

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Received by the Regents  
March 15, 2007

Subject: Litigation

March 2007

I. NEW CASES

1. Linda J. Kleinschmidt v Regents of the University of Michigan and Ronald Williams. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed January 24, 2007).

Plaintiff alleges that, while driving in Ann Arbor, a University bus failed to stop and struck her car from the rear. Ms. Kleinschmidt claims that she suffered and continues to suffer severe injuries. Plaintiff claims both the University and bus driver Williams were negligent and seeks damages, costs, attorney's fees and interest.

2. Hans Masing v Regents of the University of Michigan. Michigan Court of Claims. (Judge Paula J.M. Manderfield) (Filed January 12, 2007).

Mr. Masing claims that his former supervisor was unfair to him and ultimately RIFd him from his position in the Media Union. Plaintiff alleges breach of contract. He also claims that he was never paid for his on-call time, in violation of the Standard Practice Guide. Plaintiff seeks damages, interest, and attorneys' fees.

3. Heather Weiss v University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed February 9, 2007).

Ms. Weiss claims that she was subjected to sexual harassment and a hostile work environment when she worked at the University Hospital as a custodian. She alleges that she was prohibited from completing her work duties and falsely written up for missing work, which led to her termination. Ms. Weiss claims that the University did not reprimand her supervisor for sexually harassing her and then allowed the plaintiff's union to disregard her grievance. She claims that she has suffered damages, including loss of employment, loss of past, present and future wages, embarrassment, humiliation, and mental anguish. She seeks damages, costs, interest and attorney's fees.

4. Dairyland Insurance Company as Subrogee of Martin Stein v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge Laura Baird) (Filed February 15, 2007).

Plaintiff paid a bill to the University Hospital on an insurance claim made by a patient at the hospital in 2005. Dairyland claims that the University should have known of the legal services performed by Plaintiff subrogee Stein and of the attorney lien on the proceeds paid to the University. Plaintiff alleges that the University was unjustly enriched by the \$20,000 Dairyland had to pay to Stein and that Plaintiff is entitled to receive all or part of that \$20,000 payment.

## II. RESOLUTIONS

5. Meseret Chekol Reta v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Denise Page Hood) (Filed March 9, 2006).

Plaintiff, a former assistant professor at the Flint campus, claims to be an individual with a disability who was discriminated against by the University when he was not provided with a research assistant during his first two years at the University. He claims that his visual disability did not allow him to produce sufficient research to meet the University's research standards without the assistance of a research assistant and that the University failed to accommodate his request. Plaintiff's three-year contract was not renewed and plaintiff claims this was a breach of contract. He seeks damages in excess of \$100,000, costs and attorney's fees. Settlement was reached between the parties and the case is dismissed.

6. Eric Russell, individually and on behalf of all similarly-situated persons, and Toward A Fair Michigan, a Michigan non-profit corporation v Brandon, Deitch, Maynard, McGowan, Fisher Newman, Richner, Taylor, White, Coleman, in their official capacities, The Regents of the University of Michigan and Jennifer Granholm, in her official capacity as Governor of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed January 2, 2007).

Eric Russell, an applicant to the University of Michigan Law School, and Toward A Fair Michigan filed suit in state court as a putative class action, alleging that unless enjoined from doing so, the University of Michigan will violate the recently enacted amendment to the Michigan Constitution known as Proposal 2. The plaintiffs seek a declaratory judgment that Proposal 2 prohibits the University of Michigan from considering race, sex, ethnicity, national origin, or color in its admissions and financial aid decisions and that there is no legal basis to excuse the University from complying immediately, as well as an injunction precluding the University from making any financial aid or admissions decisions, in whole or in part, based on consideration of an applicant's race, color, ethnicity, or national origin. On January 4, the plaintiffs filed a motion requesting a preliminary injunction barring all defendants from considering any of those factors in admissions or financial aid decisions of any public college or university; a hearing on that motion is scheduled for January 31. On January 5, the Attorney General Mike Cox filed a motion to intervene in the suit as a plaintiff.

