

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

July 2019

NEW CASES

Robert Sugarbaker v Regents of the University of Michigan. Court of Claims. (Filed April 12, 2019) (Judge Christopher Murray)

Plaintiff claims that, on November 17, 2017, he was struck by a motor vehicle driven by a University of Michigan employee during the scope of his employment, resulting in serious and permanent injuries to Plaintiff. Plaintiff's one-count complaint alleges negligence. Plaintiff seeks an amount in excess of \$1,000, together with interest, costs and attorney's fees.

CASE UPDATES

John Doe v University of Michigan, Board of Regents of the University of Michigan, Pamela Heatlie, Robert Sellers, Martin Philbert, Erik Wessel, Laura Blake Jones, E. Royster Harper, Suzanne McFadden and Paul Robinson. United States District Court, Eastern District of Michigan (Filed June 4, 2018) (Judge Arthur Tarnow)

Plaintiff, a student at the University of Michigan, alleges violations of the University's Policy and Procedures on Student Sexual and Gender-Based Misconduct and other Forms of Interpersonal Violence (Sexual Misconduct Policy). His five-count complaint alleged violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief to include an injunction halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff, and an injunction prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks legal relief to include compensatory, exemplary and punitive damages, interest, costs and attorney's fees. On June 4, 2018, Plaintiff filed an *ex parte* motion to proceed under a pseudonym and a motion for temporary restraining order and preliminary injunction. Defendants' opposition to Plaintiff's motion for preliminary injunction was filed on June 15, 2018. On July 6, 2018, the Court entered its Order Granting In Part and Denying In Part Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. The Court ordered that as soon as practicable the University provide Plaintiff with the opportunity for a live hearing in accordance with the procedures set forth in the Statement of Student Rights and Responsibilities. On July 25, 2018, Defendants filed a notice of appeal. Plaintiff filed a response and a cross-appeal. On January 18, 2019, Defendant filed a motion to dismiss the cross-appeal. On April 10, 2019, the United States Court of Appeals for the Sixth Circuit vacated the district court's preliminary injunction and remanded for reconsideration in light of *Doe v. Baum* and the University's interim policy. On May 22, 2019, Plaintiff filed a second amended complaint and a motion for interim attorney fees on May 23, 2019. On June 5, 2019, Defendants filed a motion to dismiss the second amended complaint. On June 10, 2019, Plaintiff filed a motion for partial summary judgment. On July 12, 2019, Defendants filed an emergency motion seeking mandamus relief from the Court's orders requiring the University's President to personally appear for a settlement conference on the record and in open court. In response, the Sixth Circuit has stayed the settlement conference pending further briefing.

Don M. Bosco, Personal Representative of Estate of Heping Zhao v Ameer Raoof. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 22, 2017)

Plaintiff, Don M. Bosco, has been appointed as Personal Representative of the Estate of Heping Zhao by the Probate Court of Washtenaw County. Plaintiff claims that, as a result of wrongful acts by former Michigan employee Defendant Raoof, Zhao suffered injuries resulting in his death. Plaintiff seeks economic and non-economic damages, together with costs, interest, and attorney's fees. On May 22, 2017, Defendant filed a motion to dismiss and for summary disposition that was denied. On August 17, 2017, Defendant-Appellant filed a delayed application for leave to appeal that was denied. Defendant filed a

second motion to dismiss on alternative grounds that was denied on July 16, 2018. On July 25, 2018, Defendant-Appellant filed an application for leave to appeal that was denied on December 20, 2018. On May 2, 2019, Defendant filed a motion for summary disposition that was denied on May 30, 2019. On June 3, 2019, Defendant filed a claim of appeal.

**Michael Heinrich v. Marvin Pettway, Michael Rutkofske, and Robert Miller.** Washtenaw County Circuit Court. (Judge David S. Swartz) (Served October 15, 2018)

Plaintiff alleges that defendants were reckless and negligent over a period of years in the course of their work as foresters after a tree fell on him. Plaintiff seeks in excess of \$25,000 for all damages, including exemplary damages, together with costs, interests and attorney's fees. On May 31, 2019, Defendants filed a motion for summary disposition, which the Court granted on June 26, 2019.

