

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

February 2021

NEW CASES

Paul Hanson v The University of Michigan and The Regents of the University of Michigan. Court of Claims.
(Judge Christopher Murray) (Served October 8, 2020)

Plaintiff filed a two-count complaint alleging negligence and gross negligence and premise liability after he slipped and fell in a restroom in the Museum of Natural History. Plaintiff seeks compensation for injuries and damages sustained together with interest, costs, and attorney's fees.

Dana Telep v Board of Regents of the University of Michigan, Gretchen Pagac, and Jeffrey Wood.
Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served January 4, 2021)

Plaintiff filed a three-count complaint alleging age discrimination in violation of the Elliot-Larsen Civil Rights Act, retaliation, and hostile work environment arising out of the termination of her position. Plaintiff seeks front and back pay, exemplary damages, interests, costs, and attorney's fees.

Devereaux Johnson v Regents of the University of Michigan. Court of Claims. (Judge Michael Kelly)
(Served June 19, 2020)

Plaintiff files a one-count complaint of negligence and owner's liability. Plaintiff claims an employee of defendant struck his vehicle, causing serious and permanent injuries. Plaintiff seeks compensation for his injuries and damages, together with interests, costs and attorney's fee. On November 20, 2020, Defendant filed a motion for summary disposition.

Layla-Fakhr El-Din El-Sawy and Egyptian European Pharmaceutical Industry, an Egyptian corporation
v Regents of the University of Michigan, a non-profit educational institution of the State of Michigan,
and Mark L. Day, United States District Court, Eastern District of Michigan. (Judge Paul Borman)
(Served January 11, 2021)

Plaintiff's eight-count complaint includes sex, race, religion and national origin discrimination, among other claims. Plaintiffs' seek direct, consequential, punitive and/or exemplary damages and declaratory relief, together with interest, costs, and attorney's fees.

Cheryl Fox v The Board of Regents of the University of Michigan. Court of Claims. (Judge Michael Kelly)
(Served January 5, 2021)

Plaintiff filed a one-count breach of contract complaint arising out of her allegations that she was denied long-term disability benefits. Plaintiff seeks damages, past due benefits, and reinstatement of her eligibility for ongoing benefits, together with interest, costs, and attorney's fees.

The Mackinac Center for Public Policy, a nonprofit Michigan corporation v The University of Michigan, a
state public body. Court of Claims. (Judge Christopher Murray) (Served January 5, 2021)

Plaintiff filed a one-count complaint alleging violations of the Freedom of Information Act ("FOIA"). Plaintiff asks the Court to order defendant to provide all documents sought in the FOIA request, apply penalties, and award costs and attorney's fees.

Constance Esposito v The Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed January 25, 2021)

Plaintiff, formerly the Assistant Director of Core Operations at Michigan Medicine-Biomedical Research Core Facilities, filed a one-count age discrimination complaint after her position was eliminated in 2019. Plaintiff seeks front and back pay, exemplary damages, interest costs, and attorney's fees.

CASE UPDATES

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 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 that was granted on May 14, 2020. On January 14, 2020, Defendants Regents of the University of Michigan, Sally Churchill and Rebecca Pickus filed a motion for summary judgement.

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. On July 29, 2019, Plaintiff filed a claim of appeal. On November 19, 2020, the Court of Appeals affirmed the trial court's dismissal of the case based on governmental immunity. On December 20, 2020, Plaintiff filed an application for leave to appeal to the Michigan Supreme Court.

Debbie Lynn Pipkins v University of Michigan Hospital. Washtenaw County Circuit Court. (Served September 1, 2020) (Judge Patrick J. Conlin)

Plaintiff was an employee at Michigan Medicine's Patient Relation and Clinical Risk Department and alleges she was forced to retire on the basis of her race and in retaliation for filing a discrimination complaint. Her three-count complaint includes claims for race discrimination, retaliation, and hostile work environment. On November 13, 2020, Defendant filed a motion for summary disposition that was denied on December 17, 2020.

Eugene Daneshvar v The University of Michigan. Court of Claims. (Served May 11, 2020) (Judge Cynthia Stephens)

Plaintiff filed a one-count complaint alleging violations of the Freedom of Information Act ("FOIA"). Plaintiff requests the Court order the University to provide all documents sought in the FOIA request, apply penalties, and award Plaintiff costs and attorney's fees. On July 20, 2020, Defendant filed a motion to dismiss that was denied on December 18, 2020.

