

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the
Regents
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Subject: Litigation

July 2015

NEW CASES

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

Plaintiff claims that his constitutional rights were violated when he applied for and was denied a personal waiver to carry a firearm 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.

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.

CASE UPDATES

Detroit Free Press, Inc., a Michigan corporation, and Federated Publications, Inc., a Delaware corporation v The Regents of the University of Michigan, a Michigan corporation. Court of Claims (Judge Michael J. Talbot) (Filed July 8, 2014)

Plaintiffs allege that the University of Michigan violates the Open Meetings Act and the Michigan Constitution. Plaintiffs sought a temporary and permanent injunction. Plaintiffs also sought costs and attorney's fees. Both parties filed motions for summary disposition, and oppositions thereto. On June 10, 2015, Judge Talbot granted Defendant's motion for summary disposition, and denied Plaintiffs' cross motion. On June 29, 2015, Plaintiffs filed a claim of appeal.

CASE RESOLUTIONS

Sheri Barron v University of Michigan and University of Michigan Health System. U.S. District Court, Eastern District of Michigan, Southern Division (Judge Mark A. Goldsmith) (Served August 10, 2011).

Plaintiff was a registered nurse at UMHS. She alleged she was harassed and discriminated against based on her age and disability or perceived disability when, after returning from a disability leave of absence of more than seven years, she was told that she should take a refresher course before she could be returned to work as a registered nurse. Plaintiff claimed that she applied for approximately 70 registered nurse positions within the University following her leave, and that, after taking the training, she was not promoted from the nurse's-aid position. Plaintiff also alleged that she was told she would not be considered for promotion because of her age. Plaintiff claimed she suffered economic and emotional damages. She sought judgment against the University, damages, costs, and attorney's fees. On March 12, 2013, Defendants filed a motion to dismiss that was denied on May 30, 2013. On June 19, 2013, the Court awarded Defendants costs and attorney's fees as a result of a court filing seeking overdue discovery from Plaintiff. On August 28, 2013, Plaintiff's attorney's motion to withdraw as counsel was granted. Defendant's second motion to dismiss, filed on June 26, 2013, was denied. The Court also

imposed additional sanctions upon Plaintiff for her failure to produce overdue discovery. On November 25, 2013, Defendants filed their third motion to dismiss for failure to comply with Court orders; that motion was granted on June 30, 2014, with prejudice. On July 21, 2014, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals. On May 29, 2015, the Court of Appeals affirmed the District Court's decision to dismiss after Plaintiff failed to comply with discovery-related Court orders and pay the monetary sanction assessed against her. Plaintiff filed a motion for rehearing that was denied.

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 had been paying royalties to the University for a number of years, but stopped, 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 currently owed royalties, and to protect the University's ability to receive 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 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. 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. On June 27, 2014, the University appealed the Patent Office decision to the Court of Appeals for the Federal Circuit. Settlement has been reached between the parties. The District Court litigation and appeal of the Patent Office decision will be dismissed with prejudice.

Megan Bayagich v Board of Regents of the University of Michigan. Court of Claims (Judge Mark Boonstra) (Filed May 4, 2015) AND Megan Bayagich v. Alyssa McCullough. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed May 1, 2015)

Plaintiff, a University of Michigan student, alleged she sustained serious injuries when she fell from a University of Michigan bus. Plaintiff alleged she was ejected through a rear door when it opened without notice while the vehicle was in motion. Plaintiff claimed Defendants failed to engage safety devices, and that the bus was overcrowded. The driver of the bus has also been sued, alleging gross negligence. Defendant's filed a motion for summary disposition that was granted on June 22, 2015.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

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