

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

September 2019

NEW CASES

Verint Americas Inc., d/b/a ForeSee Results v The Regents of the University of Michigan. United States District Court for the Northern District of Georgia, Atlanta Division. (Judge J.P. Boulee) (Filed June 25, 2019)

Plaintiff brings this action for declaratory judgment against Defendant to cancel UM's trademarks, declare that UM has misused its trademarks, and declare that Plaintiff does not infringe UM's trademarks. Plaintiff seeks costs and attorney's fees. On August 13, 2019, Defendant filed a motion to dismiss.

Patricia Tracy v Board of Regents of the University of Michigan. Court of Claims. (Judge Michael Kelly) (Served August 2, 2019)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff seeks an amount in excess of \$25,000, an accounting from Defendant as to Plaintiff's rate of LTD benefits, an Order instructing Defendant to file the LTD Plan and all documents constituting Plaintiff's claim file, together with interest, costs and attorney's fees.

Brennan Cain v University of Michigan-Dearborn, University of Michigan. United States District Court, Eastern District of Michigan. (Judge Matthew Leitman) (Served August 30, 2019)

Plaintiff, a former Secretary Intermediate for Dearborn's CASL department, claims she was terminated due to her alleged disability and suffered retaliation in violation of the FMLA. Plaintiff seeks damages, interest, costs and attorney's fees. Plaintiff filed a similar Complaint with this same court in 2018 that was dismissed.

CASE UPDATES

John Doe v University of Michigan, Board of Regents of the University of Michigan, Pamela Heatlie, Robert Sellers, Martin Philbert, Erik Wessel, Laura Blake Jones, E. Royster Harper, Suzanne McFadden and Paul Robinson. United States District Court, Eastern District of Michigan (Filed June 4, 2018) (Judge Arthur Tarnow)

Plaintiff, a student at the University of Michigan, alleges violations of the University's Policy and Procedures on Student Sexual and Gender-Based Misconduct and other Forms of Interpersonal Violence (Sexual Misconduct Policy). His five-count complaint alleged violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief to include an injunction halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff, and an injunction prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks legal relief to include compensatory, exemplary and punitive damages, interest, costs and attorney's fees. On June 4, 2018, Plaintiff filed an *ex parte* motion to proceed under a pseudonym and a motion for temporary restraining order and preliminary injunction. Defendants' opposition to Plaintiff's motion for preliminary injunction was filed on June 15, 2018. On July 6, 2018, the Court entered its Order Granting In Part and Denying In Part Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. The Court ordered that as soon as practicable the University provide Plaintiff with the opportunity for a live hearing in accordance with the procedures set forth in the Statement of Student Rights and Responsibilities. On July 25, 2018, Defendants filed a notice of appeal. Plaintiff filed a response and a cross-appeal. On January 18, 2019, Defendant filed a motion to dismiss the cross-appeal. On April 10, 2019, the United States Court of Appeals for the Sixth Circuit vacated the district court's preliminary injunction and remanded for reconsideration in light of *Doe v. Baum* and the University's interim policy. On May 22, 2019, Plaintiff filed a second amended complaint and a motion for interim attorney fees on May 23, 2019. On June

5, 2019, Defendants filed a motion to dismiss the second amended complaint. On June 10, 2019, Plaintiff filed a motion for partial summary judgment. On July 12, 2019, Defendants filed an emergency motion to the sixth circuit seeking mandamus relief from the Court's orders requiring the University's President to personally appear for a settlement conference on the record and in open court that was granted on August 8, 2019.

**Karen Zarza v University of Michigan.** United States District Court, Eastern District of Michigan (Judge Arthur Tarnow) (Served March 20, 2019)

Plaintiff was a Supervisor for the University of Michigan's Building Services department. Plaintiff alleges she was terminated from her position in retaliation for opposing Defendant's alleged unlawful employment practices towards a former custodian employee. Plaintiff seeks lost wages, compensatory damages, liquidated damages pursuant to the FMLA, punitive and exemplary damages, together with interest, costs, and attorney's fees. Defendant filed a motion for partial dismissal on April 10, 2019 that was granted on August 5, 2019.

**Michael Heinrich v. Marvin Pettway, Michael Rutkofske, and Robert Miller.** Washtenaw County Circuit Court. (Judge David S. Swartz) (Served October 15, 2018)

Plaintiff alleges that defendants were reckless and negligent over a period of years in the course of their work as foresters after a tree fell on him. Plaintiff seeks in excess of \$25,000 for all damages, including exemplary damages, together with costs, interests and attorney's fees. On May 31, 2019, Defendants filed a motion for summary disposition, which the Court granted on June 26, 2019. On July 29, 2019, Plaintiff filed a claim of appeal.

