

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

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Regents
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Subject: Litigation

February 2015

NEW CASES

Lorie Biggs and Jamie Mercurio v The University of Michigan and University of Michigan Board of Regents. United States District Court, Eastern District of Michigan (Judge George Caram Steeh) (Filed January 13, 2015)

Plaintiff Jamie Mercurio alleges that she was disciplined after she complained of sexual harassment by a male coworker. Plaintiff Lorie Biggs alleges that she was terminated after she complained of sexual harassment by the same male coworker, and also claims she was denied a reasonable accommodation for a disability. Plaintiffs' claims include violations of Title VII for sexual harassment and retaliation; failure to accommodate in violation of the Americans with Disabilities Act; and violation of the Elliott-Larsen Civil Rights Act. Plaintiffs seek economic, emotional, and punitive damages, together with costs and attorney's fees.

JoAnn Odom v Frank Krupansky, Director Material Services, University of Michigan Hospitals, and Lakita Pogue, Manager Patient Transportation. United States District Court, Eastern District of Michigan (Judge Linda V. Parker) (Served December 22, 2014)

Plaintiff was a patient transportation supervisor for the University Hospital Material Services department. She alleges she was discharged from her position because of her age. Plaintiff files this lawsuit in *pro per* and does not state what relief she is seeking. On January 5, 2015, Defendants filed a motion for judgment on the pleadings. A stipulated Order of dismissal was entered on January 30, 2015.

In the Matter of the Doris E. Hoffman Revocable Living Trust. Washtenaw County probate Court (Judge Julia Owdziej)

The University filed a joint petition to review and reduce unreasonable Trustee and attorney fees, and to modify the trust. The Co-Petitioner is the Attorney General for the State of Michigan.

CASE UPDATES

Wei Cao and Li-Hsuan Yang v Board of Regents of the University of Michigan. Genesee County Circuit Court (Judge Joseph J. Farah) (Served April 2, 2013)

Plaintiff was an Assistant Professor of Education for the University of Michigan-Flint. She claimed she applied for and was denied tenure and promotion because of her national origin. She further alleged the denial of her tenure was in retaliation for her having opposed, through a published article, what she described as "the discriminatory environment" on the Flint campus. Plaintiff claimed she suffered economic loss and sought reinstatement, money damages in excess of \$25,000, plus interest, consequential damages, costs, and attorney's fees. On February 3, 2014, Plaintiff filed an Amended Complaint and an Order was entered allowing the joinder of Li-Hsuan Yang as Co-Plaintiff, without prejudice to Defendant's right to seek severance of the two Plaintiffs for purposes of trial. Settlement was reached between the University and Plaintiff Cao. Defendants filed a partial motion for summary disposition in the Yang case that was denied. Defendant/Appellant, the Board of Regents of the University of Michigan, seeks leave to appeal from the Genesee County Circuit Court's December 22, 2014 order denying Defendant's Motion for Partial Summary Disposition as to Plaintiff Li-Hsuan Yang.

Belinda Anderson v The Regents of the University of Michigan, Ted Makowiec in his official capacity, and Brian Vasher in his official capacity. United States District Court, Eastern District of Michigan (Judge David Lawson) (Filed May 24, 2014).

Plaintiff was hired as secretary in the Benefits Administration Office within University Human Resources. She alleges Defendants have engaged in a pattern and practice of unlawful discrimination on the basis of race or national origin by denying her promotions and salary increases, and by subjecting her to arbitrary demotions when she was selected to be transferred to a newly created Shared Services Center. Plaintiff seeks compensatory damages, lost wages and benefits, interest, costs, and attorney's fees. On August 14, 2014, Defendants filed a motion for partial summary judgment. On December 30, 2014, the parties stipulated to the dismissal of claims against defendants Vasher and Makowiec with prejudice; therefore, defendants' motion for partial summary judgment is dismissed at moot.

