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THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

July 2013

NEW CASES

Polytorx, LLC a Michigan Limited Liability Company v Antoine Naaman, Sherif El-Tawil, Dong Joo Kim, Ju Young Kim, Ji Yong Kim, and Sambo Construction Machine Co., LTD. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff claims the defendants, a current and former faculty member, have engaged in activities that constitute a tortious interference with business relationship and/or contract. Plaintiff alleges the faculty in the Civil Engineering Department engaged in research and activities using the licensed patent rights that were in conflict with the license and collaborating in misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction (a Korean Company).

Mark Wawrzaszek v Paul Guttman, in his official capacity. United States District Court, Eastern District of Michigan. (Judge Julian Abele Cooke) (Filed June 13, 2013)

Plaintiff is a construction services employee at the University and a member of the Skilled Trades Union. Plaintiff alleges that he regularly works more than 40 hours a week because of Defendant's policy mandating that he arrive at his work location at the beginning of his work shift. Plaintiff also alleges he is required to arrive at his work vehicle as much as 15 minutes prior to his 7:00 a.m. start time to arrive on time to his various work locations, causing him to work overtime transporting university vehicles to and from his job assignments. Plaintiff claims he is not paid for this alleged overtime. His one-count complaint states Violations of the Fair Labor Standards Act. Plaintiff seeks an injunction preventing Defendant from continuing to deny him lawful paid work time spent transporting university vehicles to and from his assigned work locations. Plaintiff also seeks fees and costs.

Eldred B. Meadows v University of Michigan, School of Music and Laura Hoffman. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served June 14, 2013)

Eldred Meadows was enrolled in a non-degree program at the School of Music, Theater and Dance, from 1992-1994. His enrollment was suspended for failure to make adequate progress but he continued to visit campus and send disturbing and unwelcomed communications to a School of Music employee. This resulted in U-M Department of Public Safety issuing a trespass and no-contact order. Plaintiff alleges sexual harassment and discrimination based upon race, creed, color, and religion (Muslim). Plaintiff filed a similar suit in 2003 while in prison; that suit was dismissed. Plaintiff seeks full pay for the educational goals for him and his immediate family and grandsons.

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. On June 19, 2013, the Court awarded defendants costs and attorney's fees as a result of a court filing seeking overdue discovery from plaintiff.

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. On May 31, 2013, the Court granted St. Jude's motion to stay the litigation during Patent Office proceedings. The University and St. Jude will resolve the validity of the patent-in-suit at the Patent Office by 2014, and then the University will reopen the district court litigation to resolve its contract claims and any remaining patent claims.

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 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 June 28, 2013, Defendants re-filed their partial motion to dismiss Counts I, II, III, V, VI, VII and VIII of Plaintiff's Second Amended Complaint, and also to dismiss named defendants Rachel Goldman and Peter Green in their individual capacities.

CASE RESOLUTIONS

Bella Osak v Board of Regents of the University of Michigan, Jolanta Grembecka and Tomasz Cierpicki. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Served October 4, 2010).

Plaintiff was employed in the University's Department of Pathology where she worked as a Research Laboratory Specialist. Plaintiff alleged that she was discriminated against because of her age when she was terminated five months after she began working at the University. Plaintiff's claims also included defamation and tortious interference with a business relationship. In her complaint, Plaintiff claimed that Dr. Grembecka defamed her when he accused her of falsifying research data. Plaintiff sought reinstatement, damages, lost wages, interest, costs, and attorney's fees. On February 9, 2011, the court dismissed Plaintiff's age discrimination claim; the claims of defamation and tortious interference with a business relationship remained. A motion for summary disposition on the defamation and tortious interference claims was filed on behalf of the Defendants and granted by Judge Aquilina on August 29, 2011. Plaintiff filed an appeal to the Michigan Court of Appeals on September 20, 2011. The trial court's grant of summary disposition in favor of defendants was affirmed. This case is concluded.

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. On June 25, 2013, the Michigan Supreme Court denied Plaintiff's application for leave to appeal. This case is concluded.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "T. Lynch", with a long horizontal flourish extending to the right.

Timothy G. Lynch
Vice President & General Counsel

July 2013