

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

July 2014

NEW CASES

Hussein Berry v Board of Regents of the University of Michigan. United States District Court, Eastern District of Michigan (Judge Arthur J. Tarnow) (Served May 20, 2014)

Plaintiff claims he was unlawfully denied in-state tuition at the University of Michigan-Dearborn. Plaintiff's Complaint states that he brings this action on behalf of himself and all those similarly situated, and alleges violations of equal protection, due process, and unjust enrichment. Plaintiff seeks a refund of tuition, statutory damages, actual damages resulting from defendant's unjust enrichment, future in-state tuition pricing, costs, expenses, and attorney's fees. Plaintiff also asks the court to direct Defendant to divulge the cases of students who have been reviewed for residency eligibility, and denied in-state tuition. On June 10, 2014, Defendants filed a Motion to Dismiss.

Belinda Anderson v The Regents of the University of Michigan, Ted Makowiec in his official capacity, and Brian Vasher in his official capacity. United States District Court, Eastern District of Michigan (Judge David Lawson) (Filed May 24, 2014).

Plaintiff is an administrative assistant for the University of Michigan's Benefits office. She alleges defendants have engaged in a pattern and practice of unlawful discrimination on the basis of race or national origin by denying her promotions, fair salary increases, and subjecting her to arbitrary demotions. Plaintiff's two-count complaint includes claims of race discrimination, and retaliation, and she seeks compensatory damages, lost wages and benefits, interest, costs, and attorney's fees.

CASE UPDATES

The Authors Guild, Inc., et. al. v HathiTrust, Regents of The University of Michigan, et al.. United States District Court, Southern District of New York (Judge Harold Baer) (Served October 14, 2011)

Plaintiffs claim Defendants are violating, or will violate, Plaintiffs' alleged copyrights through Defendants' efforts to digitize the works in their libraries, create a shared repository through the HathiTrust, and participate in the HathiTrust's Orphan Works Project. Plaintiffs seek injunctive and declaratory relief as well as attorney's fees, and costs. The University, along with its co-defendants, filed a motion for judgment on the pleadings. On August 6, 2012, oral argument was heard by the court on the motions for summary judgment that were filed by all three parties (plaintiffs, the Library Defendants, and the intervening National Federation for the Blind). On October 10, 2012, the late Judge Baer ruled in favor of the Library Defendants, stating in a written opinion that the HathiTrust was an example of fair use and did not infringe upon copyright laws. Judge Baer also declared that the University of Michigan is an "authorized entity" under the Chaffee Amendment, which gives the University the ability to provide unprecedented access to library patrons who have disabilities. On February 25, 2013, Plaintiffs/Appellants filed their appeal brief in the Second Circuit Court of Appeals. Four *amici* filed briefs in support of Plaintiffs/Appellees on March 4, 2013. On May 28, 2013, Defendants/Appellees filed briefs in opposition, and 13 *amici* filed briefs in support of Defendants/Appellees on June 4, 2013. On October 30, 2013, the United States Court of Appeals for the Second Circuit heard oral argument. On June 10, 2014, the Second Circuit affirmed the District Court's ruling that Michigan and the other defendants did not engage in copyright infringement as alleged by the plaintiffs. Specifically, it is a fair use to digitize copyrighted works for indexing, search, and access for those who have print disabilities. The Court also affirmed that some of the plaintiffs did not have standing and it remanded to determine whether some of the other plaintiffs had standing.

Regents of the University of Michigan v St. Jude Medical, Inc. United States District Court, Eastern District of Michigan (Judge Avern Cohn/Magistrate Judge Laurie J. Michelson) (Filed July 2, 2012)

In 1997, the University licensed to St. Jude Medical, Inc. its rights to patents and other technology related to chemical compositions for treating bio-prosthetic tissues. St. Jude has been paying royalties to the University for a number of years, but last year stopped paying, claiming that the University's patents and technology do not cover all the St. Jude products and that therefore the company was entitled to a credit on amounts previously paid. The University filed this lawsuit to recover the royalties that are currently owed, and to protect the University's ability to receive the future royalties to which the University is entitled. Defendant St. Jude filed its Answer with the court, including a counterclaim that the University should have to repay all the royalties since 1998. The University replied to Defendant's counterclaim, denying liability because the claim, among other things, is barred by the Michigan Court of Claims Act. On November 9, 2012, St. Jude Medical filed a Petition for Inter Partes Review at the U.S. Patent Office, seeking reexamination of the patentability of the claims in one of the patents licensed to St. Jude. The University filed an amended complaint for procedural reasons. On December 17, 2012, St. Jude Medical filed an Answer adding a count seeking declaratory judgment that the University's patent is invalid. On December 27, 2012, the University moved to dismiss Defendant's counterclaim given Defendant's failure to file notice with the Michigan Court of Claims as required by Michigan law. On December 31, 2012, the University filed a summary judgment motion seeking an affirmative finding of liability on the license agreement. Defendant filed its opposition to the University's motion to dismiss on January 17, 2013, and the University filed a reply on January 31, 2013. On February 25, 2013, the Court denied the University's motion to dismiss. On March 7, 2013, St. Jude Medical notified the University it was terminating the 1997 license agreement as a matter of right, effective in June 2013. On April 5, 2013, the Court ruled the University could amend its Complaint to add a patent infringement count. On May 31, 2013, the Court granted St. Jude's motion to stay the litigation during Patent Office proceedings. The University and St. Jude will resolve the validity of the patent-in-suit at the Patent Office by 2014, and then the University will reopen the district court litigation to resolve its contract claims and any remaining patent claims. On August 8, 2013, the University filed a Motion to Amend the Complaint to add a patent infringement count against St. Jude Medical. On September 5, 2013, the District Court granted the University's Motion to Amend and Supplement the Complaint to add a count alleging patent infringement by St. Jude Medical; this Amended Complaint was filed on September 9, 2013. The parties completed the Inter Partes Review Proceedings (IRP) in January 2014. On May 1, 2014, the Patent Trial and Appeal Board of the U.S. Patent Office ruled that Defendant demonstrated, by a preponderance of the evidence, that the claims at issue in the IPR are not patentable. On June 27, 2014, the University appealed the Patent Office decision to the Court of Appeals for the Federal Circuit.