Drew Sterrett v. Heather Cowan, Jay Wilgus, Stacey Vander Velde, Theodore Spencer, Susan Pritzel, Mikiko Senja, E. Royster Harper, Malinda Matney, Anthony Walesby, and Laura Blake Jones. United States District Court, Eastern District of Michigan (Judge Denise Page Hood) (Filed April 23, 2014)

Plaintiff is a former student at the University of Michigan. His claims arise out of disciplinary and other alleged actions taken against him by Defendants on the basis of sexual misconduct. Plaintiff alleges he was deprived of his protected liberty and property interests, and not afforded due process. His two-count federal complaint includes claims of 42 USC Section 1983 – Fourteenth Amendment Due Process against all Defendants, and First Amendment Free Speech against Defendants Cowan, Vander Velde, and Wilgus. Plaintiff seeks equitable relief as well as compensatory damages, exemplary damages, punitive damages, interest, costs, attorney and expert witness fees. On April 24, 2014, Plaintiff filed the same two-count complaint against the Regents of the University of Michigan in the Washtenaw County Circuit Court, and a Complaint alleging breach of contract in the Court of Claims on May 6, 2014. The Circuit Court Case was transferred to the Court of Claims on May 27, 2014, and the parties stipulated to the dismissal of that case. On May 20, 2014, Defendants filed a motion to dismiss the federal case; a motion to Stay discovery was filed on June 17, 2014. On June 17, 2014, Defendants filed a motion for summary disposition and motion to stay discovery in the Court of Claims case; the motion for summary disposition was granted on July 17, 2014, and the motion to stay discovery was denied as being moot. On February 4, 2015, the federal district court granted in part and denied in part defendants' motions to dismiss. Specifically, the court granted the motion to dismiss as to Wilgus, Vander Velde, Spencer, Pritzel, Senja, Harper, Matney, Walesby, and Jones; granted the motion to dismiss plaintiff's First Amendment claim; and denied plaintiff's motion to amend his complaint. The court denied the motion to dismiss defendant Cowan. On February 5, 2014, Cowan filed a notice of appeal to the Sixth Circuit.

CASE RESOLUTIONS

Bin Kang, Ph.D. v. The Regents of the University of Michigan. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed May 14, 2013)

Plaintiff, a former postdoctoral fellow at the University's Department of Biology (now known as the Department of Molecular, Cellular and Developmental Biology), alleged that the University failed to credit him on various research publications. His four-count complaint included claims for breach of contract, fraud, misrepresentation, and retaliation. Plaintiff sought compensatory damages. Defendant filed a motion for summary disposition on July 16, 2013, that was granted by Judge Kuhnke on August 28, 2013. On September 18, 2013, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals that was dismissed for lack of prosecution. Plaintiff requested his appeal be reinstated. This request was granted on September 8, 2014. On January 22, 2015, the Michigan Court of Appeals affirmed the trial courts ruling granting Defendant's motion for summary disposition.

David Boyle v. The University of Michigan, a Michigan institution of higher education. Washtenaw County Circuit Court. (Judge Nancy Wheeler) (Filed April 29, 2013)

On October 23, 2012, Plaintiff, a resident of the State of California, made a FOIA request of the University for "the complete report prepared by Latham & Watkins" regarding "former medical resident Stephen Jenson." The University denied Plaintiff's request based on the FOIA exemption that permits a public body to withhold "information on or records subject to the attorney-client privilege." Plaintiff asserted that the documents requested were not exempt under this exemption, and asked the court to issue a writ of mandamus compelling the University to disclose the report, issue a declaratory judgment that the University violated FOIA, and award Plaintiff attorney's fees, and costs. On November 18, 2014, the University filed a motion for summary disposition that was granted on January 16, 2015.