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 Tarrow)

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 (1) halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff and (2) prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks 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. 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 petition with the Sixth Circuit seeking mandamus relief from the District Court's orders requiring the University's President to 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. On October 21, 2019, Defendants filed a motion requesting that the District Court permit the University to proceed with the student conduct hearing or, in the alternative, promptly rule on the pending dispositive motions. On November 15, 2019, the District Court denied Defendants' motion. On March 16, 2020, Defendants filed a petition for a writ of mandamus with the Sixth Circuit, seeking an order requiring the District Order to permit the University to move forward with the student conduct hearing and to implement the Sixth Circuit's order to reconsider Plaintiff's due process claim in light of the University's interim policy. On March 23, 2020, the District Court entered an Order granting in part and denying in part Defendants' motion to dismiss, granting Plaintiff's motion for partial summary judgment, and denying Defendants' motion to vacate order enjoining student conduct hearing as moot. The District Court dismissed Plaintiff's Title IX claim and declined to exercise supplemental jurisdiction over Plaintiff's Elliott-Larsen Civil Rights Act claim. The District Court declined to dismiss Plaintiff's Fourteenth Amendment Due Process claim on qualified immunity grounds and granted summary judgment in Plaintiff's favor on this claim. On March 24, 2020, the Clerk entered a corresponding Judgment. On March 25, 2020, Defendants filed a Notice of Appeal. On April 10, 2020, Plaintiff filed a motion for injunctive relief, seeking to delay his student conduct hearing. On April 16, 2020, the Court denied Plaintiff's motion as moot after the claimant informed the University that she would no longer participate in a hearing. On April 20, 2020, the Sixth Circuit entered an order dismissing the March 16, 2020 mandamus petition as moot. On April 27, 2020, Plaintiff filed a motion to dismiss the March 25 appeal as moot while also seeking to leave the District Court's March 23 Order intact. On May 1, 2020, Defendants filed a motion for sanctions against Plaintiff requesting that the Court order reimbursement for the legal fees they expended responding to Plaintiff's improper motion for injunctive relief pending Defendants' appeal and preparing the motion for sanctions. On November 25, 2020, the Magistrate Judge issued a Report and Recommendation that the motion for sanctions be denied. Defendants timely filed objections and a ruling on the request for sanctions is pending. On December 23, 2020, the Sixth Circuit granted Plaintiff's motion to dismiss the March 25, 2020 appeal as moot with instructions to vacate the judgment. On January 8, 2020, Plaintiff filed a renewed motion for attorney fees, which remains pending.

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) AND **Andrew Lipian v Jeffery Frumkin, Elizabeth Seney, Pamela Heatlie, Steven West, Aaron Dworkin, Melody Racine, and Christopher Kendall.** Washtenaw County Circuit Court. (Filed March 20, 2020) (Judge David S. Swartz)

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 dismissing 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. On April 9, 2020, the district court entered an Opinion and Order granting in part and denying in part Defendants' motion to dismiss and granting in part and denying in part Defendants' motion for summary judgment. All claims against the individual defendants were dismissed. Additionally, all of Plaintiff's claims against the University were dismissed except his Title IX claim alleging that the University's response to sexual harassment was deliberately indifferent. On April 23, 2020, the University filed a motion to certify a portion of the district court's April 9, 2020 Opinion and Order for interlocutory appeal as well as a motion to stay proceedings pending a resolution of any appeal that were both denied.

On March 20, 2020, Plaintiff filed a State Court lawsuit against Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Steven West, Aaron Dworkin, and Christopher Kendall asserting sex discrimination and retaliation claims arising under the Elliott-Larsen Civil Rights Act and a claim for false light invasion of privacy. On June 19, 2020, Defendants removed the State Court case to the Federal Court and filed a motion to dismiss that case the same day. Plaintiff filed an amended complaint, removing Kendall and Dworkin as defendants, and removing the retaliation claim. Plaintiff also filed a motion for remand that was granted on July 15, 2020. On April 7, 2020, Defendants filed a motion for summary disposition that was granted on September 30, 2019. Plaintiff filed an appeal on October 20, 2020. On February 1, 2020, the Michigan Court of Appeals dismissed Plaintiff's appeal after the parties stipulated to its dismissal.

Kertina Kimbrough v The University of Michigan and Kayce Newcomb, an employee of the University of Michigan sued in her personal and official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Filed February 19, 2020) (Judge Stephanie Dawkins Davis)

Plaintiff was an Administrative Assistant in Michigan Medicine's Department of Psychiatry. Plaintiff alleges she was denied a promotion because of her race. Her two-count complaint alleges race discrimination under Title VII and Michigan's Elliott-Larsen Civil Rights Act. Plaintiff claims she suffered compensatory, economic and non-economic damages, lost wages and benefits, past and future, and she seeks exemplary and liquidated damages. Plaintiff seeks an injunction prohibiting any further acts of wrong doing, together with interest, costs, and attorney's fees. On April 20, 2020, the parties stipulated to the dismissal of the race discrimination claim under Michigan's Elliott-Larsen Civil Rights Act, without prejudice. On January 29, 2021, Defendants filed a motion for summary judgement.

