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THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2014

NEW CASES

John Joseph v University of Michigan-Flint. Genesee County Circuit Court. (Judge Geoffrey L. Neithercut)
(Served July 8, 2014)

Plaintiff alleges that he applied for two Police Officer positions, and participated in the application process, but was not hired on account of age and race discrimination. Plaintiff seeks damages exceeding \$25,000, plus costs, and interest.

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 Carol Kuhnke) (Filed July 8, 2014)

Plaintiffs allege that the University of Michigan routinely violates the Open Meetings Act and the Michigan Constitution. Plaintiffs seek a temporary and permanent injunction restraining Defendants from continuing to do so. Plaintiffs also seek costs and attorney's fees.

Michael Sanders, as Personal Representative for the estate of Nancy Sanders, Deceased v Kenneth Wright. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed July 8, 2014)

Plaintiff claims that defendant, while driving a UM commuter bus, struck Plaintiff's Decedent, Nancy Sanders who later died of injuries. His complaint alleges gross negligence and seeks in excess of \$25,000 in damages with costs, interest, and attorney's fees.

Andrew U.D. Straw v American Bar Association Section of Legal Education and Admission to the Bar et al.
United States District Court, Northern District of Illinois. (Judge Elaine E. Bucklo) (Filed July 9,
2014)

Plaintiff Andrew Straw has brought suit in the U.S. District Court for the Northern District of Illinois against the University of Michigan Law School, the American Bar Association ("ABA"), and the other 49 law schools considered to be in the top 50 ranked law schools in the country. Plaintiff alleges that the ABA and the law schools have violated the Americans with Disabilities Act ("ADA") by not publicly disclosing statistics related to the number of students and faculty who have disabilities on an annual basis. Plaintiff seeks reimbursement for costs and injunctive relief under Title II and Title III of ADA.

CASE UPDATES

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 the University Hospital. She alleges 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 claims that she applied for approximately 70 registered nurse positions within the University following her leave, and after taking the training, she was not promoted from the nurse's-aid position. Plaintiff also alleges that she was told she would not be considered for promotion because of her age. Plaintiff claims she has suffered economic and emotional damages. She seeks 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, which was 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.

Joan Scheske v University of Michigan Health System. United States District Court, Eastern District of Michigan. (Judge Nancy Edmunds) (Filed August 5, 2013)

Plaintiff was a market research analyst lead for the Department of Surgery for the University of Michigan Health System. Plaintiff states she reported to management that there was a discrepancy between her role, title, and compensation, and that this discrepancy was based on her gender. Plaintiff claims similarly situated male employees, who performed similar functions, were properly titled and compensated at the director level, and she was not. Plaintiff further alleges that her supervisors subjected her to gender-based discriminatory behavior. Her three-count complaint includes claims of gender discrimination, retaliation, and violation of the Equal Pay Act. Plaintiff seeks back pay, punitive damages, reinstatement or back and front-pay in lieu of reinstatement, interest, costs, and attorney's fees. On April 29, 2014, the parties stipulated to the dismissal of Plaintiff's gender discrimination and Equal Pay Act claims, with prejudice. On August 1, 2014, Defendants filed a Motion for Summary Judgment.

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)

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. The Circuit Court Case was transferred to the Court of Claims on May 27, 2014, and the parties stipulated to the dismissal of that case. On May 20, 2014, Defendants filed a Motion to Dismiss the federal case; a Motion to Stay Discovery was filed on June 17, 2014. On June 17, 2014, Defendant filed a Motion for Summary Disposition and Motion to Stay Discovery in the Court of Claims case; the Motion for Summary Disposition was granted on July 17, 2014, and the Motion to Stay discovery was denied as being moot. The federal case is the only case currently pending.

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 was an Assistant Professor for the Criminal Justice Program at the University of Michigan's Dearborn campus until his recent resignation. 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.