On January 22, the University filed a motion to dismiss the case. The next day, the plaintiffs informed the University that they intended to withdraw their motion requesting a preliminary injunction. On January 30, the plaintiffs moved to dismiss their case against the Governor and the University. The dismissal was without prejudice, so the plaintiffs may bring suit again in future. The case was dismissed and is concluded.

### III. CASE UPDATES

7. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), et al. v Jennifer Granholm, Regents of the University of Michigan, Board of Trustees of Michigan State University, Board of Governors of Wayne State University and Trustees of any other public college or university, community college, or school district. United States District Court, Eastern Division of Michigan. (Judge David M. Lawson) (Filed November 8, 2006).

Plaintiffs, including BAMN, The Rainbow PUSH Coalition, a number of black high school students in Michigan, college and graduate school students in Michigan, the AFSCME labor organization, and others, assert that ballot Proposal 2 was placed on the Michigan ballot by racially-targeted voter fraud and violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. They claim that state actors will be prohibited from utilizing policies to desegregate universities, employment and public contracting, thereby prohibiting state bodies from fulfilling federal mandates to desegregate. Plaintiffs also claim that public universities have a First Amendment right to determine their academic standards and to determine the criteria for admission to the university. Plaintiffs seek declaratory relief that Proposal 2 is preempted by the federal civil rights acts, violates the First Amendment of the U.S. Constitution and violates the Equal Protection Clause of the Fourteenth Amendment. On December 17, 2006, the plaintiffs filed an amended complaint, which sets forth their arguments in greater detail.

On December 11, 2006, the University of Michigan, along with Michigan State University and Wayne State University, sought a preliminary injunction precluding implementation of Proposal 2 to the Universities' admissions and financial aid policies through the end of the current admissions and financial aid cycles and otherwise seeking a declaration of rights and responsibilities under Proposal 2. The Attorney General then moved to intervene in the suit, and the Court granted the motion on December 14th. On December 18, 2006, the parties (the Attorney General, the Governor, the Universities, and the plaintiffs) stipulated their agreement to the Universities' requested injunctive relief through 12:01 am on July 1, 2007. On December 19th, the Court, pursuant to the stipulation of the parties, enjoined enforcement of Proposal 2 to the Universities' admissions and financial aid policies through the end of the current admissions and financial aid cycles or until further order of the Court, stated that this injunction would expire at 12:01 am on July 1, 2007 (unless vacated by the Court before that date), dismissed that portion of the Universities' claim seeking temporary injunctive relief with prejudice, and dismissed the remaining part of the Universities' claim without prejudice.

On December 22, two proposed intervenors to the suit, Eric Russell (an applicant to the University of Michigan Law School) and Toward a Fair Michigan ("TAFM") filed an appeal to the Sixth Circuit challenging the district court's failure to rule on their motion to intervene and its issuance of the injunction granting temporary relief to the three defendant Universities. Russell and TAFM asked the Sixth Circuit to stay the injunction pending review of the merits of their appeal, and also sought a writ of mandamus compelling the district court to lift its injunction. On December 29, a three-judge panel of the Sixth Circuit granted the requested stay of the district court's injunction pending the Sixth Circuit's review of the merits of the appeal and dismissed the request for a writ of mandamus as moot. In addition, on December 27, the district court granted Russell's motion to

intervene in the underlying litigation, but denied TAFM's request to intervene, as well as all other pending motions seeking intervention (which had been filed by the City of Lansing, the Michigan Civil Rights Initiative, and the American Civil Rights Foundation.) BAMN filed a petition with the Supreme Court (via Justice Stevens, as Circuit Justice for the Sixth Circuit) for review of the Sixth Circuit's decision to stay the injunction pending appeal. Justice Stevens referred the matter to the entire Supreme Court, which denied BAMN's petition on January 19. Russell's appeal therefore remains pending before the Sixth Circuit. He has filed a motion to expedite the Sixth Circuit's review of the whole case, arguing that there is no need for development of a factual record before the district court (as Judge Lawson has ordered) because there is no set of facts under which BAMN could succeed on its legal theories. The Universities filed a response opposing this motion. Although the Sixth Circuit has not definitively ruled on the motion to expedite, it has issued a briefing schedule that suggests that the motion is, in effect, denied. Under this briefing schedule, Russell's brief is due April 2nd, and the Universities' response is due May 4th.