**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.

**Tanisha Brown v University of Michigan Health System, Michigan Health Corporation F/K/A Michigan Medicine, Inc. University of Michigan Dialysis Clinics-Livonia A/K/A Livonia Center for Specialty Care, Dr. Sanjeevkumar R. Patel, and Dr. Panduranga Sadashiva Rao.** Wayne County Circuit Court. (Judge Edward Ewell, Jr.) (Served August 31, 2018)

Plaintiff was a patient of Michigan Medicine receiving dialysis treatment. She alleges Defendants harassed her and withheld public accommodations that included removal from the transplant list. Plaintiff's three-count complaint includes alleged race discrimination and retaliation as well as Michigan Public Accommodations Law violations. Plaintiff claims she has suffered emotional anxiety, embarrassment, and humiliation. Plaintiff seeks compensatory and exemplary damages, costs, interest and attorney's fee. On August 29, 2019, Defendants filed a motion to dismiss for failure to appear for deposition and lack of progress; it was granted without prejudice on September 9, 2019.

The Regents of the University of Michigan v Shamrock Structures, LLC. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed September 231, 2018)

The University filed a breach of contract claim against Defendant for breaching the Beam Subuse Agreements it has with the University. The University seeks a past-due amount owed of \$97,987.56, including interest, costs and fees, as permitted by the Beam Subuse Agreement. Plaintiffs filed and were granted a default judgment for defendant's failure to appear. The University sought to enforce the judgment in Delaware and was successful on May 7, 2019. Defendants are proceeding with garnishment actions to aid in recovery.

### CASE RESOLUTION

Elia Companies, LLC, a Michigan limited liability company v Regents of the University of Michigan, a Michigan constitutional corporation. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed August 9, 2018)

Plaintiff owns and operates restaurants, including several coffee shops through various wholly owned subsidiaries and related entities. The parties were in dispute over the termination of a lease for certain premises located in the University of Michigan Union. Plaintiff's six-count complaint included alleged breach of contract, breach of covenant for quiet possession, use and enjoyment, conversation, unjust enrichment and alleged violations of Michigan's lock-out statute. Plaintiff sought in excess of \$25,000, interest, costs, and attorney's fees. On June 18, 2019 Defendant filed a motion for summary disposition that was granted with prejudice on August 23, 2019.

Shannon Hester v Jeremia Walter Brabbs. Washtenaw County Circuit Court (Judge David Swartz) (Served November 16, 2017)

Plaintiff was a passenger in a vehicle being transported from a medical appointment at the University. Defendant is a University employee who, while operating a university vehicle, allegedly rear-ended the transport vehicle, causing severe injuries. Plaintiff sought an amount in excess of \$25,000, together with interest, exemplary damages, costs and attorney's fees. Defendant filed a motion for summary disposition that was granted with prejudice on May 2, 2018. On October 10, 2018, Plaintiff filed an appeal that was denied on August 15, 2019.

Carole Ramm v Richard Auchus. Court of Claims (Served December 18, 2018) (Judge Christopher Murray)

Plaintiff alleged that, after her resignation on or about December 2017, she applied for and was denied several positions at the University because of Defendant's alleged negative references to potential employers. Her one-count complaint claimed defamation, and she sought lost wages, benefits, past and future, emotional distress damages, exemplary and punitive damages, and interest, costs, and attorney's fees. Plaintiff also asked that Defendant be ordered to retract his alleged defamatory statements and cease and desist making such statements. Settlement was reached between the parties. This case is concluded.

Dean Pode, Individually, and Mary Pode, Individually v Survival Flight – Michigan Medicine, University of Michigan Hospital, St. Mary Mercy Livonia Hospital, Hillsdale Hospital, Survival Flight Attendant Mike Chesney, Individually, Survival Flight Attendant John Booth, Individually, and Survival Flight Attendant Laurie Jacobs, Individually. Livingston County Circuit Court. (Judge Michael P. Hatty) (Served December 11, 2018)

Plaintiff Dean Pode and his wife Mary Pode alleged that he was exposed to a dangerous disease when he piloted a survival flight in 2015. His nine-count complaint included claims for breach of contract and breach of warranty, negligence and gross negligence, failure to warn, detrimental reliance, promissory estoppel, and exemplary damages. Plaintiffs sought compensatory damages, interest, costs, and attorney's fees. On December 26, 2018, Defendants Survival Flight, Michigan Medicine, and University Hospital filed a motion for summary disposition that was granted without prejudice on January 31, 2019. On December 26, 2018, Defendants Chesney, Booth, and Jacobs filed a motion for summary disposition that was denied without prejudice. On March 18, 2019, Defendants Chesney, Booth, and Jacobs filed a motion for partial summary

disposition and sanctions that was granted in part. Settlement was reached between the parties. This case is concluded.

**Tanya Wallace v Board of Regents of the University of Michigan.** Court of Claims. (Judge Stephen Borello) (Filed June 27, 2018)

Plaintiff brought a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff sought an amount in excess of \$25,000, an accounting from Defendant as to Plaintiff's rate of LTD benefits, an Order instructing Defendant to file the LTD Plan and all documents constituting Plaintiff's claim file, together with interest, costs and attorney's fees. On May 21, 2019, Defendant filed a motion for summary disposition that was denied. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Timothy G. Lynch", written in a cursive style.

Timothy G. Lynch  
Vice President & General Counsel

September 2019