

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

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Subject: Litigation

December 2013

NEW CASES

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, alleges 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 includes claims of Negligence, Premises Liability, and Exemplary Damages. Plaintiffs seek damages in excess of \$25,000 together with interest, costs, and attorney's fees.

CASE UPDATES

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 subsequently charged 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 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, 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.

**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 alleges 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 claims 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 alleges that she was told she would not be considered for promotion because of her age. Plaintiff claims she has suffered economic and emotional damages. She seeks 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, has been 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.

**Jennifer Dibbern v The University of Michigan, a Domestic Nonprofit Corporation, the Board of Regents of The University of Michigan, a public constitutional body corporate, Mary Sue Coleman, President of The University of Michigan, an individual acting in her official capacity, Rachel S. Goldman, in her individual and official capacity, Tresa Pollock, in her individual and official capacity and Peter Green, in his individual and official capacity.** United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed December 21, 2012)

Plaintiff was a Graduate Student in Materials Science Engineering at the University. She alleges she was dismissed from the Graduate Program in December 2011 after reporting incidents of peer-to-peer sexual and gender-based harassment in the College of Engineering and claims she was retaliated against for attempting to remedy a sexually hostile environment. Plaintiff further alleges the University failed to meet its obligations under Title IX by willfully and knowingly allowing a sexually hostile educational environment to continue. Plaintiff's twelve-count complaint includes claims under Title IX, 42 U.S.C. Section 1983, and the Elliot-Larson Civil Rights Act, as well as claims for negligence, breach of fiduciary duty, emotional distress and invasion of privacy. Plaintiff seeks damages, costs, and attorney's fees. On January 25, 2013, Plaintiff filed an Amended Complaint adding Peter Green as a named defendant and dropping the claims for negligence, breach of fiduciary duty, and emotional distress. On March 4, 2013, Defendants filed a Partial Motion to Dismiss Plaintiff's claims for sexual harassment, sex discrimination, retaliation, and Section 1983 claims for equal protection and first amendment. The parties have agreed to dismiss the Equal Protection/Section 1983 and First Amendment/Section 1983 claims as to the University of Michigan and the Board of Regents of the University of Michigan because they are barred by the 11th Amendment. The parties further agreed to dismiss these counts against the individual Defendants in their official capacities except to the extent that prospective, non-monetary relief is granted. On June 5, 2013, a stipulated order was entered dismissing Defendants University of Michigan and the Board of Regents of the University of Michigan from Counts III (Equal Protection/Section 1983) and V (First Amendment/Section 1983) of Plaintiff's First Amended Complaint based on 11<sup>th</sup> Amendment immunity. It was further ordered that Defendants, Mary Sue Coleman, Rachel Goldman, Tresa Pollack, and Peter Green, acting in their official capacities, are also dismissed from Counts III and V of Plaintiff's First

Amended Complaint, except to the extent that Plaintiff seeks prospective, non-monetary relief. On June 7, 2013, Plaintiff filed a Second Amended Complaint. On June 28, 2013, Defendants re-filed their partial motion to dismiss Counts I, II, III, V, VI, VII and VIII of Plaintiff's Second Amended Complaint, and also to dismiss named defendants Rachel Goldman and Peter Green in their individual capacities. Defendants' motion was denied by Judge Cox on November 18, 2011.

### CASE RESOLUTIONS

Kendra Atwell v The University of Michigan. United States District Court, Eastern District of Michigan. (Judge Avern Cohn) (Filed December 12, 2012).

Plaintiff was an Administrative Specialist for the Thompson Center for Learning and Teaching on the Flint Campus until she was placed on Reduction in Force ("RIF") in May 2011. Plaintiff alleged she was suspended, forced to transfer, laid off, and rejected for re-hire on account of a perceived disability, because (1) she took FMLA leave, and (2) in retaliation for her participation in an investigation of an alleged HIPAA violation. Her three-count complaint included claims under the Family and Medical Leave Act, the Michigan's Persons with Disabilities Civil Rights Act, and the Michigan Whistleblower Protection Act. She sought reinstatement and/or back pay, front pay damages *in lieu* of reinstatement, interest, costs, and attorney's fees. Settlement was reached between the parties. This case is concluded.

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, claiming that he relied on the University's promises that he would not be discriminated against based upon 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 the 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.

Respectfully submitted,



Timothy G. Lynch  
Vice President & General Counsel