

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

May 2013

NEW CASES

Wei Cao v Board of Regents of the University of Michigan. Genesee County Circuit Court. (Judge Joseph J. Farah) (Served April 2, 2013).

Plaintiff was an Assistant Professor of Education for the University of Michigan-Flint. She claims she applied for and was denied tenure and promotion because of her national origin. She further alleges the denial of her tenure was in retaliation for her having opposed, through a published article, what she described as "the discriminatory environment" on the Flint campus. Plaintiff claims she suffered economic loss and seeks reinstatement, money damages in excess of \$25,000 plus interest, consequential damages, costs, and attorney's fees.

CASE UPDATES

Aiman Farhoud and Souhar Farhoud v Darice Rosario. Washtenaw County Circuit Court. (Judge Timothy P. Connors) (Filed August 1, 2011).

Plaintiff Aiman Farhoud is a patient care technician at the University of Michigan Hospital. Defendant Darice Rosario is a nurse co-worker. Plaintiff Aiman Farhoud alleged that Defendant made false accusations against him when she told her supervisors that he advised a co-worker, "go do this procedure before I kill somebody." Plaintiff Aiman Farhoud alleged that Defendant Rosario's accusations resulted in his being subjected to investigation by UMH security personnel (after which he was cleared of any wrongdoing) as well as suffering embarrassment, humiliation, mortification, depression, sleeplessness, anxiety, missed time from work, damage to his reputation in the workplace and his community, and lost wages and benefits. Plaintiff Souhar Farhoud (Aiman's wife) claimed damage to her reputation in the community, emotional distress, humiliation, mortification, embarrassment, sleeplessness, and anxiety. Plaintiffs sought judgment in excess of \$25,000 plus costs, interest, and attorney's fees. At a December 15, 2011, hearing, Judge Connors granted Defendant's motion to dismiss the case in its entirety and with prejudice. Plaintiff appealed to the Michigan Court of Appeals on February 10, 2012. On February 21, 2013, the Court of Appeals affirmed the trial court's dismissal of Plaintiffs' claims. On April 3, 2013, Plaintiff filed an application for leave to appeal to the Michigan Supreme Court. On April 26, 2013, Defendant filed a brief in opposition to Plaintiff's application for leave to appeal. The hearing was scheduled for April 30, 2013.

Sheri Barron v University of Michigan and University of Michigan Health System. U.S. District Court, Eastern District of Michigan, Southern Division. (Judge Mark A. Goldsmith) (Served August 10, 2011).

Plaintiff was a Registered Nurse at University Hospital. She alleges she was harassed and discriminated against based on her age and disability and/or perceived disability when, after returning from a disability leave of absence of more than seven years, she was told that she was no longer qualified to work as a registered nurse until she took a refresher nursing class. Plaintiff claims that she applied for approximately 70 Registered Nurse positions within the University following that training but was not promoted from the nurse's-aid position. Plaintiff also alleges that she was told she would not be considered for promotion because of her age. As a result, Plaintiff claims she has suffered economic and emotional damages, and losses. She seeks judgment against the University, plus damages, costs, and attorney's fees. Plaintiff filed a companion case in the Washtenaw County Circuit Court. On March 12, 2013, Defendants filed a Motion to Dismiss that is scheduled to be heard on May 23, 2013.

Alix Gould-Werth, Christie Toth and Graduate Employees Organization, AFT Michigan, AFT, AFL-CIO, and Regents of the University of Michigan (Plaintiff in Intervention) v Edward Callaghan in his official capacity as Chairman of the Michigan Employment Relations Commission; Christine Derdarian in her official capacity as a member of the Michigan Employment Relations Commission; and Nino Green in his official capacity as a member of the Michigan Employment Relations Commission. United States District Court, Eastern District of Michigan (Judge Mark Goldsmith) (Filed April 17, 2012 and June 8, 2012 [Intervening Complaint]).

Plaintiffs Gould-Werth, Toth, and GEO, AFT Michigan, AFT, AFL-CIO, seek to enjoin defendants from enforcing 2012 Public Act 45. The Complaint alleges that 2012 PA 45 violates the equal protection clause of the U.S. Constitution by excluding a group of individuals (graduate student research assistants) from the right to bargain based on job title alone, a right granted to every other public employee in the state of Michigan, without a rational basis in fact. It further alleges that 2012 PA 45 violates Article IV, Section 24 of the Michigan Constitution of 1963 (the "Title-Object Clause") by changing the object and purpose of the bill that eventually became 2012 PA 45. Plaintiffs ask the Court to enjoin the defendants from enforcing 2012 Public Act 45 and order defendants to reimburse Plaintiffs for costs and attorney's fees.

