

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

July 2020

NEW CASES

Eugene Daneshvar v The University of Michigan. Court of Claims. (Served May 11, 2020) (Judge Cynthia Stephens)

Plaintiff filed a one-count complaint alleging violations of the Freedom of Information Act ("FOIA"). Plaintiff requests the Court order the University to provide all documents sought in the FOIA request, apply penalties, and award Plaintiff costs and attorney's fees.

Noelle Benavides v Board of Regents of the University of Michigan operating as the University of Michigan and University of Michigan Hospital. Washtenaw County Circuit Court. (Served April 24, 2020) (Judge Timothy Connors)

Plaintiff was an employee in the Central Sterile Processing Department at the University Hospital and alleges she was terminated due to a disability or perceived disability when she was ordered by her manager to leave work and follow up with her physician when they suspected she was ill. Plaintiff alleges she was tested for Covid-19 and instructed to stay home until she received the results and, as a result, was terminated from her position given her continued pattern of absences. Plaintiff's one-count complaint alleges a violation of the Michigan Persons with Disabilities Act and seeks compensation for lost wages and benefits, compensation based on earning potential and emotional distress damages. Plaintiff also seeks in excess of \$25,000, reinstatement, exemplary damages, interest, costs, and attorney's fees.

Heather Wurster v The Board of Regents of the University of Michigan and Jeffrey S. Desmond, MD. Washtenaw County Circuit Court. (Served June 2, 2020) (Judge Timothy Connors)

Plaintiff was an employee at Michigan Medicine until she was terminated in June 2019. Plaintiff's three-count complaint includes alleged violations of The Elliot-Larsen Civil Rights Act for age discrimination, sex discrimination, and retaliation. Plaintiff claims she has suffered embarrassment, humiliation, pain and suffering and harm to reputation. Plaintiff seeks back pay, front pay, exemplary damages interest, costs, and attorney's fees.

Michael Dooley v Adam Steinberg and Randy Wise Chrysler – U.M. Washtenaw County Circuit Court. (Served March 12, 2020) (Judge David Swartz)

Plaintiff filed a three-count complaint alleging negligence as a result of Defendant Steinberg, a UM employee, driving over his foot, causing serious and permanent injuries. Plaintiff seeks an award in excess of \$25,000, together with costs, interest, and attorney's fees.

Vivian Saroki-Keller v The University of Michigan, a Michigan public university, the University of Michigan-Dearborn, a Michigan public university. United States District Court, Eastern District of Michigan. (Served April 14, 2020) (Judge Laurie Michelson)

Plaintiff was a part-time counseling Psychologist for the University of Michigan-Dearborn campus and alleges she was terminated from her position due to her disability. Plaintiff's two-count complaint includes alleges violations of the Rehabilitation Act, and the People with Disabilities Civil Rights Act ("PWDCRA"). Plaintiff asks the Court to enter a judgment ordering Defendants to reinstate Plaintiff and provide reasonable accommodations necessary for Plaintiff to perform her job. Plaintiff also seeks compensatory damages, exemplary and punitive damages, together with interest, costs, and attorney's fees.

William Elliott Ashford, an individual v **University of Michigan, University of Michigan – Dearborn, Gary Gorski**, an employee of the University of Michigan and the University of Michigan-Dearborn, sued in his personal and official capacity, jointly and severally, and **Jeffrey Evans**, an employee of the University of Michigan and the University of Michigan-Dearborn, sued in his personal and official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Served March 4, 2020) (Judge Terrence G. Berg)

Plaintiff is a police officer for the University of Michigan – Dearborn Police Department and claims he was suspended and threatened with termination in violation of his first amendment rights. Plaintiff's four-count complaint includes alleged violations of The First Amendment, Title IX – retaliation, the Michigan's Whistleblower Protections Act, and retaliation in violation of public policy. Plaintiff seeks compensatory, economic, and noneconomic damages, lost wages and benefits (past and future), and exemplary and punitive damages. Plaintiff also seeks declaratory and equitable relief to include the removal of all discipline related to the claims in this case from his record, together with interest, costs, and reasonable attorney fees,

Jeffrey Majchrzak, Michelle DeJean, Linda Majchrzak-Wagner, Marianne Oster, Lisa Wagner, Greg Majchrzak, Robert Majchrzak, and Steven Majchrzak v **Wayne County, Wayne County Medical Examiner, Carl J. Schmidt, MD and Reggie Harvel**, jointly and severally. United States District Court, Eastern District of Michigan. (Served June 6, 2020) (Judge Mark A. Goldsmith)

Plaintiffs are the siblings of Timothy Williams Majchrzak (deceased), and allege that, after his death, the medical examiner's office conducted an autopsy without their consent and also failed timely to notify the next of kin that the body was in the morgue, resulting in the body remaining in the morgue for over a year. Plaintiffs' four-count complaint includes alleged violations of due process, gross negligence, and intentional infliction of emotional distress. Plaintiffs seek compensatory, exemplary, and punitive damages, together with interest, costs, and attorney's fees.

CASE UPDATES

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. On May 15, 2020, Plaintiff filed a petition for rehearing.

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. The University's petition for rehearing *en banc* was granted on May 15, 2020.