Drew Sterrett v. Heather Cowan, Jay Wilgus, Stacey Vander Velde, Theodore Spencer, Susan Pritzel, Mikiko Senja, E. Royster Harper, Malinda Matney, Anthony Walesby, and Laura Blake Jones. United States District Court, Eastern District of Michigan (Judge Denise Page Hood) (Filed April 23, 2014); **AND Drew Sterrett v Regents of the University of Michigan.** Washtenaw County Circuit Court (Judge Donald E Shelton) (Filed April 24, 2014); **AND Drew Sterrett v Regents of the University of Michigan.** Court of Claims (Judge Pat M. Donofrio) (Filed May 6, 2014)

Plaintiff is a former student at the University of Michigan. His claims arise out of disciplinary and other alleged actions taken against him by Defendants on the basis of sexual misconduct. Plaintiff alleges he was deprived of his protected liberty and property interests, and not afforded due process. His two-count federal complaint includes claims of 42 USC Section 1983 – Fourteenth Amendment Due Process against all defendants, and First Amendment Free Speech against Defendants Cowan, Vander Velde, and Wilgus.

Plaintiff seeks equitable relief as well as compensatory damages, exemplary damages, punitive damages, interest, costs, attorney and expert witness fees. On April 24, 2014, Plaintiff filed the same two-count complaint against the Regents of the University of Michigan in the Washtenaw County Circuit Court, and a Complaint alleging Breach of Contract in the Court of Claims on May 6, 2014. On May 20, 2014, Defendants filed a Motion to Dismiss the Federal Court case; a Motion to Stay Discovery was filed on June 17, 2014. On June 17, 2014, Defendant's filed a Motion for Summary Disposition and Motion to Stay Discovery in the Court of Claims case.

CASE RESOLUTIONS

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 alleged that he did not receive tenure because of his sexual orientation. Plaintiff also alleged 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 sought 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 that was denied.

Sheri Barron v University of Michigan and University of Michigan Health System. U.S. District Court, Eastern District of Michigan, Southern Division (Judge Mark A. Goldsmith) (Served August 10, 2011).

Plaintiff was a Registered Nurse at the University Hospital. She alleged she was harassed and discriminated against based on her age and disability or perceived disability when, after returning from a disability leave of absence of more than seven years, she was told that she should take a refresher course before she could be returned to work as a registered nurse. Plaintiff claimed that she applied for approximately 70 Registered Nurse positions within the University following her leave, and that, after taking the training, she was not promoted from the nurse's-aid position. Plaintiff also alleged that she was told she would not be considered for promotion because of her age. Plaintiff claimed she has suffered economic and emotional damages. She sought judgment against the University, damages, costs, and attorney's fees. On March 12, 2013, Defendants filed a motion to dismiss that was denied on May 30, 2013. On June 19, 2013, the Court awarded defendants costs and attorney's fees as a result of a court filing seeking overdue discovery from plaintiff. On August 28, 2013, Plaintiff's attorney's Motion to Withdraw as counsel was granted. Defendant's Second Motion to Dismiss, which was filed on June 26, 2013, was denied. The Court also imposed additional sanctions upon Plaintiff for her failure to produce

overdue discovery. On November 25, 2013, Defendants filed their Third Motion to Dismiss for Failure to Comply with Court Orders. That motion that was granted on June 30, 2014, with prejudice.

Young Americans for Liberty at The University of Michigan v Mary Sue Coleman et al. United States District Court, Eastern District of Michigan (Judge Patrick J. Duggan) (Filed December 20, 2013)

Plaintiff alleged denial of equal access to mandatory student fees for student organizations at the University of Michigan. Plaintiff sought a declaratory judgment that Defendants' denial of student fee funding and student fee funding policies violated Plaintiff's rights under the First and Fourteenth Amendments. Plaintiff also sought compensatory damages, punitive damages, attorney's fees, and costs. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "T. Lynch", with a long horizontal flourish extending to the right.

Timothy G. Lynch
Vice President & General Counsel

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