

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2023

NEW CASES

Parag-G. Patil, M.D., Ph. D v The Board of Regents of the University of Michigan, Marie Lozon, M.D., Individually, Karin Muraszko, M.D., Individually, and Stephen Sullivan, M.D., Individually. United States District Court, Eastern District of Michigan. (Filed March 17, 2023) (Judge Mark A. Goldsmith)

Plaintiff, an Associate Professor of Neurology at the University of Michigan, filed a 15-count complaint that alleges, among other things, violations of the American with Disabilities Act; the Michigan Persons with Disabilities Act; the Elliott-Larsen Civil Rights Act; and the Bullard Plawecki Employee Right to Know Act. Plaintiff seeks compensatory, exemplary, and punitive damages, together with costs, interest and attorney's fees. On July 3, 2023, Defendants filed motions to dismiss.

John Doe, M.D. v. The Board of Regents of the University of Michigan, Michael Mulholland, M.D., Marie Lozon, M.D., and Justin Dimick, M.D., Individually. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed July 14, 2023)

Plaintiff filed a five-count complaint after he received notice from Defendants of an intent to suspend his clinical privileges indefinitely and report his suspension to the National Practitioner Data Bank ("NPDB") and the State of Michigan Board of Medicine. Plaintiff alleges breach of contract, breach of fiduciary and public duties, intentional infliction of emotional distress, age discrimination, and retaliation. Plaintiff seeks injunctive and equitable relief and compensatory, exemplary, and punitive damages. He further demands that his clinical privileges be restored, his board certification renewed, and his name renewed with the NPDB. Plaintiff also seeks interest, costs, expert witness, and attorney's fees.

Robert Davis v The University of Michigan. Court of Claims (Filed July 28, 2023) (Judge Elizabeth Gleicher)

Plaintiff filed a one-count complaint alleging violations of the Freedom of Information Act ("FOIA"). Plaintiff seeks costs and attorney's fees.

Dennis Eborka v University of Michigan. Washtenaw. County Circuit Court. (Filed June 22, 2023) (Judge Carole Kihnke)

Plaintiff filed a complaint asking the court to order the University to award him an "A" for a course. Defendant filed a motion for summary disposition on July 11, 2023, that was granted on August 16, 2023.

Brandon Lucas v Regents of the University of Michigan. United States District Court, Eastern District of Michigan. (Filed August 11, 2023) (Judge Matthew F. Leitman)

Plaintiff was a Director in the College of Engineering and filed a two-count complaint alleging race discrimination and retaliation and a violation of the Whistleblower Protection Act after he was terminated from his position and deemed ineligible for rehire at the College of Engineering. Plaintiff seeks a declaratory judgment stating that it is unlawful for Plaintiff to be placed on a "Do Not Hire" list; equitable relief; and compensatory and exemplary damages, together with interest, costs and attorney's fees.

Robyn Leineke v Michigan Medicine. United States District Court, Eastern District of Michigan. (Filed August 22, 2023 (Judge Sean Cox)

Plaintiff was a registered nurse with Michigan Medicine and filed a two-count complaint alleging disability discrimination and due process after she was terminated for refusing to get the Covid vaccine when her

accommodation request to receive an exemption was denied. Plaintiff seeks compensatory, exemplary, and punitive damages together with costs and attorney's fees.

Robert Stepheson v University of Michigan, University of Michigan of Board of Regents, and Laurie McCauley, University of Michigan Provost and Executive Vice President for Academic Affairs, Patricia Hurn, Dean of the University of Michigan School of Nursing, and Robert Ploutz-Snyder, Assistant Dean of Research and Scholarship for the University of Michigan School of Nursing, sued in their personal and official capacities. United States District Court, Eastern District of Michigan. (Filed August 2, 2023) (Judge Mark A. Goldsmith)

Plaintiff is a professor of Nursing at the University's School of Nursing and filed a six-count complaint alleging violations of due process, the Fourteenth Amendment, Title IX and ELCRA. Plaintiff seeks compensatory, exemplary, and punitive damages. Plaintiff also seeks equitable relief together with interest, costs, and attorney's fees.

