

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

June 2013

NEW CASES

Bobbi Polanco v Omnicell, Inc.; South Jersey HealthCare, Inc.; Sentara Healthcare, Inc.; University of Michigan Health Systems, Inc.; Doe's 1-50; ABC Corporations 1-50; and XYZ Partnerships and Associations 1-50. United States District Court for the District of New Jersey (Judge Noel L. Hillman) (Served March 18, 2013)

Plaintiff claims that, on November 14, 2012, a laptop computer owned by Omnicell, Inc., containing Personal Confidential Information ("PCI") of her and thousands of others like her, was stolen out of an employee's car. Plaintiff claims the failure to encrypt the PCI constitutes a violation of HIPAA. Her complaint includes allegations of Breach of State Security Notification Laws; Violations of the New Jersey, Virginia and Michigan Consumer Fraud Laws; Fraud; Negligence; and Conspiracy. Plaintiff seeks certification of a class action and seeks declaratory and injunctive relief, damages, costs, and expert and attorney's fees. On May 31, 2013, the University moved to dismiss the complaint on the grounds that the University is immune from suit under the Eleventh Amendment; the court lacks personal jurisdiction over the University; the plaintiff lacks standing; and the Complaint fails to state a legally viable claim against the University.

David Boyle v. The University of Michigan, a Michigan institution of higher education. Washtenaw County Circuit Court (Judge Nancy Wheeler) (Filed April 29, 2013)

On October 23, 2012, Plaintiff, a resident of the State of California, made a FOIA request of the University for "the complete report prepared by Latham & Watkins" regarding "the possession of child pornography by former medical resident Stephen Jenson." The University denied Plaintiff's request based on the FOIA exemption that permits a public body to withhold "information on or records subject to the attorney-client privilege." Plaintiff asserts that the documents requested are not exempt under this exemption and asks the court to issue a writ of mandamus compelling the University to disclose the report, issue a declaratory judgment that the University violated FOIA, and award Plaintiff attorney's fees, and costs. On June 5, 2013, the University answered the complaint.

Polytorx, LLC, a Michigan Limited Liability Company, v. Regents of the University of Michigan. Court of Claims. (Judge James S. Jamo) (Served May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff alleges that faculty in the Civil Engineering Department used the licensed patent rights to perform research and activities outside the scope of the rights retained by the University in the license, and that the faculty and a former graduate student also collaborated in the misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction (a Korean Company). Plaintiff seeks damages, interest, costs, and attorney's fees.

Bin Kang, PhD. v. The Regents of the University of Michigan. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed May 14, 2013)

Plaintiff, a former postdoctoral fellow at the University's Department of Biology (now known as the Department of Molecular, Cellular and Developmental Biology), alleges that the University failed to credit him on various research publications. His four-count complaint includes claims for Breach of Contract, Fraud, Misrepresentation, and Retaliation. Plaintiff seeks compensatory damages.

CASE UPDATES

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 the University Hospital. She alleges she was harassed and discriminated against based on her age and disability 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. Plaintiff claims she has suffered economic and emotional damages. She seeks judgment against the University, 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 was denied on May 30, 2013.

The Authors Guild, Inc., et. al. v HathiTrust, Regents of The University of Michigan, et al. United States District Court, Southern District of New York. (Judge Harold Baer) (Served October 14, 2011)

Plaintiffs' claim Defendants are violating, or will violate, Plaintiffs' alleged copyrights through Defendants' efforts to: digitize the works in their libraries, create a shared repository through the HathiTrust, and participate in the HathiTrust's Orphan Works Project. Plaintiffs seek injunctive and declaratory relief as well as attorney's fees, and costs. The University, along with its co-defendants, filed a motion for judgment on the pleadings. On August 6, 2012, oral argument was heard by the court on the motions for summary judgment that were filed by all three parties (plaintiffs, the Library Defendants, and the intervening National Federation for the Blind). On October 10, 2012, Judge Baer ruled in favor of the Library Defendants, stating in a written opinion that the HathiTrust was an example of fair use and did not infringe upon copyright laws. Judge Baer also declared that the University of Michigan is an "authorized entity" under the Chaffee Amendment, which gives the University the ability to provide unprecedented access to library patrons who have disabilities. On February 25, 2013, Plaintiffs/Appellants filed their appeal brief in the Second Circuit Court of Appeals. Four amici filed briefs in support of Plaintiffs/Appellees on March 4, 2013. On May 28, 2013, Defendants/Appellees filed briefs in opposition, and 13 amici filed briefs in support of Defendants/Appellees on June 4, 2013.

Joseph Gant v The University of Michigan Hospital and AFSCME, Local 1583. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed December 6, 2012)

Plaintiff was a Custodian for Environmental Services at the University Hospital. He alleged that he was discharged from his position without cause and in retaliation for filing an EEOC charge alleging race discrimination. The complaint also alleges that Plaintiff's Union AFSCME, Local 1583 breached its duty of fair representation in processing Plaintiff's grievance relating to his discharge and discrimination complaint. Plaintiff seeks \$2,000,000.00 in damages. Defendant University filed a motion to dismiss that was granted on March 13, 2013. On June 4, 2013, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals.

