

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2017

NEW CASES

Joanne Odom and Reginald Whitlow v University of Michigan and University of Michigan Health System.
Washtenaw County Circuit Court (Judge David S. Swartz) (Served June 14, 2017)

Plaintiffs, supervisors for the hospital's patient transportation department, allege they were discharged from their respective positions because of age. Plaintiffs' claims include violations of the Elliott-Larsen Civil Rights Act. Plaintiffs claim they suffered damages, including lost wages, lost benefits, and emotional pain and suffering, and seek back pay, front pay or reinstatement, exemplary damages, interest, costs, and attorney's fees. Plaintiffs filed similar Complaints in Washtenaw County Circuit Court and in the United States District Court, Eastern District of Michigan. Those Complaints have been dismissed.

Mohib Boutros v University of Michigan. United States District Court, Eastern District of Michigan.
(Judge Sean F. Cox) (Served June 2, 2017)

Plaintiff, a Database Administrator for the University, claims he was discriminated and retaliated against, harassed, and made to endure a hostile work environment because of his alleged disability and/or because he took sick/medical leave, in an effort to constructively discharge and/or terminate his employment. Plaintiff claims he suffered emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life. He seeks lost wages, past and future, compensatory damages, liquidated damages, punitive and exemplary damages, costs, interest and attorney's fees.

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 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 Defendants' policies, and an Order to instruct Defendant to provide reasonable accommodations to employees, back pay with interest, forward pay, medical expenses, back benefits, restoration of employment, restoration of leave and compensatory damages. On June 28, 2017, Defendant filed a motion to dismiss.

Stacy Deitert v. Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served June 23, 2017)

Plaintiff was employed as a patient services associate and claims she was suffering from various medical maladies. Plaintiff claims her request for an accommodation to file for long-term disability and extended sick leave was denied. Plaintiff's claims include violation of the Family Medical Leave Act and the Person's With Disabilities Civil Rights Act. Plaintiff requests an Order awarding her compensatory damages, punitive damages, costs and attorney's fees.

Hassan M. Ahmad, Esq. v University of Michigan. Court of Claims. (Judge Stephen Borrello) (Served June 23, 2017)

Plaintiff filed a Complaint claiming the University of Michigan violated the Freedom of Information Act ("FOIA"). Plaintiff asks the Court to find that the entirety of the documents responsive to the FOIA request by Defendant be "public records" and that no exemption exists; to issue an Order compelling complete production of the FOIA response no later than 30 days from the date of the Order; and order payment of all penalties and costs. On August 16, 2017, Defendant filed a motion to dismiss.

Dennis Klein v University of Michigan Board of Regents, University of Michigan Medical Center, Jim Harvey, Bob Harris, Bill O'Dell, Chris Schlaps, Maria Brussolo, Denise Seibert, Luis Mello, and Susan Quine, in their personal and professional capacities. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Served July 17, 2017)

Plaintiff, who has been on long-term disability since 2015, claims in the beginning of October 2008, a continuous process began by which he was treated substantially differently than other employees and subjected to workplace harassment at the hands of Defendants either directly or in collusion with Defendant Harvey and that that led to a stroke. Plaintiff's ten-count complaint includes intention infliction of emotional distress, defamation, invasion of privacy, negligent hiring and retention, failure to provide a safe workplace, breach of implied covenant of good faith and fair dealing, violation of Title 42 USC 1983 and 1985, violation of HIPPA, breach of contract (employee agreement), and loss of consortium, society and companionship. Plaintiff seeks damages in the amount of \$4,000,000, and compensatory damages in the amount of \$4,000,000. On August 14, 2017, Defendants filed a motion to dismiss.

Katie Oppenheim, BSN, RN v. Board of Regents of the University of Michigan. Court of Claims. (Judge Christopher M. Murray) (Filed July 18, 2017)

Plaintiff filed a one-count complaint claiming the University of Michigan violated the Freedom of Information Act. Plaintiff seeks a judgment against Defendant for declaratory relief, injunctive relief, punitive damages, costs and attorney's fees.