CASE UPDATES

Laura Beny v University of Michigan, University of Michigan Law School, and Dean Mark D. West, Individual and professional capacity. United States District Court, Eastern District of Michigan. (Filed August 26, 2022) (Judge David A. Lawson)

Plaintiff, a tenured professor at the Law School, filed a fourteen-count complaint alleging violations of the Americans with Disabilities Act (ADA); the Family Medical Leave Act (FMLA); Title VII for race and sex discrimination; Title IX; First Amendment; Fifth Amendment; Fourteenth Amendment for Equal Protection and Due Process; Michigan Persons with Disabilities Act (PWDCRA); Elliott-Larson Civil Rights Act (ELCRA) based on sex, race and familial/marital status, hostile work environment under ELCRA, and retaliation. On November 21, 2022, Defendants filed a motion to dismiss. On January 13, 2023, Plaintiff filed an amended complaint. On February 6, 2023, Defendants filed a motion to dismiss Plaintiff's First Amended Complaint that was granted and denied in part on July 7, 2023. On July 21, 2023, Plaintiff filed a motion for reconsideration and to file a second amended complaint, which was denied on July 28, 2023.

Heather Kerchen, Lori Kerchen, and Dale Kerchen v Christian Raphaelides (in his individual and official capacities), University of Michigan, James H. Woods (in his individual and official capacities), & Unknown Does (in their individual—and where appropriate—official capacities). United States District Court, Eastern District of Michigan. (Judge Shalimar Kumar) (Served October 1, 2022)

Plaintiffs filed a wrongful death case on behalf of Todd Kerchen after he was found deceased in his home on January 25, 2000. Plaintiffs claim that the drugs that caused Mr. Kerchen's death were stolen from a University lab that had failed to enact proper drug access procedures. The complaint alleges deprivation of life without due process of law, wrongful death, Drug Dealer Liability Act, Section 6, Drug Dealer Liability Act, Section 5 (Estate), Drug Dealer Liability Act, Section 5 (The Family) and Drug Dealer Liability Act, Section 7. Plaintiffs seek compensatory and punitive/exemplary damages in the amount of \$300,000,000.00, plus attorney and expert's fees. On December 15, 2022, Defendants filed a motion to dismiss that was denied on August 2, 2023.

Tamara Cook v University of Michigan. Washtenaw County Circuit Court. (Filed March 21, 2023) (Judge Timothy P. Connors)

Plaintiff, a former Patient Services Assistant for Michigan Medicine, filed a three-count complaint alleging violations of the Michigan Persons with Disabilities Act for alleged failure to accommodate, disability discrimination and retaliation. Plaintiff seeks compensatory, pecuniary, exemplary and/or punitive damages; lost wages and the value of fringe benefits; and interest, costs, and attorney's fees. On July 3, 2023, the case was closed for lack of progress. On August 23, 2023, Plaintiff filed a motion to set aside the dismissal and reinstate the case.

Paul Hinz v Board of Regents of the University of Michigan. Court of Claims. (Judge Cynthia Stephens)
(Served January 19, 2022)

Plaintiff alleges the University of Michigan was negligent after he slipped in the bathtub at the Med Inn Hotel and sustained injuries. Plaintiff seeks an amount in excess of \$25,000 in addition to costs, interest, and attorney's fees. On January 19, 2023, Defendant filed a motion for summary disposition that was denied on March 23, 2023. Defendant filed an appeal on April 11, 2023.

