

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

February 2016

NEW CASES

Leo Zheng, as Next Friend of Liam Zheng, a minor v University of Michigan, Board of Regents (A Public University). Court of Claims (Judge Stephen Borrello) (Filed October 21, 2015)

Plaintiff, Leo Zheng, alleges the University failed to exercise reasonable care and supervision to ensure his minor son, Liam Zheng, was not allowed to use playground equipment not recommended for a child of his age, and, as a result, he suffered injuries. Plaintiff seeks a judgment in excess of \$25,000, including compensatory damages, pain and suffering, interest, costs, and attorney's fees.

Motor City Pawn Brokers v University of Michigan Police Department. Court of Claims (Judge Stephen Borrello) (Filed December 23, 2015)

Plaintiff, Motor City Pawn Brokers, Inc., has filed a complaint against the University of Michigan Police Department (UMPD) seeking damages in the amount of \$375.00 as reimbursement for an Apple laptop that he claims UMPD recovered from Plaintiff, and returned to the alleged owner. Plaintiff also seeks costs for filing this action.

Alan Belden Enkerlin v Douglas Lewis. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed December 22, 2015)

Plaintiff alleges that an attorney with the University's Student Legal Services failed to advise him of immigration consequences when he pleaded guilty to misdemeanor charges when he was studying at the University on a student visa. Plaintiff claims this caused him to spend 22 days in federal custody and led to numerous other losses. Plaintiff's two-count complaint includes malpractice and breach of contract claims. Plaintiff seeks damages, interest, costs, and attorney's fees.

Paul Britt v Kevin Tang, and Farm Bureau General Insurance Company of Michigan, a Michigan Insurance Corporation, jointly and severally. Genesee County Circuit Court (Judge Geoffrey Neithercut) (Served January 20, 2016)

Plaintiff's claims arise out of an October 28, 2012, motor-vehicle accident in Flint in which Defendant, Assistant Professor Kevin Tang, is alleged to have been involved. Plaintiff's three-count complaint includes negligence, economic/non-economic damages, and uninsured motorist coverage claims. Plaintiff further seeks interests, costs, and attorney's fees.

Alfonso Ignacio Viggers v Board of Regents of the University of Michigan and Doe Defendants. United States District Court, Eastern District of Michigan (Judge Avern Cohn) (Served January 29, 2016)

Plaintiff alleges that he was an employee of Alpac, Inc., and was assigned to perform work at the University Plant Operations IT Department between approximately 2007 and 2015. In 2014 the University posted an opening for a full time University employee to perform Plaintiff's job duties. Plaintiff was offered the position contingent on obtaining a visa and a successful background check. Plaintiff further alleges that the University improperly reprimanded him, delayed processing his visa, and ultimately withdrew the job offer due to Plaintiff's exercise of his free speech rights, and based upon defamatory statements from his stepmother, and current employer. Plaintiff alleges violations of the First Amendment, due process, breach of contract, the Fair Credit Reporting Act, contempt of court, conspiracy, tortious furtherance of malicious intent, and sabotage of Plaintiff's immigration process.

## CASE UPDATES

Yvonne Beach, a Protected Person, by and through her duly appointed Guardian, Brad Beach, and Andersen Beach, a minor, by his Next Friend, Brad Beach v Board of Regents of the University of Michigan. Michigan Court of Claims (Judge Clinton Canady III) (Served November, 9, 2012); AND Yvonne Beach, a Protected Person, by and through her duly appointed Guardian, Brad Beach, and Andersen Beach, a minor and his Next Friend Brad Beach v Jade Sanders and Richard Secosky. Washtenaw County Circuit Court (Judge Donald Shelton) (Filed October 31, 2012); AND Richard Secosky v Board of Regents of the University of Michigan. Michigan Court of Claims (Judge Clinton Canady III) (Filed March 22, 2013); AND Richard C. Secosky v Jade Alexis Sanders. Washtenaw County Circuit Court (Judge Donald Shelton) (Filed March 26, 2013).

