

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

May 2020

NEW CASES

John Doe (MC 1- 36, 38, 39, 41, 43-54) v University of Michigan and Regents of the University of Michigan, United States District Court, Eastern District of Michigan AND John Doe v University of Michigan and Regents of the University of Michigan, class action. United States District Court, Eastern District of Michigan AND John Doe MC-1 v The University of Michigan and The Regents of the University of Michigan (officially capacity only), jointly and severally. Washtenaw County Circuit Court.

To date, 53 Federal Court lawsuits, including a class action case and a State Court case, have been filed against the University and The Regents of the University of Michigan claiming that while employed as a physician by the University of Michigan from the 1960s until 2003, Dr. Robert Anderson, deceased, used his position to sexually assault university students, many of whom were athletes. Plaintiffs' complaints include alleged violations of Title IX, 42 U.S.C §1983, Elliott-Larsen, negligence, gross negligence, negligence supervision, negligent failure to warn or protect, negligent failure to train or educate, negligent retention, due process, vicarious liability, expressed implied agency, intentional infliction of emotional distress, fraud and misrepresentation. Plaintiffs seek compensatory damages to include medical expenses, loss of earnings, punitive and/or exemplary damages; declaratory, equitable, and/or injunctive relief, including, but not limited to implementation of institutional reform and measures of accountability to ensure the safety and protection of young athletes and other individuals. Plaintiffs also seek interest, costs and attorney's fees. On April 20, 2020, Defendants filed a motion to consolidate all pending MC Federal Court cases. On May 1, 2020, Defendants filed motions to dismiss MC 1-17, 19 and 20.

Kertina Kimbrough v The University of Michigan and Kayce Newcomb, an employee of the University of Michigan sued in her personal and official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Filed February 19, 2020) (Judge Stephanie Dawkins Davis)

Plaintiff was an Administrative Assistant in Michigan Medicine's Department of Psychiatry. Plaintiff alleges she was denied a promotion because of her race. Her two-count complaint alleges race discrimination under Title VII and Michigan's Elliott-Larsen Civil Rights Act. Plaintiff claims she suffered compensatory, economic and non-economic damages, lost wages and benefits, past and future, and she seeks exemplary and liquidated damages. Plaintiff seeks an injunction prohibiting any further acts of wrong doing, together with interest, costs, and attorney's fees. On April 20, 2020, the parties stipulated to the dismissal of the race discrimination claim under Michigan's Elliott-Larsen Civil Rights Act, without prejudice.

Heather Johnson v The University of Michigan, the Regents of the University of Michigan, Debasish Dutta, in his individual capacity, and Christopher Giordano, in his individual capacity. United States District Court, Eastern District of Michigan. (Filed February 13, 2020) (Judge Victoria A. Roberts) AND Heather Johnson v The University of Michigan at Flint, the Regents of the University of Michigan, Debasish Dutta, and Christopher Giordano. Washtenaw County Circuit Court. (Filed February 20, 2019) (Judge David S. Swartz)

Plaintiff has two lawsuits pending in two different courts, both including allegations of unlawful termination. Plaintiff was the Director of the Center for Gender and Sexuality for the University of Michigan-Flint. Plaintiff claims she was terminated from her position in retaliation for reporting violations of federal and state law and for engaging in activities that are protected under the Michigan Whistleblower Protection Act and the Elliott-Larsen Civil Rights Act. Plaintiff's complaints also include alleged violations of Title IX and Sex Discrimination in violation of the Patient Protection and Affordable Care Act. Plaintiff seeks reinstatement, lost wages and related economic damages and compensatory damages for emotional distress and reputational harm. Plaintiff also seeks costs and attorney's fees.

Robert Sherwin v The Board of Regents of the University of Michigan. Court of Claims. (Filed March 3, 2019) (Judge Christopher Murray)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of his long-term disability benefits. Plaintiff seeks past due benefits and to reinstate eligibility for ongoing benefits, together with interest, costs, and attorney's fees.