**Stacy Deitert v. Board of Regents of the University of Michigan.** Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served June 23, 2017)

Plaintiff was a patient services associate who claimed she was suffering from various medical issues and that her request for an accommodation to file for long-term disability and extended sick leave was wrongly denied. Plaintiff alleged violations of the Family Medical Leave Act and the Person's With Disabilities Civil Rights Act. Plaintiff requested an Order awarding her compensatory damages, punitive damages, costs and attorney's fees. On September 18, 2017, an Order of partial voluntary dismissal with prejudice was entered dismissing the FMLA claim and any claim for punitive damages or equitable relief under the PWDCRA claim. Defendant filed a motion for summary disposition that was granted with prejudice on October 17, 2018. On November 7, 2018, Plaintiff filed a motion for reconsideration that was denied on May 2, 2019. Plaintiff filed an appeal of right on May 23, 2019.

**Pamela Smock v Mark Schlissel, Regents of the University of Michigan, and Andrew Martin.** United States District Court, Eastern District of Michigan. (Judge Arthur J. Tarnow) (Filed February 2, 2018)

Plaintiff is a tenured Professor of Sociology in the College of Literature, Science and the Arts. Her lawsuit alleges a violation of due process, the First Amendment, and retaliation, after she was disciplined because her behavior towards students was found to be inappropriate and involved sexually charged discussions. Plaintiff asks that the practices and actions of Defendants be declared unconstitutional. Plaintiff further seeks an injunction prohibiting any future acts by Defendants allegedly violating Plaintiff's constitutional rights and an Order removing the investigation from Plaintiff's file and reversing the sanctions. Plaintiff further asks the Court to award her compensatory damages, exemplary damages, lost wages and benefits, interest, costs, and attorney's fees. On March 14, 2018, Defendants filed a motion to dismiss. On May 16, 2018, Plaintiff filed a motion for summary judgment. On November 19, 2018, the court granted Defendants' motion to dismiss in part and denied Plaintiff's motion for summary judgement. On January 24, 2019, Defendants filed a motion to dismiss Plaintiff's claims for damages that was granted and denied in part on May 23, 2019.

**Tanya Wallace v Board of Regents of the University of Michigan.** Court of Claims. (Judge Stephen Borello) (Filed June 27, 2018)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff seeks an amount in excess of \$25,000, an accounting from Defendant as to Plaintiff's rate of LTD benefits, an Order instructing Defendant to file the LTD Plan and all documents constituting Plaintiff's claim file, together with interest, costs and attorney's fees. On May 21, 2019, Defendant filed a motion for summary disposition.

**Professor Scott Kurashige, Ph.D., and Professor Emily Lawsin, M.A. v University of Michigan, a Michigan corporation.** Washtenaw County Circuit Court (Judge Timothy Connors) (Filed January 10, 2017)

Plaintiff Scott Kurashige, formerly a professor in the Departments of American Culture and History in the College of Literature, Science and the Arts, and Plaintiff Emily Lawsin, a Lecturer IV in the Departments of Women's Studies and American Culture in the College of Literature, Sciences and the Arts, allege race

discrimination, gender discrimination, marital status discrimination, race hostile work environment and retaliation, and disability-based discriminatory hostile treatment and retaliation. Plaintiff Lawsin, who is currently on leave from her Lecturer IV position, seeks reinstatement to her position as a Lecturer IV, to teach without a "remediation plan." Plaintiff Kurashige seeks reinstatement to a tenured full professor position from which he claims he was constructively discharged and reinstatement to the position of Director of the Asian/Pacific Islander American Studies Program. Both Plaintiffs further seek economic and non-economic damages, permanent injunctive relief under the Elliott-Larsen Civil Rights Act and a consent judgment with a timeline for meeting metrics and other necessary actions to come into compliance with ELCRA. On February 22, 2017, Defendant filed a partial motion to dismiss that was granted and denied in part. Plaintiff filed an Amended Complaint. Trial was scheduled for July 1, 2019 in Washtenaw County Circuit Court that has been adjourned until December 1, 2019.

The Regents of the University of Michigan v Shamrock Structures, LLC. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed September 231, 2018)

The University filed a breach of contract claim against Defendant for breaching the Beam Subuse Agreements it has with the University. The University seeks a past-due amount owed of \$97,987.56, including interest, costs and fees, as permitted by the Beam Subuse Agreement. Plaintiffs filed and were granted a default judgment for defendant's failure to appear. The University sought to enforce the judgment in Delaware and was successful on May 7, 2019.

