Imports, LLC, McWorth Properties, LLC

On October 1, 2019, Plaintiff, Amy Evans, filed a verified complaint naming her former spouse, James Hepworth, Hepworth's fiancé, Michela Swarthout, and several entities as Defendants in this action. Her complaint asserts several causes of action, including conspiracy, conversion, and violations of the Uniform Voidable Transaction Act, the U.S. Racketeer Influenced and Corrupt Organizations Act ("RICO"), and the Idaho Racketeering Act. Plaintiff also seeks punitive damages. Evans contemporaneously filed an emergency motion seeking an *ex parte* prejudgment writ of attachment, temporary restraining order, and a preliminary injunction.

Plaintiff alleges that she was entitled to half of certain purchase shares and the proceeds from their liquidation that she and Defendant Hepworth acquired during their marriage. According to Plaintiff, she and Hepworth entered into a property division agreement that was incorporated into their 2015 divorce judgment and that agreement required Hepworth to hold Plaintiff's shares in trust and to inform her about any information regarding the shares. She alleges that in late 2017, Hepworth liquidated all of the shares, including Plaintiff's allocation, and received nearly $1.8 million in proceeds without her knowledge. During the same period of time, Plaintiff claims that Defendants Hepworth and Swarthout began creating a myriad of entities in order to deceptively hide, transfer, and spend the proceeds through various bank accounts. Specifically, Plaintiff alleges that Defendants exhausted nearly all of the proceeds by, among other things, transferring large sums of money among each other and other outside companies and obtaining various luxury automobiles and a boat, with the purpose of defrauding her.

Plaintiff states that she learned of the liquidation in April 2019 and filed a petition in state court in Ada County to enforce the 2015 divorce judgment, at which point Defendants Hepworth and Swarthout left Idaho and began consolidating the remaining proceeds. Plaintiff alleges that while she obtained a judgment against Defendant Hepworth for the amount of proceeds that she was entitled to under the property agreement and divorce judgment, it is unlikely that she will be able to fully collect from Defendant Hepworth individually. She alleges that, after exhausting Defendant Hepworth's assets, she will still be entitled to over $300,000.

In December 2019, after Defendants filed motions to dismiss, the court ordered both Plaintiff and Defendant Hepworth to brief the issue of whether the court should dismiss or stay the case in light of the ongoing state court proceedings on an expedited schedule. On January 16, 2020, the court issued an order staying the case pending final resolution of the state court matter.

The court issued a decision determining that a stay was proper under the abstention doctrine articulated in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny. The court has directed the parties to file a motion to lift the stay upon the conclusion of the state court action. The court also

addressed other abstention doctrines. First, the court found that the doctrine set forth in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), was not applicable because invoking *Colorado River* implies that a federal court will not take any further action to resolve the parties' dispute, which might not be the case here. Second, the court reasoned that the abstention doctrine articulated in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), could potentially apply to this case because any decision that the court would issue would likely interfere with the state court's ability to determine whether Plaintiff should be further compensated.

However, the court ultimately concluded that a stay was proper under *Younger*. Under *Younger* abstention principles, a federal court must abstain in a case when: (1) there are ongoing state court proceedings; (2) the federal case implicates issues of importance to the state; (3) the federal court plaintiff can litigate federal constitutional issues in the state court proceedings; and (4) the federal court proceedings would have the practical effect of enjoining the state court proceedings. In this case, Plaintiff conceded the first element was met and acknowledged that the third element was satisfied, since she was not attempting to litigate any federal constitutional issues in the case. The court held that the second element was met because the state court had an important interest in administering its judicial system, which includes enforcing its judgments, which is exactly what Plaintiff is asking the state court to do. Finally, the court held that the fourth element was satisfied because any determination at the federal-court level would interfere with the enforcement of the parties' divorce judgment.

A trial was set to take place in the state court matter in January, but the parties have not yet moved to lift the stay as of the end of February.

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