

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

November 2011

NEW CASES

The Authors Guild, Inc., The Authors League Fund, Inc., The Australian Society of Authors Limited, Union des Écrivaines et des Écrivains Québécois, Authors' Licensing and Collecting Society, Sveriges Författarförbund, Norsk Faglitterær Forfatter-OG Oversetterforening, The Writers' Union of Canada, Trond Andreassen, Pat Cummings, Erik Grundström, Angelo Loukakis, Helge Rønning, Roxana, Robinson, André Roy, Jack R. Salamanca, James Shapiro, Danièle Simpson, T.J. Stiles and Fay Weldon v HathiTrust; Julia Donovan Darlow, Laurence B. Deitch, Denise Ilitch, Olivia P. Maynard, Andrea Fischer Newman, Andrew C. Richner, S. Martin Taylor and Katherine E. White, in their official capacities as The Regents of The University of Michigan; Richard C. Blum, David Crane, William de la Peña, Russell Gould, Eddie Island, Odessa Johnson, George Kieffer, Sherry L. Lansing, Monica Lozano, Hadi Makarechian, George M. Marcus, Alfredo Mireles, Jr., Norman J. Pattiz, Bonnie Reiss, Fred Ruiz, Leslie Tang Schilling, Bruce D. Varner, Paul Wachter and Charlene Zettel, in their official capacities as The Regents of The University of California; Jeffrey Bartell, Mark J. Bradley, Judith V. Crain, John Drew, Tony Evers, Michael J. Falbo, Edmund Manydeeds, Katherine Pointer, Charles Pruitt, Troy Sherven, Brent Smith, Michael J. Spector, S. Mary Tyler, José F. Vásquez and David G. Walsh, in their official capacities as The Board of Regents of The University of Wisconsin System; William R. Cast, Patrick A. Shoulders, Maryellen Kiley Bishop, Bruce Cole, Philip N. Eskew, Jr., Cora J. Griffin, Thomas E. Reilly, Jr., Derica W. Rice and William H. Strong, in their official capacities as The Trustees of Indiana University; and Cornell University. United States District Court, Southern District of New York. (Judge Harold Baer) (Served October 14, 2011)

Plaintiffs claim Defendants are violating, or will violate, Plaintiffs' alleged copyrights through Defendants' efforts to: digitize the works in their libraries, create a shared repository through the HathiTrust, and participate in the HathiTrust's Orphan Works Project. Plaintiffs seek injunctive and declaratory relief as well as attorneys' fees and costs.

Kimberlyn Malone v James Chulhyun Cho and University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Served September 30, 2011)

Plaintiff claims that on November 24, 2008, a University-owned vehicle driven by Cho struck Plaintiff's vehicle from behind when Cho failed to stop at a traffic light. Plaintiff claims the collision caused her serious and permanent injuries and that Defendant was negligent in the operation of the vehicle. Plaintiff seeks judgment against Defendant in excess of \$25,000, as well as costs, interest, and attorney fees.

Gary Frierson v University of Michigan and John Lund. Washtenaw County Circuit Court. (Judge David S. Swartz) (Served November 1, 2011).

Plaintiff was employed by the University as a food service worker until November 2008. Plaintiff claims he was forced to involuntarily resign after an internal investigation revealed that he had secured UM health insurance benefits for an ineligible person for approximately six years. Plaintiff's claims include malicious prosecution, age discrimination, and intentional infliction of emotional distress. He seeks lost wages, lost medical benefits, attorney fees, costs, and exemplary damages.

## RESOLUTIONS

Keith Yohn v Board of Regents of the University of Michigan, Peter Polverini, Paul Krebsbach and Mark Snyder. Michigan Court of Claims. (Judge Thomas L. Brown) (Filed October 7, 2008).

