

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2022

NEW CASES

Jessica Kemeter v The Board of Regents of the University of Michigan. Court of Claims. (Filed June 29, 2022) (Judge Douglas B. Shapiro)

Plaintiff filed a one-count breach of contract complaint arising out of her allegations that she was denied long-term disability benefits. Plaintiff seeks damages, past due benefits, and reinstatement of her eligibility for ongoing benefits, together with interest, costs, and attorney's fees.

Vanessa Martin v The Board of Regents of the University of Michigan. Court of Claims. (Filed June 29, 2022) (Judge Douglas B. Shapiro)

Plaintiff filed a one-count breach of contract complaint arising out of her allegations that she was denied long-term disability benefits. Plaintiff seeks damages, past due benefits, and reinstatement of her eligibility for ongoing benefits, together with interest, costs, and attorney's fees.

Somangshu Mukherji v University of Michigan Board of Regents; University of Michigan; Susan Collins; Sara Blair. Court of Claims. (Filed June 24, 2022) (Judge Brock Swartzle)

Plaintiff was an Associate Professor in the School of Music, Theory and Dance at the University of Michigan. Plaintiff filed a three-count complaint after he was denied tenure. Plaintiff seeks compensatory damages, reinstatement as a professor with the right to be considered for tenure, removal of negative information related to the second tenure review from his file, together with costs and attorney's fees.

Sylvester Shoner v A.O. SMITH, a Delaware corporation; AJAX MAGNETHERMIC CORPORATION, a Delaware corporation; AMERICAN OPTICAL CORPORATION, a Delaware corporation; AMERON INTERNATIONAL CORPORATION, a Delaware corporation, individually and as successor in interest to BONDSTRAND LTD.; ARMSTRONG INTERNATIONAL, INC., a Michigan corporation, f/k/a ARMSTRONG MACHINE WORKS; ARMSTRONG PUMPS INC., a New York corporation; THE BEHLER-YOUNG COMPANY, a Michigan corporation; THE BOOMER COMPANY, a Michigan corporation; CBS CORPORATION, a Delaware Corporation, f/k/a VIACOM INC., successor by merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC; CLEAVER-BROOKS COMPANY, a Pennsylvania corporation, in its own right and as successor in interest to AQUA CHEM PUMPS; COLLINS & AIKMAN PRODUCTS CO., a Delaware corporation, f/k/a COLLINS & AIKMAN CORPORATION, in their own right and as successor in interest to WICKES CORPORATION and WICKES BOILER COMPANY; COOPER INDUSTRIES, LLC., a Delaware corporation, in its own right and as successor in interest to COOPER INDUSTRIES, INC., as successor in interest to CROUSE HINDS, MCGRAW-EDISON COMPANY and NATIONAL ELECTRIC COIL DIV.; COPES-VULCAN, INC., a Delaware corporation; CRANE CO., a Delaware corporation, f/k/a CRANE COMPANY, f/k/a CRA□JE DELAWARE CO., a Delaware corporation, in its own right and as successor in interest to CRANE CO., an Illinois corp., f/k/a CRANE COMPANY, and as successor in interest to JENKINS BROTHERS, JENKINS CANADA, COCHRANE INC., CHAPMAN VALVE, PACIFIC VALVE, and DEMING PUMPS COMPANY; DAVID BROWN UNION PUMPS COMPANY, f/k/a Union Steam Pump Company of Battle Creek, MI, a Michigan corporation; DETREX CORPORATION, a Michigan corporation, d/b/a THE PACIFIC INDUSTRIAL FURNACE COMPANY, an assumed name; EASTERN MICHIGAN UNIVERSITY, a Michigan constitutional corporation; EATON AEROQUIP LLC, an Ohio corporation f/k/a AEROQUIP-VICKERS in its own right and as successor in interest to AEROQUIP CORPORATION and BARCO MANUFACTURING CO. and GUSTIN BACON DIVISION; EVERLASTING VALVE COMPANY, INC., a Michigan

