

Progress Report in the Young Case
Effective 11-19-2001

Settlement and Payments

1. Today We Have 1881 Open Files

1716 Affidavits are completed and are being processed. That leaves 165 claims where we have not yet received an Affidavit from OSRL. Again, if you have not yet received an Affidavit from OSRL, or have not gotten it corrected by OSRL to be as accurate as possible, please contact our office.

We have settled 1628 claims. Of those, 1201 have been paid, 282 are on judgments that have not yet been paid. We are tentatively hopeful of receiving checks for most of those claims on judgments this month. That leaves 145 settled claims that have not yet been reduced to judgment.

2. Court Rulings

The State Court of Appeals, through a panel of three judges, two of whom were retired Supreme Court Judges ruled that elected officials were not employees and were not covered by the statute upon which this lawsuit is based. The opinion is well written, and I will not appeal the decision. However, this was an issue worth raising as, under the Fair Labor Standards Act, there was specific statutory exclusion for elected officials, an exclusion which did not exist in this State's statute.

Judge Lipscomb, in a Circuit Court decision, ruled that those plaintiffs who were employed by the Oregon University System and worked outside of their contract dates, were not entitled to compensation for those hours so worked. This decision goes against FLSA case law which indicates that when employees work outside of their normal schedule, then the employer owes them for the hours worked. So that ruling will be appealed.

After the Court of Appeal's decision, the State filed a motion to exclude payment to three claims made by District Attorneys. The Court of Appeal's ruling clearly indicates that the District Attorneys, as elected officials, are not covered by this lawsuit. However, the State had previously stipulated that District Attorneys were covered by this lawsuit and accepted the claims made on behalf of the three District Attorneys. I have argued on behalf of the District Attorneys that there is enforceable contract for payment with the State. If the Court rules against them, that ruling will also be appealed.

3. Claims Pending Arbitration

There has been slow progress in this area. Two claims have gone to arbitration, but we have yet to received a decision. A third is scheduled to go in December. There are 18 left to schedule. So, a few claims have been settled, but this process will not speed up. I am working with representatives of the Attorney General's office to schedule the remaining claims in the months of January through March. Some of them will probably not be tried until April. The only good news is that after wasting a few days, the Attorney General's office has agreed that if both sides do not request mediation, it would not bother paying for a mediator. This eliminates one usually unnecessary step in the process.

On a sour note, the previous Assistant Attorney General and I freely exchanged information in order to attempt to settle claims. I am now dealing with an Assistant Attorney General who is asking witnesses not to talk to me. This only heightens tension in the workplace and will lead to litigation of claims that might otherwise settle. However, this is not something which I can control.

4. PERS

Many of you have asked me about PERS and what PERS is doing to adjust your retirement benefits. If you go to PERS' web page, www.pers.state.or.us, you will see an article entitled "Status of Young Case" in which PERS promises to do all the legally mandated adjustments to plaintiffs' retirement accounts. What I have not yet be able to get out of PERS, is in what order it will be handling these claims and when plaintiffs can reasonably begin to expect to be notified of the adjustments to their accounts. I will continue to press for answers in this area.

Because the pace of this case is slowing down, I do not anticipate another progress report for a few months. Happy Holidays!

Sincerely,

The Law Office of John Hoag, P.C.

JH:jlj