

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
March 19, 2009

Subject: Litigation

March 2009

NEW CASES

Robert Mullen and Associates v Regents of the University of Michigan. Michigan Court of Claims. (Judge Paula J.M. Manderfield) (Served February 10, 2009).

Plaintiff was retained to provide legal services to a client who had been in a motorcycle accident and was subsequently treated at the University Medical Center. Plaintiff claims that various representatives of the University contacted the firm to discuss the processing of the personal protection insurance ("PIP") claim on behalf of his client but subsequently refused to recognize Plaintiff's attorney's lien on the PIP benefit insurance proceeds issued by the insurance company. Plaintiff asks the court to enter an Order enforcing the attorney's lien as well as exemplary and treble damages, including attorney fees, costs and interest.

William Ensminger, M.D. v Darrell A. Campbell, Jr. M.D.. United States District Court, Eastern District of Michigan. (Judge Patrick J. Duggan) (Filed March 2, 2009).

Plaintiff, a tenured professor and physician at the University Medical Center, claims that his privileges to practice medicine were temporarily suspended and that he was removed from the workplace and advised that his alleged misconduct will be reported to the database of disciplined physicians. Dr. Ensminger claims that he is entitled to a hearing prior to these actions. He asks the court for an injunction requiring the University to schedule a *Loudermill* hearing, rescinding the temporary suspension of privileges, enjoining Defendant from reporting Plaintiff's alleged misconduct to the physician's database, and requiring Defendant to expunge all negative information regarding this matter.

Rauhorn Electric, Inc. v DeAngelis Landscape, Inc. and The Regents of the University of Michigan, et al. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed February 18, 2009).

Plaintiff ("REI") served as the general contractor on a University of Michigan project known as Land Improvements, Construct Utility Duct Bank from Ingalls Switching Station to Wall Street and subcontracted a portion of the work to DeAngelis Landscape. Plaintiff claims that DeAngelis' performance was defective and deficient and that DeAngelis asserted claims for extra compensation not included in the contract. REI is passing those claims on to the University because, according to REI, the University partially approved the DeAngelis change order and claims for more money. Plaintiff alleges that the University breached its contract and seeks judgment against the University, including costs and attorney fees.

RESOLUTIONS

Mihaela Gavril v University of Michigan and Dr. Peter Adriaens. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed August 23, 2007).

Plaintiff was a research fellow in the department of Civil and Environmental Engineering at the College of Engineering under the supervision of Professor Adriaens. She claims that Professor Adriaens discriminated against her by treating her differently because of her gender and that she was retaliated against by the University and Professor Adriaens when she was terminated. She seeks damages in excess of \$25,000, costs and attorney's fees. Settlement was reached between the parties and the case is dismissed.

CASE UPDATES

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.

Christine McCahan v Samuel Kelly Brennan and The Regents of the University of Michigan. Michigan Court of Claims. (Judge Paula J.M. Manderfield) (Served December 18, 2008). McCahan v University of Michigan and Samuel Kelly Brennan. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed February 6, 2009).

Ms. McCahan claims that a University vehicle driven by a UM student (Brennan) on December 12, 2007 struck her vehicle while making an illegal left turn. She claims the collision caused serious and permanent injuries to her person and that Brennan was negligent in the operation of the vehicle. She seeks judgment against Brennan in excess of \$25,000. She also claims that the University, as the owner of the vehicle, is liable for the injuries she sustained and that the University was negligent in entrusting Brennan to operate its motor vehicle. She also seeks damages, costs, interest and attorneys' fees against the University. Plaintiff dismissed the claims against the UM

student and refiled them in Washtenaw County Circuit Court. The two cases have been consolidated and will be heard by Judge Brown in Washtenaw County.

Afzal Hossain, Ph.D. v University of Michigan-Dearborn, Malayappan Shridhar, and Subrata Sengupta. Wayne County Circuit Court. (Judge Warfield Moore) (Served May 23, 2007); Michigan Court of Claims. (Judge Beverley Nettles-Nickerson) (Served July 16, 2007).

Plaintiff was an assistant professor of Electrical and Computer Engineering at the Dearborn campus. He claims that, during his employment at the University, he was discriminated against and denied tenure based upon his religion (Muslim), national origin (Bangladesh), and age. Plaintiff's allegations include violation of the Elliott-Larsen Civil Rights Act, intentional infliction of emotional distress, and hostile work environment. He seeks damages in excess of \$25,000, costs, interest and attorney's fees. Plaintiff also filed his case in the Michigan Court of Claims. This case is set to go to trial on April 14, 2009.

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.

Alissa Zwick v Regents of the University of Michigan, Marilyn Lantz, Wilhelm Piskorowski, Mark Snyder and Fred Burgett. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed May 12, 2006). Michigan Court of Claims. (Judge James R. Giddings) (Filed May 12, 2006). U.S. District Court, Eastern District of Michigan. (Judge Marianne Battani).

Plaintiff is a former Dental School student who was dismissed in her third year of studies. She claims that she was targeted by the Dental School administration and the named defendants for reasons unrelated to her academic studies. Her allegations include violations of her free speech, due process, breach of contract, and defamation. She seeks damages in excess of \$25,000, reinstatement as a Dental School student, interest, costs and attorney's fees. The two cases have been removed to federal court and consolidated in front of Judge Battani. The University filed a motion for summary judgment; on April 28, 2008, the court dismissed all of the claims except Plaintiff's due process claims. The case went to trial before a jury in the Federal court. On December 2, 2008, the jury found for the plaintiff and awarded her \$220,000 in economic damages,

\$500,000 in non-economic damages, and \$1 million in punitive damages. Defendants filed a motion for judgment as a matter of law and an alternative motion for a new trial and remittitur. Plaintiff filed a motion for attorneys' fees, costs and interest. Defendants' motions were denied by the judge; plaintiff's motion for attorneys' fees, costs and interest was granted.

Respectfully submitted,



Suellen Scarnecchia
Vice President and General Counsel

March 2009