Kliment Milanov, Trenten Ingell, and all other who are similarly situated v University of Michigan, and Regents of the University of Michigan. Court of Claims. (Served April 26, 2020) (Judge Michael Kelly)

Plaintiffs seek refunds of tuition, room and board, fees, and other applicable costs related to the University's response to the Novel Coronavirus Disease of 2019 pandemic. Plaintiffs' six-count complaint includes claims for breach of contract and unjust enrichment. Plaintiffs request the Court enter a judgement certifying class actions; declaring that the University is financially responsible for notifying members of the classes of the pendency of the lawsuit; declaring that the University has wrongfully kept monies paid for tuition, on-campus housing, meals, and fees; requiring that the University disgorge amounts wrongfully obtained for on-campus tuition, on-campus housing, meals and fees; awarding injunctive relief as permitted by law or equity, including enjoining the University from retaining the prorated, unused monies paid for tuition, on-campus housing, meals and fees; and awarding Plaintiffs' reasonable attorney's fees, costs and expenses.

CASE UPDATES

Karen Wilson v University of Michigan Hospital, and Gregory Lambert. United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Served January 13, 2020)

Plaintiff claims she was forced to resign after allegedly being wrongfully accused of improper conduct and harassed and retaliated against for filing an EEOC charge. Plaintiff claims she has suffered loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem, mental and emotional distress, and loss of pleasures of ordinary life. Plaintiff seeks compensatory damages, economic and non-economic damages, and punitive or exemplary damages, plus costs, interests, and attorney's fees. On March 13, 2020, Defendants filed a partial motion to dismiss Count II of Plaintiff's Complaint.

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 a 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, Defendants filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendants filed a motion to dismiss Plaintiff's first amended complaint, which 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 filed a notice of appeal. On December 4, 2019, the United States Court of Appeals for the Sixth Circuit held oral argument on Plaintiff's appeal. On March 11, 2020, the Sixth Circuit issued an Opinion reversing the district court's dismissal of the lawsuit and remanding for further proceedings. On March 25, 2020, the University filed a petition for rehearing *en banc*. On April 1, 2020, sixteen institutions of higher education filed a motion seeking leave to file an *amicus*

curiae brief supporting the University. On April 6, 2020, Plaintiff filed a response to the petition for rehearing *en banc*. The Sixth Circuit's ruling on the petition remains pending.

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 Tarrow)

Plaintiff, a student at the University of Michigan, was accused of violating 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 alleges violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief, including an injunction (1) halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff and (2) prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks 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. The Court ordered that 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 as soon as practicable.

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 United States Court of Appeals for the Sixth Circuit vacated the district court's preliminary injunction and remanded for reconsideration in light of *Doe v. Baum* and the University's interim policy. On May 22, 2019, Plaintiff filed a second amended complaint. On June 5, 2019, Defendants filed a motion to dismiss the second amended complaint. On June 10, 2019, Plaintiff filed a motion for partial summary judgment. On June 12, 2019, Defendants filed an emergency petition with the Sixth Circuit seeking mandamus relief from the District Court's orders requiring the University's President to appear for a settlement conference on the record and in open court. On June 12, the Sixth Circuit stayed the District Court's Order and on August 23, 2019, granted the petition for a writ of mandamus. On October 21, 2019, Defendants filed a motion requesting that the District Court permit the University to proceed with the student conduct hearing or, in the alternative, promptly rule on the pending dispositive motions. On November 15, 2019, the District Court denied Defendants' motion. On March 16, 2020, Defendants filed a petition for a writ of mandamus with the Sixth Circuit, seeking an order requiring the District Order to permit the University to move forward with the student conduct hearing and to implement the Sixth Circuit's order to reconsider Plaintiff's due process claim in light of the University's interim policy. On March 23, 2020, the District Court entered an Order granting in part and denying in part Defendants' motion to dismiss, granting Plaintiff's motion for partial summary judgment, and denying Defendants' motion to vacate order enjoining student conduct hearing as moot. The District Court dismissed Plaintiff's Title IX claim and declined to exercise supplemental jurisdiction over Plaintiff's Elliott-Larsen Civil Rights Act claim. The District Court declined to dismiss Plaintiff's Fourteenth Amendment Due Process claim on qualified immunity grounds and granted summary judgment in Plaintiff's favor on this claim. On March 24, 2020, the Clerk entered a corresponding Judgment. On March 25, 2020, Defendants filed a Notice of Appeal. On April 10, 2020, Plaintiff filed a motion for injunctive relief, seeking to delay his student conduct hearing. On April 16, 2020, the Court denied Plaintiff's motion as moot after the claimant informed the University that she would no longer participate in a hearing. On April 20, 2020, the Sixth Circuit entered an order dismissing the March 16, 2020 mandamus petition as moot. On April 27, 2020, Plaintiff filed a motion to dismiss the University's appeal as moot. Plaintiff's motion to dismiss, and the University's March 25, 2020 appeal, remain pending. On April 27, 2020, Plaintiff filed a motion to dismiss the March 25 appeal as moot while also seeking to leave the District Court's March 23 Order intact. The motion to dismiss the appeal remains pending. On May 1, 2020, Defendants filed a motion for sanctions against Plaintiff requesting that the Court order reimbursement for the legal fees they expended responding to Plaintiff's improper motion for injunctive relief pending Defendants' appeal and preparing the motion for sanctions.

David St. Pierre v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Matthew F. Leitman) (Served January 22, 2020)

Plaintiff claims age and disability discrimination as a result of his termination of employment. Plaintiff seeks \$100,000,000 in damages. On March 13, 2020, Defendant filed a partial motion to dismiss Plaintiff's Complaint.

Karen Zarza v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Filed September 17, 2019) (Judge David S. Swartz)

Plaintiff has two lawsuits pending concurrently in two different courts. Plaintiff was a Supervisor for the University of Michigan's Building Services department and alleges she was terminated from her position in retaliation for opposing Defendant's alleged unlawful employment practices towards a former employee. Plaintiff's two-count complaint alleges retaliation for exercising rights under PWDCRA and the Worker's Disability Compensation Act. Plaintiff seeks lost wages, past and future, compensatory damage, punitive and exemplary damages, together with interest, costs, and attorney's fees. On January 7, 2020, Defendant filed a motion for summary disposition that was granted on February 12, 2020. Plaintiff filed an appeal on March 2, 2020.

Andrew Lipian v University of Michigan, Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Martin Philbert, Martha Pollack, Steven West, Aaron Dworkin, Mark Schlissel, and Christopher Kendall. 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 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 David Daniels filed a counter-claim against Plaintiff. On January 4, 2019, Plaintiff filed a motion to dismiss Defendant Daniels's counter-claim. On February 21, 2019 an Order was entered dismissing Count II of Plaintiff's Complaint and dismissing the counter-claim. On September 26, 2019, after the court granted leave, Plaintiff filed an amended complaint asserting additional Title IX claims as well as Equal Protection Clause, Due Process Clause, and First Amendment claims under 42 U.S.C. § 1983. Plaintiff also added Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Martin Philbert, Martha Pollack, Steven West, Aaron Dworkin, Mark Schlissel, and Christopher Kendall as defendants. On October 25, 2019, the individual defendants filed a motion to dismiss. On December 13, 2019, all Defendants filed a motion for summary judgment. On April 9, 2020, the district court entered an Opinion and Order granting in part and denying in part Defendants' motion to dismiss and granting in part and denying in part Defendants' motion for summary judgment. All claims against the individual defendants were dismissed. Additionally, all of Plaintiff's claims against the University were dismissed except his Title IX claim alleging that the University's response to sexual harassment was deliberately indifferent. On April 23, 2020, the University filed a motion to certify a portion of the district court's April 9, 2020 Opinion and Order for interlocutory appeal as well as a motion to stay proceedings pending a resolution of any appeal. The motion to certify remains pending.

The Regents of the University of Michigan, a Michigan constitutional corporation v Leica Microsystems, Inc. United States District Court for the Northern District of California. (Judge Lucy Koh) (Filed November 13, 2019)

The University alleges that Defendant Leica Microsystems, Inc. ("Leica") infringes U.S. Patent No. 7,277,169, entitled "Whole Spectrum Fluorescence Detection With Ultrafast White Light Excitation." Leica makes and sells white light laser microscope systems employing the University's patented invention. The University invited Leica to take a license and pay a fair royalty for Leica's use of valuable inventions that are protected by the '169 Patent, but Leica has refused to do so. The University seeks damages and an injunction. Leica moved to dismiss the complaint on January 15, 2020 that was denied on April 30, 2020.

Verint Americas Inc., d/b/a ForeSee Results v The Regents of the University of Michigan, United States District Court for the Northern District of Georgia, Atlanta Division. (Judge J.P. Boulee) (Filed June 25, 2019)

Plaintiff brings this action for declaratory judgment against Defendant to cancel two of UM's trademarks (ASCI as a generic work mark and a stylized logo containing the letters "ACSI"), declare that UM has misused its trademarks, and declare that Plaintiff does not infringe UM's trademarks. Plaintiff seeks costs and attorney's fees. On August 13, 2019, Defendant filed a motion to dismiss that was granted on February 25, 2020. Plaintiff filed a notice of appeal on March 26, 2020.

