

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2020

NEW CASES

Michele Cederquist v The University of Michigan, The Board of Regents of the University of Michigan, and Kelly Devries, severally and individually. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served July 27, 2020)

Plaintiff was a Patient Services Intermediate for Michigan Medicine's Disease Management department and alleges she was terminated in violation of the Family Medical Leave Act ("FMLA") and in retaliation for exercising her right to return to work when her FMLA leave ended. Plaintiff claims damages for lost wages and benefits; liquidated damages; equitable relief in the form of reinstatement or front pay; and interest, costs, attorney's fees and expert witness fees. Plaintiff voluntarily dismissed this case on August 6, 2020.

Torin Clay v The University of Michigan. Washtenaw County Circuit Court. (Filed August 24, 2020) (Judge Carol Kuhnke)

Plaintiff now has two lawsuits pending concurrently in two different courts alleging he was wrongfully arrested for trespassing in the undergraduate library. In this new Washtenaw County Circuit Court case, Plaintiff's one-count complaint alleges a violation of the Elliott-Larsen Civil Rights Act for race discrimination and seeks compensatory damages, withdrawal and eradication of his suspension, readmission to the University of Michigan, full credit for those academic classes taken and completed while he was suspended from the University of Michigan, interest, costs and attorney's fees. Plaintiff's Court of Claims is currently on appeal.

CASE UPDATES

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 that was granted on July 15, 2020. On April 7, 2020, Defendants filed a motion for summary disposition.

Mark Franklin Hoeltzel v. Margie Pillsbury, Maureen Burke, Sgt. Conners, Det. Lucas, Tom Cargill, Mark Worosz, Det. Parviz, Officer Chalogianis and Lynetta Smith. United States District Court, Eastern District of Michigan. (Judge David Lawsin and Stephanie Dawkins Davis) (Filed October 18, 2019)

Plaintiff is currently incarcerated at the Milan Federal Correctional Institution and alleges unreasonable search and seizure in violation of the Fourth Amendment. Plaintiff seeks damages and injunctive and declaratory relief. On July 30, 2020, Defendants Pillsbury, Burke, Martin-Connors, Lucas, Cargill, Worosz and Chalogianis filed a motion for summary judgement.

John Doe MC et al. v University of Michigan and Regents of the University of Michigan. United States District Court, Eastern District of Michigan, **John Doe v University of Michigan and Regents of the University of Michigan, class action.** United States District Court, Eastern District of Michigan, **John Doe MC v The University of Michigan and The Regents of the University of Michigan (officially capacity only), jointly and severally.** Washtenaw County Circuit Court, **John Doe TF et al. v University of Michigan and Regents of the University of Michigan.** United States District Court, Eastern District of Michigan, **Charles Christian et al. v University of Michigan and Regents of the University of Michigan.** United States District Court, Eastern District of Michigan. **John Doe WL and EB and James Barahal, Ward Black, John W. Herndon, Jr., A.K.A Bill Herndon, David Phipps and Shiva Wheeler, F.K.A Bill Wheeler v University of Michigan and Regents of the University of Michigan.** United States District Court, Eastern District of Michigan. **Mike Robinson and John Doe RS et al. v University of Michigan and Regents of the University of Michigan.** United States District Court, Eastern District of Michigan **and Thomas "Tad" Deluca v University of Michigan and Regents of the University of Michigan.**

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 have alleged violations of Title IX, 42 U.S.C. § 1983, the Elliott-Larsen Civil Rights Act, 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 that are currently pending. On August 11, 2020, the parties stipulated to the dismissal of Plaintiffs' state law claims. The parties have begun the facilitative mediation process with a court-appointed mediator.

Kliment Milanov, Trenten Ingell, and all other who are similarly situated v University of Michigan, and Regents of the University of Michigan. Court of Claims. (Served April 26, 2020) (Judge Michael Kelly)

Plaintiffs seek refunds of tuition, room and board, fees, and other applicable costs related to the University's response to the Novel Coronavirus Disease of 2019 pandemic. Plaintiffs' six-count complaint includes claims for breach of contract and unjust enrichment. Plaintiffs request the Court enter a judgement certifying class actions; declaring that the University is financially responsible for notifying members of the classes of the pendency of the lawsuit; declaring that the University has wrongfully kept monies paid for tuition, on-campus housing, meals, and fees; requiring that the University disgorge amounts wrongfully obtained for on-campus tuition, on-campus housing, meals and fees; awarding injunctive relief as permitted by law or equity, including enjoining the University from retaining the prorated, unused monies paid for tuition, on-campus housing, meals and fees; and awarding Plaintiffs' reasonable attorney's fees, costs and expenses. Defendants filed a motion for summary disposition that was denied. On August 18, 2020, Defendants filed a motion for reconsideration that was denied on August 21, 2020.

CASE RESOLUTIONS

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 that was denied on August 3, 2020.

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 claimed that, as a result of wrongful acts by former Michigan employee Defendant Raouf, Zhao suffered injuries resulting in his death. Plaintiff sought 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 that was denied. Defendant filed a second motion to dismiss on alternative grounds that was denied on July 16, 2018. On July 25, 2018, Defendant-Appellant filed an application for leave to appeal that was denied on December 20, 2018. On May 2, 2019, Defendant filed a motion for summary disposition that was denied on May 30, 2019. On June 3, 2019, Defendant filed a claim of appeal regarding the denial of qualified immunity. On June 20, 2019, Defendant filed an application for leave to appeal the remaining issues. On October 22, 2019, the Court of Appeals granted the application for leave to appeal and consolidated the two appeals. On July 23, 2020, the Court of Appeals reversed the trial court's denial of summary disposition and granted it in favor of defendant.

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 alleged 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 alleged she was tested for Covid-19 and instructed to stay home until she received the results and as a result, she was terminated from her position due to her continued pattern of absences. Plaintiff's one-count complaint alleged a violation of the Michigan Persons with Disabilities Act. Settlement has been reached between the parties. This case is concluded.

Kellen Smith v The University of Michigan, a domestic nonprofit corporation, the Board of Regents of the University of Michigan a public constitutional body corporate, Pam Heatlie, in her individual capacity, Daniel Ferency, in his individual capacity, Sarah Daniels, in her individual capacity, James Henry, in

his individual capacity, and Warde Manuel, in his individual capacity. United States District Court, Eastern District of Michigan. (Filed May 7, 2020) (Judge Bernard Friedman)

Plaintiff filed a complaint against the University and named defendants for their alleged deliberate indifference towards an alleged hostile educational environment created and perpetuated by a fellow student-athlete's repeated sexual harassment and stalking of Plaintiff. Plaintiff's five-count complaint included alleged violations of Title IX for sex discrimination and retaliation, the Michigan Elliott-Larson Civil Rights Act for sex discrimination and retaliation as well as an alleged violation of equal protection. Plaintiff sought compensatory and punitive damages and injunctive relief. Plaintiff also sought costs and attorney's fees. On July 13, 2020, Defendants filed a motion to dismiss. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President and General Counsel

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