

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
September 22, 2006

Subject: Litigation

September 2006

I. NEW CASES

1. Lisa Fraiberg v Board of Regents of the University of Michigan. United States District Court, Eastern District of Michigan. (Judge Lawrence P. Zatkoff) (Filed July 19, 2006).

Plaintiff was employed in the Food Services Division of University Housing until her termination in April 2006. She claims that she was discriminated against because of her disabilities. She also claims that the University violated the Family Medical Leave Act and subsequently discriminated against her for having taken FMLA leave. Finally, Plaintiff alleges that she was terminated in violation of the Michigan Whistleblower's Protection Act. She seeks reinstatement, attorney's fees, costs and damages.

2. Megan Newman v University of Michigan. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Served August 14, 2006).

Plaintiff is an employee at the University. She states in her complaint that she went on medical leave to have surgery and the University refuses to put her back to work. She alleges that she is being discriminated against because of her handicap. Plaintiff seeks judgment against the University, including costs, interest and attorney fees.

3. James McGovern v University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed August 21, 2006).

Plaintiff claims that he has been mis-classified as a non-resident for tuition purposes and that he was not afforded the opportunity to provide information to prove his resident status. He seeks classification as a resident for tuition purposes.

II. RESOLUTIONS

There were no resolutions during this period.

III. CASE UPDATES

4. Catherine Wilkerson v University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed December 19, 2003).

Plaintiff was employed as a physician at the University and worked as an emergency room physician in the emergency care unit at Hurley Hospital. She claims that, after she had raised concerns about

women's health issues at the hospital and assisted another female staff member with her claim of sexual harassment, she was retaliated against by her supervisor. Plaintiff alleges that her job was ultimately eliminated in retaliation for complaining about gender discrimination and that alleged promises of another job were not forthcoming. She seeks damages, attorney fees, costs and interest. The University filed a motion for summary disposition, which was denied by the court. The University filed an application for leave to appeal that decision to the Michigan Court of Appeals; on February 3, 2006, the Court of Appeals granted our motion. Oral argument was held on July 11, 2006. On July 25, 2006, the Court of Appeals issued its opinion, reversing the trial court's opinion in part, affirming in part, and remanding for further proceedings. Essentially, the court ruled that plaintiff's claims of discriminatory/retaliatory termination based on the elimination of her position are time-barred. In addition, plaintiff failed to establish a question of fact that she was denied other employment opportunities at the University in retaliation of her complaints of discrimination, with the exception of an opportunity to work certain shifts in the MWorks area. Therefore, according to the court's ruling, the only claim remaining in this case is that allegation relating to the MWorks shifts and that has been remanded for further proceedings. Plaintiff has filed a motion for reconsideration by the Court of Appeals.

5. C. William Kauffman v Regents of the University of Michigan and David Hyland. Washtenaw County Circuit Court. (Judge David Swartz) (Filed October 26, 2000); Michigan Court of Claims (Judge William E. Collette) (Filed November 30, 2000).

Plaintiff is a tenured professor in the Department of Aerospace Engineering at the University. He claims that the chair of the department, David Hyland, appropriated Plaintiff's work on a proposal to create an international aircraft design center without plaintiff's knowledge and without allowing plaintiff to have any involvement in the project. Plaintiff alleges that, because he complained of Hyland's actions to the UM chapter of the American Association of University Professors (AAUP), he has been retaliated against as a whistleblower. He seeks damages, costs, and attorney's fees. The two cases have been consolidated and will be heard before Judge Swartz. The judge granted defendant David Hyland's motion for leave to file a counterclaim against plaintiff. The University filed a motion for partial summary disposition, which was heard on May 14, 2003. The court dismissed Hyland as an individual defendant. Judge Swartz also dismissed the entire Court of Claims complaint and dismissed everything except the Whistleblower claim in the Circuit Court complaint. On October 21, Plaintiff's attorney withdrew and plaintiff had 45 days to retain another attorney. Judge Swartz ruled that, although it appears as though the plaintiff has not retained counsel, the trial will go forward. Plaintiff appealed to the Michigan Court of Appeals, which vacated Judge Swartz' order denying Kauffman's motion for a trial adjournment. Trial was then scheduled for August 23, 2004. Plaintiff voluntarily dismissed his sole remaining claim in the circuit court and appealed Judge Swartz' earlier dismissal of Plaintiff's other claims. On April 26, 2006, the Michigan Court of Appeals upheld the trial court's dismissal. Plaintiff filed a claim of appeal to the Michigan Supreme Court.

6. Pinaki Mazumder v University of Michigan, College of Engineering, Stephen Director, Richard Brown and Promod Khargonekar. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed April 8, 2003). Removed to U.S. District Court, Eastern District of Michigan. (Judge Paul D. Borman).

Plaintiff is a tenured professor in the College of Engineering. In his 414-paragraph complaint, Professor Mazumder alleges that he has been mistreated and discriminated against by the

University and members of the University academic community based on his country of origin (Indian), religion, ethnicity, ancestry and caste (Kayastha). He seeks monetary damages, interest and attorneys' fees. The University removed the case to the United States District Court; it was assigned to Judge Borman. The University filed a motion for partial summary disposition, seeking dismissal of the claims filed against defendant Khargonekar; the motion was granted. The University filed a motion for summary disposition of the case in its entirety, which is scheduled to be heard on February 28, 2005. Plaintiff stipulated to a dismissal of his claims for damages pursuant to FOIA. On March 28, 2005, Judge Borman issued his opinion, dismissing all of Plaintiff's claims in their entirety. Plaintiff filed a claim of appeal *pro se* to the Michigan Court of Appeals, which was denied by the court. Mazumder has filed a request with the Court of Appeals for rehearing *en banc*.

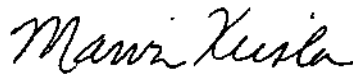
7. Sandra Fernandez v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 17, 2005).

This complaint was filed by a former medical school student. She claims that, while in medical school, she was diagnosed with a medical condition that required her to request accommodations for test taking, which the University provided. Ultimately, however, Ms. Fernandez was dismissed from medical school because of failing grades. She alleges that the University failed to properly accommodate her. She also claims that she was treated differently because of her national origin, which claims she later withdrew voluntarily. Plaintiff seeks judgment against the University, damages, reinstatement, costs, interest and attorney fees. The University filed a motion for summary disposition.

8. Peter J. Hammer v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge James R. Giddings) (Served January 6, 2005).

Plaintiff is an Assistant Professor at the Law School. He alleges that he did not receive tenure because of his sexual orientation, claiming that he relied on the University's promises that he would not be discriminated against based upon his sexual orientation. Mr. Hammer seeks judgment in excess of \$25,000. The University filed a motion for summary disposition and a motion to dismiss, both of which were denied by Judge Giddings. The University filed an interlocutory appeal to the Michigan Court of Appeals; there is a stay of proceedings in the trial court until the appeal has been decided.

Respectfully submitted,



Marvin Krislov
Vice President and General Counsel