

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

December 2018

NEW CASES

American Customer Satisfaction Index, LLC v. Genesys Telecommunications Laboratories, Inc. and Interactive Intelligence, Inc. (Hon. Matthew F. Leitman)

The University exclusively licensed its “ACSI” trademark to American Customer Satisfaction Index, LLC (“ACSI LLC”). On August 8, 2017, ACSI LLC filed suit against Interactive Intelligence and its successor in interest, Genesys Telecommunications Laboratories, Inc. (together, “Genesys”) for federal trademark infringement, among other claims. On March 1, 2018, Genesys moved to dismiss the trademark claim based on the failure of ACSI LLC to name the university as a party. On May 31, 2018, the Court found that the University was a necessary party to the claim. On July 27, 2018, the University filed a motion with the Court to become a party in the lawsuit, which was granted.

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 are in dispute over the termination of a lease for certain premises located in the University of Michigan Union. Plaintiff’s six-count complaint includes 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 seeks in excess of \$25,000, interest, costs, and attorney’s fees.

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.

Amy Wang v Board of Regents of the University of Michigan, operating as the University of Michigan and Nancy Hobbs, individually and in her official capacity. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Filed on September 17, 2018)

Plaintiff was the former Director of Procurement Services for the University’s Finance Department. Plaintiff alleges she was terminated from her position in retaliation for her refusal to participate in alleged illegal activity. Plaintiff’s four-count complaint includes alleged violations of the First Amendment, Due Process, Michigan Whistleblowers’ Protection Act, and Retaliation. Plaintiff claims she has suffered loss of earnings and fringe benefits, emotional distress, humiliation and embarrassment, loss of the enjoyment of the ordinary pleasures of everyday life, and loss of the ability to pursue employment of choice. Plaintiff seeks an award of lost wages and benefits, past and future, compensatory and punitive damages, costs, and expert witness and attorney’s fees. On October 17, 2018, the Court dismissed all of Plaintiff’s state law claims, including the alleged violation of the Michigan Whistleblowers’ Protection Act (Count III) and Michigan’s established public policy (Count IV).

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.

Genzyme Corp. and The Regents of the University of Michigan v Apotex Inc. and Apotex Corp. United States District Court for the District of Delaware. **AND Genzyme Corp. And The Regents of the University of Michigan v Teva Pharmaceuticals USA, Inc.** United States District Court for the District of Delaware. (Filed November 14, 2018)

In 2000, U-M, through the Office of Technology Transfer, licensed certain patent rights to Genzyme Corp. Over a period of years, Genzyme developed a drug covered by some of the patent rights, and the FDA approved the marketing and sale of the drug in 2014 for the treatment of certain Gaucher disease patients. In 2018, the named defendants filed an abbreviated new drug application based on Genzyme's FDA drug approval for clearance to market and sell a generic version of the Genzyme drug. In doing so, defendants challenged the validity of at least one of the U-M/Genzyme patents. This is an action by U-M seeking a ruling that the defendant's marketing and sale of the generic drug would infringe U-M's patent rights.

Andrew Lipian v University of Michigan and David Daniels. United States District Court, Eastern District of Michigan (Judge Arthur Tarnow), (Filed October 31, 2018)

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 legal relief in the form of compensatory damages, exemplary and punitive damages, interest, costs and attorney's fees.

The Regents of the University of Michigan v Shamrock Structures, LLC. Washtenaw County Circuit Court. (Judge Archie Brown) (Filed September 23, 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.

CASE UPDATES

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) **AND Lana Tyrrell v Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson.** Court of Claims. (Judge Christopher M. Murray) (Filed July 31, 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 in the Washtenaw County Circuit Court includes violations of the PWDORA and retaliation. Plaintiff seeks in excess of \$25,000, interest, costs, and attorney's fees. On September 13, 2018, Defendant filed a motion for summary disposition. Defendant filed a motion for summary disposition in the Court of Claims case on September 13, 2018.

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, and removed the ADA and retaliation claims. 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.

Professor Scott Kurashige, Ph.D., and Professor Emily Lawsin, M.A. v University of Michigan, a Michigan corporation. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed January 10, 2017)

Plaintiff Scott Kurashige, formerly a professor in the Departments of American Culture and History in the College of Literature, Science and the Arts, and Plaintiff Emily Lawsin, a Lecturer IV in the Departments of Women's Studies and American Culture in the College of Literature, Sciences and the Arts, allege race discrimination, gender discrimination, marital status discrimination, race hostile work environment and retaliation, and disability-based discriminatory hostile treatment and retaliation. Plaintiff Lawsin, who is currently on leave from her Lecturer IV position, seeks reinstatement to her position as a Lecturer IV, to teach without a "remediation plan." Plaintiff Kurashige seeks reinstatement to a tenured full professor position from which he claims he was constructively discharged and reinstatement to the position of Director of the Asian/Pacific Islander American Studies Program. Both Plaintiffs further seek economic and non-economic damages, permanent injunctive relief under the Elliott-Larsen Civil Rights Act and a consent judgment with a timeline for meeting metrics and other necessary actions to come into compliance with ELCRA. On February 22, 2017, Defendant filed a partial motion to dismiss that was granted and denied in part. Plaintiff filed an Amended Complaint. Trial is scheduled for July 1, 2019 in Washtenaw County Circuit Court.

