

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

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Subject: Litigation

April 2009

## NEW CASES

Juliet Ballard v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Served March 6, 2009).

Plaintiff was employed as a Marketing and Communications Specialist in the Cardiovascular Center at the Health System. She claims that she learned that she was being paid significantly less than her Caucasian peers and asked her supervisor for an equity review of her salary. Ms. Ballard alleges that her supervisor began to criticize her performance and was abusive, confrontational, harassing and inhospitable to plaintiff following that request. Plaintiff also states that she filed a formal grievance, which was not answered until January 15, 2009, two weeks after plaintiff was terminated from her employment at the University. Her allegations include a violation of the Elliott Larsen Civil Rights Act on the basis of race as well as retaliation.

Michelle D. Popovich v Board of Regents of the University of Michigan and Suellyn Scarnecchia. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Served March 30, 2009).

Plaintiff filed a complaint against the University in November 2008, which was reported to the Regents in December 2008. (See Popovich v Board of Regents elsewhere in this report.) Plaintiff claims that the December Regents Communication containing the report of Plaintiff's lawsuit was posted on the internet on December 18, 2008, and contained a material omission concerning the litigation against the University. Plaintiff claims that the internet posting is libelous in that it omits certain facts about the status of certain criminal proceedings in which Plaintiff was involved and that the publication of that posting has resulted in damage to Plaintiff's reputation. Plaintiff seeks judgment in excess of \$25,000 and attorney's fees.

## RESOLUTIONS

Paul Eilers v University of Michigan. Michigan Court of Claims. (Judge Joyce A. Draganchuk) (Filed May 23, 2008).

Plaintiff alleges that, while seeking medical treatment at the Livonia Center for Specialty Care, he slipped and fell on some liquid on the floor, causing a broken hip and other serious injuries. Plaintiff claims that the University was negligent and seeks damages, interest, court costs and attorney fees. On March 18, 2009, Judge Draganchuk ruled that plaintiff failed to file a proper, timely notice as required by statute and the case was dismissed.

Keith Yohn v Coleman, Sullivan, Polverini, Krebsbach, Bernitsas and Snyder. United States District Court, Eastern District of Michigan. (Judge Gerald E. Rosen) (Filed January 2, 2008).

Plaintiff claims that University administrators, including President Coleman, Provost Sullivan, Dean Polverini, and Professors Krebsbach, Bernitsas and Snyder, have infringed on his free speech rights to mass mail email messages to the faculty to speak out. He claims he has also been deprived of his due process rights by refusing to grant him the right to a fair and impartial grievance review board (which was chaired by Professor Bernitsas) to address his grievance. Also, he claims that Dean Polverini filed a false report to the Department of Public Safety in order to embarrass, retaliate and intimidate him. He claims that Department Chair Krebsbach has made false accusations against him. His claims against Clinical Assistant Professor Snyder allege gross negligence to perform teaching duties for personal gain. Dr. Yohn seeks over \$1 million in damages. The University filed a motion for summary judgment on behalf of all defendants; that motion was granted by the court and the case was dismissed in its entirety.

JoAnn Hetherington v University of Michigan-Flint. Genesee County Circuit Court. (Judge Joseph J. Farah) (Filed February 9, 2007). Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed April 2, 2007).

Ms. Hetherington claims that, while attending a performance in the Kiva Building auditorium on the Flint campus, she fell and injured herself severely. She alleges that the University has a duty to keep its buildings free from defect and that she was injured because of our failure to do so. She seeks damages, costs, interest and attorney's fees. The University filed a motion to dismiss based on jurisdiction, which was granted. Plaintiff re-filed her claims in the Court of Claims. The University filed a motion for summary disposition, which was heard on January 30, 2008. Judge Draganchuk denied the motion. The University filed a claim of appeal to the Michigan Court of Appeals, and on March 18, 2009, the court reversed the trial court's decision and ordered that judgment in favor of the University be entered.

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. Plaintiff voluntarily dismissed this action on March 12, 2009.

## CASE UPDATES

Kathy Halabicky, et al. v University of Michigan. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed December 7, 2007); Removed to United States District Court, Eastern District of Michigan (January 4, 2008) (Judge David M. Lawson).

This is a complaint filed by female Physicians Assistants and Nurse Practitioners at the University Medical Center. The plaintiffs claim that they are paid less than their male counterparts, even though they perform substantially the same duties. Plaintiffs claim gender discrimination under the Equal Pay Act and Elliott Larsen Civil Rights Act and seek past and future economic damages, past and future non-economic damages, an increase in current compensation, interest, costs and attorney fees. The University removed the case to the federal court. Plaintiffs' motion for Class Certification was heard before Judge Lawson, who denied the motion on March 31, 2009. The case will now proceed with the 27 named plaintiffs.