Andre K. Davis v Regents of the University of Michigan, a constitutional body corporate, Sally J. Churchill, individually and in her official capacity; Rebecca Pickus, individually; Marie Visconti, individually and in her official capacity, jointly and servally (sic). United States District Court, Eastern District of Michigan. (Judge Laurie J. Michelson) (Served September 23, 2019)

Plaintiff is incarcerated at the Chippewa Correctional Facility in Kincheloe, Michigan. He alleges the University violated his first amendment and due process rights when he was dismissed from the University's Inside-Out Prison Exchange Program—a class taught to prisoners and students. Plaintiff seeks compensatory damages, punitive damages, interests, and costs. On October 30, 2019, Defendant Visconti filed a motion for summary judgement that was granted on May 14, 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) AND **Andrew Lipian v Jeffery Frumkin, Elizabeth Seney, Pamela Heatlie, Steven West, Aaron Dworkin, Melody Racine, and Christopher Kendall.** Washtenaw County Circuit Court. (Filed March 20, 2020) (Judge David S. Swartz)

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 that were both denied. On June 19, 2020, Defendants removed the State Court case to the Federal Court and filed a motion to dismiss that case the same day. Plaintiff filed a motion for remand claiming Defendants improperly removed Plaintiff's State Court Complaint to Federal Court.

Bryan Richards v County of Washtenaw, Thomas Arnett, Justin Berent, and John Cratsenberg. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed March 13, 2018)

Plaintiff alleges that, while at a University of Michigan football game, law enforcement personnel approached him and falsely accused him of being intoxicated. Plaintiff claims that unlawful and excessive actions by law enforcement caused him injuries and damage. Plaintiff's six-count complaint alleges illegal search and seizure, excessive force, and malicious prosecution, and state-law claims for false arrest/false imprisonment and malicious prosecution. Plaintiff seeks an amount in excess of \$75,000, together with interest, costs, and attorney's fees. On June 20, 2018, Defendant Berent, an UM police officer, filed a motion for summary judgment and motion to stay that was denied. On December 17, 2018, Defendant Berent filed a notice of appeal. On January 11, 2019, an Order was entered to stay proceedings. On June 24, 2020, the Court affirmed the district court's denial of qualified immunity for Plaintiff's excessive force claim but reversed the Court's denial of qualified immunity for the false arrest and malicious prosecution claims and the state law counterparts.

John Doe 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.

Several cases 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; and declaratory, equitable, and/or injunctive relief, including, but not limited to implementation of institutional reforms. Plaintiffs also seek interest, costs, and attorney's fees. On May 1, 2020, Defendants filed motions to dismiss MC 1-17, 19 and 20 that are currently 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. On June 26, 2020, Leica filed a petition with the U.S. Patent and Trademark Office asking for the PTO to review and cancel all claims of the patent-in-suit.

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. The parties stipulated to the dismissal of Count II of Plaintiff's Complaint – Age Discrimination.

CASE RESOLUTIONS

Robert Taylor v. The University of Michigan. United States District Court, Eastern District of Michigan.
(Judge Nancy Edmunds) (Filed May 8, 2017)

Plaintiff is a former custodian for the Building Services department. He alleges that he fell and injured his back and neck at work and that the University failed to accommodate his disability by assigning him to light duty work or finding him another job, in violation of the Americans with Disabilities Act. Plaintiff seeks modification to University policies and an order instructing the University to provide reasonable accommodations to employees, back pay with interest, forward pay, medical expenses, past benefits, restoration of employment, restoration of leave, and compensatory damages. On June 28, 2017, the University filed a motion to dismiss that was granted on March 14, 2018. Plaintiff filed a motion to amend his Complaint, which also was granted on March 14, 2018. On April 2, 2018, Plaintiff filed his amended complaint alleging Rehabilitation Act Violations. On October 2, 2018, Defendant filed a motion to dismiss that was denied. On July 25, 2019, Defendant filed a motion for summary judgement that was granted on May 28, 2020.

John Doe v David H. Baum, Susan Pritzel, Tabitha Bentley, E. Royster Harper, and Nadia Bazzy. 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. Plaintiff's 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. On March 26, 2019, Plaintiff filed a motion for interim attorney's fees. On April 1, 2019, Plaintiff filed a motion for partial summary judgment. On September 30, 2019, the District Court entered an opinion, which granted in part and denied in part the post-remand motions. On October 14, 2019, Plaintiff filed a motion for reconsideration. On October 29, 2019, Plaintiff filed a notice of interlocutory appeal. On November 25, 2019, Plaintiff filed a petition for a writ of mandamus with the Sixth Circuit that was denied on February 11, 2020. On December 18, 2019, the District Court denied Plaintiff's motion for reconsideration. Settlement was reached between the parties. This case is concluded.

John Doe v University of Michigan Medical School, University of Michigan Board of Regents, Susan Shore, PhD, and Kevin Lindsey. Washtenaw County Circuit Court. (Judge David Swartz) (Filed September 12, 2019)

Plaintiff was hired as a Post-Doctoral Fellow at the Kresge Hearing Research Institute, Department of Otolaryngology at Michigan Medicine. Plaintiff alleges that Dr. Shore created a hostile work environment by treating him less favorably than similarly situated women in her lab. Plaintiff's three-count complaint includes a hostile work environment, sex discrimination and retaliation. Plaintiff seeks damages, lost wages and benefits; back and front pay; and punitive damages, together with costs, interest, and attorney's fees. On September 20, 2019, Defendants filed a Notice of Transfer to the Court of Claims on the portion of the lawsuit alleging equitable relief (front pay) and request the Washtenaw County Circuit Court matter be stayed until a final judgment on the matter of declaratory or equitable relief. Settlement was reached between the parties. This case is concluded

Respectfully submitted,

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

Timothy G. Lynch
Vice President and General Counsel

July 2020