

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOSEPH BOVA  
Plaintiff-Respondent,

v.

CITY OF MEDFORD, an incorporated  
Subdivision of the State of Oregon, and

MICHAEL DYAL, City Manager of the  
City of Medford, as an individual, and in his  
official capacity,

Defendants-Appellants.

Jackson County Circuit  
Court No. 081663E7

CA A144254

**GROUP OF RESPONDENT CLASS  
MEMBERS' MOTION FOR LEAVE TO FILE  
ADDITIONAL AUTHORITIES IN SUPPORT  
OF APPELLANTS' MOTION TO STAY  
PREVIOUS JUDGMENT/ORDER, OR, IN  
THE ALTERNATIVE, MOTION FOR  
LEAVE TO FILE AN APPLICATION TO  
APPEAR AS *AMICUS CURIAE***

1.

Pursuant to ORAP 7.05 and ORS 19.270(1), a Group of Respondent Class Members, represented by the undersigned attorney and identified in a list attached to this Motion as Attachment A (“Class Subset”), hereby respectfully moves this Court to permit the Class Subset to file Additional Authorities in Support of Appellants’ Emergency Motion to Stay the Previous Judgment entered by the Honorable Circuit Court Judge Mark Schiveley of the Jackson County Circuit Court (“Additional Authorities in Support of the Motion to Stay”). In the alternative, under ORAP 8.15(1), the Class Subset respectfully moves this Court for leave to file a written application to appear as *amicus curiae* with regard to the pending Emergency Motion to Stay the Previous Judgment (“Motion to Stay”) (“Application to Appear as *Amicus Curiae*”).

2.

On April 7, 2008, Respondent Joseph Bova filed a Complaint against Appellants in Jackson County Circuit Court, seeking, *inter alia*, declaratory and injunctive relief against Appellants for allegedly violating ORS 243.303(2) by making health insurance benefits available to employees of the City of Medford ("City") and their families without also providing such benefits to retired employees or their families in the event of employees retiring before becoming eligible for Medicare.

3.

On November 20, 2008, the circuit court certified a class consisting of all current employees of the City who (a) have been employed for at least three years prior to November 20, 2008 and (b) have health insurance benefits for themselves or their family members provided by the City that does not include an option to continue that coverage upon retirement. The certified class includes 90 non-union-represented employees.

4.

On December 4, 2009, the circuit court entered a Limited Judgment requiring Appellants to make available to employees health insurance that provides the same benefits for current and for retired employees.

5.

On December 21, 2009, Appellants filed a Notice of Appeal in this Court. On February 18, 2010, Appellants filed the Motion to Stay pending the resolution of the appeal that is now before this Court.

6.

On January 27, 2009, the circuit court approved a notice to the class that states, in pertinent part, "You may, of course, seek the advice and guidance of your own attorney if you desire concerning this case." The Notice to Class is attached to this motion as Attachment B. The Class Subset retained Ball Janik LLP to represent its interests in this case. The Class Subset comprises 82 percent of the non-union-represented members of the certified class.

7.

The Class Subset seeks leave from this Court to file Additional Authorities in Support of the Motion to Stay in order to communicate to this Court their position, and the reasons for taking such position, that immediate enforcement of the Limited Judgment is not in the best interests of the Class Subset. The Class Subset believes in good faith that the City's compliance with the Limited Judgment will result in substantial changes to their health insurance benefits, including changes in benefit amounts, changes in co-pays and other out-of-pocket costs, and increases (possibly significant increases) in their premium costs.

8.

In the alternative, should the Court find that the Class Subset is not a party to

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the appeal and, therefore, may not file Additional Authorities in support of a pending motion, the Class Subset seeks leave to file an Application to Appear as *Amicus Curiae* with regard to the pending Motion to Stay.

Dated: July 9, 2010.