Plaintiff filed an amended complaint on June 16, 2014, and a second amended complaint on August 7, 2014.

Belinda Anderson v The Regents of the University of Michigan, Ted Makowiec in his official capacity, and Brian Vasher in his official capacity. United States District Court, Eastern District of Michigan. (Judge David Lawson) (Filed May 24, 2014).

Plaintiff was hired as secretary in the Benefits Administration Office within University Human Resources. She alleges Defendants have engaged in a pattern and practice of unlawful discrimination on the basis of race or national origin by denying her promotions and salary increases, and by subjecting her to arbitrary demotions when she was selected to be transferred to a newly created Shared Services Center. Plaintiff seeks compensatory damages, lost wages and benefits, interest, costs, and attorney's fees. On August 14, 2014, Defendants filed a motion for partial summary judgment.

Rasheedah N. Gyan-Apenteng v University of Michigan. Court of Claims. (Judge Deborah A. Servitto) (Served July 9, 2014)

Plaintiff was a Research Technician for the University's Translational Pathology Department and claims she was a non-exempt employee. Plaintiff alleges 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 brings claims under the Fair Labor Standards Act of 1938 and the Minimum Wage Law of 1964. She seeks damages, costs, interest, and attorney's fees. Plaintiff previously filed a similar Complaint in the Eastern District of Michigan. The parties stipulated to the dismissal of that Complaint, without prejudice, in June 2014 and Plaintiff filed this new Complaint in the Court of Claims.

CASE RESOLUTIONS

Alix Gould-Werth, Christie Toth and Graduate Employees Organization, AFT Michigan, AFT, AFL-CIO, and Regents of the University of Michigan (Plaintiff in Intervention) v Edward Callaghan in his official capacity as Chairman of the Michigan Employment Relations Commission; Christine Derdarian in her official capacity as a member of the Michigan Employment Relations Commission; and Nino Green in his official capacity as a member of the Michigan Employment Relations Commission. United States District Court, Eastern District of Michigan. (Judge Mark Goldsmith) (Filed April 17, 2012 and June 8, 2012 [Intervening Complaint])

Plaintiffs alleged that 2012 Public Act 45 violates the equal protection clause of the U.S. Constitution by excluding a group of individuals (graduate student research assistants) from the right to bargain based on job title alone. They further alleged that the Act violates Article IV, Section 24 of the Michigan Constitution by changing the object and purpose of the bill that eventually became 2012 PA 45.

The University of Michigan filed an Intervening Complaint on June 8, 2012, bringing claims under the equal protection clause of the U.S. Constitution and Article IV, Section 24 of the Michigan Constitution. The Intervening Complaint added a claim under the equal protection clause of the Michigan Constitution, and a challenge to the immediate effect of 2012 PA 45 under Article IV, Section 24 of the Michigan Constitution. Intervening Plaintiff University asked the Court to issue a permanent injunction declaring 2012 PA 45 in violation of the U.S. and Michigan Constitutions. On January 28, 2013, the parties stipulated to the dismissal without prejudice of Court IV – Immediate Effect Clause – Michigan Constitution, of the University's Intervening Complaint. On April 10, 2013, Defendant MERC filed a Motion for Summary Judgment. On April 16, 2013, Plaintiff GEO/AFT, and Intervening Plaintiff University of Michigan, both filed Motions for Summary Judgment. On February 5, 2014, the Court issued its opinion, invalidating 2012 PA 45 on the basis that it violated Article IV, Section 24 of the Michigan Constitution. The Court did not reach the equal protection argument. On March 21, 2014, the Attorney General, on behalf of the Defendants, filed

a notice of appeal in the Sixth Circuit. On July 8, 2014, an Order was entered dismissing the Sixth Circuit appeal. This case is concluded.

Tracey McCoy and Larry McCoy v Holly B. McCrum, Progressive Casualty Insurance Company and University of Michigan Health System. Court of Common Pleas of Lucas County, Ohio. (Filed October 10, 2013).

As a result of an alleged car accident, Plaintiff Tracey McCoy claimed she received physical therapy treatment from the University of Michigan Health System and the bills she received contained duplicative charges. Plaintiff claimed the alleged fraudulent billing violated Ohio Revised Code Section 1345.02 and 1345.03. Plaintiff sought damages of more than \$25,000, together with punitive damages, treble damages, attorney's fees, interest, and costs. Settlement was reached between the parties. This case is concluded.

Donald Pines v The University of Michigan. Wayne County Circuit Court. (Judge Patricia Fresard) (Served September 11, 2012).

Plaintiff worked as a billing clerk at the University Hospital. He alleged that, after he complained to his supervisors that he was being sexually harassed by a co-worker, the University engaged in a pattern of harassment and discipline ultimately resulting in Plaintiff being placed on an unpaid medical leave in November 2008. Plaintiff alleged that the University denied him subsequent positions for which he applied and ultimately released him from his employment. Plaintiff brought claims under Michigan's Persons with Disabilities Civil Rights Act, including a claim of retaliation for filing a sexual harassment charge. Plaintiff sought lost wages, lost benefits, emotional damages, interest, costs, and attorney's fees. On December 14, 2012, Judge Fresard granted in part Defendant's motion for summary disposition by dismissing the retaliation claim. On January 4, 2013, the University filed an application for leave to appeal the trial court's denial of the University's motion for summary disposition on the Michigan's Persons with Disabilities Civil Rights Act claim. On July 31, 2013, the Court of Appeals granted Defendant's Application for Leave to Appeal. The Court of Appeals reversed the trial court's decision and ordered the court to grant the University's summary disposition.

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 alleged that, following two misdemeanor charges, he entered into an agreement with the College and accepted the sanctions listed in that agreement. Plaintiff claimed that those sanctions did not include removal of his membership in the Jean and Samuel Frankel Center for Judaic Studies. Plaintiff alleged breach of contract and due process violations, and sought damages, costs, interest, and attorney's fees. On April 12, 2013, Plaintiff filed a motion for partial summary disposition and on April 17, 2013, Defendants filed a motion for summary disposition. Both motions were denied. Trial was held over five days, and Judge Krause rejected Eliav's assertions, finding in favor of the University. This case is dismissed.

Jesse R. Enjaian v Jose A. Dorta and Renee Schomp. United States District Court, Eastern District of Michigan. (Judge Robert H. Cleland) (Served September 16, 2013)

Plaintiff alleged that, pursuant to a search warrant, his electronic equipment was seized from his residence in connection with an alleged charge of stalking, and not returned for 446 days. Plaintiff further claimed that Defendant Schomp made false allegations about him to University Defendants. Plaintiff sought compensatory damages from Defendant Dorta, and nominal damages from Defendant Schomp. On November 8, 2013, Defendants filed motions to dismiss the University of Michigan and named defendants Jose Dorta and Renee Schomp. On January 17, 2014, Defendants filed a motion for sanctions. On July

23, 2014, Defendants' motions to dismiss were granted and Defendants' motion for sanctions was denied. Plaintiff filed a motion for reconsideration that was denied. This case is concluded.

Bin Kang, PhD. v. The Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed May 14, 2013)

Plaintiff, a former postdoctoral fellow at the University's Department of Biology (now known as the Department of Molecular, Cellular and Developmental Biology), alleged that the University failed to credit him on various research publications. His four-count complaint included claims for breach of contract, fraud, misrepresentation, and retaliation. Plaintiff sought compensatory damages. Defendant filed a Motion for Summary Disposition on July 16, 2013, that was granted by Judge Kuhnke on August 28, 2013. On September 18, 2013, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals that was dismissed for lack of prosecution.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Timothy G. Lynch", with a stylized flourish at the end.

Timothy G. Lynch
Vice President & General Counsel

September 2014