

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

April 2013

NEW CASES

Lindsay Franson, v The Regents of the University of Michigan and Dr. Eugene Chen. Genesee County Circuit Court. (Judge Judith Fullerton) (Served March 25, 2013).

Plaintiff was a research technologist for the Cardiology department in Internal Medicine. She alleges she was terminated after she reported violations of laws and regulations concerning the operation of a lab and after she participated in an investigation by OSHA and hazmat inspectors. Plaintiff brings claims under the Whistleblower Protection Act and the Elliott Larsen Civil Rights Act. Plaintiff claims she suffered extreme emotional distress and mental anguish; anxiety and embarrassment, worry, humiliation, insulted honor and mortification; damage to her professional reputation; and loss of salary, benefits and future income. She seeks damages in excess of \$25,000, plus interest, costs, and attorney's fees.

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

Plaintiff Glenaleen Dusseau alleges she was a patient at the University of Michigan Hospital, unable to use her arms and hands, and thus unable to feed herself. She claims 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. Plaintiffs claim 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. They seek damages in excess of \$25,000, plus costs, interest, and attorney's fees.

CASE UPDATES

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), et al. v Jennifer Granholm, Regents of the University of Michigan, Board of Trustees of Michigan State University, Board of Governors of Wayne State University and Trustees of any other public college or university, community college, or school district. United States District Court, Eastern Division of Michigan. (Judge David M. Lawson) (Filed November 8, 2006).

In 2006, Plaintiffs, including BAMN, The Rainbow PUSH Coalition, a number of high school students in Michigan, college and graduate school students in Michigan, the AFSCME labor organization, and others (collectively, "BAMN Plaintiffs"), filed suit against a list of universities in the State, including the University of Michigan. Plaintiffs asserted that Proposal 2, which prohibits preferential treatment on the basis of race, gender, national origin, and ethnicity in public education, public employment, and public contracting, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. Plaintiffs further alleged that Proposal 2 violates the Universities' First Amendment right to determine their academic standards and to determine the criteria for admission by prohibiting public universities from considering race in their admissions policies. This suit was later consolidated with another suit brought by students, prospective students, and faculty at the University of Michigan (collectively, "Cantrell Plaintiffs") against Governor Granholm – but not any state universities – contending that Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment.

On March 18, 2008, the Court issued a decision upholding Proposal 2 and dismissing the BAMN and Cantrell suits. The Court found that Plaintiffs had not shown that Proposal 2 was unconstitutional under any of their theories. The Court therefore granted summary judgment to the Attorney General, who had

intervened in the case to argue that Proposal 2 was constitutional. The Court granted the Universities' motion to dismiss BAMN's claim that Proposal 2 violated First Amendment principles of academic freedom, agreeing that that right is for the Universities to assert (or not), but otherwise denied the Universities' motion to be dismissed from the case: in the Court's view, the allegations against the Universities stemmed from the same basic facts as those asserted in the case generally and university action would be required to obtain the relief sought by the plaintiffs; accordingly, the Court held, the Universities were proper parties to the litigation.

The Court in a separate opinion issued on March 18, 2008, found that Eric Russell (the law school applicant who intervened in the case) no longer had a unique interest and dismissed him from the litigation. The Court likewise denied Jennifer Gratz's motion to intervene. Finally, because the Court granted summary judgment to the Attorney General, upholding Prop 2 against Plaintiffs' challenges, the Court denied the various pending discovery motions and class certification motions as moot.

The Cantrell Plaintiffs filed a motion for reconsideration, which was denied. Eric Russell sought attorney's fees from the University; that request was denied on June 17, 2010.

BAMN filed an appeal to the Sixth Circuit, and the Universities cross-appealed the denial of their motion to be dismissed. Both Eric Russell and Jennifer Gratz appealed the Court's rulings to the Sixth Circuit. Jennifer Gratz later filed a motion to withdraw as an appellant, which motion was granted on March 23, 2009. The Sixth Circuit determined that Eric Russell could participate only as an amicus. A Sixth Circuit panel heard oral argument on November 17, 2009.

On July 1, 2011, the Sixth Circuit panel reversed the grant of summary judgment to the Attorney General, found Proposal 2 unconstitutional, and ordered the grant of summary judgment to the BAMN and Cantrell plaintiffs. The Sixth Circuit panel affirmed the decision to dismiss Eric Russell from the suit, and also affirmed the decision to keep the University defendants in the suit. On September 9, 2011, the Sixth Circuit Court of Appeals issued an order stating that the entire court would reconsider the July 1, 2011, decision of the three-judge panel; oral argument was in March 2012.

