

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Received by the Regents  
February 18, 2010

Subject: Litigation

February 2010

### NEW CASES

There are no new cases this month.

### RESOLUTIONS

There were no cases closed this month.

### CASE UPDATES

Pino Colone v Patrick Wardell, Hurley Medical Center and University of Michigan. Genesee County Circuit Court. (Judge Richard B. Yuille) (Filed June 14, 2007).

Plaintiff was employed by the University as an emergency room physician working at Hurley Hospital in Flint. He claims that he was a Whistleblower when he reported an incident to the State Nurse Licensing Board that he felt was inappropriate patient care. Plaintiff states that, subsequent to that report, he was retaliated against by both Hurley Hospital and the University when he was reassigned to work at another hospital. He seeks damages in excess of \$25,000, costs and attorney's fees. The University filed a motion for summary disposition as did Hurley Hospital/Patrick Wardell. Judge Yuille dismissed Plaintiff's conspiracy and public policy claims; the judge also dismissed the Whistleblower claim against Hurley Hospital but retained the Whistleblower claim against the University as well as the Elliott-Larsen retaliation claim against the University and Hurley. Defendants University, Hurley Medical Center and Patrick Wardell filed an application for leave to file an interlocutory appeal of Judge Yuille's ruling to the Michigan Court of Appeals. The Court of Appeals granted leave and also granted Defendants' motion to stay the proceedings in the trial court while the appeal is pending. Oral argument is scheduled in the Court of Appeals for March 2, 2009.

Robert McGee v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Filed May 16, 2008).

Plaintiff was a graduate student in Nuclear Engineering and Radiological Sciences, with a 25% appointment as a Graduate Student Research Assistant to work in a laboratory in the area of neutron radiography. Plaintiff claims that he observed a number of practices in the lab that did not meet OSEH standards and reported them to the University's Radiation Safety Services office, to OSEH and to the Michigan Department of Environmental Quality. Plaintiff claims that his subsequent termination was retaliation against him for reporting suspected violations of laws. He seeks compensation for his losses, interest, costs and attorneys fees. The University filed a motion for summary disposition, which was denied. Trial began on November 9, 2009. The jury found in favor of the University. Plaintiff filed an appeal to the Michigan Court of Appeals.

Keith Yohn v Board of Regents of the University of Michigan, Peter Polverini, Paul Krebsbach and Mark Snyder. Michigan Court of Claims. (Judge Thomas L. Brown) (Filed October 7, 2008).

Professor Yohn's complaint alleges that Paul Krebsbach, Chair of the Biomedical and Materials Science Department in the School of Dentistry, is keeping a secret file on Dr. Yohn to force Plaintiff out of his tenured University appointment. He also alleges that Defendant Snyder committed misconduct by working on his intramural dental patients during work hours, causing Plaintiff to suffer anger and loss of sleep; Plaintiff complained to Dean Polverini and later filed a grievance of Snyder's misconduct. Dr. Yohn also complained that Dr. Krebsbach embarrassed him in front of his fellow faculty members at a faculty meeting, and that later an officer from DPS was sent to his home to ask him about some alleged threats made by Plaintiff at that meeting. Dr. Yohn seeks an order to expunge all evidence of the DPS incident report noted above, jail time for defendants Polverini and Krebsbach, \$3 million for mental anguish and suffering, and exemplary damages. Trial is scheduled to begin on September 28, 2009. The University's motion for summary disposition was granted by the court on June 24 thereby dismissing all of Plaintiff's claims with prejudice. Plaintiff contested the proposed order, and a hearing was held on September 2. The judge granted the University's motion to dismiss the entire case, denied Plaintiff's motion opposing the order of dismissal, denied with prejudice Plaintiff's motion to amend his complaint, and awarded the defendants \$36,000 in costs and fees. Plaintiff filed an appeal with the Michigan Court of Appeals. In addition, Plaintiff filed a motion for an immediate preliminary injunction, asking the Court of Appeals to prohibit defendant Snyder from performing certain of his duties. The Court of Appeals denied the motion for immediate preliminary injunction.

Respectfully submitted,

  
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Suellen Scarnecchia  
Vice President and General Counsel

February 2010