corporation; F.B. WRIGHTCO., a Michigan corporation; FLOWSERVE CORPORATION, a New York corporation, f/k/a DURCO INTERNATIONAL INC., in its own right and as successor in interest to BW/IP INTERNATIONAL, INC.; FLOWSERVE US INC., a Delaware corporation, in its own right and as successor in interest to EDWARD VOGT VALVE CO.; FORD MOTOR COMPANY, a Delaware corporation; FOSTER WHEELER L.L.C., a Delaware corporation, in its own right and as successor in interest to FOSTER WHEELER CORPORATION; GENERAL ELECTRIC COMPANY, a New York corporation; GOODRICH CORPORATION, a foreign corporation, f/k/a THE B.F. GOODRICH COMPANY; THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation, in its own right and as parent corporation and successor in interest to GOODYEAR CANADA INC.; THE GORMAN-RUPP COMPANY, an Ohio corporation; GOULDS PUMPS, INCORPORATED, a Delaware corporation, in its own right and as successor in interest to MORRIS PUMP CO.; GREENE TWEED & CO., a Pennsylvania corporation; GRINNELL LLC, a Delaware corporation; HARRISON PIPING SUPPLY COMPANY, a Michigan corporation; HONEYWELL INTERNATIONAL INC., a Delaware corporation, in its own right and as successor in interest to HONEYWELL INC.; ALLIED SIGNAL INCORPORATED, f/k/a ALLIED CORPORATION; BENDIX CORPORATION; and WARNER & SWASEY DIVISION and successor in interest to ITT CORPORATION, an Indiana corporation, f/k/a ITT INDUSTRIES, INC., in its own right and as successor in interest to BELL & GOSSETT PUMPS, CONSOLIDATED VALVES and FABRI-VALVE; IU NORTH AMERICA INC., a Delaware corporation, as successor in interest by merger with THE GARP COMPANY and formerly known as THE GAGE COMPANY, a Pennsylvania corporation, f/k/a THE EGAG COMPANY, and as successor in interest to R.H. TAYLOR DIVISION, AP. ENGLEHARDT DIVISION, HARRY W. TAYLOR, LANSING SUPPLY CO., TRIANGLE SUPPLY, TAYLOR ENGINEERING, WESTCO INDUSTRIAL DISTRIBUTORS, REDLON & JOHNSON SUPPLY CORP., and YONKERS SUPPLY; JOHNSTON BOILER COMPANY, a Michigan corporation; K & C SUPPLY, INC., an Ohio corporation, in its own right and as successor in interest to Michigan Industrial Piping Supply Co.; LAMONS METAL GASKET COMPANY, a Delaware corporation; THE MARLO SEALING COMPANY, INC., a Massachusetts corporation, in its own right and as successor in interest to THE MARLO COMPANY, INC.; MCMASTER-CARR SUPPLY COMPANY, an Illinois corporation; METROPOLITAN LIFE INSURANCE COMPANY, a Delaware corporation a/k/a METROPOLITAN INSURANCE COMPANY; MIDLAND ROSS CORPORATION, in its own right and as parent to MIDLAND ROSS ENGINEERING DIVISION and as successor in interest to SURFACE COMBUSTION, an Ohio corporation; NIBCO, INC., an Indiana corporation; NORTHERN BOILER AND MECHANICAL CONTRACTORS, INC., a Michigan corporation; PARKER-HANNIFIN CORP., an Ohio corporation, as Parent Corporation of Parker Packing Division; POWER PROCESS PIPING, INC., a Michigan corporation; RADIATOR SPECIAL TY COMPANY, a North Carolina corporation; RHONE-POULENC AG COMPANY, INC., a New York corporation, in its own right and as successor in interest to RHONE-PAULENC AG COMPANY (f/k/a AMCHEM PRODUCTS, INC./BENJAMIN FOSTER COMPANY); RIC-WIL, INC., an Ohio corporation; RILEY POWER INC., a Massachusetts corporation, f/k/a RILEY STOKER CORPORATION and UNION BOILER COMPANY; SCHAD BOILER SETTING COMPANY, d/b/a SCHAD REFRACTORY CONSTRUCTION COMPANY, a Michigan corporation; SCHNEIDER ELECTRIC USA, INC., a Delaware corporation, f/k/a SQUARE-D COMPANY; SEALITE, INC., a California corporation; SEAWAY MECHANICAL CONTRACTORS, INCORPORATED, a Michigan corporation; SPENCE ENGINEERING COMPANY, INC., a New York corporation; SPIRAX SARCO, INC., a Delaware corporation; STANDARD FUEL ENGINEERING COMPANY, a Delaware corporation; THE STANLEY-CARTER CO., a Michigan corporation; STERLING FLUID SYSTEMS (USA) LLC, a Delaware corporation, f/k/a PEERLESS PUMP COMPANY; TACO, INC., a Rhode Island corporation; THERMO FISHER SCIENTIFIC INC. a/k/a THERMO ELECTRON CORPORATION, a Delaware Corporation, successor in interest to Thermo Terra Tech Company f/k/a THERMOPROCESS SYSTEMS, INC., in its own right and as successor to HOLCROFT/LOFTUS & HOLCROFT, a Delaware UNION CARBIDE CHEMICALS AND PLASTICS COMPANY, INC., successor in interest to UNION CARBIDE, a New York corporation; UNIROYAL, INC., a Delaware corporation, in its own right and as successor in interest to U.S. RUBBER CO.; UNITED CONVEYOR CORPORATION, an Illinois corporation; UNIVERSITY OF MICHIGAN, a Michigan corporation; THE WILLIAM POWELL COMPANY, an Ohio corporation; ZURN INDUSTRIES, LLC., a Delaware corporation, f/k/a ZURN INDUSTRIES INC. and ERIE CITY IRON WORKS; jointly and severally. Wayne County Circuit Court. (Filed June 29, 2022)