The University of Michigan filed an Intervening Complaint on June 8, 2012. The Intervening Complaint also brings claims under the equal protection clause of the U.S. Constitution and Article IV, Section 24 of the Michigan Constitution. The Intervening Complaint adds a claim under the equal protection clause of the Michigan constitution, and a challenge to the immediate effect of 2012 PA 45 under Article IV, Section 24 of the Michigan Constitution. Intervening Plaintiff University asks the Court to issue a permanent injunction declaring 2012 PA 45 to be in violation of the U.S. and Michigan Constitutions. On January 28, 2013, the parties stipulated to the dismissal without prejudice of Court IV – Immediate Effect Clause – Michigan Constitution, of the University's Intervening Complaint. On April 10, 2013, Defendant MERC filed a Motion for Summary Judgment. On April 16, 2013, Plaintiff GEO/AFT and Intervening Plaintiff University of Michigan both filed Motions for Summary Judgment. All three motions are pending before the court. Oral argument is scheduled for June 27, 2013.

Regents of the University of Michigan v St. Jude Medical, Inc. United States District Court, Eastern District of Michigan. (Judge Avern Cohn/Magistrate Judge Laurie J. Michelson) (Filed July 2, 2012).

In 1997, the University licensed to St. Jude Medical, Inc. its rights to patents and other technology related to chemical compositions for treating bio-prosthetic tissues. St. Jude has been paying royalties to the University for a number of years, but last year stopped paying, claiming that the University's patents and technology do not cover all the St. Jude products and that therefore the company was entitled to a credit on amounts previously paid. The University filed this lawsuit to recover the royalties that are currently owed, and to protect the University's ability to receive the future royalties to which the University is entitled. Defendant St. Jude filed its Answer with the court, including a counterclaim that the University should have to repay all the royalties since 1998. The University replied to Defendant's counterclaim, denying liability because the claim, among other things, is barred by the Michigan Court of Claims Act. On November 9, 2012, St. Jude Medical filed a Petition for Inter Partes Review at the U.S. Patent Office, seeking reexamination of the patentability of the claims in one of the patents licensed to St. Jude. The University filed an amended complaint for procedural reasons. On December 17, 2012, St. Jude Medical filed an Answer adding a count seeking declaratory judgment that the University's patent is invalid. On December 27, 2012, the University moved to dismiss Defendant's counterclaim given Defendant's failure to file notice with the Michigan Court of Claims as required by Michigan law. On December 31, 2012, the University filed a summary judgment motion seeking an affirmative finding of liability on the license agreement. Defendant filed its opposition to the University's motion to dismiss on January 17, 2013, and the University filed a reply on January 31, 2013. On February 25, 2013, the Court denied the University's motion to dismiss. On March 7, 2013, St. Jude Medical notified the University it was terminating the 1997

license agreement as a matter of right, effective in June 2013. On April 5, 2013, the Court ruled the University could amend its Complaint to add a patent infringement count.

Yaron Eliav v University of Michigan. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Filed April 4, 2012).

Plaintiff is a faculty member in the College of LS&A, Department of Near Eastern Studies. His complaint alleges that, following two misdemeanor charges, he entered into an agreement with the College and accepted the sanctions listed in that agreement. Plaintiff claims that those sanctions did not include removal of his membership in the Jean and Samuel Frankel Center for Judaic Studies. Plaintiff alleges breach of contract and due process violations, and seeks damages, costs, interest, and attorney's fees. On April 12, 2013, Plaintiff filed a Motion for Partial Summary Disposition. On April 17, 2013, Defendants filed a Motion for Summary Disposition. Both motions are pending before the court.

Douglas M. Smith v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed June 13, 2012).

Plaintiff claims that the Board of Regents violated the Michigan Open Meetings Act when it announced its choice of a law firm to conduct an external evaluation of the handling of a report of a resident physician suspected of possessing child pornography, allegedly without having announced or held a special public meeting to choose that law firm. Plaintiff also alleges that, when he filed a Freedom of Information Act request for documents to show how the Regents chose the consultants, the response from the University was untimely, informed him that much of the responsive material would be exempt from disclosure, and informed him that a fee deposit would be required. Plaintiff asks the court to compel the University to disclose the public records that he requested and seeks damages, attorney's fees, and costs. The University filed a motion for summary disposition, which was argued before Judge Swartz on October 31, 2012. At that hearing, the court concluded that it was unable to decide the motion without the benefit of an evidentiary hearing. On November 30, 2012, Defendant filed a Motion for Reconsideration. On April 15, 2013, Judge Swartz entered an Order granting Defendant's motion for reconsideration, dismissing Plaintiff's claim under the Michigan Open Meetings Act, and setting procedures related to Plaintiff's Freedom of information Act Claims.

