

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

May 2019

NEW CASES

**Bradley Foerster v University of Michigan.** United States District Court, Southern District of New York (Filed March 11, 2019)

Plaintiff is an Associate Professor at The University of Michigan. Plaintiff claims that he faces imminent termination from the University of Michigan as a result of Defendant's violations of the Family Medical Leave Act ("FMLA"). Plaintiff sues for compensatory damages and costs under the FMLA for Interference/Denial and Discrimination/Retaliation including all past, present and future lost wages. Plaintiff also seeks reinstatement to his previous position at the Ann Arbor VA and the University of Michigan. On March 26, 2019, this case was transferred to the United States District Court, Eastern District of Michigan.

**Allstate Insurance Company v University of Michigan Health Plan and Blue Cross Blue Shield of Michigan.** Wayne County Circuit Court (Judge Annette Berry) (Filed February 8, 2019)

A non-party to this lawsuit, Norman Eaton, who was injured in a motor vehicle accident in the State of Michigan, incurred related medical expenses. This litigation involves a priority of coverage dispute between Allstate, and the U of M Health Plan, and BCBSM as the plan administrator and/or insurer, as to health benefits payable to or on behalf of Mr. Eaton for medical expenses incurred by Mr. Eaton arising out of the accident. Plaintiff seeks an Order declaring the U of M Plan and BCBSM provided coverage and should be the primary insurer prior to Allstate's automobile insurance for the payment of medical expenses. Plaintiff further seeks an Order declaring they are entitled to recoup any amounts which Allstate has paid for medical expenses, together with costs, interest, and attorney's fees.

**Karen Zarza v University of Michigan.** United States District Court, Eastern District of Michigan (Judge Arthur Tarnow) (Served March 20, 2019)

Plaintiff was a Supervisor for the University of Michigan's Building Services department. Plaintiff alleges she was terminated from her position in retaliation for opposing Defendant's alleged unlawful employment practices towards a former custodian employee. Plaintiff seeks all lost wages, past and future, compensatory damages, liquidated damages pursuant to the FMLA, punitive and exemplary damages, together with interest, costs, and attorney's fees. Defendant filed a motion for partial dismissal on April 10, 2019.

**Myria Petrou v Ella Kazerooni.** United States District Court, Southern District of New York (Filed April 8, 2019)

Plaintiff was an Associate Professor of Radiology at the University of Michigan until her voluntary resignation on September 30, 2018. Plaintiff, who is proceeding *in pro per*, sues for harm to her professional reputation, professional opportunities and resulting in damages. Plaintiff's claims include defamation, intentional infliction of emotional distress, tortious interference with contract, wrongful death related to a miscarriage, and retaliation. Plaintiff seeks compensatory and punitive damages, interest, costs and attorney's fees.

**Ebony Dawnese Davis v Michigan Medicine University Hospital.** United States District Court, Eastern District of Michigan (Judge Bernard Friedman) (Served March 4, 2019)

Plaintiff was a Storekeeper I at Michigan Medicine and alleges she was terminated from her position after complaining of discrimination. Plaintiff's four-count complaint includes work place discrimination, retaliation and hostile work environment. Plaintiff seeks compensatory damages for lost wages, punitive damages, costs and attorney's fees. Defendant filed a motion to dismiss that was granted on April 18, 2019.

CASE UPDATES

**John Doe v University of Michigan, Board of Regents of the University of Michigan, Pamela Heatlie, Robert Sellers, Martin Philbert, Erik Wessel, Laura Blake Jones, E. Royster Harper, Suzanne McFadden and Paul Robinson.** United States District Court, Eastern District of Michigan (Filed June 4, 2018) (Judge Arthur Tarnow)