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch. United States District Court, Eastern District of Michigan. (Judge Mark A. Goldsmith) (Served on August 2, 2017)

Plaintiff files a three-count complaint alleging she was terminated in violation of the Americans with Disabilities Act ("ADA"), and in retaliation for making allegations against Defendants and filing EEOC charges. Plaintiff seeks an Order requiring Defendant to modify its policies, practices, and procedures in compliance with the ADA, eliminate the application of "best qualified" standard when considering reassignments as a reasonable accommodation, and implement ADA training. Plaintiff also seeks back pay, front pay, medical expenses, back benefits, and compensatory damages. On August 23, 2017, Defendants filed a motion to dismiss.

Amy Clements v The Board of Regents of the University of Michigan. Court of Claims. (Judge Mark Boonstra) (Served December 22, 2016)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff seeks damages, including past due benefits, and reinstatement of her eligibility for ongoing benefits, together with interest, costs and attorney's fees.

CASE UPDATES

Arseniy Bakhshersyan v. Regents of the University of Michigan, Erik Wessel, E. Royster Harper, Pamela Heatlie, Daniel Ferency, David Baum, Marita Inglehart, and Arlyn Reed. Court of Claims. (Judge Michael Talbot) (Served May 16, 2017)

Plaintiff, a graduate student in the Masters in Business Administration ("MBA") program sponsored by the Ross School of Business, alleges violations of the Michigan Constitution when he was found to have stalked his former girlfriend after she ended their relationship. Plaintiff was notified of the allegations and given a full and fair opportunity to make his case. Plaintiff was found to have stalked his former girlfriend. Plaintiff appealed in writing. A former federal judge, who serves as the University's external appellate reviewer, affirmed the stalking finding in writing. Plaintiff nonetheless alleges he was denied his constitutional rights under the University's disciplinary process. Plaintiff, who won't take no for an answer, no matter how many times he is told, requests mandatory injunctive and declaratory relief, and seeks sanctions, costs and

attorney's fees. On May 26, 2017, Plaintiff filed a verified motion for order to show cause and for preliminary injunction that was denied. On June 8, 2017, Defendants filed a motion to dismiss. On July 7, 2017, Plaintiff filed an Amended Complaint adding several UM employees as defendants as well as a Title IX claim. In response, Defendants filed a supplemental brief regarding dismissal of the first amended complaint. On July 17, 2017, Plaintiff filed his first renewed motion for preliminary injunctions that was denied on July 21, 2017. Plaintiff also has pending felony criminal charges based on the same pattern of stalking.

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 States 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 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, Defendant's filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendant's filed a motion to dismiss Plaintiff's first amended complaint.

Kimberly Rodriguez v Board of Regents of the University of Michigan, The University of Michigan, and Cathy Kendrick, individually. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed September 5, 2014)

Plaintiff was a registered nurse with the University of Michigan Hospital. She alleges she was discharged from her position after she allegedly became aware and reported that another nurse improperly disposed of a controlled drug. Plaintiff's claims include violations of the Michigan Whistleblower's Protection Act and race discrimination. She seeks damages, costs, interest, and attorney's fees. Defendants filed a motion for summary disposition that was denied on January 19, 2017. Defendants filed an application for leave to appeal that was denied. This does not address the appeal as of right.

Michael Sanders, as Personal Representative for the estate of Nancy Sanders, Deceased v Kenneth Wright. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed July 8, 2014)

Plaintiff claims that defendant, while driving a UM commuter bus, struck Plaintiff's Decedent, Nancy Sanders who later died of injuries. His complaint alleges gross negligence and seeks in excess of \$25,000 in damages with costs, interest, and attorney's fees. Defendant filed a motion for partial summary disposition to dismiss Count II of the First Amended Complaint that was granted on April 26, 2017, without prejudice. On July 11, 2017, Defendant filed a motion for summary disposition on all remaining Counts.

Don M. Bosco, Personal Representative of Estate of **Heping Zhao** v Ameer Raouf. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 22, 2017)

Plaintiff, Don M. Bosco, has been appointed as Personal Representative of the Estate of Heping Zhao by the Probate Court of Washtenaw County. Plaintiff claims that as a result of wrongful acts by former Michigan employee Defendant Raouf, Zhao suffered injuries resulting in his death. Plaintiff seeks economic and non-economic damages, together with costs, interest and attorney's fees. On May 22, 2017, Defendant

filed a motion to dismiss and for summary disposition that was denied. On August 17, 2017, Defendant-Appellant filed a delayed application for leave to appeal.