Yusong Gong v Board of Regents of the University of Michigan, and Martin G. Myers, Jr. Washtenaw County Circuit Court. (Judge Timothy Connors) (Served October 9, 2012); AND **Yusong Gong v. Board of Regents of the University of Michigan and Martin G. Myers, Jr.** United States District Court, Eastern District of Michigan (Judge Sean Cox) (Filed February 6, 2013)

Plaintiff previously worked in the Department of Internal Medicine in a research laboratory under the direction of Dr. Myers. She claims that she was laid off in Dr. Myers's group in August 2007 and went to work in other departments at the University. Plaintiff alleges that, after she left Dr. Myers's laboratory, Dr. Myers instituted a campaign of harassment, intimidation, and bullying against her, which, she alleges, led to Plaintiff's termination on April 18, 2012. Plaintiff brings claims for national origin discrimination, retaliation, and violations of the Whistleblower's Protection Act. She seeks damages, costs, and attorney's fees. On February 6, 2013, Plaintiff filed a Complaint in Federal Court alleging she is a qualified individual with a disability who was terminated because of a disability. The two-count complaint brings claims under the Discrimination/Rehabilitation Act and Retaliation/Rehabilitation Act. Plaintiff seeks lost wages, damages, costs, interest, and attorney's fees. On April 18, 2013, the parties stipulated to the dismissal of named Defendant Martin G. Myers, Jr., M.D., Ph.D.

Yvonne Beach, a Protected Person, by and through her duly appointed Guardian, Brad Beach, and Andersen Beach, a minor, by his Next Friend, Brad Beach v Board of Regents of the University of Michigan. Michigan Court of Claims (Judge Clinton Canady III) (Served November, 9, 2012); AND Yvonne Beach, a Protected Person, by and through her duly appointed Guardian, Brad Beach, and Andersen Beach, a minor and his Next Friend Brad Beach v Jade Sanders and Richard Secosky. Washtenaw County Circuit Court (Judge Donald Shelton) (Filed October 31, 2012); AND Richard Secosky v Board of Regents of the University of Michigan. Michigan Court of Claims (Judge Clinton Canady III) (Filed March 22, 2013); AND Richard C. Secosky v Jade Alexis Sanders. Washtenaw County Circuit Court (Judge Donald Shelton) (Filed March 26, 2013).

Plaintiff, Yvonne Beach, alleges she was a passenger on a motorcycle when a collision occurred between the motorcycle and a University owned vehicle operated by a University student intern. Plaintiff claims the vehicle was negligently operated and that she sustained serious impairment of a bodily function and permanent/serious disfigurement as a result of the collision. As a result, Plaintiff claims she will incur economic losses in excess of three years. Plaintiff, Andersen Beach, a minor, claims loss of services by his mother, Yvonne Beach. Plaintiffs seek damages, with interest, costs, and attorney's fees. The motorcycle driver, Richard Secosky, filed companion cases against the University in the Michigan Court of Claims, and against Jade Alexis Sanders in Washtenaw County Circuit Court. An order was issued on April 3, 2013 by the Court of Claims transferring the case against the University to Washtenaw County Circuit Court, and joining it with the currently pending cases involving the same accident.

CASE RESOLUTIONS

Veritas Insurance Corporation and Factory Mutual Insurance Company, as subrogees of the Regents of the University of Michigan, and the Regents of the University of Michigan v Peaker Services Incorporated, St. Paul Protective Insurance Company, and Travelers Property Casualty Company of America. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed March 17, 2011).

On November 2, 2007, during testing of a generator at the Central Power Plant on the Ann Arbor Campus, a newly purchased over-speed regulator failed, causing damage to the generator's turbine. A lawsuit to recover the damages was filed on March 17, 2011, in Washtenaw County Circuit Court, for breach of contract and warranties against the vendor that supplied and installed the regulator. On April 24, 2013, settlement was reached between the parties. This case is concluded.

Kay Ball v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Paul D. Borman) (Filed March 12, 2012).

Plaintiff, a former employee of the University, claimed that she was unjustly terminated from her employment. She alleged that she was treated differently from her male co-workers and cited violations of Title VII and the Elliott-Larsen Civil Rights Act. Plaintiff sought damages, costs, interest, and attorney's fees. On April 13, 2013, settlement was reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel