

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

June 2016

NEW CASES

Michigan Nurses Association and Nadine M. Peterson v Board of Regents of the University of Michigan.
Court of Claims (Judge Cynthia D. Stephens) (Filed May 26, 2016)

The Michigan Nurses Association and Nadine Peterson filed a breach of the Freedom of Information Act (FOIA) claim against the University after their FOIA request to obtain information provided to researchers for a survey on flu vaccinations was denied. Plaintiffs ask the Court to order Defendants to provide the requested public records. Plaintiffs also seeks punitive damages, costs, expenses and attorney's fees.

CASE UPDATES

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 claims she was 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 violations. The parties also 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 Pollack, 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. On June 7, 2013, Plaintiff filed a Second Amended Complaint. On October 19, 2015, Defendants filed a motion for summary judgement. On December 29, 2015, a stipulated Order dismissing Count IX (Invasion of Privacy) was entered, with prejudice. On May 18, 2016 Defendants' motion for summary judgment was granted and denied in part. On June 1, 2016, Plaintiff filed a motion for reconsideration. Trial is scheduled to begin June 28, 2016.

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 PRIL 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 claims breach of contract, fraud, unjust enrichment, and promissory estoppel. Plaintiff seeks damages in excess of \$25,000, punitive damages, costs, interest, and attorney's fees. Plaintiff filed a similar complaint in federal 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. That case was dismissed by the court in April 2015. Defendants filed four motions for summary disposition that were granted by Judge Swartz. In addition, at our request, the court imposed \$5,000 in sanctions on plaintiffs. Plaintiff filed a motion for reconsideration that was denied. Plaintiff filed an appeal. 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.

Detroit Free Press, Inc., a Michigan corporation, and Federated Publications, Inc., a Delaware corporation v The Regents of the University of Michigan, a Michigan corporation. Court of Claims (Judge Michael J. Talbot) (Filed July 8, 2014)

Plaintiffs allege that the University of Michigan violated the Open Meetings Act and the Michigan Constitution. Plaintiffs seek a temporary and permanent injunction. Plaintiffs also seek costs and attorney's fees. Both parties filed motions for summary disposition and oppositions thereto. On June 10, 2015, Judge Talbot granted Defendant's motion for summary disposition and denied Plaintiffs' cross motion. On April 26, 2016, the Michigan Court of Appeals, in a unanimous published opinion, agreed that the University of Michigan is fully complying with the Michigan Constitution, rejected Plaintiffs' arguments, and affirmed the trial court's decision in favor of the University. On June 2, 2016, Plaintiffs applied to the Michigan Supreme Court for leave to appeal.

CASE RESOLUTIONS

Leo Zheng, as Next Friend of Liam Zheng, a minor v University of Michigan, Board of Regents (A Public University). Court of Claims (Judge Stephen Borrello) (Filed October 21, 2015)

Plaintiff, Leo Zheng, alleged the University failed to exercise reasonable care and supervision to ensure his minor son, Liam Zheng, was not allowed to use playground equipment not recommended for a child of his age, and, as a result, he suffered injuries. Plaintiff sought a judgment in excess of \$25,000, including compensatory damages, pain and suffering, interest, costs, and attorney's fees. Defendants filed a motion for summary disposition that was granted on May 20, 2016.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

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