Hassan M. Ahmad, Esq. v University of Michigan. Court of Claims. (Judge Stephen Borrello) (Served June 23, 2017)

Plaintiff filed a Complaint claiming the University of Michigan violated the Freedom of Information Act ("FOIA"). Plaintiff asked the Court to find that the entirety of the documents responsive to the FOIA request by Defendant be "public records" and that no exemption exists; to issue an Order compelling complete production of the FOIA response no later than 30 days from the date of the Order; and order payment of all penalties and costs. On August 16, 2017, Defendant filed a motion to dismiss that was granted. On November 20, 2017, Plaintiff filed an appeal. On June 20, 2019, the Michigan Court of Appeals issued an unpublished opinion in which it held that the requested records are public records. The court remanded the case to the Court of Claims for further proceedings consistent with the court's opinion.

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch (sic). United States District Court, Easter District of Michigan. (Judge Sean Cox) (Served on August 2, 2017)

Plaintiff filed a three-count complaint alleging her employment was terminated in violation of the Americans with Disabilities Act ("ADA"), and in retaliation for making allegations against Defendants and filing EEOC charges. Plaintiff sought an Order requiring Defendant to modify its policies, practices, and procedures; eliminate the application of "best qualified" standard when considering reassignments as a reasonable accommodation; and implement ADA training. Plaintiff also seeks back pay, front pay, medical expenses, back benefits, and compensatory damages. On August 23, 2017, Defendants filed a motion to dismiss that was granted and denied in part. Defendants filed a motion for summary judgment that was granted on December 14, 2018. On December 27, 2018, Plaintiff filed a motion for reconsideration that was denied. On April 23, 2019, Plaintiff filed a notice of appeal.

Lana Tyrrell v. University of Michigan, Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed August 1, 2018) **AND** Lana Tyrrell v Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson. Court of Claims. (Judge Christopher M. Murray) (Filed July 31, 2018)

Plaintiff is a former employee of the University's Unit for Laboratory Animal Medicine ("ULAM") who claims she was terminated due to her alleged disability. Plaintiff's two-count complaint in the Washtenaw County Circuit Court includes claims for violations of the PWDCRA and retaliation. Plaintiff seeks in excess of \$25,000, interest, costs, and attorney's fees. On September 13, 2018, Defendant filed a motion for summary

disposition. Defendant filed a motion for summary disposition in the Court of Claims case on September 13, 2018 that was granted and denied in part. In the Circuit Court case, Defendants motion for summary disposition was denied on May 2, 2019. On May 21, 2019, Defendants filed a claim of appeal.

**The World Leadership Program Institute**, a District of Columbia not for profit organization v **Mark Tessler, Sherman Jackson, Nancy Burns, and David Howell**. Washtenaw County Circuit Court (Judge David Swartz) (Filed June 30, 2015); **Margaret Cone v Mark Tessler, Sherman Jackson and David Howell**. United States District Court, Eastern District of Michigan (Judge Sean F. Cox) (Filed April 5, 2016)

Plaintiff, The World Leadership Program, filed a claim in state court alleging that defendants wrongfully obtained, handled, and then terminated a grant from the United Arab Emirates that, it contends, would otherwise have funded its activities. Plaintiff claimed breach of contract, fraud, unjust enrichment, and promissory estoppel. Plaintiff sought damages in excess of \$25,000, punitive damages, costs, interest, and attorney's fees. Plaintiff filed a similar complaint in state court against these same named defendants as well as the Board of Regents of the University of Michigan, The Center for Political Studies, and The Institute for Social Research. Defendants filed four motions for summary disposition that were granted by Judge Swartz. Plaintiff filed a motion for reconsideration that was denied. Plaintiff filed an appeal that was denied. In addition, at our request, the court imposed \$5,000 in sanctions on plaintiffs. Contemporaneously, the founder/executive for World Leadership, Margaret Cone, filed another lawsuit in federal court making essentially the same claims. Motions for summary judgment on behalf of all defendants and demand for sanctions were filed on May 5, 2016 and were denied. On December 13, 2017, Defendants filed a Motion for Judgment on the Pleadings that was denied on August 28, 2018. On March 19, 2018, Defendants filed a motion for summary judgment that was granted on April 8, 2019. On April 8, 2019, Plaintiff filed an appeal that is currently pending.

#### CASE RESOLUTION

**Torin Clay v University of Michigan**. Court of Claims. (Filed December 17, 2018) (Judge Stephen Borrello)

Plaintiff alleged the University of Michigan violated the Freedom of Information Act ("FOIA"). Plaintiff asked the Court to order the University to produce records requested by Plaintiff or, in the alternative, provide an in-camera review to determine whether the exemptions claimed by Defendant are applicable. Settlement has been reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch  
Vice President & General Counsel

July 2019