Respectfully submitted,



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Lisa M. Umscheid, OSB 92571  
BALL JANIK, LLP  
101 SW Main St., Ste. 1100  
Portland, OR 97204  
Tel: (503) 228-2525

Attorney for Group of Respondent  
Class Members

## ATTACHMENT A

1. Jeanette K. "Kathy" Ameral
2. Samual D. Barnum
3. David G. Bierwiler
4. Laurence J. Beskow
5. Tad S. Blanton
6. Denise R. Bostwick
7. Kimberly M. Budreau
8. Michael L. Budreau
9. Rhonda K. Buma
10. Robert E. Calkins
11. Alison B. Chan
12. Scott A. Clausen
13. Lori Cooper
14. Melissa D. Cooper
15. Cynthia L. Danzl-Jenkins
16. Douglas G. Detling
17. Timothy N. Doney
18. Cory J. Crebbin
19. Annette J. Cunningham
20. Philip G. Eastman
21. Steven B. Edwards
22. Charles D. Elliott
23. Brian E. Fish
24. Jana M. Forsyth
25. Ron L. Forsyth
26. Kaily E. Freund
27. Timothy J. George
28. Anne L. Gordon
29. Diane C. Greer
30. Robert C. Hansen
31. Dennis W. Hart
32. John W. "Bill" Hoke
33. Thomas V. Ianieri
34. Donna L. Jerden
35. Yuhui Jiao
36. Brett L. Johnson
37. John G. "Greg" Kleinberg
38. Greg A. Lemhouse
39. Benjamin T. Lytle
40. Sue A. McKenna
41. Peter T. Mackprang

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42. Barbara L. Madruga
43. Brent E. Mak
44. Sharon L. Melendy
45. Elizabeth M. Mier
46. Julie K. Moran
47. Paul A. Morrow
48. Lynette M. O'Neal
49. Michael M. Osterman
50. Glenda P. Owens
51. Frances G. "Gary" Palmer
52. Judy M. Parton
53. Brice W. Perkins
54. Daniel V. Petersen
55. Bianca Petrou-Smith
56. Christopher A. Reising
57. Winnie M. Rezendes
58. Patrick H. Roam
59. Carol D. "Darlene" Roberts
60. Randall H. Schoen
61. Ralph G. Scott
62. Randy L. Sparacino
63. Karen M. Spoons
64. Brian N. Sjothun
65. Edward D. Sturtevant
66. Thomas E. Suttle
67. Roger E. Thom
68. Douglas D. Townsend
69. Kevin G. Walruff
70. Mark S. Warwick
71. Pamela S. Webber
72. Christy L. West
73. Curtis W. Whipple
74. Derek R. Zwagerman

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF JACKSON

**JOSEPH BOVA,**

Case No. 08-1663-E7

Plaintiff,

**NOTICE TO CLASS**

vs.

**CITY OF MEDFORD**, an incorporated  
Subdivision of the State of Oregon, and  
**MICHAEL DYAL**, City Manager  
of the City of Medford, as an Individual, and  
in his official capacity,

Defendants.

**NOTICE OF CLASS ACTION**

**This notice may affect your rights.**

**Please read carefully**

**TO: Current Employees of The City of Medford**

You are not being sued. You have received this Notice because you may be eligible for certain benefits under your health care plan with the City of Medford due to a lawsuit pending in the above named Court.

Plaintiff Joseph Bova is a current employee of the City. His case charges he will be unlawfully denied health insurance when he retires as a result of the actions of the City of Medford and City Manager Michael Dyal, the "defendants." Plaintiff alleges that under Oregon law, if defendants provide health insurance to current employees of the City, which they presently do, defendants are then required to have that insurance include terms which will give employees a choice to continue that insurance when they retire, for themselves, their spouses and

PAGE 1 - NOTICE TO CLASS

NOTICE OF CLASS ACTION.Revised.F.doc

**STEPHEN L. BRISCHETTO**  
ATTORNEY AT LAW  
621 S.W. Morrison St., Suite 1025  
Portland, Oregon 97205  
Telephone: (503) 223-5814

1 any unmarried children under 18, until they become Medicare eligible.

