

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

February 2020

NEW CASES

Integra Lifesciences Corporation, a Delaware Corporation v Regents of the University of Michigan. Court of Claims. (Judge Cynthia Stephens) (Filed December 6, 2019)

Plaintiff filed a one-count complaint alleging a violation of the Freedom of Information Act. Plaintiff seeks an order requiring Defendant to produce all documents responsive to the FOIA requests and an award of damages in excess of \$25,000, together with interest, costs and attorney's fees.

Deborah Zahn v The University of Michigan Board of Regents and Megdalia Musler. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served December 1, 2019)

Plaintiff was a Staff Specialist in the Department of Surgery and alleges she was terminated due to her age and sex and in retaliation for complaining of unfair treatment. Plaintiff's five-count complaint includes alleged violations of the Elliot-Larsen Civil Rights and the Bullard-Plawecki Employee Right to Know Act, and intentional infliction of emotional distress. Plaintiff seeks front and back pay, exemplary damages, interest, costs, and attorney's fees. The ELCRA claim seeking equitable relief was transferred to the Court of Claims. The Washtenaw County Circuit Court case stayed the remaining claims until the Court of Claims case is completed.

Dennis Dzwigalski v The University of Michigan Board of Regents, Kevin Williams, Jeff Evans, and Eddie L. Washington, Jr. Wayne County Circuit Court. (Judge Patricia Fresard) (Served December 19, 2019)

Plaintiff was a Police Sergeant with the University of Michigan-Dearborn's police department until his retirement in June 2019. Plaintiff claims that he was denied the opportunity to apply for advancement due to his age and in retaliation for supporting a co-employee who had applied for the previous position of Deputy Chief. Plaintiff also alleges he was discriminated against because of his union affiliation. Plaintiff claims he suffered economic and non-economic damages, including emotional distress, humiliation, and embarrassment. Plaintiff seeks compensation, costs, and attorney's fees.

Josie M. Fisher v University of Michigan, JW Hunt OTC, Inc., David Jin, Keith E. Smukala, Western Reserve Financial Corporation, d.b.a. "Western Reserve Group", Community Insurance Company c/o CT Corporation System, as statutory agent and John Does #1-10. Court of Common Pleas, Erie County, Ohio. (Judge Tygh M. Tone) (Served January 27, 2020)

Plaintiff claims she was involved in a three-car collision involving Defendant Jin while driving her vehicle on the Ohio Turnpike. Plaintiff claims she suffered severe injuries, mental anguish, anxiety, distress, and pain and suffering. Plaintiff seeks in excess of \$25,000 interest, costs, and attorney's fees.

David St. Pierre v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Matthew F. Leitman) (Served January 22, 2020)

Plaintiff claims age and disability discrimination as a result of his termination of employment. Plaintiff seeks \$100,000,000 in damages.

Karen Wilson v University of Michigan Hospital, and Gregory Lambert. United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Served January 13, 2020)

Plaintiff claims she was forced to resign after being wrongfully accused of improper conduct and harassed and retaliated against for filing an EEOC charge. Plaintiff claims she has suffered loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem, mental and emotional distress, and loss of pleasures of ordinary life. Plaintiff seeks compensatory damages, economic and non-economic damages, and punitive or exemplary damages, plus costs, interests, and attorney's fees.

Callahan et. Al. (including Regents of the University of Michigan) v. U.S. Department of Health and Human Services (HHS). U.S. District Court for the Northern District of Georgia, Atlanta Division. (Judge Amy Tottenberg) (Filed April 22, 2019)

The Regents, on behalf of Michigan Medicine, joined 13 other transplant centers and four patients as plaintiffs in a lawsuit against HHS and its contractor, the United Network For Organ Sharing (UNOS), to stop implementation of a new liver allocation policy ("Acuity Circles Policy"), which was set to go into effect April 30, 2019. Plaintiffs allege (1) that HHS failed to follow legally required procedures in developing the Acuity Circles Policy and failed to properly oversee UNOS in its capacity as the Organ Procurement and Transplantation Network (OPTN), in violation of the Administrative Procedures Act (Count 1); (2) that Defendants' actions in adopting and ratifying the Acuity Circles Policy were arbitrary, capricious, and otherwise not in accordance with law (Count 2); and (3) that Defendants' actions violated the Due Process Clause of the Fifth Amendment (Count 3). Plaintiffs simultaneously moved for preliminary injunctive relief, arguing that they were likely to succeed on each of these three claims. After the District court denied the preliminary injunction, the Plaintiffs continued to stave off implementation of the new policy with an appeal to the Eleventh Circuit. After multiple rounds of motions in the district and circuit court, on January 16, 2020, in another preliminary order, the District court decided, while noting that the plaintiffs had identified "serious" defects in the policy development process, that it could no longer delay implementation of the new policy. With HHS support UNOS implemented the Acuity Circles policy February 4, 2020. Plaintiffs currently have motions pending related to discovery and a motion to reconsider denial of summary judgement as to Count 1.

