

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION:

EXH	MOTION
	SECOND
	ACTION <b>APPROVED BY THE REGENTS</b>
NOTE:	October 2005
	OCT 21 2005

Subject: Litigation

I. NEW CASES

1. Afzal Hossain v Daniel Little, Board of Regents of the University of Michigan, Malayappan Shridhar and Subrata Sengupta. United States District Court for the Eastern District of Michigan. (Judge George Caram Steeh) (Filed August 31, 2005).

Plaintiff was hired as an Assistant Professor in the College of Engineering and Computer Science on the Dearborn campus. He claims that he was discriminated against while employed in that position and was ultimately denied tenure because of his national origin (Bangladesh) and religion (Muslim). Plaintiff's twenty-one counts include breach of contract, negligent training and supervision, infliction of emotional distress, religious and national origin discrimination, wrongful denial of tenure and hostile work environment. He seeks reinstatement, damages, attorney's fees, back wages and other relief.

2. Anita Stubbs v The University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed September 12, 2005).

Plaintiff is a former employee of the University. She claims that she had been off work on sick leave and that, when she was cleared by her physician to return to work, she was terminated. She alleges that she was terminated because of her condition and seeks damages, costs and attorney's fees.

3. Kevin A. Graves v Robert Thompson. United States District Court, Eastern District of Michigan. (Judge Patrick J. Duggan) (Filed August 30, 2005).

Plaintiff was employed as a Research Associate at the University in the Mental Health Research Institute. He claims that he was sexually harassed by his female colleagues and that, even after he complained to his supervisor Robert Thompson, the treatment continued. His employment was terminated in October 2004 and Plaintiff alleges that he was fired because of his gender and because he had complained about the sexual harassment. He seeks lost wages and benefits (both past and future), damages, costs and attorney's fees.

II. RESOLUTIONS

4. Virginia Roman, P.R. of the Estate of John Roman v A.J. Baxter Company, et al. Wayne County Circuit Court. (Judge Robert Colombo, Jr.) (Served June 14, 2004).

This case was filed against dozens of corporations and businesses at which John Roman (deceased) worked or may have worked on construction projects, claiming that he was exposed to

asbestos which caused disabling personal injuries which eventually caused/contributed to his death. Plaintiff (widow of John Roman) alleges that the University's (as well as that of other companies) negligence was the cause of this asbestos exposure and seeks damages, costs, interest and attorney's fees. Settlement was reached between the parties and the case is dismissed.

5. Crystal Byrd v University of Michigan. Michigan Court of Claims. (Judge James R. Giddings) (Filed January 19, 2004).

Plaintiff, a former University employee, claims that she was denied long term disability benefits. She seeks long term disability benefits, attorney fees, costs and interest. The University filed a motion for summary disposition, which was denied by the court. Settlement was reached between the parties and the case is dismissed.

6. 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, which denied her application. This case is concluded.

### III. CASE UPDATES

7. John Nicklas v Todd Koelling, M.D., Elizabeth Nabel M.D., Dan Cutler, John Doe and Richard Roe. Washtenaw County Circuit Court. (Judge Davis S. Swartz) (Filed March 20, 1998); John Nicklas v Kim Eagle, Elizabeth Nabel, David Humes, Robert Cody, and Keith Aaronson. United States District Court, Eastern District of Michigan. (Judge Bernard Friedman) (Filed June 2, 1999).

Plaintiff is an associate professor at the Medical School. He claims that the defendants, who are also faculty members, made false and defamatory statements against him, causing him to be denied a promotion and suffering injury to his good name and reputation. He seeks damages in excess of