2 The City presently does not provide this kind of health insurance to all of its employees.  
3 The City's failure to do so, plaintiff alleges, violates ORS 243.303(2) and age discrimination  
4 laws. For a remedy plaintiff asks the Court to order the defendants to purchase health insurance  
5 which permits continuation of that coverage for City employees, their spouses and any unmarried  
6 children under 18, when they retire. Plaintiff also asks that defendants pay his costs and attorney  
7 fees in bringing his claim.

8 The defendants deny all of these charges and claims.

9 The Court has not yet ruled on the merits of plaintiff's charges or on the denials of  
10 defendants. The Court has ruled, however, that plaintiff is permitted to continue his case against  
11 defendants upon his ORS 243.303(2) and age discrimination claims as a class action pursuant to  
12 ORS 32 B(2) and B(3). Further, the Court has ruled that the cost of the type of insurance sought  
13 by plaintiff is not a defense available to defendants.  
14

#### 15 Class Action Ruling

16 The Court has defined certain qualifications for employees of the City of Medford which  
17 must be met in order for them to be members of the Class, as follows:

- 18 (1) Any persons who are current employees of the City of Medford ; and,  
19 (2) Have a City sponsored health insurance plan, for themselves, their spouses  
20 and their children under the age of 18, that does not include an option to continue that coverage  
21 when those employees retire.  
22

23 Current employees who meet the above criteria are members of the Class whether they  
24 are employed as managers or as non-management employees. Current employees who meet the  
25 criteria above are also members of the Class whether they are unionized or non-union  
26 employees.

PAGE 2 - NOTICE TO CLASS

STEPHEN L. BRISCHETTO  
ATTORNEY AT LAW  
621 S.W. Morrison St., Suite 1025  
Portland, Oregon 97205  
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NOTICE OF CLASS ACTION.Revised.F.doc

1 Establishment by the Court of this Class does not mean that the health insurance sought  
2 by plaintiff will soon be obtained for current employees of the City, because whether it is  
3 possible for the City to provide the requested insurance involves contested factual issues which  
4 have not yet been decided. Further, it is yet to be determined whether the City of Medford will  
5 be responsible for the actual payment of any insurance premiums, should the plaintiff prevail in  
6 this class action. Rather, the ruling means that the ultimate outcome of this lawsuit - whether  
7 favorable to the plaintiffs or to the defendants - will apply in like manner to all Class members.  
8

9 **Rights And Obligations Of Class Members**

10 If you remain a member of the Class:

11 • Joseph Bova and his attorneys, Stephen L. Brischetto and George P. Fisher, will  
12 act as your representative and legal counsel for the presentation of the charges against the  
13 defendants.  
14

15 • Your participation in any relief which may be obtained from the defendants  
16 through trial or settlement will depend upon the results of this lawsuit. If no relief is obtained for  
17 the Class, you will be bound by that result.

18 • You will be entitled to notice of any ruling reducing the size of the Class and also  
19 to notice of, and an opportunity to be heard respecting, any proposed settlement or dismissal of  
20 the class claims. (For this reason, as well as to participate in any recovery, you are requested to  
21 notify the legal counsel for the Class of any corrections or changes in your name or address).  
22

23 **Further Proceedings**

24 Other pretrial proceedings are yet to occur such that trial of this case is not likely to  
25 convene before September 2009. In the meantime, you may communicate with legal counsel for  
26

1 the Class if you believe you have evidence helpful to establishing the Class' claims. You may  
2 also be asked by the parties to provide information relevant to the case.

3 Any questions you have concerning the matters contained in this Notice (and any  
4 corrections or changes of name and address) should not be made to the Court but should be  
5 directed in writing to legal counsel for the Class:  
6

7 Stephen L. Brischetto, OSB #78156  
8 Attorney at Law  
9 621 SW Morrison St., Suite 1025  
10 Portland, OR 97205  
11 Phone: (503) 223-5814  
12 Fax: (503) 228-1317  
13 [slb@brischettolaw.com](mailto:slb@brischettolaw.com)

