

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

October 2011

NEW CASES

Peter Granneman v Kevin Lamarr Massey and the Regents of the University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed August 24, 2011).

Plaintiff filed this lawsuit against the University and Kevin Massey, a University bus driver. Mr. Granneman claims that, on September 8, 2008, he was riding a bicycle when he was struck by a University bus driven by Mr. Massey. Plaintiff alleges that, as a result of the accident, he suffered serious injuries. He seeks judgment in excess of \$25,000, including interest, costs and attorney fees.

Guey-Fang Chao v Board of Regents of the University of Michigan. United States District Court, Eastern District of Michigan. (Judge Bernard A. Friedman) (Filed September 14, 2011).

Plaintiff was employed in the College of Engineering until August 2, 2010. She claims that she was discriminated against and constructively discharged in violation of the Americans with Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act. Plaintiff seeks damages, reinstatement, interest, costs and attorney fees.

RESOLUTIONS

Renali Transport v RIS Risk Management Services, Regents of the University of Michigan and Lajuana Crawford. 19th Judicial District Court. (Filed August 11, 2011).

Plaintiff provides non-emergency medical transportation services to individuals who may be disabled and/or otherwise unable to drive due to physical injuries. Plaintiff claims that it provided services to Defendant Crawford following an accident. Plaintiff claims that the University (Veritas) was required to provide insurance coverage to Crawford under Michigan's no-fault automobile law. Plaintiff alleges that \$736.13 is due and owing by the University for the aforementioned services. Renali seeks payment, including interest, costs and attorney fees. (Note: This case relates to the Lajuana Crawford v Regents lawsuit, reported in an earlier litigation summary. The Crawford litigation is ongoing.) On September 9, 2011, a Stipulated Order of Dismissal of this case was signed by Judge Hultgren.

Milton Straham Jr. v Scott Arnst, Kenneth Heiser, and University of Michigan. Genesee County Circuit Court. (Judge Richard B. Yuille) (Served March 30, 2011).

Plaintiff was employed as a computer desktop support person in the Information Technology Services Department on the Flint Campus. He claims that he was discriminated against on the basis of his race and age, and discharged from his position. He claims this was in violation of the Elliott Larsen Civil Rights Act. He seeks damages in excess of \$25,000, interest, costs and attorney fees. This case has been voluntarily dismissed by the plaintiff.

Barbara L. Kornblau v Board of Regents for the University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed February 16, 2011). Barbara L. Kornblau v Board of Regents of the University of Michigan, Lauren Shellenberger, Jeanne M. Strickland, Diana T. Curran and Gerald Voland. United States District Court in the Eastern District of Michigan. (Judge Stephen J. Murphy III) (Filed February 18, 2011).

Plaintiff, former dean and currently a faculty member in the School of Health Professions and Studies ("SHPS") on the Flint Campus, alleges that she was falsely accused of a HIPAA privacy violation and was forced to resign as the Dean of SHPS. Plaintiff claims that she was deprived of her rights of fair and just treatment under the Michigan Constitution. She also claims that the University and Provost Voland deprived her of her rights to a name-clearing hearing; and that Defendants Shellenberger, Strickland and Curran defamed her when they filed a report with the US Department of Health and Human Services ("HHS") regarding Plaintiff's alleged HIPAA privacy violation. Plaintiff seeks an order requiring the University to withdraw the report filed with HHS, damages, costs and attorney's fees. On September 3, 2011, settlement was reached between the parties and the case is concluded.

CASE UPDATES

Bella Osak v Board of Regents of the University of Michigan, Jolanta Grembecka and Tomasz Cierpicki. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Served October 4, 2010).

Ms. Osak was employed in the University's Department of Pathology where she worked as a Research Laboratory Specialist. Plaintiff alleges that she was discriminated against because of her age when she was terminated five months after she began working at the University. Her claims also include defamation and tortious interference with a business relationship. In her complaint, Ms. Osak claims that Dr. Grembecka defamed her when Grembecka accused Osak of falsifying research data. Plaintiff seeks reinstatement, damages, lost wages, interest, costs and attorney fees. On February 9, 2011, the court dismissed Ms. Osak's age discrimination claim; the claims of defamation and tortious interference with a business relationship remain. A motion for summary disposition on the defamation and tortious interference claims was filed on behalf of the Defendants and granted by Judge Aquilina on August 29, 2011. Ms. Osak filed an appeal to the Michigan Court of Appeals on September 20, 2011.

Carlos Prieskorn v University of Michigan Health System, Bernard Hoeyack, Jr., Diane Rembert, Reshunda Triplet and Madia Bryant-Johnson. Washtenaw County Circuit Court. (Judge Archie G. Brown) (Served December 22, 2008).