Mark Franklin Hoeltzel v. Margie Pillsbury, Maureen Burke, Sgt. Connors, Det. Lucas, Tom Cargill, Mark Worosz, Det. Parviz, Officer Chalogianis and Lynetta Smith. United States District Court, Eastern District of Michigan. (Judge David Lawson) (Filed October 18, 2019)

Plaintiff, an inmate at the Milan Federal Correctional Institution, alleges unreasonable search and seizure in violation of the Fourth Amendment. Plaintiff sought damages and injunctive and declaratory relief. On July 30, 2020, Defendants Pillsbury, Burke, Martin-Connors, Lucas, Cargill, Worosz and Chalogianis filed a motion for summary judgement that was granted on March 30, 2021. On April 22, 2021, Defendant Lynetta Smith filed a motion for summary judgement. On March 17, 2022, all of plaintiff's claims against all defendants were dismissed with prejudice. Plaintiff filed an appeal that was dismissed on June 28, 2022. On July 7, 2022, Plaintiff filed a motion to reopen to file an appeal, which was granted on July 20, 2022. On July 18, 2022, Plaintiff filed an application for rehearing of his appeal. On August 22, 2023, the court of appeals affirmed the judgment of the district court, in part, and vacated and remanded, in part.

Luis Antonio Martinez, Sr., Ana Martinez De Jesus, Yaritza Martinez De Jesus, Debora Martinez De Jesus, and Enith Martinez De Jesus v County of Wayne, a municipal corporation, Dr. Carl Schmidt, acting in his official and individual capacities, Dr. Leigh Hlavaty, Dr. Michael Caplan, Dr. Lee Hill, William Kasper, Investigator Davis and Investigator Doe, all acting in their individual capacities. United States District Court, Eastern District of Michigan. (Filed June 6, 2023) (Judge Matthew Leitman)

Plaintiffs filed a five-count complaint including alleged violations of 42 U.S.C. § 1983, M.C.L. § 52.205, gross negligence and intentional infliction of emotional distress when the decedent's body was allegedly cremated without the family being afforded the opportunity to identify his remains. Plaintiffs seek compensatory and punitive damages, together with costs and attorney's fees. On August 31, 2023, Defendants filed a motion to dismiss.

The Regents of the University of Michigan and The University of South Florida Board of Trustees v Novartis Pharmaceuticals Corporation. United States District Court, Northern District of California San Jose Division. (Filed August 29, 2022)

The Regents of the University of Michigan filed a one-count complaint for patent infringement of United States Patent No. 10,633,344 under the patent laws of the United States, 35 U.S.C. § 271, *et seq.* On September 1, 2023, Defendant Novartis filed a motion to stay.

John Doe v University of Michigan, Board of Regents of the University of Michigan, Pamela Heatlie, Robert Sellers, Martin Philbert, Erik Wessel, Laura Blake Jones, E. Royster Harper, Suzanne McFadden and Paul Robinson. United States District Court, Eastern District of Michigan (Filed June 4, 2018) (Judge Arthur Tarnow)

Plaintiff, a student at the University of Michigan, was accused of violating the University's Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (Sexual Misconduct Policy). His five-count complaint alleges violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief, including an injunction (1) halting the investigation and decision-making process with regard to the University's Office for Institutional Equity complaint against Plaintiff and (2) prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks compensatory, exemplary and punitive damages, interest, costs, and attorney's fees. On June 4, 2018, Plaintiff filed an *ex parte* motion to proceed under a pseudonym and a motion for a temporary restraining order and preliminary injunction. Defendants' opposition to Plaintiff's motion for

preliminary injunction was filed on June 15, 2018. On July 6, 2018, the Court entered its Order Granting In Part and Denying In Part Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. The Court ordered that the University provide Plaintiff with the opportunity for a live hearing in accordance with the procedures set forth in the Statement of Student Rights and Responsibilities as soon as practicable.

