

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

December 2019

NEW CASES

John Doe v University of Michigan Medical School, University of Michigan Board of Regents, Susan Shore, PhD, and Kevin Lindsey. Washtenaw County Circuit Court. (Judge David Swartz) (Filed September 12, 2019)

Plaintiff was hired as a Post-Doctoral Fellow at the Kresge Hearing Research Institute, Department of Otolaryngology at Michigan Medicine. Plaintiff alleges that Dr. Shore created a hostile work environment by treating him less favorably than similarly situated women in her lab. Plaintiff's three-count complaint includes a hostile work environment, sex discrimination and retaliation. Plaintiff seeks damages, lost wages and benefits; back and front pay; and punitive damages, together with costs, interest, and attorney's fees. On September 20, 2019, Defendants filed a Notice of Transfer to the Court of Claims on the portion of the lawsuit alleging equitable relief (front pay) and request the Washtenaw County Circuit Court matter be stayed until a final judgment on the matter of declaratory or equitable relief.

Andre K. Davis v Regents of the University of Michigan, a constitutional body corporate, Sally J. Churchill, individually and in her official capacity; Rebecca Pickus, individually; Marie Visconti, individually and in her official capacity, jointly and servally (sic). United States District Court, Eastern District of Michigan. (Judge Laurie J. Michelson) (Served September 23, 2019)

Plaintiff is currently incarcerated at the Chippewa Correctional Facility in Kincheloe, Michigan. He alleges the University violated his first amendment and due process rights when he was dismissed from the University's Inside-Out Prison Exchange Program—a class taught to prisoners and students. Plaintiff seeks compensatory damages, punitive damages, interests, and costs.

Torin Clay v University of Michigan, a Michigan public body. Court of Claims. (Judge Michael J. Kelly) (Served September 26, 2019)

Plaintiff was an undergraduate student at the University of Michigan. Plaintiff alleges that, on September 2, 2017, after being separated from his friends after a party, he went in the Shapiro Undergraduate Library to charge his phone and he fell asleep. He claims that after he was awoken by campus police, they asked him to leave the library and he refused. Plaintiff claims he was wrongfully arrested for trespassing and subsequently banned from the library. Plaintiff's three-count complaint alleges unreasonable search and seizure and a denial of equal protection of the law, the right against self-incrimination, and due process. Plaintiff claims he has suffered seizures and loss of liberty, degradation, humiliation, stress, mental anguish, emotional suffering and embarrassment, loss of and damage to his reputation, medical and mental health expenses, past and future, physical pain and suffering and disruption of his academic and career pursuits. Plaintiff seeks declaratory relief in the form of the lifting of his academic suspension, compensatory damages, punitive and/or exemplary damages, together with costs, interest, and attorney's fees. Defendants filed a motion to dismiss on October 16, 2019.

Mark Franklin Hoeltzel v. Margie Pillsbury, Maureen Burke, Sgt. Connors, Det. Lucas, Tom Cargill, Mark Worosz, Det. Parviz, Officer Chalogianis and Jane Roe. 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.

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.

CASE UPDATES

Hassan M. Ahmad, Esq. v University of Michigan. Court of Claims. (Judge Stephen Borrello) (Served June 23, 2017)

Plaintiff filed a Complaint claiming the University of Michigan violated the Freedom of Information Act (“FOIA”). On August 16, 2017, Defendant filed a motion to dismiss that was granted. On November 20, 2017, Plaintiff filed an appeal. On June 20, 2019, the Michigan Court of Appeals issued an unpublished opinion in which it held that the requested records are public records. The court remanded the case to the Court of Claims for further proceedings consistent with the court’s opinion. On July 31, 2019, the University filed an application for leave to appeal to the Michigan Supreme Court.

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 claims that, as a result of wrongful acts by former Michigan employee Defendant Raouf, Zhao suffered injuries resulting in his death. Plaintiff seeks 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, which 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 that was granted on October 22, 2019.

Lana Tyrrell v Teri Grieb, Jessica Durkin, and Carrie Peterson. Court of Claims. (Judge Christopher M. Murray) (Filed July 31, 2018)

Plaintiff has two lawsuits pending concurrently in two different courts, both including allegations of unlawful termination. Plaintiff is a former employee of the University’s Unit for Laboratory Animal Medicine (“ULAM”) who claims she was terminated in retaliation for her refusal to violate the law in the course of her employment. Defendants filed a motion for summary disposition on September 13, 2018 that was granted and denied in part. On October 17, 2019, Defendants filed a motion for summary disposition.