Plaintiff claims, in part, that over a period of decades, he was exposed to toxic levels of environmental pollutants, including asbestos fibers, while in the course of his employment with Boone & Darr, Inc. working on projects over which the University had supervision and control. Plaintiff seeks a judgement in excess of \$10,000, together with interests, costs, and attorney's fee.

Grace Foxworthy, Individually and on behalf of all similarly situated individuals v Michigan Medicine. Court of Claims. (Filed July 29, 2022) (Judge Elizabeth L. Gleicher)

Plaintiff filed a four-count complaint after she was terminated from her position as a medical assistant associate. Plaintiff's complaint includes alleged violations of the Fair Labor Standards Act, Improved Workforce Opportunity Wage Act, Persons with Disabilities Civil Rights Act and retaliation, and the Family Medical Leave Act. Plaintiff seeks designation of a class action, unpaid overtime wages, liquidated and compensatory damages, together with interest and attorney's fees.

Ross Barranco and Kathleen Shier v University of Michigan Board of Regents, a state funded university. Defendants jointly and severally. Court of Claims. (Filed June 23, 2022) (Judge Brock A. Swartzle)

Plaintiffs filed a complaint for declaratory and equitable relief after they were removed from the kidney and heart transplant lists for refusing to receive the COVID-19 vaccine. Defendant Michigan Medicine has a requirement that all transplant patients receive the vaccine to remain eligible transplant candidates. Plaintiffs state in their complaint that they have significant and sincere religious and medical objections to taking the vaccine and ask the Court to order Michigan Medicine to restore their place on their respective transplant lists. On August 19, 2022, Defendant filed a motion for summary disposition which remains pending.