Trevor Le Gassick, as Trustee of the James A. Bellamy Trust, under Trust Agreement dated August 6, 1998, as amended, and as Personal Representative of the Estate of James Bellamy, Deceased v Regents of the University of Michigan and Andrew D. Martin. Probate Court for the County of Washtenaw. (Judge Julia B. Owdziej) (Filed April 23, 2018)

The Trustee of the Bellamy Trust filed a breach of contract claim alleging that the University is not using funds distributed to it in accordance with the intent of the donor. The University submitted a Petition for Instruction to the Washtenaw County Probate Court, requesting the Court determine that the Trustee does not have legal standing to file a claim against the University and seeking an interpretation of the terms of the Trust. Defendants filed a motion for summary disposition that was granted with prejudice on July 19, 2018. On October 30, 2018, Plaintiff filed an appeal.

Pamela Smock v Mark Schlissel, Regents of the University of Michigan, and Andrew Martin. United States District Court, Eastern District of Michigan. (Judge Arthur J. Tarnow) (Filed February 2, 2018)

Plaintiff is a tenured Professor of Sociology in the College of Literature, Science and the Arts. Her lawsuit alleges a violation of due process, the First Amendment, and retaliation, after she was disciplined because her behavior towards students was found to be inappropriate and involved sexually charged discussions. Plaintiff asks that the practices and actions of Defendants be declared unconstitutional. Plaintiff further seeks an injunction prohibiting any future acts by Defendants allegedly violating Plaintiff's constitutional rights and an Order removing the investigation from Plaintiff's file and reversing the sanctions. Plaintiff further asks the Court to award her compensatory damages, exemplary damages, lost wages and benefits, interest, costs, and attorney's fees. On March 14, 2018, Defendants filed a motion to dismiss. On May 16, 2018, Plaintiff filed a motion for summary judgment. On November 19, 2018, the court granted Defendants motion to dismiss in part and denied Plaintiffs motion for summary judgement.

Rebecca Foster v The University of Michigan, The Board of Regents of the University of Michigan, and Alison Davis-Blak, in her official capacity as Dean of the Ross School of Business at the University of Michigan. United State 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 that was denied on November 7, 2017. On August 3, 2018, Defendants filed a motion for summary judgment.

John Doe v David H. Baum, Susan Pritzel, Tabitha Bentley, E. Royster Harper, and Nadia Bazy. United States District Court, Eastern District of Michigan. (David M. Lawson) (Filed September 1, 2016)

Plaintiff is a former student at the University of Michigan. Plaintiffs’ claims arise out of actions taken against him for violating the University’s Policy on Sexual Misconduct by Students. Plaintiff’s three-count complaint included alleged violations of 42 U.S.C. § 1983 regarding Due Process and First Amendment Free Speech. Plaintiff sought removal of all references to allegations or investigation, discipline, or sanctions from his file; immediate reinstatement to the University as a student in good standing; and compensatory, exemplary, and punitive damages, along with interest, costs, and attorney’s fees. Plaintiff filed an Amended Complaint on October 3, 2016, adding Title IX claims and Michigan Elliott-Larson Civil Rights gender discrimination claims. On October 21, 2016, Defendants filed a motion to dismiss that was granted on January 5, 2017. On February 2, 2017, Plaintiff filed a motion to re-open and/or for reconsideration, to amend the complaint, and to vacate order to due process claim based on evidence that was denied. Plaintiff filed a notice of appeal. On September 7, 2018, the United States Court of Appeals for the Sixth Circuit issued an opinion reversing in part the District Court’s ruling and remanding for further proceedings. On September 21, 2018, the University filed a petition for rehearing and rehearing *en banc*, which was denied on October 11, 2018. The case is currently on remand to the District Court.

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 includes 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. Despite Plaintiff's request for campus-wide changes to the University's policies and procedures, the Court limited its relief to the ongoing investigation regarding Plaintiff's alleged misconduct. 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 and motion to stay pending appeal. On August 22, 2018, the court granted Defendants' motion for a stay.

CASE RESOLUTION

Megan Bayagich v Board of Regents of the University of Michigan. Court of Claims (Judge Mark Boonstra) (Filed May 4, 2015) AND **Megan Bayagich v. Alyssa McCullough.** Washtenaw County Circuit Court (Judge Timothy Connors) (Filed May 1, 2015)

Plaintiff, a University of Michigan student, alleged she sustained serious injuries when she fell from a University of Michigan bus. Plaintiff alleged she was ejected through a rear door when it opened without notice while the vehicle was in motion. Plaintiff claimed Defendants failed to engage safety devices and that the bus was overcrowded. The driver of the bus has also been sued on gross negligence grounds. Defendant Board of Regents filed a motion for summary disposition that was granted on June 22, 2015. Plaintiff filed a motion for reconsideration that was denied on July 14, 2015. In Bayagich v McCullough, Plaintiff has filed two amended complaints adding as defendants Gillig LLC, the bus manufacturer, and Vapor Bus International, the rear door equipment supplier. Defendant McCullough filed a motion for summary disposition that was denied. Defendant McCullough sought leave to file an appeal with the Court of Appeals. Settlement has been reached between the parties. This case is concluded.

