

IN BRIEF

The newsletter of
Feldman, Franden, Woodard, Farris & Boudreaux

June 15, 2004

Tulsa, Oklahoma

States may be liable under the Americans With Disability Act

In a 5-4 decision, the Supreme Court held that Congress did not exceed its power under § 5 of the 14th Amendment when it abrogated states' 11th Amendment immunity by subjecting them in Title II of the ADA to suits for money damages.

The respondents, both of whom use wheelchairs, claimed that they were denied access to Tennessee's court system.

Title II makes it illegal to exclude the disabled from public services, programs, or activities.

Previously, the Supreme Court held in *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001), that Congress exceeded its § 5 powers when it attempted to subject states to Title I suits alleging employment discrimination. In *Tennessee v. Lane*, however, the court noted the long, sad history of state exclusion of and outright discrimination against the disabled in the provision of public benefits/services, concluding that--given this history--Congress was entitled to act. See: *Tenn. v. Lane*, No. 02-1667 (May 17, 2004).

The majority opinion may not be as broad as media reports have suggested. Late in the opinion, the Court emphasizes that the case at bar involved the ability of disabled persons to access court buildings--an arena where, cf. the Sixth Amendment and the Due Process Clause, Congressional power may be at its acme.

The Court specifically noted that it was not deciding whether Title II suits for money damages might be appropriate if the allegation was that a state "fail[ed] to provide reasonable access to [state-owned] hockey rinks, or even to voting booths." That seems like a pretty significant disclaimer.

The high court's ruling recognizes that states have an obligation under Title II of the Americans with Disabilities Act (ADA) to make reasonable modifications to ensure access to judicial services, and that Congress has the constitutional authority to require states to pay money damages for violations of this ADA obligation. This decision came after a series of Supreme Court decisions that have significantly narrowed the scope of the ADA.



COOL NEWS FOR HOT SUMMER DAYS

WE ARE PROUD OF ...

...our lawyers for their recent accomplishments

Paula Quillin won summary judgment and the dismissal of a former employee's federal FMLA claim.

Joe Farris and Jody Nathan filed a summary judgment motion in a legal malpractice case. Rather than respond, Plaintiff dismissed the suit.

Jody Nathan, Paul Boudreaux, and Paul Prather were successful in preventing an opponent from receiving attorneys fees and costs. The trial court's ruling was affirmed on appeal.

John Woodard and Thayla Bohn won summary judgment for an insurer in a garnishment action.

Joe Farris and Jody Nathan won the appeal of a legal malpractice suit, with the Court of Appeals affirming dismissal of the case against our client.

Paula Quillin won summary judgment in a personal injury case.

Joe Farris and Paula Quillin won a directed verdict at the trial of a legal malpractice case.

Joe Farris and Jody Nathan won a federal appeal of a civil rights suit against a lawyer.

Paul Boudreaux received a defense verdict in a case of admitted liability.

TOP NEWS AND FEATURES INSIDE!

Squad Helps Dog Bite Victim

Safety Experts Say Bus Passengers Should Be Belted

Police Begin Campaign to Run Down Jaywalkers

Two Sisters Reunited after 18 Years in Checkout Counter

Local High School Dropouts Cut in Half

Hospitals are Sued by 7 Foot Doctors

Juvenile Court to Try Shooting Defendant

Typhoon Rips Through Cemetery; Hundreds Dead

Red Tape Holds Up New Bridge

Illiterate? Write today for free help.

FARRIS ADMITTED TO AMERICAN COLLEGE OF TRIAL LAWYERS AND WINS BARRISTER BOWL

Called upon to defend cock fighting as a religious ceremony exempt from judicial scrutiny, Joe Farris addressed his creative remarks to a crowd of federal judges and lawyers. The issue of cock fighting, a favorite activity in some areas of Oklahoma, rose to Constitutional dimensions with Joe portraying it as a religion and advocating the right of all participants to practice their beliefs.



Joe's oral presentation (in actuality, a stand-up comedy routine) won the Barrister Bowl competition. The large trophy, which is approximately the size of Joe's head, is displayed in the firm's reception area. The staff is in fact working on getting a diving board for it in anticipation of the upcoming summer months.

The Barrister Bowl is a largely humorous event, but the goal is to raise funds to benefit 12 and 12, an alcohol and drug abuse treatment program.

"Few people would stoop to this level before a panel of state and federal judges," commented John Woodard. "We are proud of Joe. Apparently there is no limit to how far below the boundaries of common sense and good taste he will plummet."

On a more serious note, Joe was recently inducted into the American College of Trial Lawyers. Founded in 1950, the ACTL is widely considered to be the premier professional organization in America. It is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is by invitation, extended only after careful investigation, to those experienced trial lawyers who have demonstrated exceptional skill as advocates and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, and civility. This rare honor, shared by few trial lawyers, exemplifies not only Joe's standing among his peers but also the quality work he performs as a seasoned courtroom advocate.

Customers Asked To Sign Before Eating

In Britain, there are some restaurants that now ask their customers to sign disclaimer forms before eating because of the scare of E-coli and salmonella poisoning. Restaurants such as Shoeless Joe's, and Planet Hollywood are some of the restaurants that have asked customers to sign forms that give up their rights to take legal action after eating items such as rare hamburgers, minced beef and sausages. This warning does not apply to steak because steak only has bacteria on the outside, which is killed off by cooking.

"I don't know where it will all stop -- soon you might have to fill in a huge form before setting foot in a restaurant," said Egon Ronay, a restaurant critic.

ACTUALLY SAID . . .

