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THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

February 2014

NEW CASES

Regents of the University of Michigan, a Michigan constitutional corporation, Ascenta Therapeutics, Inc., a Delaware corporation, and Debiopharm S.A., a Switzerland Societe Anonyme, v Selleck Chemicals LLC, a Texas limited liability company. United States District Court, Eastern District of Michigan (Judge Patrick Duggan) (Filed December 6, 2013).

The University and its licensee Debiopharm LLC believe that Selleck Chemicals is infringing U.S. Patent No. 8,278,293 that the University has licensed to Debiopharm. The University asks the Court to order Defendants from infringing, contributing to the infringement of, and inducing infringement of the patent-in-suit. Plaintiffs further ask that Selleck be directed to compensate Plaintiffs for all damages attributed to Selleck's infringement, including but not limited to, reasonable royalties and lost profits, and be required to account for all gains, profits, advantages, and unjust enrichment derived from its violation of law. Plaintiffs seek damages, interest, costs, and attorney's fees.

Dawn Foster v Regents of the University of Michigan and Kristie Beckon. Washtenaw County Circuit Court. (Judge David Swartz )(Filed January 31, 2014)

Plaintiff, Dawn Foster, was an Accountant for the University of Michigan's Sponsored Programs, and claims she was terminated from her position because of her age. Plaintiff alleges she has suffered economic damages as well as embarrassment, humiliation, outrage, pain and suffering, and mental and emotional distress. Plaintiff seeks a minimum of \$25,000, exemplary damages, costs, interest, and attorney's fees.

CASE UPDATES

Peter J. Hammer v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge James R. Giddings) (Served January 6, 2005)

Plaintiff is a former Assistant Professor at the Law School who was denied tenure in 2002. He alleges that he did not receive tenure because of his sexual orientation. Plaintiff also alleges that he was not given notice of non-reappointment consistent with the Standard Practice Guide; and that, because he had an academic appointment for a full eight years, he was entitled to *de facto* tenure pursuant to Regents Bylaw 5.09. Plaintiff seeks judgment in excess of \$25,000. The University filed a motion for summary disposition and a motion to dismiss; both were denied by Judge Giddings. The University filed an interlocutory appeal to the Michigan Court of Appeals. On January 25, 2007, the Court of Appeals vacated the orders of the Court of Claims and ordered Judge Giddings to reconsider Plaintiff's affidavits. The University and Plaintiff filed motions and cross-motions for summary disposition; at oral argument in March 2008, the Court stated that it was denying the motions filed by both sides as to the claim of *de facto* tenure and took under advisement the University's motion to dismiss the discrimination claim. In December 2008, and again in November 2009, the Court of Claims granted Plaintiff's request to reopen discovery for the purpose of taking additional deposition testimony. The Court of Claims heard additional oral argument on December 11, 2009, on the University's request for the dismissal of Plaintiff's claim of sexual orientation discrimination. On August 27, 2010, Judge Giddings dismissed Plaintiff's sexual orientation discrimination claim; the claim of *de facto* tenure proceeded to trial. A bench trial was held on July 11, 12 & 14, 2011. Following presentation of Plaintiff's case, the University moved for and was granted a directed verdict. Plaintiff filed a claim of appeal to the Michigan Court of Appeals. The Michigan Court of Appeals affirmed the trial court's grant of summary disposition as to Plaintiff's discrimination claim, and directed verdict as to Plaintiff's contract

claim. On January 13, 2014, Plaintiff filed an Application for Leave to Appeal to the Michigan Supreme Court.

Alix Gould-Werth, Christie Toth and Graduate Employees Organization, AFT Michigan, AFT, AFL-CIO, and Regents of the University of Michigan (Plaintiff in Intervention) v Edward Callaghan in his official capacity as Chairman of the Michigan Employment Relations Commission; Christine Derdarian in her official capacity as a member of the Michigan Employment Relations Commission; and Nino Green in his official capacity as a member of the Michigan Employment Relations Commission. United States District Court, Eastern District of Michigan (Judge Mark Goldsmith) (Filed April 17, 2012 and June 8, 2012 [Intervening Complaint])

Plaintiffs Gould-Werth, Toth, and GEO, AFT Michigan, AFT, AFL-CIO, seek to enjoin defendants from enforcing 2012 Public Act 45. The Complaint alleges that 2012 PA 45 violates the equal protection clause of the U.S. Constitution by excluding a group of individuals (graduate student research assistants) from the right to bargain based on job title alone. It further alleges that 2012 PA 45 violates Article IV, Section 24 of the Michigan Constitution of 1963 (the "Title-Object Clause") by changing the object and purpose of the bill that eventually became 2012 PA 45. Plaintiffs ask the Court to enjoin the defendants from enforcing 2012 Public Act 45 and order defendants to reimburse Plaintiffs for costs and attorney's fees.