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

Plaintiff was a patient services associate who claimed she was suffering from various medical issues and that her request for an accommodation to file for long-term disability and extended sick leave was wrongly denied. Plaintiff alleged violations of the Family Medical Leave Act and the Person's With Disabilities Civil Rights Act. Plaintiff requested an Order awarding her compensatory damages, punitive damages, costs and attorney's fees. On September 18, 2017, an Order of partial voluntary dismissal with prejudice was entered dismissing the FMLA claim and any claim for punitive damages or equitable relief under the PWDCRA claim. Defendant filed a motion for summary disposition that was granted with prejudice on October 17, 2018.

Carmen Green v T. Anthony Denton, in his individual capacity. United States District Court, Eastern District of Michigan (Judge David Lawson) (Served January 31, 2018)

Plaintiff, a University of Michigan physician and medical school professor, filed a Complaint alleging retaliation after her administrative appointment as Associate Vice President and Associate Dean for the Office for Health and Equity Inclusion ("OHEI") was terminated. Plaintiff has retained her position as a tenured faculty member. Plaintiff claimed her termination as an Associate Dean was in retaliation for addressing discrimination in access to healthcare and healthcare facilities, addressing racial disparity in patient outcomes, and addressing alleged discriminatory employment practices. Plaintiff sought in excess of \$75,000, lost wages, fringe benefits, exemplary and punitive damages, interest, costs, and attorney's fees. On May 9, 2018, Defendant filed a motion to dismiss the complaint in its entirety and seeking costs. On October 3, 2018, Plaintiff's amended complaint was dismissed with prejudice. Motion for costs was denied.

Bret R. Kelly, Corey Foster, April Smith, and Michigan Nurses Association v The University of Michigan, Michgael J. Beham, in his official and individual capacity as University of Michigan Regent, Mark J. Bernstein, in his official and individual capacity as University of Michigan Regent, Shauna Ryder Diggs, in her official and individual capacity as University of Michigan Regent, Denise Ilitch, in her official and individual capacity as University of Michigan Regent, Andrea Fischer Newman, in her official and individual capacity as University of Michigan Regent, Andrew C. Richner, in his official and individual capacity as University of Michigan Regent, Katherine E. White, in her official and individual capacity as University of Michigan Regent, Michelle Sullivan, in her official and individual capacity as Director of Labor Relations, and Jesus Cepero, in his official and individual capacity as Chief Nursing Officer, jointly and severally. United States District Court, Eastern District of Michigan. (Judge Matthew Leitman) (Filed September 11, 2018)

Plaintiffs filed a lawsuit alleging that the University's refusal to allow nurses to wear t-shirts in patient care areas with slogans such as: "nurses fighting for a fair contract for the good of nurses and patients" violated the First Amendment. Plaintiffs' three-count complaint included alleged violations of the First Amendment, Equal Protection Clause and Due Process under the Fourteenth Amendment. Plaintiffs sought a preliminary and permanent injunction restraining Defendants from applying and enforcing a policy to prohibit Plaintiffs and MNA-represented nurses from wearing apparel and gear displaying pro-union and pro-patient messages. Plaintiffs also sought damages, costs, and attorney's fees. Settlement was reached between the parties. This case is concluded.

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 claimed that defendant, while driving a U-M commuter bus, struck Plaintiff's Decedent, Nancy Sanders, who later died of injuries. The complaint alleged gross negligence and sought 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 that was denied. Defendant filed a notice of appeal. On October 23, 2018, the Court of Appeals reversed the trial Court's decision ordering it to grant summary disposition.

Patrick Baker v Board of Regents of the University of Michigan. Court of Claims (Judge Cynthia Stephens) (Served December 12, 2017)

Plaintiff brought a breach of contract claim against the University out of an alleged denial of his 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. Settlement was reached between the parties. This case is concluded.

Brennan Cain v University of Michigan-Dearborn, University of Michigan. United States District Court, Eastern District of Michigan. (Judge Victoria A. Roberts) (Filed August 5, 2018)

Plaintiff, a former Secretary Intermediate for Dearborn's CASL department, claimed she was terminated due to her alleged disability in violation of the ADA. She also claimed she suffered retaliation in violation of the FMLA. Plaintiff sought damages, interest, costs and attorney's fees. Defendant filed a motion to dismiss that was granted on November 8, 2018.

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, alleged 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 alleged fraud, breach of fiduciary duty, and unjust enrichment, and he 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. 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; 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. On September 7, 2017, Plaintiff filed a notice of appeal. On November 19, 2018, the Court of Appeals for the Federal Circuit affirmed the district court's grant of summary judgment in favor of the defendants.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

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