Plaintiff is a former employee of the Department of Pathology in the Health System. He claims that he complained to his supervisor about safety violations that he alleged were occurring in his department and that, following his complaints, he was harassed and threatened by co-workers Rembert, Triplet and Bryant-Johnson. Plaintiff also alleges that his supervisor Hoeyack terminated his employment in violation of the Michigan Whistleblowers' Protection Act. Plaintiff seeks damages, lost wages, interest, costs and attorney's fees as well as reinstatement to his previous position. Defendants filed a motion for summary disposition, which was granted by Judge Brown on May 14, 2010 and the case was dismissed. The judge also awarded legal fees and costs to the University. Plaintiff filed an appeal to the Michigan Court of Appeals. Oral argument before the Court of Appeals is set for October 4, 2011.

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), et al. v Jennifer Granholm, Regents of the University of Michigan, Board of Trustees of Michigan State University, Board of Governors of Wayne State University and Trustees of any other public college or university, community college, or school district. United States District Court, Eastern Division of Michigan. (Judge David M. Lawson) (Filed November 8, 2006).

In 2006, Plaintiffs, including BAMN, The Rainbow PUSH Coalition, a number of black high school students in Michigan, college and graduate school students in Michigan, the AFSCME labor organization, and others (collectively, "BAMN Plaintiffs"), filed suit against, among others, the Regents of the University of Michigan. That suit asserted that Proposal 2, which prohibits preferential treatment on the basis of race, gender, national origin, and ethnicity in public education, public employment, and public contracting, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972, and violates the universities' First Amendment right to determine their academic standards and to determine the criteria for admission by prohibiting public universities from considering race in their admissions policies. This suit was later consolidated with another suit brought by students, prospective students, and faculty at the University of Michigan (collectively, "Cantrell Plaintiffs") against Governor Granholm – but *not* any state universities – that contended that Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment.

On March 18, 2008, the Court issued a decision upholding Proposal 2 and dismissing the BAMN and Cantrell suits. The Court found that the plaintiffs had not shown that Proposal 2 was unconstitutional under any of their theories. The Court therefore granted summary judgment to the Attorney General, who had intervened in the case to argue that Proposal 2 was constitutional. The Court granted the Universities' motion to dismiss BAMN's claim that Proposal 2 violated First Amendment principles of academic freedom, agreeing that that right is for the Universities to assert (or not), but otherwise denied the Universities' motion to be dismissed from the case. According to the Court, the Universities were proper parties to the action because the allegations regarding them stemmed from the same basic facts as those asserted in the case generally and because university action would be required to obtain the relief sought by the plaintiffs.

The Court also, in a separate opinion likewise issued on March 18, 2008, found that Eric Russell (the law school applicant who had intervened in the case) no longer had a unique interest and dismissed him from the litigation. The Court likewise denied Jennifer Gratz's belated motion to intervene in the case. Finally, because the Court had granted summary judgment to the Attorney General, upholding Prop 2 against the plaintiffs' challenges, the Court denied the various pending discovery motions (such as those filed by Russell seeking additional discovery from the defendant Universities) and class certification motions as moot.

The Cantrell Plaintiffs filed a motion for reconsideration with the district court, but the district court ultimately denied that motion. Eric Russell filed a motion in the district court seeking attorneys' fees from the University; that motion was denied on June 17, 2010.

BAMN filed an appeal to the Sixth Circuit to challenge the Court's ruling upholding Proposal 2. The University defendants cross-appealed the Court's denial of their motion to be dismissed from the case. Both Eric Russell and Jennifer Gratz appealed the Court's rulings to the Sixth Circuit. Jennifer Gratz later filed a motion to withdraw as an appellant, which motion was granted on March 23, 2009, and the Sixth Circuit determined that Eric Russell could participate only as an amicus. The Sixth Circuit panel heard oral argument of the parties' appeals, including the Universities' cross-appeal seeking dismissal from the case, on November 17, 2009.

On July 1, 2011, the Sixth Circuit panel issued a decision that reversed the grant of summary judgment to the Attorney General, found Proposal 2 unconstitutional, and ordered the grant of summary judgment to the BAMN and Cantrell plaintiffs. The Sixth Circuit panel affirmed the decision to dismiss Eric Russell from the suit, and also affirmed the decision to keep the University defendants in the suit. On September 9, 2011, the Sixth Circuit Court of Appeals issued an order stating that the entire court would reconsider the July 1, 2011 decision of the three-judge panel.

Respectfully submitted,


Suellyn Scarnecchia
Vice President and General Counsel