

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

November 2020

NEW CASES

Suleyman Uludag, Ph.D. v University of Michigan – Flint, a public university. Genesee County Circuit Court. (Judge Joseph Farah) (Served September 24 2020)

Plaintiff, a tenured associate professor of computer science for the University of Michigan-Flint, has filed a one-count breach of contract claim alleging that, while he was physically away from campus (in Turkey), he performed his contractual duties of research and service and offered to teach remotely and defendant refused to provide his salary and benefits. Plaintiff seeks in excess of \$25,000 together with interest, costs, and attorney's fees.

Purdue University, University of Michigan, University of Denver, Dentists for America, LLC, Physicians for American Healthcare Access, United Methodist Homes and Services, Hodges Bonded Warehouse, Inc., Chapman University, Bard College, International Institute of New England, Information Technology Industry Council, Arizona State University, Scripps College, Marana Health Center, Northern Arizona University, Study Mississippi, and Indiana University v Eugene Scalia, Secretary of Labor U.S. Department of Labor, Office of the Solicitor and United States Department of Labor. United States District Court for the District of Columbia. (Filed April 9, 2020) (Judge Emmet Sullivan)

UM joined a federal lawsuit with several other universities and trade associations filed in the United States District Court for the District of Columbia challenging the US DOL's interim final rule (IFR) elevating the prevailing wage scale for H1Bs. Currently pending before the Court is Plaintiffs' motion to enjoin the Department of Labor from implementing the new calculations for wage levels or otherwise order that the October 8, 2020 IFR violated notice and comment procedures under the APA, and therefore must be set aside. The court and the parties have decided to treat this motion as a motion for summary judgment. Plaintiffs are seeking costs and attorney fees.

Carole McGillen v The University of Michigan and Michelle Boertman. Washtenaw County Circuit Court (Served November 16, 2020) (Judge Carol Kuhnke)

Plaintiff was an Administrative Manager Senior at the University of Michigan Medical Group and alleges that she was denied promotion and remote work accommodations and terminated on the basis of a disability and her age. She further alleges that she was retaliated against for reporting complaints of age and disability discrimination. Plaintiff seeks past and future wage loss; non-economic damages for emotional distress, embarrassment and humiliation; and costs, interest and attorney's fees.

In re: Leontina M. Lima, Debtor/Janet M. Nesse, Trustee v The Regents of the University of Michigan. United States Bankruptcy Court for the District of Maryland. (Served September 3, 2020) (Judge Lori Simpson)

This bankruptcy adversary proceeding case involves an alleged preferential payment made by the debtor parent for her daughter's tuition. The trustee is suing for recovery of \$27,332.00 that Ms. Lima, the debtor, paid on behalf of her daughter.

**Debbie Lynn Pipkins v University of Michigan Hospital.** Washtenaw County Circuit Court. (Served September 1, 2020) (Judge Patrick J. Conlin)

Plaintiff was an employee at Michigan Medicine's Patient Relation and Clinical Risk Department and alleges she was forced to retire on the basis of her race and in retaliation for filing a discrimination complaint. Her three-count complaint includes claims for race discrimination, retaliation, and hostile work environment. On November 13, 2020, Defendant filed a motion for summary disposition.

#### CASE UPDATES

**Karen Wilson v University of Michigan Hospital, and Gregory Lambert.** United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Served January 13, 2020)

Plaintiff claims she was forced to resign after allegedly being wrongfully accused of improper conduct and harassed and retaliated against for filing an EEOC charge. Plaintiff's two-count complaint includes alleged violations of Title VII retaliation as to Defendant University Michigan Hospital only, and retaliation in violation the Elliott-Larsen Civil Rights Act ("ELCRA") as to all defendants. Plaintiff claims she has suffered loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem, mental and emotional distress, and loss of pleasures of ordinary life. Plaintiff seeks compensatory damages, economic and non-economic damages, and punitive or exemplary damages, plus costs, interests, and attorney's fees. On March 13, 2020, Defendants filed a partial motion to dismiss Count II of Plaintiff's Complaint that was granted and denied in part. The court dismissed the ELCRA claim against the University but denied dismissal as to Defendant Lambert.

**Rebecca Foster v The University of Michigan, The Board of Regents of the University of Michigan, and Alison Davis-Blake, 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 ("Respondent"). 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 a 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 May 24, 2017, Defendants filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendants filed a motion to dismiss Plaintiff's first amended complaint, which was denied on November 7, 2017. On August 3, 2018, Defendants filed a motion for summary judgment that was granted on February 21, 2019. Plaintiff filed a notice of appeal. On December 4, 2019, the United States Court of Appeals for the Sixth Circuit held oral argument on Plaintiff's appeal. On March 11, 2020, the Sixth Circuit issued an Opinion reversing the district court's dismissal of the lawsuit and remanding for further proceedings. On March 25, 2020, the University filed a petition for rehearing *en banc*. On April 1, 2020, sixteen institutions of higher education filed a motion seeking leave to file an *amicus curiae* brief supporting the University. The University's petition for rehearing *en banc* was granted on May 15, 2020, vacating the panel decision. The Sixth Circuit, sitting *en banc*, held oral argument on October 7, 2020, and a ruling is pending.

**Josie M. Fisher v University of Michigan, JW Hunt OTC, Inc., David Jin, Keith E. Smukala, Western Reserve Financial Corporation, d.b.a. "Western Reserve Group", Community Insurance Company c/o CT Corporation System, as statutory agent and John Does #1-10.** Court of Common Pleas, Erie County, Ohio. (Judge Tygh M. Tone) (Served January 27, 2020)

Plaintiff claims she was involved in a three-car collision involving Defendant Jin while driving her vehicle on the Ohio Turnpike. Plaintiff claims she suffered severe injuries, mental anguish, anxiety, distress, and pain and suffering. Plaintiff seeks in excess of \$25,000 interest, costs, and attorney's fees. On October 30, 2020, the court dismissed Defendant University of Michigan and Defendant Jin in his capacity as an agent of the University.

**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 March 20, 2020, Plaintiff filed a State Court lawsuit against Jeffrey Frumkin, Elizabeth Seney, Pamela Heatlie, Melody Racine, Steven West, Aaron Dworkin, and Christopher Kendall asserting sex discrimination and retaliation claims arising under the Elliott-Larsen Civil Rights Act and a claim for false light invasion of privacy. 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 an amended complaint, removing Kendall and Dworkin as defendants, and removing the retaliation claim. Plaintiff also filed a motion for remand that was granted on July 15, 2020. On April 7, 2020, Defendants filed a motion for summary disposition that was granted on September 30, 2019. Plaintiff filed an appeal on October 20, 2020.

## CASE RESOLUTIONS

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 did not use 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 did not have legal standing to file a claim against the University and sought 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 did have standing and that summary disposition was improperly granted; and it remanded the case to the trial court. Settlement has been reached between the parties. This case is concluded.

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.

Respectfully submitted,



Timothy G. Lynch  
Vice President and General Counsel

November 2020