

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

May 2018

NEW CASES

Speech First, Inc. v Mark Schlissel, et al. United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Defendants not yet served)

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 seeks a declaratory judgment, injunctive relief, and costs and expenses, including attorney’s fees.

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 claims 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 seeks 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.

Julia Pennington v The University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Served February 6, 2018)

Plaintiff was a Senior Administrative Assistant in the Department of Radiology and alleges she was terminated from her position because of her age and alleged disability. Plaintiff seeks in excess of \$25,000, compensatory damages for lost wages and benefits, emotional distress damages, exemplary and punitive damages, costs, and attorney’s fees.

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.

Cynthia Scott v Board of Regents of the University of Michigan. Court of Claims. (Judge Cynthia Stephens) (Served February 19, 2018)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff seeks an amount in excess of \$25,000, an accounting from Defendant as to her rate of LTD benefits and to the nature, amount, and maximum benefit period for other benefits she may be eligible, and interest, costs and attorney’s fees.

Bryan Richards v County of Washtenaw, Thomas Arnett, Justin Berent, and John Cratsenberg. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed March 13, 2018)

Plaintiff alleges that, while at a University of Michigan football game, law enforcement personnel approached him and falsely accused him of being intoxicated. Plaintiff claims that unlawful and excessive actions by law enforcement caused him injuries and damage. Plaintiff's six-count complaint alleges illegal search and seizure, excessive force, and malicious prosecution, and state-law claims for false arrest/false imprisonment and malicious prosecution. Plaintiff seeks an amount in excess of \$75,000, together with interest, costs, and attorney's fees.

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.

CASE UPDATES

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch (sic). United States District Court, Eastern District of Michigan. (Judge Mark A. Goldsmith) (Served on August 2, 2017)

Plaintiff filed a three-count complaint alleging she was terminated in violation of the Americans with Disabilities Act ("ADA"), and in retaliation for making allegations against Defendants and filing EEOC charges. Plaintiff seeks an Order requiring Defendant to modify its policies, practices, and procedures in compliance with the ADA, eliminate the application of "best qualified" standard when considering reassignments as a reasonable accommodation, and implement ADA training. Plaintiff also seeks 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.

John Haedrich v Joshua Akers, Laura Wolff-Powers, Charlotte Vorms, City University of New York, and University Paris 8. Wayne County Circuit Court (Judge Cathy M. Garrett) (Filed August 29, 2017)

Plaintiff alleged that Defendant Akers, a professor at the University of Michigan–Dearborn, wrote an article accusing Plaintiff and Sussex Immobilier of operating with malicious intent. Plaintiff's two-count complaint included counts alleging defamation and libel, among other things. Plaintiff sought in excess of \$25,000, special and general damages, together with interest, costs, and attorney's fees. On January 30, 2018, an Order was entered granting Defendants' Motions for Summary Disposition for Qualified Governmental Immunity. On February 28, 2018, Plaintiff filed a claim of appeal.

Detroit Free Press v The Regents of the University of Michigan. Court of Claims (Judge Michael J. Talbot) (Filed November 21, 2017)

Plaintiff filed a Complaint claiming the University of Michigan violated the Freedom of Information Act ("FOIA") by denying Plaintiff's FOIA request for the complete compensation package of the University's Chief Investment Officer. The two-count complaint alleged violations of FOIA, the Michigan constitution, and common law. Plaintiff requested the Court order the Regents of the University of Michigan to provide copies of all requested records within the scope of the FOIA request. Plaintiff also sought damages, costs and attorney's fees. On November 27, 2017, Plaintiff filed a motion for summary disposition. On January 10, 2018, Defendant filed a motion for summary disposition and response to Plaintiff's motion for summary disposition. On March 12, 2018, the Court of Claims issued an Opinion and Order requiring the University

to release the Investment Office compensation plan to Plaintiff within 21 days. On April 9, 2018, Plaintiff filed a motion for award of attorney's fees and costs. On April 30, 2018, the University filed an opposition demonstrating that the fee demand was exorbitant and not legally supportable. Among other things, the Free Press sought fees to compensate Herschel Fink (its lawyer) for copying, scanning, filing, and travel.