Lindsay Franson v The Regents of the University of Michigan and Dr. Eugene Chen. Genesee County Circuit Court (Judge Judith Fullerton) (Served March 25, 2013)

Plaintiff, a former Research Technologist for the Cardiology department in Internal Medicine, alleged she was terminated after reporting violations of laws and regulations concerning the operation of a lab or research facility and after she participated in an investigation by OSHA or hazmat inspectors. Plaintiff's claims included Whistleblower Protection Act violations and discrimination in violation of the Elliott Larsen Civil Rights Act. Plaintiff claimed she suffered extreme emotional distress and mental anguish, anxiety and embarrassment, worry, humiliation, insulted honor and mortification, damage to her professional reputation, loss of salary, benefits, and future income. She sought damages in excess of \$25,000, together with interest, costs, and attorney's fees. On February 28, 2014, Defendants filed a motion for partial summary disposition of Plaintiff's whistleblower claim that was denied on March 24, 2014. Defendants filed another partial motion for summary disposition that was denied on September 22, 2014. Settlement was reached between the parties. This case is concluded.

Mark Wawrzaszek et al v Paul Guttman, in his official capacity. United States District Court, Eastern District of Michigan (Judge Julian Abele Cooke) (Filed June 13, 2013)

Plaintiff is a Construction Services employee at the University and a member of the Skilled Trades Union. Plaintiff alleged that he regularly works more than 40 hours a week because of Defendant's policy mandating that he arrive at his work location at the beginning of his work shift. Plaintiff also alleged he is required to arrive at his work vehicle as much as 15 minutes prior to his 7:00 a.m. start time to arrive on time to his various work locations, causing him to work overtime transporting university vehicles to and from his job assignments. Plaintiff claimed he is not paid for this alleged overtime. His one-count complaint alleged violations of the Fair Labor Standards Act. Plaintiff sought an injunction, fees, and costs. On September 4, 2013, Plaintiff served Defendants with an amended complaint adding additional Plaintiffs. Both Plaintiff and Defendant have filed cross-motions for summary judgment. On January 21, 2015, Plaintiff voluntarily dismissed his complaint.

The Authors Guild, Inc., et. al. v HathiTrust, Regents of The University of Michigan, et al.. United States District Court, Southern District of New York (Judge Harold Baer) (Served October 14, 2011)

Plaintiffs claimed Defendants were violating 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 sought injunctive and declaratory relief as well as attorney's fees, and costs. The University, along with its co-defendants, filed a motion for judgment on the pleadings. On August 6, 2012, oral argument was heard by the court on the motions for summary judgment that were filed by all three parties (plaintiffs, the Library Defendants, and the intervening National Federation for the Blind). On October 10, 2012, the late Judge Baer ruled in favor of the Library Defendants, stating in a written opinion that the HathiTrust was an example of fair use and did not infringe upon copyright laws. Judge Baer also declared that the University of Michigan is an "authorized entity" under the Chaffee Amendment, which gives the University the ability to provide unprecedented access to library patrons who have disabilities. On February 25, 2013, Plaintiffs/Appellants filed their appeal brief in the Second Circuit Court of Appeals. Four *amici* filed briefs in support of Plaintiffs/Appellees on March 4,

2013. On May 28, 2013, Defendants/Appellees filed briefs in opposition, and 13 *amici* filed briefs in support of Defendants/Appellees on June 4, 2013. On October 30, 2013, the United States Court of Appeals for the Second Circuit heard oral argument. On June 10, 2014, the Second Circuit affirmed the District Court's ruling that Michigan and the other defendants did not engage in copyright infringement as alleged by the plaintiffs. Specifically, it is a fair use to digitize copyrighted works for indexing, search, and access for those who have print disabilities. The Court also affirmed that some of the plaintiffs did not have standing and it remanded to determine whether some of the other plaintiffs had standing. The parties stipulated to end the remanded portion of the case from the Second Circuit that was approved by Judge Buchwald.

Respectfully submitted,

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

Timothy G. Lynch
Vice President & General Counsel

February 2015