Professor Yohn's complaint alleges that Paul Krebsbach, Chair of the Biomedical and Materials Science Department in the School of Dentistry, is keeping a secret file on Dr. Yohn to force Plaintiff out of his tenured University appointment. He also alleges that Defendant Snyder committed misconduct by working on his intramural dental patients during work hours, causing Plaintiff to suffer anger and loss of sleep; Plaintiff complained to Dean Polverini and later filed a grievance of Snyder's misconduct. Dr. Yohn also complained that Dr. Krebsbach embarrassed him in front of his fellow faculty members at a faculty meeting, and that later an officer from DPS was sent to his home to ask him about some alleged threats made by Plaintiff at that meeting. Dr. Yohn seeks an order to expunge all evidence of the DPS incident report noted above, jail time for defendants Polverini and Krebsbach, \$3 million for mental anguish and suffering, and exemplary damages. The University's motion for summary disposition was granted by the court on June 24, 2009, thereby dismissing all of Plaintiff's claims with prejudice. Plaintiff contested the proposed order, and a hearing was held on September 2, 2009. The judge granted the University's motion to dismiss the entire case, denied Plaintiff's motion opposing the order of dismissal, denied with prejudice Plaintiff's motion to amend his complaint, and awarded the defendants \$36,000 in costs and fees. Plaintiff filed an appeal with the Michigan Court of Appeals. In addition, Plaintiff filed a motion for an immediate preliminary injunction, asking the Court of Appeals to prohibit defendant Snyder from performing certain of his duties. The Court of Appeals denied the motion for immediate preliminary injunction. Plaintiff filed an Application for Leave to Appeal Prior to Decision by Court of Appeals with the Michigan Supreme Court. On October 26, 2010, the Michigan Supreme Court denied plaintiff's application for leave to appeal. Plaintiff filed a motion in the Court of Appeals for peremptory reversal, which was denied by the court on February 16, 2011. On March 22, 2011, the Court of Appeals ruled unanimously in favor of the University and upheld the lower court's dismissal of Dr. Yohn's lawsuit. Plaintiff filed an application for leave to appeal to the Michigan Supreme Court. On May 17, 2011, the Court of Appeals granted the University's motion for attorney's fees in the amount of \$34,178. Yohn filed a motion for reconsideration of the Court's order which the Michigan Court of Appeals denied on June 30, 2011. On September 30, 2011, the Michigan Supreme Court denied Yohn's application for leave to appeal.

**Alex A. Lemerand v Kevin Sheldon Hartman.** Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed May 29, 2009); **Alex Lemerand v Regents of the University of Michigan.** Michigan Court of Claims. (Filed June 1, 2009).

Plaintiff claims that on June 19, 2006, he was driving in Ann Arbor when his vehicle was struck from the rear by a University of Michigan vehicle driven by UM employee Kevin Hartman. Mr. Lemerand alleges that Mr. Hartman was negligent by driving at an excessive rate of speed, was unable to stop, and failed to drive with due care and caution, among other violations of the Motor Vehicle Code of the State of Michigan. Plaintiff claims that, as a result of the accident, he has suffered serious and permanent injuries and disfigurements. He seeks damages, costs, attorney's fees and interest. Plaintiff filed a companion case in the Michigan Court of Claims against the University of Michigan, which was consolidated with the Washtenaw County case pending before Judge Connors. On May 27, 2010, Judge Connors granted the University's motion for summary disposition based upon plaintiff's failure to comply with the notice requirement of the Court of Claims. On August 5, 2010, the judge granted the motion for summary disposition for the individual defendant Kevin Hartman, concluding the case. Plaintiff filed an appeal to the Michigan Court of Appeals. On October 20, 2011, the court issued its opinion that upheld the lower court's dismissal of the case.

**Terry Majors v The University of Michigan.** United States District Court, Eastern District of Michigan. (Judge Anna Diggs Taylor) (Served October 8, 2010).

Plaintiff was employed as a custodian at the University until his termination on August 12, 2008. He claims that the University terminated him because of his race (African American) and seeks reinstatement, damages, costs and attorney fees. A Stipulated Order of Dismissal with Prejudice (without costs or attorney fees) was entered by the court on October 14, 2011; the case is concluded.

**Steven Rush v Ryan Cavanaugh and University of Michigan.** United States District Court, Eastern District of Michigan. (Judge John Feikens) (Filed August 26, 2010).

Plaintiff claims that he was a passenger in a vehicle that was detained in a routine traffic stop by DPS Officer Cavanaugh. He alleges that Officer Cavanaugh accosted and attacked him, causing him to sustain injuries, pain, shock, humiliation, embarrassment, fright, anxiety, mental anguish and medical expense. Plaintiff's counts include gross negligence and violation of his rights under the Fourth Amendment. He seeks damages in excess of \$75,000 plus costs, interest and attorney fees. Settlement has been reached between the parties; the case is concluded.