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 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, dismissing the ADA and retaliation claims. Plaintiff filed a motion to amend his Complaint that was also granted on March 14, 2018. On April 2, 2018, Plaintiff filed his amended complaint alleging Rehabilitation Act Violations.

T'Neya Jenkins v The Regents of the University of Michigan Health System, Carelyynn Flaucher in her official capacity, Jennifer Stalmack in her official capacity, Sue Kofflin in her official capacity, Linda Gobeski in her official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Judge Bernard Freedman) (Served December 14, 2016)

Plaintiff was a Patient Services Assistant in the Women's Birth Center and claimed that, after winning a grievance reversing her discharge, she was subjected to retaliatory conduct, including heightened supervision, improper performance evaluations, and denial of transfer requests. Plaintiff claimed she has suffered emotional distress and has incurred and will continue to incur medical expenses for treatment. She further claimed loss of earnings, benefits, and job opportunities. Plaintiff sought compensatory damages, lost wages and benefits, punitive damages, interest, costs, and attorney's fees. On January 5, 2018, Defendants filed a motion for summary judgment that was granted on March 9, 2018. Plaintiff filed a notice of appeal.

Stephen Brian Perkola. The University of Michigan Board of Regents and Anna Grbic, Kevin Williams, Renee Mainor, Reetha Raveendran, Dr. Debra Hutton and Eddie L. Washington, Jr. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed September 7, 2016).

Plaintiff, a Police Sergeant at the University of Michigan-Dearborn, claims he was denied a promotion to the new position of Deputy Chief of Police because of his race and age. His claims include alleged violations of Title VII and the Elliott-Larsen Civil Rights Act. Plaintiff seeks in excess of \$75,000, punitive damages, and interest, costs and attorney's fees. Defendants filed a motion for summary judgement that was granted and denied in part on March 28, 2018.

CASE RESOLUTION

Timothy Keeler v Hurley Medical Center, Melany Gavulic, in her official and individual capacity, Scott Bonzheim, in his individual capacity, Franz Jaggi, in his individual capacity, and Michael Roebuck, in his individual capacity. United States District Court, Eastern District of Michigan (Judge Bernard A. Friedman) (Filed April 4, 2016)

Plaintiff, a physician's assistant with Hurley Medical Center, asserted claims pursuant to 42 USC § 1983 against Defendants for alleged violation of his procedural due process rights and First Amendment rights of speech, association, and right to petition the government. Plaintiff claimed he suffered emotional distress, humiliation, mental anguish, and sought back pay, lost wages, punitive damages, together with costs, interest and attorney's fees. On May 1, 2017, Defendants filed a motion for summary judgment that was granted. On November 27, 2017, Plaintiff filed a notice of appeal. Settlement has been reached between the parties. This case is concluded.

Trace Novoson Winn v. Cynthia H. Cherre-Kahn, individually and as Co-Successor Trustee of the Michael J. Novoson Fifth Restated and Amended Revocable Trust Agreement; and Neil Packman, Individually and as Co-Successor Trustee of the Michael J. Novoson Fifth Restated and Amended Revocable Trust Agreement; Marc Novoson; University of Michigan; Milord Fredrick; Tiffany M. Llera-Lora; Johanne Gray; Dana Novoson; Stephen H. Kahn; Madison Winn; Mitchell Novoson; Mason Novoson; Paola Novoson. Miami-Dade County, Florida, Circuit Court

The University has received distributions as a 3.94242% beneficiary from the Michael J. Novoson Fifth Restated and Amended Revocable Trust Agreement. The Plaintiff requested that the Court order those distributions be returned to the Trust until resolution of the case. Settlement has been reached between the parties. This case is concluded.

