

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

March 2011

NEW CASES

Carol A. Richard and Ken Richard v Richard Stephen Cesarz. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Served February 8, 2011); Carol A. Richard and Ken Richard v University of Michigan. Michigan Court of Claims. (Judge William E. Collette) (Served February 8, 2011).

Plaintiff Carol Richard claims that she was struck by a University vehicle that was being driven by Richard Cesarz (temporary University employee). She claims that she sustained multiple injuries and alleges that Mr. Cesarz was negligent while driving the vehicle. Her complaint alleges that the University, as the owner of the vehicle, is responsible for the actions of Mr. Cesarz. Plaintiff Ken Richard claims lack of consortium. Plaintiffs seek damages in excess of \$25,000.

Barbara L. Kornblau v Board of Regents for the University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed February 16, 2011). Barbara L. Kornblau v Board of Regents of the University of Michigan, Lauren Shellenberger, Jeanne M. Strickland, Diana T. Curran and Gerald Voland. United States District Court in the Eastern District of Michigan. (Judge Stephen J. Murphy III) (Filed February 18, 2011).

Plaintiff, former dean and currently a faculty member in the School of Health Professions and Studies ("SHPS") on the Flint Campus, alleges that she was falsely accused of a HIPAA privacy violation and was forced to resign as the Dean of SHPS. Plaintiff claims that she was deprived of her rights of fair and just treatment under the Michigan Constitution. She also claims that the University and Provost Voland deprived her of her rights to a name-clearing hearing; and that Defendants Shellenberger, Strickland and Curran defamed her when they filed a report with the US Department of Health and Human Services ("HHS") regarding Plaintiff's alleged HIPAA privacy violation. Plaintiff seeks an order requiring the University to withdraw the report filed with HHS, damages, costs and attorney's fees.

In the Matter of the Rita L. Willis Living Trust. Tulsa County (Oklahoma) District Court.

The University, along with numerous other charities named in this Trust, filed a petition to receive an immediate, terminating distribution of the Willis Trust assets. Shortly before her death, Ms. Willis executed a third amendment to the Trust document, which provides distribution to UM and the other charities of Trust principal, with no mention of a 20-year waiting period as required by a second amendment to the Trust. Co-trustees of the Trust filed a counterclaim and argue that the 20-year term was omitted from the third amendment as a scrivener's error.

RESOLUTIONS

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. On April 30, 2009, Judge Brown, sitting as a Court of Claims judge, granted the University's Motion for Summary Disposition on the grounds of failure to provide proper notice in the Court of Claims. On December 18, 2009, the Washtenaw County Circuit Court entered an order dismissing Brennan for the reason that he was not grossly negligent. Plaintiff appealed to the Michigan Court of Appeals; on February 1, 2011, the court upheld the dismissal of plaintiff's claim.

Charita Miller v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge David Swartz) (Filed September 7, 2010).

Plaintiff is a former employee of the University. She claims that, after suffering a disabling injury, the University discharged her in violation of the Persons with Disabilities Civil Rights Act. She seeks damages in excess of \$25,000 plus interest, costs and attorney's fees. Settlement was reached between the parties.

CASE UPDATES

Bella Osak v Board of Regents of the University of Michigan, Jolanta Grembecka and Tomasz Cierpicki. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Served October 4, 2010).

Ms. Osak was employed in the University's Department of Pathology where she worked as a Research Laboratory Specialist. Plaintiff alleges that she was discriminated against because of her age when she was terminated five months after she began working at the University. Her claims also include defamation and tortious interference with a business relationship. In her complaint, Ms. Osak claims that Dr. Grembecka defamed her when Grembecka accused Osak of falsifying research data. Plaintiff seeks reinstatement, damages, lost wages, interest, costs and attorney

fees. On February 9, 2011, the court dismissed Ms. Osak's age discrimination claim; the claims of defamation and tortious interference with a business relationship remain.