Plaintiff, a student at the University of Michigan, alleges violations of the University's Policy and Procedures on Student Sexual and Gender-Based Misconduct and other Forms of Interpersonal Violence (Sexual Misconduct Policy). His five-count complaint includes alleged violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief to include an injunction halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff, and an injunction prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks legal relief to include compensatory, exemplary and punitive damages, interest, costs and attorney's fees. On June 4, 2018, Plaintiff filed an *ex parte* motion to proceed under a pseudonym and a motion for temporary restraining order and preliminary injunction. Defendants' opposition to Plaintiff's motion for preliminary injunction was filed on June 15, 2018. On July 6, 2018, the Court entered its Order Granting In Part and Denying In Part Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. Despite Plaintiff's request for campus-wide changes to the University's policies and procedures, the Court limited its relief to the ongoing investigation regarding Plaintiff's alleged misconduct. The Court ordered that as soon as practicable the University provide Plaintiff with the opportunity for a live hearing in accordance with the procedures set forth in the Statement of Student Rights and Responsibilities. On July 25, 2018, Defendants filed a notice of appeal. Plaintiff filed a response and a cross-appeal. On January 18, 2019, Defendant filed a motion to dismiss the cross-appeal. On April 10, 2019, the court ordered the district court's preliminary injunction be vacated and the Court remanded for reconsideration in light of Baum and the University's interim policy. As a result, Defendant's motion to dismiss was denied as moot.

**Dean Pode, Individually, and Mary Pode, Individually v Survival Flight – Michigan Medicine, University of Michigan Hospital, St. Mary Mercy Livonia Hospital, Hillsdale Hospital, Survival Flight Attendant Mike Chesney, Individually, Survival Flight Attendant John Booth, Individually, and Survival Flight Attendant Laurie Jacobs, Individually.** Livingston County Circuit Court. (Judge Michael P. Hatty) (Served December 11, 2018)

Plaintiff Dean Pode and his wife Mary Pode allege that he was exposed to a dangerous disease when he piloted a survival flight in 2015. His nine-count complaint includes claims for breach of contract and breach of warranty, negligence and gross negligence, failure to warn, detrimental reliance, promissory estoppel, and exemplary damages. Plaintiffs seek compensatory damages, interest, costs, and attorney's fees. On December 26, 2018, Defendants Survival Flight, Michigan Medicine, and University Hospital filed a motion for summary disposition that was granted without prejudice on January 31, 2019. On December 26, 2018, Defendants Chesney, Booth, and Jacobs filed a motion for summary disposition that was denied without prejudice. On March 18, 2019, Defendants Chesney, Booth, and Jacobs filed a motion for partial summary disposition and sanctions that was granted in part.

**Andrew Lipian v University of Michigan and David Daniels.** United States District Court, Eastern District of Michigan (Judge Arthur Tarnow), (Filed October 31, 2018)

Plaintiff, a University of Michigan student in the School of Music, Theater and Dance alleges violations of Title IX of the Education Amendments of 1972 and Michigan's Elliott-Larsen Civil Rights Act. Plaintiff seeks legal relief in the form of compensatory damages, exemplary and punitive damages, interest, costs and attorney's fees. On December 6, 2018, Defendant University of Michigan filed a motion to dismiss. On December 14, 2018, Defendant Daniels filed a counter-claim against Plaintiff. On January 4, 2019, Plaintiff filed a motion to dismiss Defendant Daniels' counter-claim. On February 21, 2019 an Order was entered dismissing Count II of Plaintiff's Complaint and dismissed the counter-claim.

**Rebecca Foster v The University of Michigan, The Board of Regents of the University of Michigan, and Alison Davis-Blake,** in her official capacity as Dean of the Ross School of Business at the University of

Michigan. United State District Court, Eastern District of Michigan. (Judge Bernard Friedman) (Filed May 10, 2017)

Plaintiff is a 2014 graduate of the Executive Masters of Business Administration program (“EMBA”) at the University of Michigan’s Stephen M. Ross School of Business. She filed a one-count complaint claiming a violation of Title IX, alleging that, during her time in the EMBA program, she was stalked and harassed by a fellow EMBA student. Plaintiff claims Defendants failed to provide a prompt and equitable response to Plaintiff’s complaints. Plaintiff seeks repayment for all tuition and related expenses; payment of expenses incurred as consequence of the alleged harassment and retaliation; damages for deprivation of equal access to the educational benefits and opportunities provided by Defendants; damages for lost economic opportunity; and damages for past, present, and future emotional pain and suffering, and ongoing and severe mental anguish. Plaintiff also seeks pre- and post-judgment interest, costs, and attorney’s fees. On March 17, 2017, Plaintiff filed a motion for pseudonymous status or in the alternative to seal the court file. This motion was denied on May 2, 2017. On May 10, 2017, Plaintiff filed a revised Complaint adding Plaintiff Rebecca Foster’s name. On May 24, 2017, Defendant’s filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendant’s filed a motion to dismiss Plaintiff’s first amended complaint that was denied on November 7, 2017. On August 3, 2018, Defendants filed a motion for summary judgment that was granted on February 21, 2019. Plaintiff immediately filed a notice of appeal.

