

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

February 2019

NEW CASES

Dean Pode, Individually, and Mary Pode, Individually v Survival Flight – Michigan Medicine, University of Michigan Hospital, St. Mary Mercy Livonia Hospital, Hillsdale Hospital, Survival Flight Attendant Mike Chesney, Individually, Survival Flight Attendant John Booth, Individually, and Survival Flight Attendant Laurie Jacobs, Individually. Livingston County Circuit Court. (Judge Michael P. Hatty) (Served December 11, 2018)

Plaintiff Dean Pode and his wife Mary Pode allege that he was exposed to a dangerous disease when he piloted a survival flight in 2015. His nine-count complaint includes claims for breach of contract and breach of warranty, negligence and gross negligence, failure to warn, detrimental reliance, promissory estoppel, and exemplary damages. Plaintiffs seek compensatory damages, interest, costs, and attorney's fees. On December 26, 2018, Defendants Survival Flight, Michigan Medicine, and University Hospital filed a motion for summary disposition that was granted without prejudice on January 31, 2019. On December 26, 2018, Defendants Chesney, Booth, and Jacobs filed a motion for summary disposition that was denied without prejudice.

Bin Kang, Ph.D. v. Jianming Li, Ph.D. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Served January 7, 2019)

Plaintiff, a former postdoctoral fellow at the University's then-Department of Biology alleges that the University failed to credit him on various research publications. His three-count complaint includes claims for breach of contract, fraud, and retaliation. Plaintiff seeks compensatory damages. On February 4, 2019, Defendant filed a motion for summary disposition.

Carole Ramm v Richard Auchus. Court of Claims (Served December 18, 2018) (Judge Christopher Murray)

Plaintiff alleges that, after her resignation on or about December 2017, she applied for and was denied several positions at the University because of Defendant's allegedly negative references to potential employers. Her one-count complaint claims defamation, and she seeks lost wages, benefits, past and future, emotional distress damages, exemplary and punitive damages, and interest, costs, and attorney's fees. Plaintiff also asks that Defendant be ordered to retract his allegedly defamatory statements and cease and desist making such statements.

Seong Hong v The University of Michigan, and Ann Lampkin-Williams. United States District Court, Eastern District of Michigan. (Filed December 14, 2019) (Judge Mark Goldsmith)

Plaintiff is a Professor of Education in the College of Education, Health and Human Services at the University of Michigan-Dearborn. She alleges that she was not reappointed as Director of the Early Childhood Education Center ("ECEC") because of her race and age. Her five-count complaint includes claims for alleged violations of due process; race, age and national origin discrimination; and breach of contract. Plaintiff seeks, among other things, to be restored to her Director position and lost wages, past and future; compensatory damages; punitive damages; and interest, costs, and attorney's fees.

Genzyme Corp. and The Regents of the University of Michigan v Apotex Inc. and Apotex Corp. United States District Court for the District of Delaware. (Filed November 14, 2018) (Judge Colm F. Connolly) AND **Genzyme Corp. And The Regents of the University of Michigan v Teva Pharmaceuticals USA, Inc.** United States District Court for the District of Delaware. (Filed November 14, 2018) (Judge Colm F. Connolly) AND **Genzyme Corp. and The Regents of the University of Michigan v Aizant Drug Research Solutions Private Limited.** (Filed November 20, 2018) AND **Genzyme Corp. and The**

Regents of the University of Michigan v Cipla Limited. (Filed November 20, 2018) AND Genzyme Corp. and The Regents of the University of Michigan v Dr. Reddy's Laboratories, Inc. and Dr. Reddy's Laboratories, Ltd. (Filed November 20, 2018)

In 2000, U-M licensed certain patent rights to Genzyme Corp. Over a period of years, Genzyme developed a drug covered by some of UM's patent rights; and the FDA approved the marketing and sale of the drug in 2014 for the treatment of Gaucher disease patients. In 2018, Defendants filed an abbreviated new drug application based on Genzyme's FDA drug approval to market and sell a generic version of the Genzyme drug. In doing so, defendants challenged the validity of at least one of the U-M/Genzyme patents. This is an action by Genzyme and U-M seeking a ruling that the Defendants' marketing and sale of the generic drug would infringe Genzyme and U-M's patent rights.