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. The University's motion for summary disposition was granted by the court on June 24, 2009, thereby dismissing all of Plaintiff's claims with prejudice. Plaintiff contested the proposed order, and a hearing was held on September 2, 2009. The judge granted the University's motion to dismiss the entire case, denied Plaintiff's motion opposing the order of dismissal, denied with prejudice Plaintiff's motion to amend his complaint, and awarded the defendants \$36,000 in costs and fees. Plaintiff filed an appeal with the Michigan Court of Appeals. In addition, Plaintiff filed a motion for an immediate preliminary injunction, asking the Court of Appeals to prohibit defendant Snyder from performing certain of his duties. The Court of Appeals denied the motion for immediate preliminary injunction. Plaintiff filed an Application for Leave to Appeal Prior to Decision by Court of Appeals with the Michigan Supreme Court. On October 26, 2010, the Michigan Supreme Court denied plaintiff's application for leave to appeal. Plaintiff filed a motion in the Court of Appeals for peremptory reversal, which was denied by the court on February 16, 2011.

Theresa Gratsch v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed October 6, 2008). and

Plaintiff, a research lab specialist in the Department of Cell and Developmental Biology, filed this lawsuit alleging discrimination on the basis of her gender in violation of the Elliott Larsen Civil Rights Act. Plaintiff claims that the University allegedly denied her assistance seeking patent protection for an invention that she, and others, developed, while at the same time offering assistance seeking patent protection to a male employee who developed the same invention. She seeks damages, costs, interest and attorney's fees. The University filed a motion for summary disposition, which was denied by Judge Morris. The University filed an interlocutory appeal to the Michigan Court of Appeals.

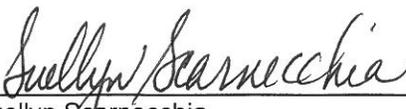
Theresa Gratsch v Regents of the University of Michigan. (Judge Timothy Connors) (Filed August 27, 2009).

Plaintiff filed this lawsuit alleging that the University retaliated against her for filing an earlier lawsuit in which she complained of gender discrimination. She claims that the University and her immediate supervisor, Dr. Sue O'Shea, forced Plaintiff to resign under duress, which resignation was not voluntary and constitutes a constructive termination. She seeks damages, costs, interest and attorney's fees. Plaintiff filed a motion to consolidate the two cases; that motion was denied by Judge Morris on December 14, 2009 and the two cases will be heard separately. The University filed a motion for summary disposition, which was denied by the judge.

Julie Amanda Rowe v The Michigan Daily, University of Michigan, Gary Graca, Jacob Smilovitz and Courtney Ratkowick. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Served February 26, 2010). Julie Amanda Rowe v The Michigan Daily and the University of Michigan. Michigan Court of Claims. (Judge William Collette) (Served February 26, 2010).

Plaintiff was a Daily News Editor at the Michigan Daily during the Winter 2009 term. She claims that she was falsely accused of plagiarism in connection with an article she wrote for the newspaper and that she subsequently resigned her position at the Daily. Plaintiff claims that the individual defendants, student editors of the Michigan Daily, wrongly accused her of plagiarism. Plaintiff also claims that University officials failed to oversee the Daily, thereby endorsing and sanctioning the wrongful treatment of the Plaintiff by the named defendants. Plaintiff's claims include defamation, intentional infliction of emotional distress and deprivation of her due process rights. She seeks damages in excess of \$25,000, costs and interest. The University filed a motion for summary disposition, which was granted by Judge Collette on November 17, 2010. The lawsuits against the Michigan Daily, Gary Graca, Jacob Smilovitz and Courtney Ratkowick continue but this concludes the case against the University, subject to any appeal that the plaintiff may file. The case against the Michigan Daily is pending in the Court of Claims and the case against the individual student editors is pending in Washtenaw County Circuit Court. Judge Collette granted the motion for summary disposition on behalf of the Daily on February 9, 2011. A motion for summary disposition on behalf of the named defendants is pending before Judge Brown.

Respectfully submitted,



Suellyn Scarnecchia
Vice President and General Counsel