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.

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. On November 26, 2019, Defendants filed a motion for summary disposition.

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 that was granted on November 19, 2019. The Court of Appeals determined that the Plaintiff does have standing that summary disposition was improperly granted and remanded the case back to the trial court.

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. Trial begins on December 2, 2019.

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. On December 6, 2018, Defendant University of Michigan filed a motion to dismiss. On December 14, 2018, Defendant Daniels filed a counter-claim against Plaintiff. On January 4, 2019, Plaintiff filed a motion to dismiss Defendant Daniels' counter-claim. On February 21, 2019 an Order was entered dismissing Count II of Plaintiff's Complaint and dismissed the counter-claim. On October 25, 2019, Defendants filed a partial motion to dismiss Plaintiff's Third Amended Complaint that is currently pending.

CASE RESOLUTION

Myria Petrou v Ella Kazerooni. United States District Court, Southern District of New York (Filed April 8, 2019)

Plaintiff was an Associate Professor of Radiology at the University of Michigan until her voluntary resignation on September 30, 2018. Plaintiff, who was proceeding *in pro per*, claimed harm to her professional reputation

and professional opportunities, resulting in damages. A stipulated order of a dismissal was entered on September 12, 2019.

Bradley Foerster v University of Michigan. United States District Court, Southern District of New York (Filed March 11, 2019)

Plaintiff was an Associate Professor at The University of Michigan. Plaintiff claimed that he faces imminent termination from the University of Michigan as a result of Defendant's violations of the Family Medical Leave Act ("FMLA"). Plaintiff sued for compensatory damages and costs under the FMLA for Interference/Denial and Discrimination/Retaliation including all past, present and future lost wages. Plaintiff also sought reinstatement to his previous position at the Ann Arbor VA and the University of Michigan. On March 26, 2019, this case was transferred to the United States District Court, Eastern District of Michigan. A stipulated order of dismissal was entered on September 12, 2019.

Speech First, Inc. v Mark Schlissel, et al. United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Filed May 8, 2018)

Speech First Inc. filed an action under the First and Fourteenth Amendments alleging that the Statement of Student Rights and Responsibilities definitions of "harassment" and "bullying" and the University's Bias Response Team's activities are overbroad, chill speech, constitute a prior restraint on speech, and are void for vagueness. Plaintiff sought a declaratory judgment, injunctive relief, and costs and expenses, including attorney's fees. On August 6, 2018, Plaintiff's motion for preliminary injunction was denied. On August 13, 2018, plaintiff filed an appeal to the Sixth Circuit. On September 23, 2019, the Sixth Circuit Court of Appeals ordered that the judgement of the district court be vacated, and the case was remanded for further proceedings. Settlement has been 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 Matthew Leitman) (Served August 30, 2019)

Plaintiff, a former Secretary Intermediate for Dearborn's CASL department, claimed she was terminated because of her alleged disability and suffered retaliation in violation of the FMLA. Plaintiff sought damages, interest, costs and attorney's fees. Plaintiff filed a similar Complaint with this same court in 2018 that was dismissed. On September 19, 2019, Defendants filed a motion to dismiss that was granted on November 11, 2019.

Seong Hong v The University of Michigan, and Ann Lampkin-Williams. United States District Court, Eastern District of Michigan. (Filed December 14, 2019) (Judge Mark Goldsmith)

Plaintiff is a Professor of Education in the College of Education, Health and Human Services at the University of Michigan-Dearborn. She alleged that she was not reappointed as Director of the Early Childhood Education Center ("ECEC") because of her race and age. Her five-count complaint included claims for alleged violations of due process; race, age and national origin discrimination; and breach of contract. Plaintiff sought, among other things, to be restored to her Director position and lost wages, past and future; compensatory damages; punitive damages; and interest, costs, and attorney's fees. Settlement has been reached between the parties. This case is concluded.

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

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. Settlement was reached between the parties. This case is concluded.

Respectfully submitted,

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

Timothy G. Lynch
Vice President & General Counsel

December 2019