\$25,000. The University filed a motion for partial summary disposition. Plaintiff filed a lawsuit in federal court, alleging retaliation by his supervisors and co-workers because of the Washtenaw County Circuit Court case. His federal suit claims that he has been subject to disparate and untoward working conditions. He has filed a motion for preliminary injunction and seeks an emergency evidentiary hearing of his claims that his research and clinical work are being jeopardized and in danger of suffering irreparable injury, loss and damage. Defendants filed a motion to dismiss in the federal court action, which was granted and the case was dismissed; plaintiff filed an appeal to the U.S. Court of Appeals. On August 22, 2002, the Court of Appeals affirmed the trial court's dismissal of plaintiff's complaint; plaintiff's petition for rehearing was denied. Plaintiff filed a petition for certiorari to the U.S. Supreme Court on January 2, 2003. In the state court case, the University filed motions for summary disposition on a number of grounds, all of which were denied without prejudice. When defendants filed for leave to appeal to the Michigan Court of Appeals, plaintiff argued that the motions were not decided by the court but merely deferred until trial. Defendants filed a motion for decision on the previously-filed motions for summary disposition, which was heard by Judge Swartz on March 19, 2003. The judge dismissed Plaintiff's claims against Drs. Eagle, Nabel and Cutler. The only count remaining is Dr. Nicklas' complaint against Dr. Koelling. Defendants filed a motion for rehearing which was granted. Following the hearing, the judge ruled that Dr. Nabel and Cutler remain dismissed and Dr. Koelling remains in the case. The court reversed its ruling by which Dr. Eagle had been dismissed. Defendants Eagle and Koelling filed claims of appeal to the Michigan Court of Appeals. A firm trial date of August 18 was set by the court. The University filed a motion on behalf of Defendants Koelling and Eagle, requesting a stay of proceedings and adjournment of the trial date, pending a decision in the appeal. Oral argument in the Court of Appeals was heard on November 3, 2004. The Court of Appeals issued its opinion on December 9, 2004, denying the University's appeal that the trial court improperly denied the University's motion for summary disposition on grounds of governmental immunity. The University filed an application for leave to appeal to the Michigan Supreme Court. Trial has been cancelled pending action by the Supreme Court. The Michigan Supreme Court denied the University's application for leave to appeal. It is expected the case will go to trial on the defamation and interference claims against Drs. Koelling and Eagle.

8. Catherine Wilkerson v University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed December 19, 2003).

Plaintiff was employed as a physician at the University and worked as an emergency room physician in the emergency care unit at Hurley Hospital. She claims that, after she had raised concerns about women's health issues at the hospital and assisted another female staff member with her claim of sexual harassment, she was retaliated against by her supervisor. Plaintiff alleges that her job was ultimately eliminated in retaliation for complaining about gender discrimination and that alleged promises of another job were not forthcoming. She seeks damages, attorney fees, costs and interest. The University filed a motion for summary disposition, which was denied by the court. The University filed an application for leave to appeal that decision to the Michigan Court of Appeals.

9. Pamela S. Wiitala v University of Michigan. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed April 10, 2003). Michigan Court of Claims (Judge Beverley Nettles-Nickerson)

Plaintiff was employed at the University as a System Project Coordinator in MAIS with a 75% appointment that allowed her to work at home. She alleges that, following an accident that resulted in an injury to her spine, the University altered the terms of her employment and required her to work 100% on-site. Plaintiff claims she was unable to do so and the University terminated her employment, thus violating the Michigan Persons with Disabilities Civil Rights Act. She seeks damages in excess of \$25,000, back pay, fringe benefits, interest, costs and attorney's fees. The University filed a motion for summary disposition which was granted by Judge Shelton. In addition, Judge Shelton granted Plaintiff's motion to file an amended complaint for breach of contract. Plaintiff re-filed her case in the Michigan Court of Claims, alleging breach of the long term disability contract.

10. Curtis J. Granderson v University of Michigan. U.S. District Court, Eastern District of Michigan. (Judge Lawrence Zatkoff) (Served June 15, 2004).

Plaintiff is a former University employee in the AFSCME bargaining unit. His complaint alleges that he was treated differently than white employees, harassed, disciplined, and eventually discharged for alleged misconduct. He claims race and disability discrimination, and seeks damages, interest, costs, and attorney's fees. The University filed a motion to dismiss, which was granted by the court on June 20, 2005. Plaintiff filed an untimely appeal to the Sixth Circuit Court of Appeals.

Respectfully submitted,



Marvin Krislov  
Vice President and General Counsel