14 George P. Fisher, OSB #910432  
15 3635 SW Dosch Road  
16 Portland OR 97239  
17 Phone: (503) 224-7730  
18 Fax: (503) 227-2429  
19 [george.fisher@gpf-law.com](mailto:george.fisher@gpf-law.com)

20 You may, of course, seek the advice and guidance of your own attorney if you desire  
21 concerning this case. The pleadings and other records in this litigation may be examined and  
22 copied at any time during regular business hours at the office of the Clerk, Jackson County  
23 Circuit Courthouse, 100 S. Oakdale Avenue, Medford, Oregon 97501.  
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25 DATED this 27 day of Jan., 2009.  
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Mark Schiveley  
Circuit Court Judge

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **PLAINTIFF'S PROPOSED**

**NOTICE TO CLASS** on:

Robert E. Franz, Jr.  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
PO BOX 62  
Springfield OR 97477

Of Attorneys for Defendants

- HAND DELIVERY
- U.S.MAIL
- FAX
- E-MAIL
- ECF


George P. Fisher  
Attorney at Law  
3635 S.W. Dosch Road  
Portland OR 97239

Of Attorneys for Plaintiff

- HAND DELIVERY
- U.S.MAIL
- FAX
- E-MAIL
- ECF

by delivering this date to said attorney(s) a true copy thereof as stated above. I further certify that said documents were contained in sealed envelopes, addressed as above stated, to the last known addresses of said attorney(s). Documents delivered by mail were deposited in the post office at Portland, Oregon with postage thereon prepaid.

DATED this 24 day of January, 2009.

  
 \_\_\_\_\_  
 STEPHEN L. BRISCHETTO, OSB 78156  
 Attorney for Plaintiff  
 (503) 223-5814

**CERTIFICATE OF SERVICE**

I certify that, on July 9, 2010, I served a true copy of the foregoing **Group of Respondent Class Members' Motion For Leave to File Additional Authorities in Support of Appellants' Motion to Stay Previous Judgment/Order, Or, In the Alternative, Motion For Leave to File an Application to Appear as *Amicus***

*Curiae* on:

Robert E. Franz, Jr., OSB 73091  
Jerome P. Larkin, OSB 83269  
Law Office of Robert E. Franz, Jr.  
P.O. Box 62  
Springfield, OR 97477  
Tel.: (541) 741-8220  
Attorney for Defendant-Appellants City of Medford and Michael Dyal;

Stephen L. Brischetto, OSB 78156  
Attorney at Law  
621 S.W. Morrison St., Suite 1025  
Portland, OR 97205  
Tel.: (503) 223-5814  
Attorney for Plaintiff-Respondent and the Class; and

George Fisher, OSB 910432  
Attorney at Law  
3635 S.W. Dosch Road  
Portland, OR 97239  
Tel.: (503) 224-7730  
Attorney for Plaintiff-Respondent and the Class.

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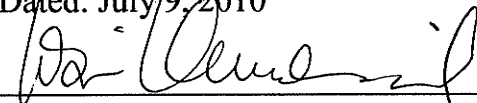
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by United States Postal Service, certified mail, return receipt requested.

Dated: July 9, 2010

A handwritten signature in black ink, appearing to read "Lisa M. Umscheid", written over a horizontal line.

Lisa M. Umscheid, OSB 92571  
BALL JANIK, LLP  
101 SW Main St., Ste. 1100  
Portland, OR 97204  
Tel: (503) 228-2525

Attorney for Group of Respondent  
Class Members

**CERTIFICATE OF FILING**

I certify that, on July 9, 2010, I filed the foregoing **Group of Respondent Class Members' Motion For Leave to File Additional Authorities in Support of Appellants' Motion to Stay Previous Judgment/Order, Or, In the Alternative, Motion For Leave to File an Application to Appear as *Amicus Curiae*** using the ABC Legal Services messenger service.

Dated: July 9, 2010



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Lisa M. Umscheid, OSB 92571  
BALL JANIK, LLP  
101 SW Main St., Ste. 1100  
Portland, OR 97204  
Tel: (503) 228-2525

Attorney for Group of Respondent  
Class Members