Timothy Keeler v Hurley Medical Center, Melany Gavulic, in her official and individual capacity, Scott Bonzheim, in his individual capacity, Franz Jaggi, in his individual capacity, and Michael Roebuck, in his individual capacity. United States District Court, Eastern District of Michigan (Judge Bernard A. Friedman) (Filed April 4, 2016)

Plaintiff, a physician's assistant with Hurley Medical Center, asserts claims pursuant to 42 USC § 1983 against Defendants for alleged violation of his procedural due process rights and First Amendment rights of speech, association, and right to petition the government. Plaintiff claims he has suffered emotional distress, humiliation, mental anguish, and seeks back pay, lost wages, punitive damages, together with costs, interest and attorney's fees. On May 1, 2017, Defendants' filed a motion for summary judgment.

Joshua Wade v University of Michigan. Court of Claims (Judge Cynthia Stephens) (Served June 15, 2015).

Plaintiff, who achieved notoriety for bringing a handgun into a choir concert at an Ann Arbor high school, claimed that his constitutional rights were violated when he applied for and was denied a personal waiver to carry a firearm on campus, despite not working, studying, or living on campus. He asked the Court to declare that Defendant's Ordinance to Regulate Parking and Traffic, and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan ("Ordinance"), violates the Michigan, and U.S. Constitutions. Plaintiff further sought that Defendant be enjoined from enforcing the Ordinance. Defendant filed a motion to dismiss that was granted by Judge Stephens. On January 4, 2016, Plaintiff filed an appeal to the Michigan Court of Appeals. On June 6, 2017, the Michigan Court of Appeals affirmed the trial Court's decision granting defendant's motion for summary disposition and dismissing plaintiff's entire complaint. Plaintiff has sought leave to the Supreme Court to appeal the Court of Appeals decision.

Eugene D. Daneshvar v Daryl R. Kipke, and NeuroNexus Technologies, Inc. United States District Court, Eastern District of Michigan (Judge Stephen J. Murphy) (Filed June 6, 2013)

Plaintiff, a doctoral candidate at the University of Michigan, College of Engineering, alleges that, after disclosing his inventions to defendant Daryl Kipke, plaintiff's faculty advisor, Defendants used Plaintiff's inventions for their own benefit. His three-count complaint alleges fraud, breach of fiduciary duty, and unjust enrichment, and seeks exemplary damages, and costs. The lawsuit was filed in Washtenaw Circuit Court; but, on July 18, 2013, defendant NeuroNexus removed it to federal court in the Eastern District of Michigan. NeuroNexus filed an answer on July 18, 2013 on behalf of both Defendants, denying all liability and filing counterclaims for (a) a declaration of non-inventorship of Plaintiff, and (b) defamation of defendant Kipke. On November 19, 2014, the Court ordered Plaintiff to show cause why his Complaint should not be dismissed for lack of prosecution. On December 1, 2014, the Court lifted the stay of litigation. On January 23, 2015, Defendants filed a motion for partial judgment on the pleadings that was granted and denied in part. On July 13, 2015, Defendants filed a motion for summary judgment. The parties were not successful in setting the lawsuit through court-ordered mediation and are awaiting a decision on the July 13, 2015 motion for summary judgment filed by the defendants. On March 24, 2017, the Court ruled on several non-dispositive motions, including (a) granting in part defendants' motion to strike plaintiff's declaration made in opposition to the motion for summary judgment; (b) denying plaintiff's motion to compel discovery against the University; (c) granting plaintiff's motion for additional briefing on disputed patent claim terms, potentially relevant to the motion for summary judgment; and (d) granting one firm's motion to withdraw as counsel for plaintiff and denying another firm's motion to withdraw as counsel for plaintiff. On July 19, 2017, the Court granted Defendants' motion for summary judgment on all of Plaintiffs' claims and denied Defendants' motion for summary judgment of liability on Defendants' defamation counterclaim.

CASE RESOLUTION

Tracy Honeycombe v University of Michigan. Washtenaw County Circuit Court. (Judge Carol Kuhnke)
(Served September 21, 2016)

Plaintiff was a Phlebotomist with the University of Michigan Health Service. She claimed Defendant terminated her from her position because of her disabilities. Plaintiff sought damages in excess of \$25,000 and compensation for back pay and benefits. Plaintiff also sought interest and attorney's fees. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

September 2017