**John Doe v David H. Baum, Susan Pritzel, Tabitha Bentley, E. Royster Harper, and Nadia Bazyz.** United States District Court, Eastern District of Michigan. (David M. Lawson) (Filed September 1, 2016)

Plaintiff is a former student at the University of Michigan. Plaintiffs’ claims arise out of actions taken against him for violating the University’s Policy on Sexual Misconduct by Students. Plaintiff’s three-count complaint included alleged violations of 42 U.S.C. § 1983 regarding Due Process and First Amendment Free Speech. Plaintiff sought removal of all references to allegations or investigation, discipline, or sanctions from his file; immediate reinstatement to the University as a student in good standing; and compensatory, exemplary, and punitive damages, along with interest, costs, and attorney’s fees. Plaintiff filed an Amended Complaint on October 3, 2016, adding Title IX claims and Michigan Elliott-Larson Civil Rights gender discrimination claims. On October 21, 2016, Defendants filed a motion to dismiss that was granted on January 5, 2017. On February 2, 2017, Plaintiff filed a motion to re-open and/or for reconsideration, to amend the complaint, and to vacate order to due process claim based on evidence that was denied. Plaintiff filed a notice of appeal. On September 7, 2018, the United States Court of Appeals for the Sixth Circuit issued an opinion reversing in part the District Court’s ruling and remanding for further proceedings. On September 21, 2018, the University filed a petition for rehearing and rehearing *en banc*, which was denied on October 11, 2018. The case is currently on remand to the District Court. On March 25, 2019, Defendants filed a partial motion to dismiss, as well as claims for punitive and exemplary damages. On April 1, 2019, Plaintiff filed a motion for partial summary judgment.

**Don M. Bosco, Personal Representative of Estate of Heping Zhao v Ameer Raouf.** Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 22, 2017)

Plaintiff, Don M. Bosco, has been appointed as Personal Representative of the Estate of Heping Zhao by the Probate Court of Washtenaw County. Plaintiff claims that, as a result of wrongful acts by former Michigan employee Defendant Raouf, Zhao suffered injuries resulting in his death. Plaintiff seeks economic and non-economic damages, together with costs, interest, and attorney’s fees. On May 22, 2017, Defendant filed a motion to dismiss and for summary disposition that was denied. On August 17, 2017, Defendant-Appellant filed a delayed application for leave to appeal that was denied. Defendant filed a second motion to dismiss on alternative grounds that was denied on July 16, 2018. On July 25, 2018, Defendant-Appellant filed an application for leave to appeal that was denied on December 20, 2018. On May 2, 2019, Defendant filed a motion for summary disposition.

## **CASE RESOLUTION**

**T’Neya Jenkins v The Regents of the University of Michigan Health System, Carelynn Flaughner in her official capacity, Jennifer Stalmack in her official capacity, Sue Kofflin in her official capacity, Linda Gobeski**

in her official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Judge Bernard Freedman) (Served December 14, 2016)

Plaintiff was a Patient Services Assistant in the Women's Birth Center and claimed that, after winning a grievance reversing her discharge, she was subjected to retaliatory conduct, including heightened supervision, improper performance evaluations, and denial of transfer requests. Plaintiff claimed she has suffered emotional distress and has incurred and will continue to incur medical expenses for treatment. She further claimed loss of earnings, benefits, and job opportunities. Plaintiff sought compensatory damages, lost wages and benefits, punitive damages, interest, costs, and attorney's fees. On January 5, 2018, Defendants filed a motion for summary judgment that was granted on March 9, 2018. Plaintiff filed a notice of appeal. On July 27, 2018, the Court dismissed the appeal for failure to file a corrected brief. On July 27, 2018, Plaintiff-Appellant filed a motion to re-open and to file an amended brief that was granted on August 1, 2018. On February 26, 2019, the Sixth Circuit Court of Appeals denied Plaintiff's appeal. On March 31, 2019, the district court entered a judgment for costs in favor of defendant.