The University of Michigan filed an Intervening Complaint on June 8, 2012. The Intervening Complaint also brought claims under the equal protection clause of the U.S. Constitution and Article IV, Section 24 of the Michigan Constitution. The Intervening Complaint added a claim under the equal protection clause of the Michigan constitution, and a challenge to the immediate effect of 2012 PA 45 under Article IV, Section 24 of the Michigan Constitution. Intervening Plaintiff University asked the Court to issue a permanent injunction declaring 2012 PA 45 to be in violation of the U.S. and Michigan Constitutions. On January 28, 2013, the parties stipulated to the dismissal without prejudice of Court IV – Immediate Effect Clause – Michigan Constitution, of the University's Intervening Complaint. On April 10, 2013, Defendant MERC filed a Motion for Summary Judgment. On April 16, 2013, Plaintiff GEO/AFT, and Intervening Plaintiff University of Michigan, both filed Motions for Summary Judgment. Oral argument was heard on June 27, 2013. On February 5, 2014, the Court issued its opinion, invalidating 2012 PA 45 on the basis that it violated Article IV, Section 24 of the Michigan Constitution. The Court did not reach the equal protection argument. A status conference is scheduled for February 19, 2014.

Wei Cao v Board of Regents of the University of Michigan. Genesee County Circuit Court. (Judge Joseph J. Farah) (Served April 2, 2013)

Plaintiff was an Assistant Professor of Education for the University of Michigan-Flint. She claims she applied for and was denied tenure and promotion because of her national origin. She further alleges the denial of her tenure was in retaliation for her having opposed, through a published article, what she described as "the discriminatory environment" on the Flint campus. Plaintiff claims she suffered economic loss and seeks reinstatement, money damages in excess of \$25,000, plus interest, consequential damages, costs, and attorney's fees. On February 3, 2014, Plaintiff filed an Amended Complaint and an Order was entered allowing the joinder of Li-Hsuan Yang as Co-Plaintiff, without prejudice to Defendant's right to seek severance of the two Plaintiffs for purposes of trial.

Jesse R. Enjaian v Jose A. Dorta and Renee Schomp. United States District Court, Eastern District of Michigan. (Judge Robert H. Cleland) (Served September 16, 2013)

Plaintiff alleges that, pursuant to a search warrant, his electronic equipment was seized from his residence in connection with an alleged charge of stalking, and not returned for 446 days. Plaintiff further claims that Defendant Schomp made false allegations about him to University Defendants. Plaintiff seeks compensatory damages from Defendant Dorta and nominal damages from Defendant Schomp. On

November 8, 2013, Defendants filed motions to dismiss the University of Michigan and named defendants Jose Dorta and Renee Schomp. On January 17, 2014, Defendants filed a motion for sanctions.

### CASE RESOLUTIONS

**Catherine Wilkerson v Kevin Warner, Janet Conners, Michael Matthews, Mark West, Dean Lloyd, Dr. Robert Domeier and Huron Valley Ambulance, Inc.** U.S. District Court, Eastern District of Michigan. (Judge Lawrence P. Zatkoff) (Filed November 20, 2009)

On November 30, 2006, Plaintiff, along with others, protested an invited speaker at the Michigan League. Plaintiff claimed that, during the protest, she was assaulted, falsely arrested, and detained by University of Michigan police officers, and that she was wrongly charged thereafter with attempted resisting and obstructing arrest. A jury trial was held and Plaintiff was found not guilty of the criminal charges in December 2007. Plaintiff thereafter claimed that she suffered damages including loss of earnings, medical expenses, pain and suffering, and attorney's fees. Her counts included violations of First and Fourth Amendment rights, conspiracy, assault and battery, false imprisonment, and malicious prosecution. She sought damages, attorney's fees, interest, and costs. Plaintiff filed a motion to amend her complaint to add a claim for conspiracy against Defendant Mathews on June 3, 2011. A Motion for Summary Judgment was filed on behalf of Defendants Mathews, West, and Conners on June 17, 2011. All motions were briefed and oral argument was requested by the parties. Oral argument was denied and Judge Zatkoff ruled on the motions as briefed on March 29, 2012. Judge Zatkoff granted the defendants' motions for summary judgment and the case was dismissed, with prejudice, in its entirety. Plaintiff filed an appeal to the Sixth Circuit Court of Appeals. On November 1, 2013, the Sixth Circuit Court of Appeals affirmed summary judgment for University Defendants West, Conners, and Matthews. On November 14, 2013, Plaintiff filed a Petition for Rehearing or Rehearing *En Banc* of the Opinion issued in this matter. The Petition was denied on January 10, 2014.