Joanne Odom and Reginald Whitlow v University of Michigan and University of Michigan Health System. Washtenaw County Circuit Court (Judge David S. Swartz) (Served June 14, 2017)

Plaintiffs, supervisors for the hospital's patient transportation department, alleged they were discharged from their respective positions because of age. Plaintiffs' claims included violations of the Elliott-Larsen Civil Rights Act. Plaintiffs claimed they suffered damages, including lost wages, lost benefits, and emotional pain and suffering, and sought back pay, front pay or reinstatement, exemplary damages, interest, costs, and attorney's fees. Plaintiffs filed similar Complaints in Washtenaw County Circuit Court and in the United States District Court, Eastern District of Michigan. Those Complaints have been dismissed. Settlement has been reached between the parties. This case is concluded.

Karen Bankovich v University of Michigan. Court of Claims. (Judge Stephen Borrello) (Served March 17, 2017).

Plaintiff, Karen Bankovich, claimed the University breached its Long-Term Disability plan ("LTD") by denying her LTD benefits. Plaintiff asked the Court to reverse the University's decision and order Plaintiff be paid LTD benefits according to the terms of the plan. Plaintiff also sought costs and attorney's fees. On October 24, 2017, Defendant filed a motion for summary disposition. Settlement has been reached between the parties. This case is concluded.

Dennis Klein v University of Michigan Board of Regents, University of Michigan Medical Center, Jim Harvey, Bob Harris, Bill O'Dell, Chris Schlaps, Maria Brussolo, Denise Seibert, Luis Mello, and Susan Quine, in their personal and professional capacities. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Served July 17, 2017)

Plaintiff, who has been on long-term disability since 2015, claims that, in the beginning of October 2008, a continuous process began by which he was treated substantially differently than other employees and that he was subjected to workplace harassment at the hands of Defendants either directly or in collusion with Defendant Harvey, and that that led to a stroke. Plaintiff's ten-count complaint alleged intentional infliction of emotional distress, defamation, invasion of privacy, negligent hiring and retention, failure to provide a safe workplace, breach of implied covenant of good faith and fair dealing, violation of Title 42 USC 1983 and 1985, violation of HIPPA, breach of contract, and loss of consortium, society, and companionship. Plaintiff sought damages in the amount of \$4,000,000, and compensatory damages in the amount of \$4,000,000. On August 14, 2017, Defendants filed a motion to dismiss. On October 13, 2017, Defendants re-filed a motion to dismiss after Plaintiff filed an amended Complaint. On April 3, 2018, Plaintiff's Complaint was dismissed with prejudice.

Onica Ashley v VHS of Michigan, Inc. d/b/a Detroit Medical Center, and/or VHS Harper-Hutzel Hospital, Inc., d/b/a Harper-Hutzel Hospital, and Vermeulen Funeral Homes, Inc. d/b/a Perry Funeral home (Wayne County), and Carl Schmidt, MD, MPH, Wayne County Medical Examiner. Wayne County Circuit Court. (Judge Cathy M. Garrett) (Served October 10, 2017)

Plaintiff sought a writ of mandamus requiring Dr. Carl Schmidt, the Wayne County Medical Examiner, to exercise his authority as medical examiner to effectuate the final disposition of 36 deceased infants and fetuses held by the Perry funeral home. Plaintiff alleged that, due to improper processing of agreements for the donation of infant remains to Wayne State for medical research, the remains had been held by the funeral home for several years. The six-count complaint included breach of contract, negligence and gross negligence, and intentional infliction of emotional distress. An Order to show cause was denied and the case was dismissed as to Dr. Carl Schmidt.

Shannon Hester v Jeremia Walter Brabbs. Washtenaw County Circuit Court (Judge David Swartz)
(Served November 16, 2017)

Plaintiff was a passenger in a vehicle being transported from a medical appointment at the University. Defendant is a University employee who, while operating a university vehicle, allegedly rear-ended the transport vehicle plaintiff was in causing severe injuries. Plaintiff sought an amount in excess of \$25,000, together with interest, exemplary damages, costs and attorney's fees. Defendant filed a motion for summary disposition that was granted with prejudice on May 2, 2018.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

May 2018