The Regents of the University of Michigan and The University of South Florida Board of Trustees v Novartis Pharmaceuticals Corporation. United States District Court, Northern District of California San Jose Division. (Filed August 29, 2022)

The Regents of the University of Michigan filed a one-count complaint for patent infringement of United States Patent No. 10,633,344 under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

Laura Beny v University of Michigan, University of Michigan Law School, and Dean Mark D. West, Individual and professional capacity. United States District Court, Eastern District of Michigan. (Filed August 26, 2022) (Judge David A. Lawson)

Plaintiff is a tenured professor at the Law School who claims she has been subjected to disability, race, and gender discrimination, and related claims, including retaliation. Plaintiff filed a fourteen-count complaint that includes alleged violations of the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), Title VII for race and sex discrimination Title IX, First Amendment, Fifth Amendment, Fourteenth Amendment for Equal Protection and Due Process, Michigan Persons with Disabilities Act (PWDCRA), Elliott-Larson Civil Rights Act (ELCRA) based on sex, race and familial/marital status, hostile work environment under ELCRA, and retaliation. Plaintiff seeks in excess of \$75,000, together with interest, costs and attorney's fees.

CASE UPDATES

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

Plaintiff is currently incarcerated at the Milan Federal Correctional Institution and alleged unreasonable search and seizure in violation of the Fourth Amendment. Plaintiff sought damages and injunctive and declaratory relief. On July 30, 2020, Defendants Pillsbury, Burke, Martin-Connors, Lucas, Cargill, Worosz and Chalagianis filed a motion for summary judgement that was granted on March 30, 2021. On April 22, 2021, Defendant Lynetta Smith filed a motion for summary judgement. On March 17, 2022, all of plaintiff's

claims against all defendants were dismissed with prejudice. Plaintiff filed an appeal that was dismissed on June 28, 2022. On July 7, 2022, Plaintiff filed a motion to reopen time to file an appeal that was granted on July 20, 2022. On July 18, 2022, Plaintiff filed an application for rehearing of his appeal.

Kertina Kimbrough v The University of Michigan and Kayce Newcomb, an employee of the University of Michigan sued in her personal and official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Filed February 19, 2020) (Judge Stephanie Dawkins Davis) AND **Kertina Kimbrough, an individual v Kayce Newcomb, an employee of the University of Michigan sued in her personal and official capacity.** Washtenaw County Circuit Court. (Filed July 8, 2022) (Judge Timothy Connors)

Plaintiff was an Administrative Assistant in Michigan Medicine's Department of Psychiatry. Plaintiff alleges she was denied a promotion because of her race. Her two-count complaint alleges race discrimination under Title VII and Michigan's Elliott-Larsen Civil Rights Act. Plaintiff claims she suffered compensatory, economic and non-economic damages, lost wages and benefits, past and future, and she seeks exemplary and liquidated damages. Plaintiff seeks an injunction prohibiting any further acts of wrongdoing, together with interest, costs, and attorney's fees. On April 20, 2020, the parties stipulated to the dismissal of the race discrimination claim under Michigan's Elliott-Larsen Civil Rights Act ("ELCRA"), without prejudice. On January 29, 2021, Defendants filed a motion for summary judgement. On July 8, 2022, after the court dismissed Plaintiff's ELCRA claim for race discrimination, Plaintiff filed a one-count complaint in state court claiming race discrimination in violation of ELCRA.

Lana Tyrrell v. University of Michigan, Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed August 1, 2018)

Plaintiff is a former employee of the University's Unit for Laboratory Animal Medicine ("ULAM") who claims she was terminated due to her alleged disability. Plaintiff's two-count complaint includes claims for violations of the PWDCRA and retaliation. Plaintiff seeks in excess of \$25,000, interest, costs, and attorney's fees. Defendants filed a motion for summary disposition that was denied on May 2, 2019. On May 21, 2019, Defendants filed a claim of appeal. On December 22, 2020, the Court of Appeals affirmed the denial of the University's motion for summary disposition and remanded back to circuit court for further proceedings. On March 10, 2021, Defendants-Appellants filed an Application for Leave to Appeal in the Michigan Supreme Court. On January 17, 2022, Defendant University of Michigan filed a Notice of Transfer to the Court of Claims as to Plaintiff's demands for declaratory and/or equitable relief and stays the Washtenaw County Circuit Court case as to all matters for which a jury trial has been requested until final judgment on Plaintiff's equitable and declaratory claims. On September 28, 2021, this case was remanded back to the Washtenaw County Circuit Court. On May 26, 2022, Defendants filed a motion for summary disposition that was granted and denied in part on August 18, 2022.