Elia Companies, LLC, a Michigan limited liability company v Regents of the University of Michigan, a Michigan constitutional corporation. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed August 9, 2018)

Plaintiff owns and operates restaurants, including several coffee shops through various wholly owned subsidiaries and related entities. The parties were in dispute over the termination of a lease for certain premises located in the University of Michigan Union. Plaintiff's six-count complaint included alleged breach of contract, breach of covenant for quiet possession, use and enjoyment, conversation, unjust enrichment and alleged violations of Michigan's lock-out statute. Plaintiff sought in excess of \$25,000, interest, costs, and attorney's fees. On June 18, 2019 Defendant filed a motion for summary disposition that was granted with prejudice on August 23, 2019. Plaintiff filed an appeal. On January 21, 2021, the Court of Appeals affirmed dismissal of all claims except the breach of contract claim which was remanded to the court of claims.

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) (currently pending in the Court of Appeals on a procedural question of law)

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 due to her alleged disability. Plaintiff's two-count complaint includes claims for violations of the PWDCRA and retaliation. Plaintiff seeks in excess of \$25,000, interest, costs, and attorney's fees. Defendants filed a motion for summary disposition that was denied on May 2, 2019. On May 21, 2019, Defendants filed a claim of appeal. On December 22, 2020, the Court of Appeals affirmed the denial of the University's motion for summary disposition and remanded back to circuit court for further proceedings.

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. On June 24, 2020, the Court affirmed the district court's denial of qualified immunity for Plaintiff's excessive force claim but reversed the Court's denial of qualified immunity for the false arrest and malicious prosecution claims and the state law counterparts. On February 3, 2021, the Court entered a Stipulation for Voluntary Dismissal Without Prejudice of Counts I, II, IV, and V Against Defendants Arnett and Cratsenburg.

CASE RESOLUTIONS

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 ("Respondent"). Plaintiff claimed Defendants failed to provide a prompt and equitable response to Plaintiff's complaints. Plaintiff sought repayment for all tuition and related expenses; payment of expenses incurred as a 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 sought pre- and post-judgment interest, costs, and attorney's fees. On May 24, 2017, Defendants filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendants filed a motion to dismiss Plaintiff's first amended complaint, which 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. On March 11, 2020, the Sixth Circuit issued an Opinion reversing the district court's dismissal of the lawsuit and remanding for further proceedings. On March 25, 2020, the University filed a petition for rehearing *en banc*. On April 1, 2020, sixteen institutions of higher education filed a motion seeking leave to file an *amicus curiae* brief supporting the University. The University's petition for rehearing *en banc* was granted on May

15, 2020, vacating the panel decision. On December 11, 2020, the Sixth Circuit issued its *en banc* opinion affirming the district court's summary judgement decision in favor of the University.

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 sought an order requiring Defendant to produce all documents responsive to the FOIA requested and an award of damages in excess of \$25,000, together with interest, costs and attorney's fees. Settlement was reached between the parties. This case is concluded.

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

Plaintiff claimed he was wrongfully arrested for trespassing in the undergraduate library. Plaintiff's three-count complaint alleged 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 that was denied on December 17, 2020.

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 claimed 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 alleged he was discriminated against because of his union affiliation. Plaintiff claimed he suffered economic and non-economic damages, including emotional distress, humiliation, and embarrassment. Plaintiff sought compensation, costs, and attorney's fees. Settlement has been reached between the parties. This case is concluded.

Heather Johnson v The University of Michigan, the Regents of the University of Michigan, Debasish Dutta, in his individual capacity, and Christopher Giordano, in his individual capacity. United States District Court, Eastern District of Michigan. (Filed February 13, 2020) (Judge Victoria A. Roberts) **AND** **Heather Johnson v The University of Michigan at Flint, the Regents of the University of Michigan, Debasish Dutta, and Christopher Giordano.** Washtenaw County Circuit Court. (Filed February 20, 2019) (Judge David S. Swartz)

Plaintiff had two lawsuits pending in two different courts, both including allegations of unlawful termination. Plaintiff was the Director of the Center for Gender and Sexuality for the University of Michigan-Flint. Plaintiff claimed she was terminated from her position in retaliation for reporting violations of federal and state law and for engaging in activities that are protected under the Michigan Whistleblower Protection Act and the Elliott-Larsen Civil Rights Act. Plaintiff's complaints also included alleged violations of Title IX and Sex Discrimination in violation of the Patient Protection and Affordable Care Act. Plaintiff sought reinstatement, lost wages and related economic damages and compensatory damages for emotional distress and reputational harm. Plaintiff also sought costs and attorney's fees. Settlement has been reached the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President and General Counsel

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