Jennifer Dibbern v The University of Michigan, a Domestic Nonprofit Corporation, the Board of Regents of The University of Michigan, a public constitutional body corporate, Mary Sue Coleman, President of The University of Michigan, an individual acting in her official capacity, Rachel S. Goldman, in her individual and official capacity, Tresa Pollock, in her individual and official capacity and Peter Green, in his individual and official capacity. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed December 21, 2012)

Plaintiff was a Graduate Student in Materials Science Engineering at the University. She alleges she was dismissed from the Graduate Program in December 2011 after reporting incidents of peer-to-peer sexual and gender-based harassment in the College of Engineering and retaliated against for attempting to remedy a sexually hostile environment. Plaintiff further alleges the University failed to meet its obligations under Title IX by willfully and knowingly allowing a sexually hostile educational environment to continue. Plaintiff's twelve-count complaint includes claims under Title IX, 42 U.S.C. Section 1983 and the Elliot-Larson Civil Rights Act, as well as claims for negligence, breach of fiduciary duty, emotional distress and invasion of privacy. Plaintiff seeks damages, costs, and attorney's fees. On January 25, 2013, Plaintiff filed an Amended Complaint adding Peter Green as a named defendant and dropping the claims for negligence, breach of fiduciary duty, and emotional distress. On March 4, 2013, Defendants filed a Partial Motion to Dismiss Plaintiff's claims for sexual harassment, sex discrimination, retaliation, and Section 1983 claims for equal protection and first amendment. The parties have agreed to dismiss the Equal Protection/Section 1983 and First Amendment/Section 1983 claims as to the University of Michigan and the Board of Regents of the University of Michigan because they are barred by the 11th Amendment. The parties further agreed to dismiss these counts against the individual Defendants in their official capacities except to the extent that prospective, non-monetary relief is granted. On June 5, 2013, a stipulated order was entered dismissing Defendants University of Michigan and the Board of Regents of the University of Michigan from Counts III (Equal Protection/Section 1983) and V (First Amendment/Section 1983) of Plaintiff's First Amended Complaint based on 11th Amendment immunity. It was further ordered that Defendants, Mary Sue Coleman, Rachel Goldman, Tresa Pollock, and Peter Green, acting in their official capacities, are also dismissed from Counts III and V of Plaintiff's First Amended Complaint, except to the extent that Plaintiff seeks prospective, non-monetary relief. Plaintiff was granted leave to file a second amended complaint.

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 or 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. In Secosky v Sanders, on May 22, 2013, Defendant Sanders' Motion for Summary Disposition, based on governmental immunity, was denied. On May 29, 2013, an appeal as of right was filed. In Beach v. Sanders and Secosky, on May 22, 2013, Sanders' Motion for Summary Disposition, based on governmental immunity, was denied. An appeal as of right was filed by Sanders on June 5, 2013. In Secosky v. Regents, on June 5, 2013, Judge Shelton denied the Regents' Motion for Summary Disposition. The Motion was based upon a claim of defects in the required Notice to the University of the claim. An appeal as of right will be filed. In summary, of the four related cases coming out of the motorcycle/UM van accident, three are on appeal after Judge Shelton denied dispositive motions.

CASE RESOLUTIONS

Brandon Jackson v Susan Marie Schaeffgen, Regents of the University of Michigan, and Farm Bureau Insurance Company. Oakland County Circuit Court. (Judge Michael Warren) (Served August 10, 2012).

Plaintiff was a passenger in a vehicle that was allegedly struck by a University van driven by University employee Schaeffgen. Plaintiff claims that the vehicle in which he was riding was uninsured and that his claim for payment of no-fault personal protection insurance benefits was denied by Defendant Farm Bureau Insurance Company. Plaintiff alleges that he was injured as a result of Defendant Schaeffgen's negligent operation of the University vehicle and that the University is liable for its employee's negligence. He seeks damages in excess of \$25,000. The court dismissed all claims against the University of Michigan with prejudice. The claims against Defendant Schaeffgen remain pending. On February 19, 2013, Defendant Schaeffgen filed a motion for Summary Disposition that was denied by Judge Warren on April 29, 2013. On May 17, 2013, Defendant Schaeffgen filed an appeal. Settlement was reached between the parties and this case is concluded.

Barbara Beeson and Nicholas W. Beeson, individually and as Trustees of the Nicholas Welborn Beeson Trust; Nicholas F. Delbanco and Elena Delbanco; Jane A. Hassinger and Marvin G. Parnes; E. Stuart Hilbert and Barbara Ann Hilbert; and George H. Kuper and Danielle E. Kuper v Mark A. Moyad and Mia M. Moyad; James Sweetnam and Elizabeth Sweetnam; the Dwaine V. Lighthammer Qualified Personal Residence Trust and the Mary J. Lighthammer Qualified Personal Residence Trust; and the University of Michigan. Washtenaw County Circuit Court. (Judge David S. Swartz) (Served October 15, 2012).

The University had been added as a party to a lawsuit between neighbors of the Arboretum regarding use of a path on the defendants' properties that various homeowners used to access the Arboretum across a third homeowner's property. The plaintiffs' counsel did not name the University or the third homeowner (Lighthammer) in the original lawsuit and had not requested any relief from the University or the third homeowner. However, the defendants requested that the University and the third homeowner be added to the lawsuit and the judge required that the University and the third homeowner be named. On April 15, 2013, the University was dismissed from this lawsuit.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel