

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

EXH	MOTION
	SECOND
	ACTION APPROVED BY THE REGENTS
NOTE.	JUN 16 2005
<i>Consent agenda</i>	

Subject: Litigation

June 2005

### I. NEW CASES

There are no new cases this month.

### II. RESOLUTIONS

Mary Tipton v University of Michigan. Michigan Court of Claims. (Judge Thomas L. Brown) (Served December 6, 2004).

Plaintiff is a former operating room aide at the hospital. In 2002, Plaintiff went on a Family Medical Leave Act (FMLA) leave of absence. The University informed her that her FMLA leave ended on October 22, 2004 but plaintiff failed to return to work, arguing that she still had two weeks of FMLA leave to which she was entitled. Plaintiff claims that the University breached the union contract, violated public policy for discharging her without just cause, and failed to provide adequate due process. She seeks lost and future wages, damages, costs and attorney's fees. The University filed a motion for summary disposition which was granted by the court and the case is concluded.

J. Thaddeus Schork v Board of Regents of the University of Michigan and Susan McClanahan. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed March 4, 2004).

Plaintiff worked as a Development Officer at the University Musical Society. In May 2003, Plaintiff was advised that his position had been eliminated because of department reorganization and he claims the RIF was gender-based. He also claims that he was not subsequently hired by another department at the University after former supervisor McClanahan shared information designed to intentionally adversely interfere with that hire. He claims gender discrimination, retaliation, and tortious interference with business relations. Plaintiff seeks damages in excess of \$25,000, attorney fees, costs and interest. Settlement was reached between the parties and the case has been dismissed.

### III. CASE UPDATES

Barbara Kohl v University of Michigan Medical Center. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 18, 2005); Michigan Court of Claims (Judge James Giddings) (Filed April 26, 2005).

Plaintiff is a former employee who became disabled in 2002. She is enrolled in and receiving benefits under the University's long term disability program. Plaintiff claims that she is entitled to more benefits than what she is receiving. She seeks judgment in excess of \$25,000, together with costs, interest and attorney's fees. Plaintiff filed a companion case against the University in the Michigan Court of Claims.

Diane Lamb v University Musical Society. Washtenaw County Circuit Court. (Judge Timothy Connors). Diane Lamb v University of Michigan. Michigan Court of Claims (Judge William Collette) (Served April 10, 2002).

Plaintiff claims that she arrived at the Power Center to attend a University Musical Society event when she suffered an allergic reaction to some food she had eaten prior to the event. She alleges that the usher personnel at the event refused to summon help for her and that she subsequently slipped and fell on the bathroom floor, breaking her ankle in the fall. She claims that the Musical Society was negligent and, as a result, she suffered injuries. She seeks damages, costs, interest and attorney fees. A motion for summary disposition was filed on behalf of the Musical Society and a similar motion on behalf of the University of Michigan; the motions were granted and the case was dismissed. Plaintiff filed an appeal to the Michigan Court of Appeals, which upheld the dismissal of UM and the Musical Society.

Keith Yohn v Board of Regents of the University of Michigan, William Kotowicz, Robert Feigal, Marilyn Woolfolk, Merle Jaarda and Kenneth Stoffers. Michigan Court of Claims. (Judge Beverley Nettles-Nickerson) (Filed April 1, 2003).

Dr. Yohn, a professor in the Dental School, claims that he was deprived of an employment contractual right to assign a grade of "F" to two Dental School students. He alleges that Dean Kotowicz and members of the executive committee of the Dental School gave special treatment to the students, that ultimately a "W" grade was given to the students rather than the "F" assigned by Dr. Yohn and three other colleagues and that the students were given the opportunity to repeat the project. Dr. Yohn claims that the actions taken by the Dean and executive committee were done with malice toward him, with deliberate disregard for his contractual rights. He asks the court to order the University to post the "F" grades for the students, enjoin the defendants from interfering in his employment contractual rights, and damages. Plaintiff had previously filed a lawsuit on this issue in the federal court system; his complaint (and subsequent appeals) were dismissed. The University filed a motion for summary disposition which was granted by the court and the case was dismissed. Plaintiff filed a motion for reconsideration, which was denied by the court. Plaintiff filed a claim of appeal to the Michigan Court of Appeals. On April 20, 2005, the Court of Appeals affirmed the Court of Claims decision in favor of the University and all named defendants, agreeing with our argument that Plaintiff's claims in the state court are barred by *res*

*judicata* because he should have raised those claims in his earlier federal action. Plaintiff filed an appeal to the Michigan Supreme Court.

Jessica Stratton v City of Flint and Drs. Weber and Greenfield, et al. Genesee County Circuit Court.  
(Judge Geoffrey Neithercut) (Received January 14, 2002)

Plaintiff states that she was injured in an automobile accident on November 27, 2000 and was subsequently transported to Hurley Hospital. At the scene of the accident and during her transport, she was filmed by a reporter employed by WJRT television station. She claims that the defendants, including the University of Michigan physicians who were working in the emergency room of Hurley Hospital, owed her a duty to protect her privacy, including her medical information and treatment, all of which was made public in a television broadcast. Plaintiff claims that, as a result of these actions, she has suffered severe emotional distress, inability to sleep, and humiliation. She seeks damages, costs and attorney's fees. Plaintiff filed a second case against the University, claiming medical malpractice. That count had already been dismissed in the original case and the University has filed a motion to dismiss the second case. Judge Neithercut dismissed all defendants on summary disposition. Plaintiff filed an appeal and defendants cross-appealed the Judge's decision not to dismiss one of the physicians on the basis of governmental immunity. On January 6, 2005, the Michigan Court of Appeals upheld the trial court's dismissal. Plaintiff filed a petition for review to the Michigan Supreme Court.

Respectfully submitted,



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Vice President and General Counsel

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