**Bin Kang, Ph.D. v. Jianming Li, Ph.D.** Washtenaw County Circuit Court (Judge Carol Kuhnke) (Served January 7, 2019)

Plaintiff, a former postdoctoral fellow at the University's then-Department of Biology alleged that the University failed to credit him on various research publications. His three-count complaint included claims for breach of contract, fraud, and retaliation. Plaintiff sought compensatory damages. On February 4, 2019, Defendant filed a motion for summary disposition that was granted on April 24, 2019.

**The World Leadership Program Institute, a District of Columbia not for profit organization v Mark Tessler, Sherman Jackson, Nancy Burns, and David Howell.** Washtenaw County Circuit Court (Judge David Swartz) (Filed June 30, 2015); **Margaret Cone v Mark Tessler, Sherman Jackson and David Howell.** United States District Court, Eastern District of Michigan (Judge Sean F. Cox) (Filed April 5, 2016)

Plaintiff, The World Leadership Program, filed a claim in state court alleging that defendants wrongfully obtained, handled, and then terminated a grant from the United Arab Emirates that, it contends, would otherwise have funded its activities. Plaintiff claimed breach of contract, fraud, unjust enrichment, and promissory estoppel. Plaintiff sought damages in excess of \$25,000, punitive damages, costs, interest, and attorney's fees. Plaintiff filed a similar complaint in state court against these same named defendants as well as the Board of Regents of the University of Michigan, The Center for Political Studies, and The Institute for Social Research. Defendants filed four motions for summary disposition that were granted by Judge Swartz. Plaintiff filed a motion for reconsideration that was denied. Plaintiff filed an appeal that was denied. In addition, at our request, the court imposed \$5,000 in sanctions on plaintiffs. Contemporaneously, the founder/executive for World Leadership, Margaret Cone, filed another lawsuit in federal court making essentially the same claims. Motions for summary judgment on behalf of all defendants and demand for sanctions were filed on May 5, 2016 and were denied. On December 13, 2017, Defendants filed a Motion for Judgment on the Pleadings that was denied on August 28, 2018. On March 19, 2018, Defendants filed a motion for summary judgment that was granted on April 8, 2019.

**Amy Clements v The Board of Regents of the University of Michigan.** Court of Claims. (Judge Christopher Murray) (Served December 22, 2016)

Plaintiff brought a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff sought damages, including past due benefits, and reinstatement of her eligibility for ongoing benefits, together with interest, costs and attorney's fees. Both Plaintiff and Defendant filed motions for summary disposition. On October 25, 2017, Judge Murray granted Defendant's motion for summary disposition and denied Plaintiff's motion for same. Plaintiff filed a notice of appeal that was denied on February 21, 2019.

**John Haedrich v Joshua Akers, Laura Wolff-Powers, Charlotte Vorms, City University of New York, and University Paris 8.** Wayne County Circuit Court (Judge Cathy M. Garrett) (Filed August 29, 2017)

Plaintiff alleged that Defendant Akers, a professor at the University of Michigan–Dearborn, wrote an article accusing Plaintiff and Sussex Immobilier of operating with malicious intent. Plaintiff's two-count complaint included counts alleging defamation and libel, among other things. Plaintiff sought in excess of \$25,000, special and general damages, together with interest, costs, and attorney's fees. On January 30, 2018, an Order was entered granting Defendants' Motions for Summary Disposition for Qualified Governmental Immunity. On February 28, 2018, Plaintiff filed a claim of appeal. On April 16, 2019, the Court of Appeals affirmed the trial court's dismissal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timothy G. Lynch", written over a horizontal line.

Timothy G. Lynch  
Vice President & General Counsel

May 2019