CASE UPDATES

Karen Zarza v University of Michigan. United States District Court, Eastern District of Michigan (Judge Arthur Tarnow) (Served March 20, 2019)

Plaintiff was a Supervisor for the University of Michigan's Building Services department. Plaintiff alleges she was terminated from her position in retaliation for opposing Defendant's alleged unlawful employment practices towards a former custodian employee. Plaintiff seeks lost wages, compensatory damages, liquidated damages pursuant to the FMLA, punitive and exemplary damages, together with interest, costs, and attorney's fees. Defendant filed a motion for partial dismissal on April 10, 2019 that was granted on August 5, 2019. On January 7, 2020, Defendant filed a motion for summary disposition.

Torin Clay v University of Michigan. Court of Claims. (Judge Michael J. Kelly) (Served September 26, 2019)

Plaintiff claims he was wrongfully arrested for trespassing in the undergraduate library. Plaintiff's three-count complaint alleges unreasonable search and seizure and a denial of equal protection of the law, the right against self-incrimination, and due process. Defendants filed a motion for summary disposition on October 16, 2019 that was granted on December 2, 2019. On December 18, 2019, Plaintiff filed a motion for reconsideration that was denied. Plaintiff filed an appeal.

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 regarding the denial of qualified immunity. On June 20, 2019, Defendant filed an application for leave to appeal the remaining issues. On October 22, 2019, the Court of Appeals granted the application for leave to appeal and consolidated the two appeals.

Andrew Lipian v University of Michigan, Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Martin Philbert, Martha Pollack, Steven West, Aaron Dworkin, Mark Schlissel, and Christopher Kendall. United States District Court, Eastern District of Michigan (Judge Arthur Tarnow), (Filed October 31, 2018)

Plaintiff, a University of Michigan student in the School of Music, Theater and Dance alleges violations of Title IX of the Education Amendments of 1972 and Michigan's Elliott-Larsen Civil Rights Act. Plaintiff seeks compensatory damages, exemplary and punitive damages, interest, costs, and attorney's fees. On December 6, 2018, Defendant University of Michigan filed a motion to dismiss. On December 14, 2018, Defendant David Daniels filed a counter-claim against Plaintiff. On January 4, 2019, Plaintiff filed a motion to dismiss Defendant Daniels's counter-claim. On February 21, 2019 an Order was entered dismissing Count II of Plaintiff's Complaint and dismissed the counter-claim. On September 26, 2019, after the court granted leave, Plaintiff filed an amended complaint asserting additional Title IX claims as well as Equal Protection Clause, Due Process Clause, and First Amendment claims under 42 U.S.C. § 1983. Plaintiff also added Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Martin Philbert, Martha Pollack, Steven West, Aaron Dworkin, Mark Schlissel, and Christopher Kendall as defendants. On October 25, 2019, the individual defendants filed a motion to dismiss. On December 13, 2019, all Defendants filed a motion for summary judgment.

John Doe v David H. Baum, Susan Pritzel, Tabitha Bentley, E. Royster Harper, and Nadia Bazzay. United States District Court, Eastern District of Michigan. (David M. Lawson) (Filed September 1, 2016)

Plaintiff is a former student at the University of Michigan. Plaintiff's claims arise out of actions taken against him for violating the University's Policy on Sexual Misconduct by Students. Plaintiff's three-count complaint included alleged violations of 42 U.S.C. § 1983 regarding Due Process and First Amendment Free Speech. Plaintiff sought removal of all references to allegations or investigation, discipline, or sanctions from his file; immediate reinstatement to the University as a student in good standing; and compensatory, exemplary, and punitive damages, along with interest, costs, and attorney's fees. Plaintiff filed an Amended Complaint on October 3, 2016, adding Title IX claims and Michigan Elliott-Larsen Civil Rights gender discrimination claims. On October 21, 2016, Defendants filed a motion to dismiss that was granted on January 5, 2017. On February 2, 2017, Plaintiff filed a motion to re-open and/or for reconsideration, to amend the complaint, and to vacate order to due process claim based on evidence that was denied. Plaintiff filed a notice of appeal. On September 7, 2018, the United States Court of Appeals for the Sixth Circuit issued an opinion reversing in part the District Court's ruling and remanding for further proceedings. On September 21, 2018, the University filed a petition for rehearing and rehearing *en banc*, which was denied on October 11, 2018. The case is currently on remand to the District Court. On March 25, 2019, Defendants filed a partial motion to dismiss. On March 26, 2019, Plaintiff filed a motion for interim attorney's fees. On April 1, 2019, Plaintiff filed a motion for partial summary judgment. On September 30, 2019, the District Court entered an opinion, which granted in part and denied in part the post-remand motions. On October 14, 2019, Plaintiff

filed a motion for reconsideration. On October 29, 2019, Plaintiff filed a notice of interlocutory appeal. On November 25, 2019, Plaintiff filed a petition for a writ of mandamus with the Sixth Circuit that was denied on February 11, 2020. On December 18, 2019, the District Court denied Plaintiff's motion for reconsideration. Plaintiff's two appeals remain pending.