On November 15, 2012, the Sixth Circuit *en banc* declared Proposal 2 unconstitutional as it relates to public education (specifically, public university admissions). The majority held that Proposal 2 creates for minorities a "comparative structural burden [that] undermines the Equal Protection Clause's guarantee that all citizens ought to have equal access to the tools of political change." Michigan's Attorney General declared his intent to file a petition for certiorari seeking U.S. Supreme Court review, and petitioned the Sixth Circuit to stay its ruling. On November 28, 2012, Michigan's Attorney General filed a petition seeking U.S. Supreme Court review of the Sixth Circuit's decision. On November 30, 2012, the Sixth Circuit granted the Michigan Attorney General's earlier request for a stay of its decision, putting the ruling on hold at least until the Supreme Court decides whether it will hear the case. On March 25, 2013, the U.S. Supreme Court agreed to hear the case during its next Term, which effectively continues the stay of the Sixth Circuit en banc decision.

Senta Reyes v The University of Michigan, Dr. Merle Jaarda, Dr. Patricia Bauer, and Dr. Marilyn Woolfolk. United States District Court, Eastern District of Michigan. (Judge Nancy G. Edmunds) (Filed December 1, 2011); AND Senta Reyes v University of Michigan, Dr. Merle Jarda, Dr. Patricia Bauer, and Dr. Marilyn Woolfolk. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Filed January 25, 2012); AND Senta Reyes v University of Michigan, Dr. Merle Jaarda, Dr. Patricia Bauer and Dr. Marilyn Woolfolk. Michigan Court of Claims. (Judge Paula J.M. Manderfield) (Filed March 26, 2012).

Plaintiff was a Dental School student who was dismissed for unsatisfactory academic progress while attempting to complete the remediation of her second year as a condition of continued enrollment after she had been previously dismissed for unsatisfactory academic progress. Plaintiff alleges deprivation of her rights to free speech, due process, and equal protection under the U.S. and Michigan Constitutions; racial discrimination; promissory estoppel/detrimental reliance; and breach of contract. Plaintiff claims she has suffered economic damages (including future lost wages and earning capacity), embarrassment, humiliation, outrage, anxiety, mental anguish, and mental and emotional distress. She seeks damages in excess of \$75,000, plus costs, interest, and attorney's fees. Plaintiff's state law claims allege violation of the Elliott Larsen Civil Rights Act, violations of due process and equal protection under the Michigan Constitution, promissory estoppel, and breach of contract. On January 15, 2013, the parties stipulated to the dismissal of plaintiff's 42 U.S.C. Section 1981 claim and race discrimination claim in the federal case. The parties also stipulated to dismiss named defendant Dr. Merle Jaarda. On January 24, 2013, Defendants filed a motion for summary disposition in the federal case; oral argument on the motion is scheduled for May 13, 2013. On April 2, 2013, plaintiff stipulated to dismiss the University and a named defendant, Dr. Marilyn Woolfolk, with prejudice.

CASE RESOLUTIONS

Peter Granneman v Kevin Lamarr Massey and The Regents of the University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed August 24, 2011).

Plaintiff filed this lawsuit against the University and Kevin Massey, a University bus driver. Plaintiff claimed that, on September 8, 2008, he was riding a bicycle when he was struck by a University bus driven by Defendant Massey. Plaintiff alleged that, as a result of the accident, he suffered serious injuries. He sought judgment in excess of \$25,000, including interest, costs, and attorney's fees. On February 29, 2012, Judge Draganchuk granted the University's motion to dismiss based on failure to provide notice as required by the Court of Claims Act. The case against the driver was also dismissed. Plaintiff filed a motion for reconsideration, which was denied. On March 5, 2013, the Michigan Court of Appeals denied Plaintiff's delayed application for leave to appeal.

Carter Simmons v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Denise Page Hood) (Served January 3, 2012).

Plaintiff was employed as a custodian at the University. Plaintiff alleged that, after suffering an injury, he returned to work with medical restrictions and the University failed to accommodate him. His allegations included race and disability discrimination, as well as retaliation for having complained about discrimination and a violation of the Family and Medical Leave Act. He sought damages in excess of \$75,000 as well as costs, interest, and attorney's fees. The University filed a motion for summary judgment that was granted on March 26, 2013.

Joseph Gant v The University of Michigan Hospital and AFSCME, Local 1583. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed December 6, 2012)

Plaintiff was a Custodian for Environmental Services at the University Hospital. He alleged that he was discharged from his position without cause and in retaliation for filing an EEOC charge alleging race discrimination. The complaint also alleged that Plaintiff's Union AFSCME, Local 1583 breached its duty of fair representation in processing Plaintiff's grievance relating to his discharge and discrimination complaint. Plaintiff sought \$2,000,000.00 in damages. Defendant University filed a motion to dismiss that was granted on March 13, 2013.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

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