On July 25, 2018, Defendants filed a notice of appeal. Plaintiff filed a cross-appeal. On January 18, 2019, Defendant filed a motion to dismiss the cross-appeal. On April 10, 2019, the United States Court of Appeals for the Sixth Circuit vacated the district court's preliminary injunction and remanded for reconsideration in light of *Doe v. Baum* and the University's interim policy. On May 22, 2019, Plaintiff filed a second amended complaint. On June 5, 2019, Defendants filed a motion to dismiss the second amended complaint. On June 10, 2019, Plaintiff filed a motion for partial summary judgment. On June 12, 2019, Defendants filed an emergency petition with the Sixth Circuit seeking mandamus relief from the District Court's orders requiring the University's President to appear for a settlement conference on the record and in open court. On June 12, the Sixth Circuit stayed the District Court's Order and on August 23, 2019, granted the petition for a writ of mandamus. On October 21, 2019, Defendants filed a motion requesting that the District Court permit the University to proceed with the student conduct hearing or, in the alternative, promptly rule on the pending dispositive motions. On November 15, 2019, the District Court denied Defendants' motion. On March 16, 2020, Defendants filed a petition for a writ of mandamus with the Sixth Circuit, seeking an order requiring the District Order to permit the University to move forward with the student conduct hearing and to implement the Sixth Circuit's order to reconsider Plaintiff's due process claim in light of the University's interim policy. On March 23, 2020, the District Court entered an Order granting in part and denying in part Defendants' motion to dismiss, granting Plaintiff's motion for partial summary judgment, and denying Defendants' motion to vacate order enjoining student conduct hearing as moot. The District Court dismissed Plaintiff's Title IX claim and declined to exercise supplemental jurisdiction over Plaintiff's Elliott-Larsen Civil Rights Act claim. The District Court declined to dismiss Plaintiff's Fourteenth Amendment Due Process claim on qualified immunity grounds and granted summary judgment in Plaintiff's favor on this claim. On March 24, 2020, the Clerk entered a corresponding Judgment. On March 25, 2020, Defendants filed a Notice of Appeal. On April 10, 2020, Plaintiff filed a motion for injunctive relief, seeking to delay his student conduct hearing. On April 16, 2020, the Court denied Plaintiff's motion as moot after the claimant informed the University that she would no longer participate in a hearing. On April 20, 2020, the Sixth Circuit entered an order dismissing the March 16, 2020, mandamus petition as moot. On April 27, 2020, Plaintiff filed a motion to dismiss the March 25 appeal as moot while also seeking to leave the District Court's March 23 Order intact. On May 1, 2020, Defendants filed a motion for sanctions against Plaintiff, requesting that the Court order reimbursement for the legal fees they expended responding to Plaintiff's improper motion for injunctive relief pending Defendants' appeal and preparing the motion for sanctions. On November 25, 2020, the Magistrate Judge issued a Report and Recommendation that the motion for sanctions be denied. Defendants timely filed objections. On December 23, 2020, the Sixth Circuit granted Plaintiff's motion to dismiss the March 25, 2020, appeal as moot with instructions to vacate the judgment. On January 8, 2021, Plaintiff filed a renewed motion for attorney fees. On November 19, 2021, the Magistrate Judge issued a Report and Recommendation awarding attorney fees. The University filed objections to the Report and Recommendation that were overruled by the District Court's June 28, 2022, Order. On July 27, 2022, Defendants filed a notice of appeal.

On August 21, 2023, following briefing and oral argument, the Sixth Circuit ruled that aside from a short, days-long hold placed on Doe's transcript in June of 2018, Doe did not suffer any injury that would give him a basis to assert claims against the University or the individual defendants named in his lawsuit. As a result, Doe cannot recover attorneys' fees for the vast majority of the litigation that has occurred over the past five years. Instead, the case has been sent back to the District Court to recalculate an award of fees tied only to Doe's limited success in obtaining the release of a clean transcript just a few days into the litigation.

CASE RESOLUTIONS

Melanie White, and as PR of the Estate of Isaiah White and Darren Pollard v. Leigh Hlavaty, acting in her individual and official capacity as Deputy Chief Medical Examiner for the Wayne County Medical Examiner's Office and Wayne County. United States District Court, Eastern District of Michigan. (Judge Terrence Berg) (Filed December 12, 2022)

Plaintiff alleged violations of the Fourteenth Amendment, gross negligence, and infliction of emotional distress after Defendant Hlavaty amended her autopsy report to reflect that the cause of death was suicide. Plaintiff sought \$1,000,000.00 in damages, together with costs, interest, and attorney's fees. On January 13, 2023, Defendants filed a motion to dismiss that was granted on July 27, 2023.