## CASE UPDATES

**Linda Martinson** v Lee K. Roosevelt, Joanne Motino Bailey, Kathy Dunnuck. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed October 31, 2008). AND **Linda Martinson** v Jodi Danhof, Sarah Choinard, Erin Flatley and Catherine Scott. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed November 7, 2008). AND **Linda Martinson** v Sarah Soroosh Vandergoot. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed November 9, 2008). AND **Linda Martinson** v Regents of the University of Michigan, Carol Loveland-Cherry, Judith Lynch-Sauer and Bonnie Hagerty. United States District Court, Eastern District of Michigan. (Judge Paul D. Borman) (Served October 5, 2009).

Plaintiff was enrolled in the School of Nursing second career nursing program. She was dismissed from the program. Afterwards, she claimed that her classmates and a faculty member (the named defendants in the State court actions) made defamatory statements to third parties regarding Plaintiff, and that School of Nursing administrators relied upon those false statements to support her expulsion from the program. Ms. Martinson's state court action included defamation and intentional infliction of emotional distress against each of the defendants. She sought damages in excess of \$25,000 plus costs and interest. By stipulation of the parties, the three state court cases were dismissed without prejudice when Plaintiff filed a fourth lawsuit in the U.S. District Court for the Eastern District of Michigan, naming the Regents as well as administrators at the School of Nursing.

In her federal lawsuit, Plaintiff's allegations include various theories alleging violations of federal and state due process rights. Plaintiff seeks declaratory judgment stating that her expulsion from the School of Nursing is null and void, damages, interest, costs and attorney fees. Defendants filed a motion to dismiss and a motion for summary judgment. The motion to dismiss was argued before Judge Borman on August 31, 2011. Judge Borman issued a written opinion dated September 28, 2011 in which he granted the motion in part and denied the motion in part. Judge Borman dismissed all the claims against the University of Michigan and all claims against the individual defendants except for the federal procedural due process claim against the individual defendants. Defendants' motion for summary judgment is still pending before the court.

**Sylvia Scott** v University of Michigan and Sonya Grant. Wayne County Circuit Court. (Judge Prentis Edwards) (Filed December 22, 2010).

Plaintiff is a former employee of the University's School of Public Health. She claims that she was discharged from her employment by her supervisor, Sonya Grant, for refusing to engage in discriminatory and wrongful conduct. Plaintiff alleges that she was retaliated against for witnessing and reporting Grant's discriminatory conduct and that the University violated the Whistleblower Protection Act by discharging her. She also claims that she was subject to a hostile work environment and that she was harassed by Grant throughout her employment. She seeks damages, lost wages, costs, interest, attorney's fees, and reinstatement. Plaintiff has agreed to dismiss with prejudice the retaliation and hostile work environment claims.

**Aiman Farhoud and Souhar Farhoud v Darice Rosario.** Washtenaw County Circuit Court.  
(Judge Timothy P. Connors) (Filed August 1, 2011).

Plaintiff Aiman Farhoud is a patient care technician at the University of Michigan Hospital. Defendant Darice Rosario is a nurse co-worker. Plaintiff Farhoud alleges that Defendant made false accusations against him when she told her supervisors that Farhoud advised a co-worker "go do this procedure before I kill somebody." Plaintiff alleges that Rosario's accusations resulted in his being subjected to investigation by UMH security personnel (after which he was cleared of any wrongdoing) as well as suffering embarrassment, humiliation, mortification, depression, sleeplessness, anxiety, missed time from work, damage to his reputation in the workplace and his community, and lost wages and benefits. Plaintiff Souhar Farhoud (Aiman's wife) claims damage to her reputation in the community, emotional distress, humiliation, mortification, embarrassment, sleeplessness, and anxiety. Plaintiffs seek judgment in excess of \$25,000 plus costs, interest, and reasonable attorney fees. The University filed a motion to dismiss the defamation and emotional distress claims. On October 27, 2011 Judge Connors dismissed the defamation claim but adjourned a ruling on the emotional distress claim. Judge Connors also granted Plaintiff's motion to amend the complaint to add the intentional interference of an advantageous relationship claim.

Respectfully submitted,

  
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Suellen Scarnecchia  
Vice President and General Counsel

November 2011