By January 31, all defendants filed their answer to BAMN's amended complaint. That case, which was consolidated with an ACLU action also challenging Proposal 2 that does not name the University as a defendant, continues to proceed in district court.

8. Abigail K. Spreyer as Trustee of the Richard G. Westerman Trust v Jean Westerman Gregg, et al. Sarasota County (Florida) Circuit Court. (Served June 21, 2005). Abigail K. Spreyer as Successor Trustee of the Billie B. Westerman Trust. Sarasota County (Florida) Circuit Court. (Served February 19, 2007).

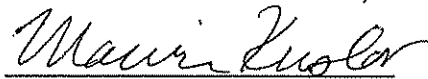
This is an action for reformation of a trust that was filed in Florida in which the University is a beneficiary. The plaintiff is the Trustee of the trust. She claims that the trust contains a clause that inaccurately reflects the Settlor's intentions, which resulted from a drafting mistake and scrivener's error. Plaintiff requests that the court reform the trust to adjust the percentages of distribution of a portion of the trust. Ms. Spreyer filed a second action in February 2007. Plaintiff is the trustee of two trusts executed by husband and wife, Richard and Billie Westerman. The Law School is a beneficiary of the Richard Westerman trust only. Mrs. (Billie) Westerman predeceased her husband (Richard). Both Mr. and Mrs. Westerman, respectively, spent the last few years of their lives in nursing homes. Plaintiff is seeking direction from the court under Florida law as to whether their principal residence continued to be Mrs. Westerman's homestead at the time of her death and whether Mr. Westerman waived his homestead rights prior to his passing. Resolution of these issues will determine whether the residence is to be distributed under Mrs. Westerman's trust, of which the University is not a beneficiary, or Mr. Westerman's trust, of which the University is a 10% residuary beneficiary.

9. Catherine Wilkerson v University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed December 19, 2003).

Plaintiff was employed as a physician at the University and worked as an emergency room physician in the emergency care unit at Hurley Hospital. She claims that, after she had raised concerns about women's health issues at the hospital and assisted another female staff member with her claim of sexual harassment, she was retaliated against by her supervisor. Plaintiff alleges that her job was ultimately eliminated in retaliation for complaining about gender discrimination and that alleged promises of another job were not forthcoming. She seeks damages, attorney fees, costs and

interest. The University filed a motion for summary disposition, which was denied by the court. The University filed an application for leave to appeal that decision to the Michigan Court of Appeals; on February 3, 2006, the Court of Appeals granted our motion. Oral argument was held on July 11, 2006. On July 25, 2006, the Court of Appeals issued its opinion, reversing the trial court's opinion in part, affirming in part, and remanding for further proceedings. Essentially, the court ruled that plaintiff's claims of discriminatory/retaliatory termination based on the elimination of her position are time-barred. In addition, plaintiff failed to establish a question of fact that she was denied other employment opportunities at the University in retaliation of her complaints of discrimination, with the exception of an opportunity to work certain shifts in the MWorks area. Therefore, according to the court's ruling, the only claim remaining in this case is that allegation relating to the MWorks shifts and that has been remanded for further proceedings. Plaintiff filed a motion for reconsideration by the Court of Appeals, which was denied by the court on September 8, 2006. Plaintiff's subsequent appeal to the Michigan Supreme Court was also denied.

Respectfully submitted,



Marvin Krislov  
Vice President and General Counsel

March 2007