Plaintiff, Yvonne Beach, alleges she was a passenger on a motorcycle when a collision occurred between the motorcycle and a University-owned vehicle operated by a University student intern. Plaintiff claims the vehicle was negligently operated and that she sustained serious impairment of a bodily function and permanent or serious disfigurement as a result of the collision. As a result, Plaintiff claims she will incur economic losses in excess of three years. Plaintiff, Andersen Beach, a minor, claims loss of services by his mother, Yvonne Beach. Plaintiffs seek damages, with interest, costs, and attorney's fees. The motorcycle driver, Richard Secosky, filed companion cases against the University in the Michigan Court of Claims, and against Jade Alexis Sanders in Washtenaw County Circuit Court. An order was issued on April 3, 2013 by the Court of Claims transferring the case against the University to Washtenaw County Circuit Court, and joining it with the pending cases involving the same accident. In Secosky v Sanders, on May 22, 2013, Defendant Sanders' motion for summary disposition, based on governmental immunity, was denied. On May 29, 2013, an appeal as of right was filed. In Beach v. Sanders and Secosky, on May 22, 2013, Sanders' motion for summary disposition, based on governmental immunity, was denied. An appeal as of right was filed by Sanders on June 5, 2013. In Secosky v. Regents, on June 5, 2013, Judge Shelton denied the Regents' motion for summary disposition. The Motion was based upon a claim of defects in the required Notice to the University of the claim. In summary, of the four related cases coming out of the motorcycle/UM van accident, three are on appeal after Judge Shelton denied dispositive motions. On August 14, 2013, Judge Shelton granted Defendant's Motion for Summary Disposition of Andersen Beach's claim. In Beach v Sanders and Secosky v Sanders, the Court of Appeals ruled that driving the van was not within the course of duties, upheld the trial court's denial of summary disposition, and remanded the case for further proceedings. In Secosky v Regents, the Court of Appeals ruled that the statutorily required Notice filed by Secosky was defective; it reversed the trial court's denial of summary disposition. Settlement was reached between Yvonne Beach v Regents, and Anderson Beach v Sanders. Secosky v Sanders is the only remaining open case; trial is scheduled for February 22, 2016.

Joshua Wade v University of Michigan. Court of Claims (Judge Cynthia Stephens) (Served June 15, 2015).

Plaintiff, who achieved notoriety for bringing a handgun into a choir concert at an Ann Arbor high school, claims that his constitutional rights were violated when he applied for and was denied a personal waiver to carry a firearm on campus, despite not working, studying, or living on campus. He asks the Court to declare that Defendant's Ordinance to Regulate Parking and Traffic, and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan ("Ordinance"), violates the Michigan and U.S. Constitutions. Plaintiff further seeks that Defendant be enjoined from enforcing the Ordinance. Defendant filed a motion to dismiss that was granted by Judge Stephens. On January 4, 2016, Plaintiff filed an appeal to the Michigan Court of Appeals. On February 1, 2016, the University filed its opposition.

**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. Defendants filed a motion for summary judgement that is currently pending before the Court.

**Jennifer Dibbern v The University of Michigan, a Domestic Nonprofit Corporation, the Board of Regents of The University of Michigan, a public constitutional body corporate, Mary Sue Coleman, President of The University of Michigan, an individual acting in her official capacity, Rachel S. Goldman, in her individual and official capacity, Tresa Pollock, in her individual and official capacity and Peter Green, in his individual and official capacity.** United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed December 21, 2012)

Plaintiff was a graduate student in materials science engineering at the University. She alleges she was dismissed from the graduate program in December 2011 after reporting incidents of peer-to-peer sexual and gender-based harassment in the College of Engineering and claims she was retaliated against for attempting to remedy a sexually hostile environment. Plaintiff further alleges the University failed to meet its obligations under Title IX by willfully and knowingly allowing a sexually hostile educational environment to continue. Plaintiff's twelve-count complaint includes claims under Title IX, 42 U.S.C. Section 1983, and the Elliot-Larsen Civil Rights Act, as well as claims for negligence, breach of fiduciary duty, emotional distress and invasion of privacy. Plaintiff seeks damages, costs, and attorney's fees. On January 25, 2013, Plaintiff filed an Amended Complaint adding Peter Green as a named defendant and dropping the claims for negligence, breach of fiduciary duty, and emotional distress. On March 4, 2013, Defendants filed a Partial Motion to Dismiss Plaintiff's claims for sexual harassment, sex discrimination, retaliation, and Section 1983 claims for Equal Protection and First Amendment violations. The parties also have agreed to dismiss the Equal Protection/Section 1983 and First Amendment/Section 1983 claims as to the University of Michigan and the Board of Regents of the University of Michigan because they are barred by the 11th Amendment. The parties further agreed to dismiss these counts against the individual Defendants in their official capacities except to the extent that prospective, non-monetary relief is granted. On June 5, 2013, a stipulated order was entered dismissing Defendants University of Michigan and the Board of Regents of the University of Michigan from Counts III (Equal Protection/Section 1983) and V (First Amendment/Section 1983) of Plaintiff's First Amended Complaint based on 11th Amendment immunity. It was further ordered that Defendants, Mary Sue Coleman, Rachel Goldman, Tresa Pollack, and Peter Green, acting in their official capacities, are also dismissed from Counts III and V of Plaintiff's First Amended Complaint, except to the extent that Plaintiff seeks prospective, non-monetary relief. On June 7, 2013, Plaintiff filed a Second Amended Complaint. On October 19, 2015, Defendants filed a motion for summary judgement. On December 29, 2015, a stipulated Order dismissing Count IX (Invasion of Privacy) was entered, with prejudice.

