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THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

July 2010

NEW CASES

State Farm Mutual Automobile Insurance Company Subrogee of Caren E. Gorga v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge James R. Giddings) (Filed June 21, 2010).

Plaintiff claims that the driver of a Bobcat Sweepster, who is a University of Michigan employee, backed the Bobcat into the vehicle owned by Caren Gorga while Ms. Gorga was driving in the University's parking lot on Glacier Way. The alleged damage to Ms. Gorga's vehicle, which was insured by State Farm, totaled \$1675.61. State Farm claims that the University, as the employer of the Bobcat driver, is liable for the driver's negligence. State Farm seeks judgment in the amount of \$1675.61 plus interest, costs, and attorney fees.

Edward P. St. John v Regents of the University of Michigan, Stephen L. DesJardins, Dean Deborah Loewenberg Ball, and Associate Dean Annemarie Palinscar. United States District Court, Eastern District of Michigan. (Judge Julian Abele Cook, Jr.) (Filed June 7, 2010).

Plaintiff, a tenured professor in the School of Education, claims that he was relieved of his teaching duties without the opportunity of a hearing, which he states is a violation of his Fourteenth Amendment due process rights. He also makes claims under the Michigan Whistleblower Protection Act, the Americans with Disabilities Act, breach of contract, and defamation as well as tortious interference with business expectancy/business relations by the named defendants. Professor St. John seeks damages, costs, attorney fees, interest, and lost profits. He also asks the court to enjoin the defendants from further violating his rights under the law.

RESOLUTIONS

Nicole R. Scott v Dr. David Lilley and the University of Michigan. Wayne County Circuit Court. (Judge Robert J. Colombo, Jr.) (Served May 17, 2010).

Plaintiff is a student at UM-Dearborn. She claims that she had filed complaints in the Dean's Office in the College of Arts, Sciences and Letters about a grade she had received on a paper from Professor Lilley. Ms. Scott alleges that, after her complaints were filed, Professor Lilley ran a criminal background check and credit report on her and communicated that personal information via email to other faculty and staff at the University. Plaintiff claims that, as a result, her reputation at UM-Dearborn has been ruined. Her allegations include defamation and intentional infliction of

emotional distress; she seeks damages, costs and interest. Plaintiff stipulated to the entry of an order of dismissal of this case in circuit court for lack of jurisdiction. Plaintiff may re-file her complaint in the Michigan Court of Claims.

Carole Mayer v Regents of the University of Michigan. Michigan Court of Claims. (Judge James Giddings) (Served December 23, 2009).

Plaintiff claims that she attended a concert at Hill Auditorium on February 2, 2008, and that she slipped and fell when exiting the Auditorium. She alleges that she sustained severe injuries and that the University was negligent for failing to keep the walkways clear of snow and ice. She seeks an unnamed amount of damages. Settlement was reached between the parties and the case is concluded.

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 black high school students in Michigan, college and graduate school students in Michigan, the AFSCME labor organization, and others (collectively, "BAMN Plaintiffs"), filed suit against, among others, the Regents of the University of Michigan. That suit 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, is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972, and 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 – that contended 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 the 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. According to the Court, the Universities were proper parties to the action because the

allegations regarding them stemmed from the same basic facts as those asserted in the case generally and because university action would be required to obtain the relief sought by the plaintiffs.

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

The Cantrell Plaintiffs filed a motion for reconsideration with the district court, but the district court ultimately denied that motion. Eric Russell filed a motion in the district court seeking attorneys' fees from the University; that motion was denied on June 17, 2010.

BAMN filed an appeal to the Sixth Circuit to challenge the Court's ruling upholding Proposal 2. The University defendants cross-appealed the Court's denial of their motion to be dismissed from the case. 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, and the Sixth Circuit determined that Eric Russell could participate only as an amicus. The Sixth Circuit panel heard oral argument of the parties' appeals, including the Universities' cross-appeal seeking dismissal from the case, on November 17, 2009.

Respectfully submitted,



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Vice President and General Counsel

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