

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

June 2014

NEW CASES

Niles Industrial Coatings LLC v The Regents of the University of Michigan. Court of Claims (Judge Amy Roynayne Krause) (Filed May 12, 2014)

Plaintiff, Niles Industrial Coatings LLC, was contracted to paint the bowl of Michigan Football Stadium over the Summer of 2013. Plaintiff is claiming additional work elements, and additional payments of over \$1.8M. The four-count complaint includes claims for breach of contract, declaratory relief, unjust enrichment, and quantum meruit. Plaintiff seeks \$1,806,184.82, interest, costs, and attorney's fees.

David Lilley v The Board of Regents of the University of Michigan. Wayne County Circuit Court (Judge Patricia Perez Fresard) (Filed May 16, 2014)

Plaintiff is an Assistant Professor for the Criminal Justice Program at the University of Michigan's Dearborn campus. Plaintiff alleges he was denied tenure based on his race and gender, and in retaliation for opposing race discrimination. His three-count complaint includes claims for race discrimination, race plus discrimination against an older white male, and retaliation. Plaintiff seeks economic, non-economic, and exemplary damages; tenure; interest; costs; and attorney's fees.

CASE UPDATES

Yaron Eliav v University of Michigan. Michigan Court of Claims (Judge Amy Roynayne Krause) (Filed April 4, 2012)

Plaintiff is a faculty member in the College of LS&A, Department of Near Eastern Studies. His complaint alleges that, following two misdemeanor charges, he entered into an agreement with the College and accepted the sanctions listed in that agreement. Plaintiff claims that those sanctions did not include removal of his membership in the Jean and Samuel Frankel Center for Judaic Studies. Plaintiff alleges breach of contract and due process violations, and seeks damages, costs, interest, and attorney's fees. On April 12, 2013, Plaintiff filed a motion for partial summary disposition. On April 17, 2013, Defendants filed a motion for summary disposition. Both motions were denied. Trial is set to begin June 18, 2014.

Regents of the University of Michigan v St. Jude Medical, Inc. United States District Court, Eastern District of Michigan (Judge Avern Cohn/Magistrate Judge Laurie J. Michelson) (Filed July 2, 2012)

In 1997, the University licensed to St. Jude Medical, Inc. its rights to patents and other technology related to chemical compositions for treating bio-prosthetic tissues. St. Jude has been paying royalties to the University for a number of years, but last year stopped paying, claiming that the University's patents and technology do not cover all the St. Jude products and that therefore the company was entitled to a credit on amounts previously paid. The University filed this lawsuit to recover the royalties that are currently owed, and to protect the University's ability to receive the future royalties to which the University is entitled. Defendant St. Jude filed its Answer with the court, including a counterclaim that the University should have to repay all the royalties since 1998. The University replied to Defendant's counterclaim, denying liability because the claim, among other things, is barred by the Michigan Court of Claims Act. On November 9, 2012, St. Jude Medical filed a Petition for Inter Partes Review at the U.S. Patent Office, seeking reexamination of the patentability of the claims in one of the patents licensed to St. Jude. The University filed an amended complaint for procedural reasons. On December 17, 2012, St. Jude Medical filed an Answer adding a count seeking declaratory judgment that the University's patent is invalid. On December 27, 2012, the University moved to dismiss Defendant's counterclaim given Defendant's failure to file notice with the Michigan Court of Claims as required by Michigan law. On December 31, 2012, the University

filed a summary judgment motion seeking an affirmative finding of liability on the license agreement. Defendant filed its opposition to the University's motion to dismiss on January 17, 2013, and the University filed a reply on January 31, 2013. On February 25, 2013, the Court denied the University's motion to dismiss. On March 7, 2013, St. Jude Medical notified the University it was terminating the 1997 license agreement as a matter of right, effective in June 2013. On April 5, 2013, the Court ruled the University could amend its Complaint to add a patent infringement count. On May 31, 2013, the Court granted St. Jude's motion to stay the litigation during Patent Office proceedings. The University and St. Jude will resolve the validity of the patent-in-suit at the Patent Office by 2014, and then the University will reopen the district court litigation to resolve its contract claims and any remaining patent claims. On August 8, 2013, the University filed a Motion to Amend the Complaint to add a patent infringement count against St. Jude Medical. On September 5, 2013, the District Court granted the University's Motion to Amend and Supplement the Complaint to add a count alleging patent infringement by St. Jude Medical; this Amended Complaint was filed on September 9, 2013. The parties completed the Inter Partes Review Proceedings (IRP) in January 2014. On May 1, 2014, the Patent Trial and Appeal Board of the U.S. Patent Office ruled that Defendant demonstrated, by a preponderance of the evidence, that the claims at issue in the IPR are not patentable. The University intends to appeal to the Court of Appeals for the Federal Circuit.

Michael Dwayne Thomas v University of Michigan, Lynn Noder-Love, Detective Ryan Cavanaugh, Deputy Scott Heddle, and Deputy William Coggins. United States District Court, Eastern District of Michigan (Judge Bernard Friedman) (Filed June 28, 2013)

Plaintiff alleges he was falsely arrested on June 27, 2011 by Defendants Heddle and Coggins and later arraigned on charges of assault with intent to do great bodily harm, charges that, he claims, were later dismissed. His complaint includes counts alleging gross negligence, intentional infliction of emotional distress, and violation of 42 U.S.C.-1983 as to all defendants; false arrest and false imprisonment as to defendants Cavanaugh, Heddle and Coggins; constitutional deprivation: individual law enforcement officer as to defendants Cavanaugh, Heddle and Coggins; constitutional deprivation: municipal/supervisory liability as to defendant University of Michigan; and malicious prosecution as to defendants Cavanaugh and Noder-Love. Plaintiff seeks judgment in excess of \$75,000, plus costs, interest and attorney's fees, together with exemplary and/or punitive damages. On June 28, 2013, Plaintiff filed a First Amended Complaint, adding the University of Michigan Health System as a defendant. On August 19, 2013, Defendants filed a Motion to Dismiss that was granted on October 2, 2013. On October 21, 2013 Plaintiff's Motion for Reconsideration was denied. On November 5, 2013, Plaintiff filed a Notice of Appeal and Defendants argued the appeal was late and moved for dismissal. On June 2, 2014, the Sixth Circuit Court of Appeals denied Defendants' motion to dismiss Plaintiff's appeal.

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); **AND Drew Sterrett v Regents of the University of Michigan.** Washtenaw County Circuit Court (Judge Donald E Shelton) (Filed April 24, 2014); **AND Drew Sterrett v Regents of the University of Michigan.** Court of Claims (Judge Pat M. Donofrio) (Filed May 6, 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.

Polytorx, LLC a Michigan Limited Liability Company v Antoine Naaman, Sherif El-Tawil, Dong Joo Kim, Ju Young Kim, Ji Yong Kim, and Sambo Construction Machine Co., LTD. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff claims the defendants, a current and former faculty member, have tortiously interfered with plaintiff's business relationships. Plaintiff alleges that defendants engaged in research and activities using the licensed patent rights that were in conflict with the license and collaborating in misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction. On July 25, 2013, Defendants filed a Motion for Summary Disposition that was denied on March 3, 2014. On March 24, 2014, Defendants filed an Application for Interlocutory Appeal. On April 21, 2014, Plaintiff filed a Motion in Opposition to Defendants' Application for Interlocutory Appeal. Defendants filed a Motion to Stay Proceedings on April 22, 2014. On May 19, 2014, the Court of Appeals granted Defendants' Application for Leave to Appeal, and Motion to Stay Pending the Appeal. At the same time, the Court ordered that the appeal to the Court of Claims and this appeal be consolidated.

CASE RESOLUTIONS

Linda Martinson v Lee K. Roosevelt, Joanne Motino Bailey, Kathy Dunnuck. Washtenaw County Circuit Court (Judge Melinda Morris) (Filed October 31, 2008); AND **Linda Martinson** v Jodi Danhof, Sarah Choinard, Erin Flatley and Catherine Scott. Washtenaw County Circuit Court (Judge Melinda Morris) (Filed November 7, 2008); AND **Linda Martinson** v Sarah Soroosh Vandergoot. Washtenaw County Circuit Court (Judge Melinda Morris) (Filed November 9, 2008); AND **Linda Martinson** v Regents of the University of Michigan, Carol Loveland-Cherry, Judith Lynch-Sauer and Bonnie Hagerty. United States District Court, Eastern District of Michigan (Judge Paul D. Borman) (Served October 5, 2009).

Plaintiff was enrolled in the School of Nursing second career nursing program. After she was dismissed from the program, she claimed that her classmates and a faculty member (the named defendants in the State court actions) made defamatory statements to third parties regarding Plaintiff, and that School of Nursing administrators relied upon those false statements to support her expulsion from the program. Plaintiff's state court action included defamation and intentional infliction of emotional distress against each of the Defendants. She sought damages in excess of \$25,000 plus costs and interest. By stipulation of the parties, the three state court cases were dismissed without prejudice when Plaintiff filed a fourth lawsuit in the U.S. District Court for the Eastern District of Michigan, naming the Regents as well as administrators at the School of Nursing.

In her federal lawsuit, Plaintiff's allegations include various theories alleging violations of federal and state due process rights. Plaintiff sought declaratory judgment stating that her expulsion from the School of Nursing is null and void, damages, interest, costs, and attorney's fees. Defendants filed a motion to dismiss and a motion for summary judgment. Judge Borman issued a written opinion dated September 28, 2011 granting the motion in part and denying the motion in part. Judge Borman dismissed all the claims against the University of Michigan and all claims against the individual defendants except for the federal procedural due process claim against the individual defendants. Plaintiff prematurely filed a notice of appeal to the Sixth Circuit Court of Appeals regarding the partial dismissal of her complaint. On August 16, 2012, Judge Borman granted the University's motion for summary judgment and dismissed plaintiff's complaint with prejudice. Plaintiff filed an appeal to the Sixth Circuit Court of Appeals. On April 4, 2014, the Sixth Circuit Court of Appeals affirmed the District Court's dismissal. On April 18, 2014, Plaintiff petitioned the Sixth Circuit for a rehearing *en banc*; that petition was denied on May 8, 2014.

Meliisa Hoagland v The University of Michigan and Rita McPherson. United States District Court, Eastern District of Michigan (Judge Patrick J. Duggan) (Filed August 24, 2012).

Plaintiff was employed in the Health System until her discharge on December 20, 2011, for job abandonment. She alleged that the University failed to accommodate her disability, discriminated against her based on her disability, and retaliated against her, all in violation of the Americans with Disabilities Act and the Michigan's Persons with Disabilities Civil Rights Act. Plaintiff sought lost wages, damages, attorney's fees, costs, interest, and full reinstatement to her previous employment. Defendant filed a motion for summary disposition that was granted in part on December 17, 2012. Judge Duggan ruled that Plaintiff could not bring a federal ADA claim against the University for money damages. He also ruled that Rita McPherson could not be sued in her individual capacity under the ADA. Judge Duggan declined Defendants' request for the Court not to exercise supplemental jurisdiction over Plaintiff's state claims. Plaintiff filed a First Amended Complaint on January 1, 2013 and a Second Amended Complaint on February 19, 2013. Settlement was reached between the parties. This case is concluded.

Rasheedah N. Gyan-Apenteng v University of Michigan. United States District Court, Eastern District of Michigan (Judge Gershwin A. Drain) (Filed March 27, 2014)

Plaintiff was a Research Technician for the University's Translational Pathology Department and claimed she was a non-exempt employee. Plaintiff alleged that Defendant failed to pay her at one and one-half times her regular rate of pay for hours worked in excess of forty hours per week. Plaintiff brought a claim under the Fair Labor Standards Act of 1938, and sought damages, costs, interest, and attorney's fees. The parties stipulated to the dismissal of Plaintiff's Complaint, without prejudice.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

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