**Bobbi Polanco v Omnicell, Inc.; South Jersey HealthCare, Inc.; Sentara Healthcare, Inc.; University of Michigan Health Systems, Inc.; Doe's 1-50; ABC Corporations 1-50; and XYZ Partnerships and Associations 1-50.** United States District Court for the District of New Jersey (Judge Noel L. Hillman) (Served March 18, 2013)

Plaintiff claimed that, on November 14, 2012, a laptop computer owned by Omnicell, Inc., containing Personal Confidential Information ("PCI") of her and thousands of others like her, was stolen out of an employee's car. Plaintiff claimed the failure to encrypt the PCI constitutes a violation of HIPAA. Her complaint included allegations of Breach of State Security Notification Laws; Violations of the New Jersey, Virginia and Michigan Consumer Fraud Laws; Fraud; Negligence; and Conspiracy. Plaintiff sought certification of a class action, declaratory and injunctive relief, damages, costs, and expert and attorney's fees. On May 31, 2013, the University moved to dismiss the complaint on the grounds that the University is immune from suit under the Eleventh Amendment; the court lacks personal jurisdiction over the University; the plaintiff lacks standing; and the Complaint fails to state a legally viable claim against the University. On December 26, 2013, the Court granted defendants' motion to dismiss without prejudice.

**Glenaleen L. Dusseau and Theodore Dusseau v The University of Michigan.** Court of Claims. (Judge Joyce Draganchuk) (Served March 25, 2013).

Plaintiff, Glenaleen Dusseau, alleged she was a patient at the University of Michigan Hospital, unable to use her arms and hands, and thus unable to feed herself. She claimed that during her stay at the University Hospital, coffee was spilled causing her severe burns and the University staff failed immediately to remove all coffee soaked materials from contact with her skin, exacerbating the injuries caused by the hot coffee. Plaintiffs claimed physical and mental pain and suffering, need for medical and pharmacological care and services, medical monitoring, loss of enjoyment of life and its activities, loss of consortium and

companionship, disability, humiliation, and embarrassment. Plaintiffs sought damages in excess of \$25,000 for injuries and losses, plus costs, interest, and attorney's fees. Settlement has been reached between the parties. This case is concluded.

**Allen Licari v Immigration Customs Enforcement, Special Agent Mike Ball, U of M Officer Marjorie Pillsbury, U of M Public Safety Department.** U. S. District Court, Eastern District of Michigan, Southern Division. (Judge Gershwin A. Drain) (Filed Served October 4, 2013)

Plaintiff, Allen Licari, claimed that his wife voluntarily turned over certain property of his to law enforcement authorities and that this property has not yet been returned to him. Plaintiff asks the Court to order the return of all the property obtained, seized, or controlled by defendants, and seeks attorney's fees and costs. On January 3, 2014, the parties stipulated to dismiss this case without prejudice.

**Hallmah Britt, as Personal Representative of Paul Britt, A Minor Child v The Flint Children's Museum & University of Michigan-Flint Daycare, a Michigan Corporation.** Genesee County Circuit Court. (Judge Richard B. Yuille) (Served November 20, 2013)

Plaintiff, Hallmah Britt, alleged his son, Paul Britt, violently slipped and fell off a helicopter apparatus and sustained physical injuries and mental anguish while on a field trip at the Flint Children's Museum with the University of Michigan-Flint Daycare. His three-count complaint included claims of Negligence, Premises Liability, and Exemplary Damages. Plaintiffs sought damages in excess of \$25,000 together with interest, costs, and attorney's fees. On January 20, 2014, this case was voluntarily dismissed because it was filed in the wrong Court.

Respectfully submitted,



Timothy G. Lynch  
Vice President & General Counsel