Charles Blackwell v University of Michigan, a state public body. Court of Claim. (Judge Elizabeth L. Gleicher) (Filed February 9, 2022)

Plaintiff filed a one-count complaint alleging violations of the Freedom of Information Act ("FOIA"). Plaintiff requests that the Court order the University to provide all documents sought in the FOIA request in unredacted form, apply penalties, and award Plaintiff costs, and attorney's fees. On March 18, 2022, Defendant filed a motion for summary disposition that was granted on August 12, 2022. On August 13, 2022, Plaintiff filed a claim of appeal.

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. The Patent Trial and Appeal Board of the US Patent and Trademark Office granted institution on January 22, 2021. On January 7, 2022, that Board issued a final decision in Plaintiff's favor that the patent was valid. On February 3, 2022, Defendant filed a notice of appeal.

Karen Zarza v University of Michigan. United States District Court, Eastern District of Michigan (Judge Arthur Tarnow) (Served March 20, 2019) AND **Karen Zarza v Board of Regents of the University of Michigan.** Washtenaw County Circuit Court. (Filed September 17, 2019) (Judge David S. Swartz)

Plaintiff has two lawsuits pending concurrently in two different courts, both include allegations of unlawful termination. Plaintiff was a Supervisor for the University of Michigan's Building Services department and alleges she was terminated from her position in retaliation for opposing Defendant's alleged unlawful employment practices towards a former custodian employee. Plaintiff's complaints allege retaliation for exercising rights under PWDCRA and the Worker's Disability Compensation Act. Plaintiff seeks lost wages, compensatory damages, and liquidated damages pursuant to Section 504 of the federal Rehabilitation Act, punitive and exemplary damages, together with interest, costs, and attorney's fees. Defendant filed a motion for partial dismissal in the federal court case on April 10, 2019, that was granted on August 5, 2019, dismissing plaintiff's state-law based claims. On January 7, 2020, Defendant filed a motion for summary disposition in WCCC that was granted on February 12, 2020. Plaintiff filed an appeal on March 2, 2020. Plaintiff filed a motion for summary judgment in the federal court case that was granted on August 2, 2022. Plaintiff filed a notice of appeal on 31, 2022.

CASE RESOLUTIONS

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

Plaintiff alleged 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 sought 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. On November 19, 2020, the Court of Appeals affirmed the trial court's dismissal of the case based on governmental immunity. On December 20, 2020, Plaintiff filed an application for leave to appeal to the Michigan Supreme Court that was denied on July 28, 2022.

Constance Esposito v The Board of Regents of the University of Michigan. Court of Claims. (Served March 9, 2021) (Judge Cynthia Stephens) and Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed January 25, 2021)

Plaintiff, formerly the Assistant Director of Core Operations at Michigan Medicine-Biomedical Research Core Facilities, alleged age discrimination after her position was eliminated in 2019. Plaintiff sought front and back pay, exemplary damages, interest costs, and attorney's fees. In the Washtenaw County Circuit Court case, the parties stipulated that all claims for declaratory and/or equitable relief be dismissed without prejudice and to stay proceedings in this case until after Plaintiff's case in the Court of Claims is adjudicated. In the Court of Claims case, Defendant filed a motion for summary disposition on April 16, 2021, that was denied on October 5, 2021. Settlement has been reached between the parties. This case is concluded.

Respectfully submitted,

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

Timothy G. Lynch
Vice President and General Counsel

September 2022