Michael Wells v Securitas Security Services USA, Inc. and the University of Michigan. United States District Court, Eastern District of Michigan. (Judge Anna Diggs Taylor) (Filed December 28, 2007). Wayne County Circuit Court. (Judge Prentis Edwards) (Filed February 15, 2008).

Plaintiff was employed by Securitas Security Services as a security officer. The University contracts with Securitas to provide security for the University's Power Plant. Mr. Wells states that a University employee had told him that she had been sexually assaulted by another University employee the previous year. Thereafter, Mr. Wells informed DPS and Power Plant officials of the assault. Plaintiff claims that shortly after he reported that assault, he was removed from his position at the Power Plant by Securitas, was reassigned to another facility in Saline, and subsequently terminated. Plaintiff alleges that these actions were violations of the Whistleblowers' Protection Act and in retaliation for reporting a sexual assault. He seeks damages in excess of \$5 million, as well as costs and fees. Plaintiff's state court claims were dismissed from the federal court case and re-filed in Wayne County Circuit Court. On March 27, 2009, Defendants' motion for summary judgment was granted by the Federal Court and that case has been dismissed in its entirety. The case in Wayne County Circuit Court is still pending. That judge has ordered the case to facilitation.

Lora Kalkman v Augustine Agho and University of Michigan. Genesee County Circuit Court. (Judge Richard B. Yuille) (Filed March 24, 2008).

Plaintiff was employed at the School of Health Professions and Studies on the Flint Campus. She alleges that she reported violations of rules, regulations and laws and subsequently was harassed, discriminated against and ultimately discharged. Plaintiff claims that she was engaged in protected activities under the Whistleblower Protection Act and that she has suffered damages in excess of \$25,000. She seeks damages, interest, costs and attorney fees. The University filed a motion for summary disposition. Judge Yuille granted the motion in part and dismissed Plaintiff's Whistleblower claims but denied summary disposition on the race and gender claims.

Robert McGee v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Filed May 16, 2008).

Plaintiff was a graduate student in Nuclear Engineering and Radiological Sciences, with a 25% appointment as a Graduate Student Research Assistant to work in a laboratory in the area of neutron radiography. Plaintiff claims that he observed a number of practices in the lab that did not meet OSEH standards and reported them to the University's Radiation Safety Services office, to OSEH and to the Michigan Department of Environmental Quality. Plaintiff claims that his subsequent termination was retaliation against him for reporting suspected violations of laws. He seeks compensation for his losses, interest, costs and attorneys fees. The University filed a motion for summary disposition, which was denied.

Michelle Delynn Popovich and Erika D. Popovich v Joseph Merignac, Stacey Merignac, Village of Bellevue, Michigan, and the Board of Regents of the University of Michigan. Eaton County Circuit Court. (Judge Thoms S. Eveland) (Filed November 12, 2008). Erika D. Popovich v Board of Regents of the University of Michigan. Michigan Court of Claims. (Served March 30, 2009).


Plaintiff Michelle Popovich claimed that Bellevue Police Officer Joseph Merignac conducted a traffic stop on a vehicle driven by her without probable cause, detained her, and subsequently arrested her for operating while intoxicated. Plaintiff claims that Joseph Merignac called Stacey Merignac, a University employee, while he had Michelle Popovich in custody, and that Stacey Merignac accessed Plaintiff Erika Popovich's medical records improperly and disclosed Plaintiff Erika Popovich's medical information to Officer Merignac. Plaintiff Michelle Popovich was subsequently convicted of operating under the influence. That conviction was later set aside and the charge against her dismissed upon motion of the Eaton County Prosecutor. Plaintiff Erika Popovich's claim against the University includes unauthorized disclosure of her personal information by University employee Stacey Merignac in violation of statutory and common-law rights. The University was dismissed from the Eaton County Circuit Court action and Plaintiff Erika Popovich re-filed her complaint against the University in the Michigan Court of Claims.

Stanley Williams v University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed April 24, 2008).

Plaintiff worked as an Anesthesia Technician at Mott Hospital. In July 2006, Mr. Williams was placed on a medical leave of absence; he was released by his physician to return to work in February 2007, with restrictions. Plaintiff claims that the University failed to reinstate him to a position that was compatible with his restrictions until August 2007. His allegations include disability discrimination, retaliation and retaliatory harassment by his supervisor. He seeks damages,

interest, costs and attorney's fees. The University's motion for summary disposition was granted by Judge Morris and the case is dismissed. Plaintiff filed a claim of appeal to the Michigan Court of Appeals.

Respectfully submitted,

  
Suellyn Scarnecchia  
Vice President and General Counsel

April 2009