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, was accused of violating 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 alleges violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief, including 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 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 as soon as practicable. 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's 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 June 12, 2019, Defendants filed an emergency motion to the Sixth Circuit seeking mandamus relief from the District Court's orders requiring the University's President to personally appear for a settlement conference on the record and in open court. On June 12, the Sixth Circuit stayed the District Court's Order and on August 23, 2019, granted the petition for a writ of mandamus. Defendants' motion to dismiss and Plaintiff's motion for summary judgment remain pending.

Rebecca Foster v The University of Michigan, The Board of Regents of the University of Michigan, and Alison Davis-Blake, in her official capacity as Dean of the Ross School of Business at the University of Michigan. United State District Court, Eastern District of Michigan. (Judge Bernard Friedman) (Filed May 10, 2017)

Plaintiff is a 2014 graduate of the Executive Masters of Business Administration program ("EMBA") at the University of Michigan's Stephen M. Ross School of Business. She filed a one-count complaint claiming a violation of Title IX, alleging that, during her time in the EMBA program, she was stalked and harassed by a fellow EMBA student. Plaintiff claims Defendants failed to provide a prompt and equitable response to Plaintiff's complaints. Plaintiff seeks repayment for all tuition and related expenses; payment of expenses incurred as consequence of the alleged harassment and retaliation; damages for deprivation of equal access to the educational benefits and opportunities provided by Defendants; damages for lost economic opportunity; and damages for past, present, and future emotional pain and suffering, and ongoing and severe mental anguish. Plaintiff also seeks pre- and post-judgment interest, costs, and attorney's fees. On March 17, 2017, Plaintiff filed a motion for pseudonymous status or in the alternative to seal the court file. This motion was denied on May 2, 2017. On May 10, 2017, Plaintiff filed a revised Complaint adding Plaintiff Rebecca Foster's name. On May 24, 2017, Defendant's filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendant's filed a motion to dismiss Plaintiff's first amended complaint that was denied on November 7, 2017. On August 3, 2018, Defendants filed a motion for summary judgment that was granted on February 21, 2019. Plaintiff filed a notice of appeal. On December 4, 2019, the United States Court of Appeals for the Sixth Circuit held oral argument on Plaintiff's appeal.

Andre K. Davis v Regents of the University of Michigan, a constitutional body corporate, Sally J. Churchill, individually and in her official capacity; Rebecca Pickus, individually; Marie Visconti, individually and in her official capacity, jointly and servally (sic). United States District Court, Eastern District of Michigan. (Judge Laurie J. Michelson) (Served September 23, 2019)

Plaintiff is currently incarcerated at the Chippewa Correctional Facility in Kincheloe, Michigan. He alleges the University violated his first amendment and due process rights when he was dismissed from the University's Inside-Out Prison Exchange Program—a class taught to prisoners and students. Plaintiff seeks compensatory damages, punitive damages, interests, and costs. On October 30, 2019, Defendant Visconti filed a motion for summary judgement.

Lana Tyrrell v Teri Grieb, Jessica Durkin, and Carrie Peterson. Court of Claims. (Judge Christopher M. Murray) (Filed July 31, 2018)

Plaintiff has two lawsuits pending concurrently in two different courts, both including allegations of unlawful termination. Plaintiff is a former employee of the University's Unit for Laboratory Animal Medicine ("ULAM") who claims she was terminated in retaliation for her refusal to violate the law in the course of her employment. Defendants filed a motion for summary disposition on September 13, 2018 that was granted and denied in part. On October 17, 2019, Defendants filed a motion for summary disposition that was granted on December 16, 2019. Plaintiff filed an appeal.

The Regents of the University of Michigan, a Michigan constitutional corporation v Leica Microsystems, Inc. United States District Court for the Northern District of California. (Judge Lucy Koh) (Filed November 13, 2019)

The University alleges that Defendant Leica Microsystems, Inc. ("Leica") infringes U.S. Patent No. 7,277,169, entitled "Whole Spectrum Fluorescence Detection With Ultrafast White Light Excitation." Leica makes and sells white light laser microscope systems employing the University's patented invention. The University invited Leica to take a license and pay a fair royalty for Leica's use of valuable inventions that are protected by the '169 Patent, but Leica has refused to do so. The University seeks damages and an injunction. Leica moved to dismiss the complaint on January 15, 2020.

CASE RESOLUTIONS

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 was denied.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Tim", is written over a horizontal blue line.

Timothy G. Lynch
Vice President & General Counsel

February 2020