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Local law firm wins big at state Supreme Court

By Jon Savelle

Even though it was not their original intent, two Issaquah lawyers have secured a place in the annals of labor law with a recent ruling by the state Supreme Court. On Dec. 13, 2007, the court affirmed that firefighter Kevin Locke, injured in 2000 while training with the city of Seattle, had a right to sue the city for damages under a state law called the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act.

Locke was represented by attorneys David Wieck and John O'Brien, of the O'Brien Law Firm in Issaquah, who filed his suit against Seattle in 2002. At the time, they considered the case a routine personal injury matter, because the act clearly stated that police and firefighters had the right to sue their employers if injured on the job.

The lawyers did not foresee that Seattle would claim that this right was an unconstitutional infringement of its sovereign immunity as a municipality, and thus not subject to suit by police and firefighters.

"We were just suing for negligence," O'Brien said. "All of a sudden, we found ourselves in this constitutional-law fight to throw the whole thing out."

When the case went to trial in 2004, Wieck, O'Brien and their paralegal, Machele Brodie, also found themselves in a David-and-Goliath struggle with Seattle's well-heeled legal department.

"We spent two months at trial," O'Brien said. "We were in court all day and prepared at night. Each day, they filed a new motion. We didn't know what we were up against."

They won the case anyway, with the jury awarding \$1.8 million (later reduced to \$1.5 million) to Locke. The city appealed to the state Court of Appeals, which upheld the jury award in 2006. Seattle's subsequent appeal to the Supreme Court is the one that recently failed again, with the court upholding the lower courts' decisions.

"By the time we were down at the Supreme Court last spring, there were eight law firms involved," O'Brien said. "The Association of Municipal Attorneys was trying to get it held unconstitutional; the International Association of Fire Fighters, in Washington, D.C., filed a brief that said leave it alone; the city hired a private law firm to help with the appeal; and we hired an appellate firm to help us with the appeal."

Others weighing in with friend-of-the-court briefs were the Washington Council of Police and Sheriffs, the Seattle Police Officers Guild, the King County Police Officers' Guild, the Washington Cities Insurance Authority and the Washington Trial Lawyers Association.

Now, Seattle has petitioned the U.S. Supreme Court to review the case, but O'Brien said he thinks it unlikely that the court will take the case.

"They were unanimous decisions in the Court of Appeals and the state Supreme Court," he said. "I don't think the supremes are going to accept it."

Seattle had hired Locke in 2000 as a firefighter trainee. He was in the 10th week of a 12-week course when he fainted from dehydration and fell from a 50-foot ladder, on which he had been practicing a rescue with a 120-pound mannequin. The fall broke Locke's back, one leg and a foot, leaving him with permanent injuries.

"There were 33 safety violations we proved," O'Brien said.

Nonetheless, Seattle asserted that Locke had no standing to sue because, as a trainee, he was not yet a firefighter.

In its decision, the state Supreme Court said that was not the case: A firefighter trainee is a firefighter. And it said the act's provision granting the right to sue is not unconstitutional.

"That's quite a success for the police and firefighters," O'Brien said.

And if the U.S. Supreme Court declines to review the case, Locke finally will receive his jury award and the lawyers will get paid.

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