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

Plaintiff alleges the University of Michigan violated the Freedom of Information Act ("FOIA"). Plaintiff asks 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.

CASE UPDATES

Bryan Richards v County of Washtenaw, Thomas Arnett, Justin Berent, and John Cratsenberg. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed March 13, 2018)

Plaintiff alleges that, while at a University of Michigan football game, law enforcement personnel approached him and falsely accused him of being intoxicated. Plaintiff claims that unlawful and excessive actions by law enforcement caused him injuries and damage. Plaintiff's six-count complaint alleges illegal search and seizure, excessive force, and malicious prosecution, and state-law claims for false arrest/false imprisonment and malicious prosecution. Plaintiff seeks an amount in excess of \$75,000, together with interest, costs, and attorney's fees. On June 20, 2018, Defendant Berent, an UM police officer, filed a motion for summary judgment and motion to stay that was denied. On December 17, 2018, Defendant Berent filed a notice of appeal. On January 11, 2019, an Order was entered to stay proceedings.

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.

Don M. Bosco, Personal Representative of Estate of Heping Zhao v Ameer Raouf. 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 Raouf, 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.

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch (sic). United States District Court, Eastern 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.

Robert Taylor v. The University of Michigan. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Filed May 8, 2017)

Plaintiff is a former custodian for the Building Services department. He alleges that he fell and injured his back and neck at work and that the University failed to accommodate his disability by assigning him to light duty work or finding him another job, in violation of the Americans with Disabilities Act. Plaintiff seeks modification to University policies and an order instructing the University to provide reasonable accommodations to employees, back pay with interest, forward pay, medical expenses, past benefits, restoration of employment, restoration of leave, and compensatory damages. On June 28, 2017, the University filed a motion to dismiss that was granted on March 14, 2018. Plaintiff filed a motion to amend his Complaint, which also was granted on March 14, 2018. On April 2, 2018, Plaintiff filed his amended complaint alleging Rehabilitation Act Violations. On October 2, 2018, Defendant filed a motion to dismiss that was denied.

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 claims breach of contract, fraud, unjust enrichment, and promissory estoppel. Plaintiff seeks 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. A hearing date is set for April 4., 2019.

The Regents of the University of Michigan v Shamrock Structures, LLC. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed September 23, 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 is seeking to enforce the judgment in Delaware.

CASE RESOLUTION

Amy Wang v Board of Regents of the University of Michigan, operating as the University of Michigan and Nancy Hobbs, individually and in her official capacity. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Filed on September 17, 2018)

Plaintiff was the former Director of Procurement Services for the University's Finance Department. Plaintiff alleged she was removed from her position in retaliation for her refusal to participate in alleged illegal activity. Plaintiff's four-count complaint included alleged violations of the First Amendment, Due Process, Michigan Whistleblowers' Protection Act, and Retaliation. On October 17, 2018, the Court dismissed all of Plaintiff's state law claims, including the alleged violation of the Michigan Whistleblowers' Protection Act (Count III) and Michigan's established public policy (Count IV). Settlement has been reached between the parties. This case is concluded.

Charles Garry Javizian, and Patricia Javizian v Wayne County, Wayne County Medical Examiner, Carl J. Schmidt, MD jointly and severally. United States District Court, Eastern District of Michigan. (Judge Laurie J. Michelson) (Filed August 2, 2018)

This lawsuit was filed by parents of a deceased person claiming that the Wayne County Medical Examiner's Office failed to timely identify the body and notify the family that the body was in the county morgue. Plaintiff alleged due process violations and gross negligence. Plaintiff claimed compensatory, exemplary, and punitive damages, together with interest, costs, and attorney's fees. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

February 2019