**Joseph Campinha-Bacote d/b/a Transcultural C.A.R.E. Associates v. Regents of the University of Michigan and Jane Does 1-5 in their individual and official capacity.** United States District Court, Eastern District of Michigan (Judge Michael R. Barrett) (Filed May 18, 2015)

Plaintiff, a sole proprietorship registered under the laws of Ohio, claims copyright infringement and alleges that Defendants reproduced, copied, and published her model of cultural competency, "Cultural Competency in Health Care Delivery: Have I 'ASKED' Myself the Right Questions?," without permission. Plaintiff requests that Defendants be enjoined from reproducing, administering, using, or distributing her copyrighted works. Plaintiff further seeks statutory damages, costs, and attorney's fees. On July, 23, 2015, the University filed a motion to dismiss that was granted. Plaintiff was granted leave to file an Amended Complaint identifying named Defendants.

## CASE RESOLUTIONS

**Karen McMahon v Regents of the University of Michigan and Marvin Pettway.** United States District Court, Eastern District of Michigan (Judge Gershwin A. Drain) (Filed March 24, 2014)

Plaintiff, a horticulturalist for the grounds department at the University of Michigan, alleged the University failed to accommodate her disability in violation of the Americans with Disabilities Act, Michigan's Persons with Disabilities Civil Rights Act, and Section 504 of the Rehabilitation Act. Plaintiff sought damages, costs, interest, and attorney's fees as well as prospective, equitable, and injunctive relief. On July 6, 2015, Defendants filed a motion for summary judgement that was denied on October 22, 2015. Settlement has been reached between the parties. This case is concluded.

**David Lilley v The Board of Regents of the University of Michigan.** Wayne County Circuit Court (Judge Patricia Perez Fresard) (Filed May 16, 2014); **AND David Lilley v. Kevin Early, Ph.D., in his individual capacity.** United States District Court, Eastern District of Michigan (Judge Gerlad E. Rosen) (Filed February 6, 2015)

Plaintiff was an Assistant Professor for the Criminal Justice Program at the University of Michigan's Dearborn campus until his recent resignation. Plaintiff alleged he was denied tenure based on his race and gender and in retaliation for opposing race discrimination. His three-count complaint included claims for race discrimination, race plus discrimination against an older white male, and retaliation. Plaintiff sought economic, non-economic, and exemplary damages, tenure, interest, costs, and attorney's fees. Plaintiff filed a similar complaint in the Eastern District of Michigan against Assistant Professor Kevin Early, in his individual capacity, alleging race discrimination and retaliation. Settlement has been reached between the parties. Both cases are concluded.

**Crystal Vlodyka v. Board of Regents of the University of Michigan.** Court of Claims (Judge Mark Boonstra) (Served September 17, 2015)

Plaintiff, Crystal Vlodyka, brought a breach of contract claim against the University out of an alleged denial of her long term disability benefits. Plaintiff sought in excess of \$25,000, an accounting as to her rate of long-term disability benefits under the Plan, and the maximum period of time those benefits are potentially available to her. Plaintiff also sought interest, costs, and attorney's fees. Settlement has been reached between the parties. This case is concluded.

**Eve Cadotte v The University of Michigan-Flint, Mary Horgan, Kelli R. Hoppe, and Merchants & Medical Credit Corporation, Inc.** Genesee County Circuit Court. (Judge Judith Fullerton) (Served August 31, 2015)

Following a collection action for unpaid tuition, a former U-M Flint student sued the University for damages, and injunctive relief in the Circuit Court for Genesee County, claiming that the University's failure to comply with the Michigan Indian Tuition Waiver law to cover her tuition discriminated against her on the basis of race or national origin. Plaintiff's claims included violation of the Michigan Indian Tuition waiver law as well as the Elliot Larsen Civil Rights Act. Plaintiff also sought costs and attorney's fees. The parties stipulated to the dismissal of Defendants University of Michigan-Flint, Marty Horgan, and Kelli R. Hoppe, without prejudice.

Respectfully submitted,



Timothy G. Lynch  
Vice President & General Counsel

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