

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
May 15, 2008

Subject: Litigation

May 2008

I. NEW CASES

1. Mohammed Nawwas and Mysa Nawwas v Steven L. Sinelli. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed April 2, 2008).

Plaintiff Mohammed Nawwas purchased a piece of equipment from the University's Property Disposition Office. On January 4, 2007, plaintiff claims that an employee of the Property Disposition Office, at the direction of supervisor Steven Sinelli, was operating a hi-lo vehicle in order to load the equipment onto Plaintiff's truck when the equipment fell off the hi-lo vehicle and injured Plaintiff's arm. Plaintiff alleges that Sinelli's conduct was negligent and that, as a result, Plaintiff Mohammed Nawwas was severely injured. Plaintiffs seek damages in excess of \$25,000, as well as attorney's fees, costs and interest.

2. Linda Charlesworth v University of Michigan and Internet2. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed April 16, 2008).

Plaintiff was employed by the University of Michigan and assigned to work at Internet2. In January 2006, plaintiff's position at Internet2 was eliminated and she was placed on RIF status; and in June 2007 plaintiff retired from the University. Ms. Charlesworth claims that she was discriminated against because of her age and disability. She seeks damages, interest, costs and attorney's fees.

3. Ruth Braun v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge Beverley Nettles-Nickerson) (Served April 28, 2008).

Ms. Braun was employed by the University in the Office of Undergraduate Admissions. She claims that she was terminated from her position because she reported suspected violations of labor practices within the office. Plaintiff seeks damages, interest, costs and attorney's fees.

4. 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.

II. RESOLUTIONS

5. Repligen Corporation and the Regents of the University of Michigan v Bristol-Myers Squibb. United States Federal Court for the Eastern District of Texas. (Filed January 6, 2006).

Repligen and the University filed suit against Bristol-Myers Squibb ("BMS") for infringement of a University patent, as the result of BMS' sales of its Orencia product for the treatment of rheumatoid arthritis. The University and the Navy [co-owner] exclusively licensed their rights in this and other patents, which relate to methods of treating various diseases including arthritis and other autoimmune diseases, to Repligen in 1992. The licenses permit Repligen to enforce the patents. BMS filed two motions for summary judgment that, if granted, would result in the invalidity of the patent-in-suit. The University and Repligen filed responses on January 31, 2008. Discovery has been completed. Settlement was reached between the parties and the case is concluded.

6. 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. The court granted the Trustee's motion to dissolve the Trust. Once the Trust is liquidated, the University will receive its pro rata share.

III. CASE UPDATES

7. Katherine McCarty v University of Michigan. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed September 19, 2007).

Plaintiff is a Custodian at the University who filed a complaint of sexual harassment. She claims that the University failed to take prompt and remedial action following her complaint and that she has suffered damages, lost wages, emotional distress and attorney's fees. She seeks damages in

excess of \$25,000, costs, interest and attorney's fees. The University filed a motion for summary disposition and the court took the matter under advisement.

8. Mary C. Lee v University of Michigan-Dearborn and Robert L. Simpson. Michigan Court of Claims. (Judge James R. Giddings) (Filed March 13, 2006); removed to United States District Court, Western District of Michigan (Judge Hugh W. Brenneman, Jr.) (April 27, 2006).

Plaintiff is a former student at the Dearborn campus who was expelled from campus for violations of the Code of Student Conduct. She claims that the University's hearing board and code appeals council decisions were improper, that the University has breached its contract with her as a student, and that Dr. Simpson's denial to reconvene the code appeals council violated her due process rights. She seeks a review of the University's expulsion decisions, money damages, costs and attorney's fees. The case was removed to federal court and the University filed a motion for summary judgment. On September 28, 2007, Judge Brenneman ruled favorably on the University's motion in part, dismissing plaintiff's claims except for the breach of contract claim which was remanded to the Michigan Court of Claims. Plaintiff filed a notice of appeal to the Sixth Circuit Court of Appeals on the dismissal of her constitutional claims and her claim under the Michigan Administrative Procedures Act. On March 7, 2008 Judge Giddings granted the University's motion for summary disposition on plaintiff's breach of contract claim. We are waiting to hear whether plaintiff's appeal of her federal claims to the Sixth Circuit will be scheduled for oral argument or whether the court will issue a ruling on the briefs. Plaintiff also appealed Judge Giddings' ruling on her breach of contract claim; that appeal is pending in the Michigan Court of Appeals.

9. 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 state and federal due process claims.

10. McAlpine & Associates v University of Michigan Board of Regents. Oakland County Circuit Court. (Hon. Gene Schnelz) (Filed April 28, 2006).

This is an action for disclosure of records under the Michigan Freedom of Information Act. McAlpine & Associates requested documents pertaining to the construction of the University's Cardiovascular Center. When McAlpine was told that it would cost thousands of dollars to retrieve all of the documents they requested, they filed this lawsuit, claiming that the University is effectively denying the FOIA request. Plaintiff seeks a court order compelling the University to produce the documents,

as well as attorneys' fees and costs. Settlement was reached between the parties and the case is concluded.

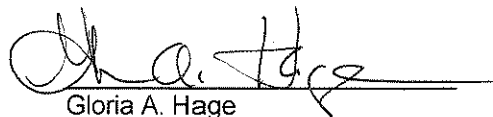
11. David Powers and Save Our Shoreline, Inc. v University of Michigan. Bay County Circuit Court. (Judge Joseph Sheeran) (Filed January 4, 2008).

This is an action for disclosure of records under the Michigan Freedom of Information Act. Plaintiffs sought the names and addresses of the individuals who were mailed a pamphlet entitled "Along the Shore, A Shoreline Management Guide for Michigan Coastal Landowners" by the Michigan Sea Grant College Program at the University. Plaintiffs were provided with a list of the professional entities and groups that were mailed a copy of the brochure, but the names and addresses of the individuals to whom the brochure was mailed were withheld for privacy reasons. Plaintiffs claim that the University violated the Michigan FOIA and seek the names and addresses that have been withheld, attorney fees, costs, and damages. Plaintiffs filed a motion for summary disposition, requesting disclosure of the requested documents.

12. 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.

Respectfully submitted,



Gloria A. Hage
Interim Vice President and General Counsel