"We can repair anything. (Please knock hard on the door - the bell doesn't work.)" - Sign on door of repair shop

"Those who survived the San Francisco earthquake said, "Thank God, I'm still alive." But, of course, those who died, their lives will never be the same again." - Barbara Boxer, Senator

"City fathers were hoping to raise enough money to erect a new bronze statue of the Duck of Wellington." - BBC commentator

"I cannot tell you how grateful I am -- I am filled with humidity." - Gib Lewis, speaker of the Texas House

"We're going to turn this team around 360 degrees." - Jason Kidd upon his drafting to the Dallas Mavericks

"If you or any member of your family has been killed..." - Lawyer commercial on TV, Orlando, Florida

"If only faces could talk..." - Pat Summerall, Sportscaster, during the Super Bowl

"Reports are sketchy, but we have heard that in the first heart transplant operation in Belgium, both patient and donor are doing fine." - Radio news announcer

"After finding no qualified candidates for the position of principal, the school board is extremely pleased to announce the appointment of David Steele to the post." - Philip Streifer, Superintendent of Schools, Barrington, Rhode Island.

"Permitted vehicles not allowed." - Road sign on US 27

"Solutions are not the answer." - Richard Nixon, former U.S. President

"Wonderful bargains for men with 16 and 17 necks." - Sign in Men's clothing store

"Traffic is very heavy at the moment, so if you are thinking of leaving now, you'd better set off a few minutes earlier." - Anonymous Traffic Report

GRAPEVINE

The firm encourages employees to donate their time and efforts to charitable organizations. Many have done so:

Cheryl Bateman donates time to accounting work for her son's AF JROTC unit.

Curtis Roberts teaches Sunday School and volunteers for Sigma Chi Epsilon's alumni association.

Debi Young volunteers in the Neonatal ICU at Hillcrest.

Jody Nathan volunteers for the AIDS Legal Research group, a part of the Oklahoma Legal Aid Clinic, which gives legal advice to AIDS victims and their families.

Joe Farris delivers Meals on Wheels every Tuesday.

John Woodard is a church representative to the Tulsa Metropolitan Ministry, and is on the National Board of the National Ghost Ranch Foundation.

Paul Prather has been appointed to the Executive Committee for Meals on Wheels.

Our receptionist, Sharon Helm, sang the National Anthem at the April 17th Tulsa Drillers home game.

Thayla Bohn is an active member of the Junior League of Tulsa. She volunteers as an advisor to the Kappa Kappa Gamma Chapter at TU. She is an active member of First Presbyterian Church.



WELCOME TO VICTOR WANDRES

Victor Wandres recently joined the firm. Victor is a member of the American Bar Association, the Oklahoma Bar Association, the Tulsa County Bar Association, and the Johnson-Sontag Chapter of the American Inns of Court. His diverse practice includes complex commercial litigation, bankruptcy, insurance defense, and small business intellectual property counseling. Visit our website for more about Victor.

DOG JOKE

As a butcher is shooing a dog from his shop, he sees \$10 and a note in his mouth, reading: "10 lamb chops, please."

Amazed, he takes the money, puts a bag of chops in the dog's mouth, and quickly closes the shop. He follows the dog and watches him wait for a green light, look both ways, and trot across the road to a bus stop. The dog checks the timetable and sits on the bench. When a bus arrives, he walks around to the front and looks at the number, then boards the bus. The butcher follows, dumbstruck.



As the bus travels out into the suburbs, the dog takes in the scenery. After awhile he stands on his back paws to push the "stop" button, then the butcher follows him off.

The dog runs up to a house and drops his bag on the stoop. He goes back down the path, takes a big run, and throws himself -Whap!- against the door. He does this again and again. No answer. So he jumps on a wall, walks around the garden, beats his head against a window, jumps off, and waits at the front door. A big guy opens it and starts cursing and pummeling the dog.

The butcher runs up screams at the guy: "What are you doing? This dog's a genius!"

The owner responds, "Genius? Are you kidding! It's the second time this week he's forgotten his key!"

Legal Briefs

Hartford, Ill., property owners filed a class action complaint against refiners, alleging that 4 million gallons of gasoline have collected under their village, threatening their health and land values (Dennis Bedwell, et al. v. The Premcor Refining Group Inc., et al., No. 04-L-342, Ill. Cir., Madison Co.). [Editor's Note: But it has cut down on smoking.]

A federal judge ruled that certain former Mobil Corp. employees are entitled to severance benefits resulting from Mobil's merger with Exxon Corp. in accordance with a summary plan description in conflict with the plan document; but the employees' breach of fiduciary duty and equitable estoppel claims failed (Joe A. Hooven et al. v. Exxon Mobil Corporation et al., No. 00-CV-5071, E.D. Pa.).

A Texas judge affirmed a unanimous jury award of more than \$1 billion to the family of a woman who died last year of primary pulmonary hypertension (PPH), a rare but invariably fatal constriction of the blood vessels in the lungs associated with the use of Wyeth's Pondimin and Redux diet drugs.



THE FURTHER ADVENTURES OF JOHN WOODARD

John Woodard has always ordered beverages one simple way: "A Coke, please."

Lately, though, this hasn't seemed to work. Waitresses now often respond, "I'm sorry, we don't have Coke. We have Pepsi, Diet Pepsi, Dr. Pepper, Mr. Pibb."

Tired of listening to the long list of soft drinks, John thought he'd make life easier. So one day he simply asked the snack bar clerk at a movie theater for a "dark, carbonated beverage."

The young man behind the counter chuckled and asked, "Sir, would you like a cylindrical plastic sucking device with that?"

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Dog Days of Summer Edition



Chill Out
This Summer
With

IN BRIEF