CASE RESOLUTIONS

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch (sic). United States District Court, Eastern District of Michigan. (Judge Sean Cox) (Served on August 2, 2017)

Plaintiff filed a three-count complaint alleging her employment was terminated in violation of the Americans with Disabilities Act ("ADA"), and in retaliation for making allegations against Defendants and filing EEOC charges. Plaintiff sought an Order requiring Defendant to modify its policies, practices, and procedures; eliminate the application of "best qualified" standard when considering reassignments as a reasonable accommodation; and implement ADA training. Plaintiff also sought back pay, front pay, medical expenses, back benefits, and compensatory damages. On August 23, 2017, Defendants filed a motion to dismiss that was granted and denied in part. On August 20, 2018, Defendants filed a motion for summary judgment that was granted on December 14, 2018. On December 27, 2018, Plaintiff filed a motion for reconsideration that was denied. On April 23, 2019, Plaintiff filed a notice of appeal that was denied on October 17, 2019. Plaintiff filed a petition for rehearing that was denied on November 6, 2019. On January 20, 2020, Plaintiff filed a Petition for Writ of Certiorari to the United States Supreme Court that was denied on April 20, 2020. This case is concluded.

Professor Scott Kurashige, Ph.D., and Professor Emily Lawsin, M.A. v University of Michigan, a Michigan corporation. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed January 10, 2017)

Plaintiff Scott Kurashige, formerly a professor in the Departments of American Culture and History in the College of Literature, Science and the Arts, and Plaintiff Emily Lawsin, a Lecturer IV in the Departments of Women's Studies and American Culture in the College of Literature, Sciences and the Arts, alleged race discrimination, gender discrimination, marital status discrimination, race-based hostile work environment and retaliation, and disability-based discriminatory hostile treatment and retaliation. A trial began December 2, 2019. On December 20, 2019, the jury returned a verdict in favor of Defendant and against Plaintiffs as to all of Plaintiffs' claims.

Pamela Smock v Mark Schlissel, Regents of the University of Michigan, and Andrew Martin. United States District Court, Eastern District of Michigan. (Judge Arthur J. Tarnow) (Filed February 2, 2018)

Plaintiff is a tenured Professor of Sociology in the College of Literature, Science and the Arts. Her lawsuit alleged a violation of due process, the First Amendment, and retaliation, after she was disciplined because her behavior towards students was found to be inappropriate and involved sexually charged discussions. Plaintiff asked that the practices and actions of Defendants be declared unconstitutional. Plaintiff further sought an injunction prohibiting any future acts by Defendants allegedly violating Plaintiff's constitutional rights and an Order removing the investigation from Plaintiff's file and reversing the sanctions. Plaintiff further asked the Court to award her compensatory damages, exemplary damages, lost wages and benefits, interest, costs, and attorney's fees. On March 14, 2018, Defendants filed a motion to dismiss. On May 16, 2018, Plaintiff filed a motion for summary judgment. On November 19, 2018, the court granted Defendants' motion to dismiss in part and denied Plaintiff's motion for summary judgement. On January 24, 2019, Defendants filed a motion to dismiss Plaintiff's claims for damages that was granted and denied in part on May 23, 2019. Settlement has been reached between the parties. This case is concluded.

Deborah Zahn v The University of Michigan Board of Regents and Megdalia Musler. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served December 1, 2019)

Plaintiff was a Staff Specialist in the Department of Surgery and alleged she was terminated because of her age and sex and in retaliation for complaining of unfair treatment. Plaintiff's five-count complaint included alleged violations of the Elliot-Larsen Civil Rights and the Bullard-Plawecki Employee Right to Know Act, and intentional infliction of emotional distress. Plaintiff sought front and back pay, exemplary damages, interest, costs, and attorney's fees. The ELCRA claims seeking equitable relief was transferred to the Court of Claims. The Washtenaw County Circuit Court case stayed the remaining claims until the Court of Claims case is completed. Settlement has been reached between the parties. This case is concluded.

Robert Sugarbaker v Regents of the University of Michigan. Court of Claims. (Filed April 12, 2019) (Judge Christopher Murray)

Plaintiff claimed that, on November 17, 2017, he was struck by a motor vehicle driven by a University of Michigan employee during the scope of his employment, resulting in serious and permanent injuries to Plaintiff. Plaintiff's one-count complaint alleges negligence. Plaintiff sought an amount in excess of \$1,000, together with interest, costs and attorney's fees. Settlement has been reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President and General Counsel

May 2020