John Doe, M.D. v. The Board of Regents of the University of Michigan, Marie Lozon, M.D., and Justin Dimick, M.D., Individually. United States District Court, Eastern District of Michigan (Judge Gershwin Drain) (Filed December 29, 2021)

Plaintiff filed a six-count complaint after he received notice from Defendants of an intent to suspend his clinical privileges indefinitely and report his suspension to the National Practitioner Data Bank ("NPDB") and the State of Michigan Board of Medicine. Plaintiff's alleged violations of due process, breach of contract, breach of fiduciary and public duties, intentional infliction of emotional distress, and retaliation. Plaintiff sought injunctive and equitable relief, compensatory, exemplary, and punitive damages; and he asked that his clinical privileges be restored, his board certification renewed, and his name renewed with the NPDB. Plaintiff also sought interest, costs, expert witness, and attorney's fees. Defendants filed a motion to dismiss that was granted on June 16, 2022. Plaintiff filed a motion for reconsideration that was denied on November 18, 2022. On December 5, 2022, Plaintiff filed an appeal that was denied on August 9, 2023.

Suleyman Uludag, Ph.D. v University of Michigan – Flint, a public university. Genesee County Circuit Court. (Judge Joseph Farah) (Served September 24 2020)

Plaintiff, a tenured associate professor of computer science for the University of Michigan-Flint, filed a one-count breach of contract claim alleging that, while he was physically away from campus (in Turkey), he performed his contractual duties of research and service and offered to teach remotely but defendant refused to provide his salary and benefits. Plaintiff sought in excess of \$25,000, together with interest, costs, and attorney's fees. On March 23, 2022, Defendant filed a motion for summary judgement that was granted on May 24, 2022. Plaintiff filed a claim of appeal on June 13, 2022. On May 7, 2023, Defendant filed a Notice of Supplemental Authority claiming Plaintiff has failed to comply with the notice requirement, which was granted on July 13, 2023.

Melvin Smith v Regents of the University of Michigan-Flint. Genesee County Circuit Court. (Filed March 16, 2023) (Judge Chris Christenson)

Plaintiff, a LEO Lecturer I in the Biology department at U-M-Flint, filed a six-count complaint alleging a hostile work environment, race discrimination, and retaliation under both the Michigan Elliott-Larsen Civil Rights Act and Title VII. Plaintiff sought lost wages; compensatory, emotional distress, punitive, and exemplary damages; equitable relief; an injunction prohibiting Defendant from discrimination; and interest, costs, and attorney's fees. On June 23, 2023, Defendants filed a motion for summary disposition that was granted on August 8, 2023.

Ross Barranco and Katie Shier v University of Michigan Board of Regents. United States District Court, Eastern District of Michigan (Filed March 20, 2023) (Judge Nancy G. Edmunds)

Plaintiffs filed a complaint for declaratory and equitable relief after they were removed from the kidney and heart transplant lists for refusing to receive the COVID-19 vaccine. Michigan Medicine had a requirement that all transplant patients receive the vaccine to remain eligible transplant candidates. Plaintiff brought these claims in the Court of Claims. Plaintiff's four-count complaint includes alleged violations of the First and Fourteenth Amendments and Title II. The Michigan Court of Claims 1) dismissed the federal claims for lack of subject matter jurisdiction; 2) dismissed the Michigan civil rights claims under Elliot Larsen; and 3) retained

jurisdiction over the Michigan constitutional claims. Plaintiff brought the federal claims for injunctive relief to federal court pursuant to Title II, and the U.S. Constitution. Settlement has been reached between the parties. This case is concluded.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Timothy G. Lynch", with a long horizontal flourish extending to the right.

Timothy G. Lynch
Vice President and General Counsel

September 2023