

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

October 2012

**NEW CASES**

There are no new cases this month.

**RESOLUTIONS**

VetGen LLC, Regents of the University of Michigan and Trustees of Michigan State University v Molecular Diagnostic Laboratories LLC and VetNostic Laboratories. United States District Court, Eastern District. (Judge Bernard Friedman) (Filed May 15, 2012).

The University of Michigan co-owns a family of patents with Michigan State University that relate to testing for a particular genetic defect in dogs. In 1994, the University and MSU licensed their rights to an Ann Arbor startup company, VetGen LLC, which is still the universities' licensee. VetGen and the university co-plaintiffs claim that Molecular Diagnostic Laboratories LLC of Hamilton, NJ and its VetNostic Laboratories subsidiary is infringing one or more patents, and this infringement seems to be taking a significant portion of VetGen's testing business. VetGen seeks an injunction to stop the infringement, as well as royalties and damages permitted by the patent statute. On September 24, 2012, the parties reached a settlement of this matter and it has been dismissed by Judge Friedman.

Brandon Jackson v Susan Marie Schaeffgen, Regents of the University of Michigan, and Farm Bureau Insurance Company. Oakland County Circuit Court. (Judge Michael Warren) (Served August 10, 2012).

Plaintiff Brandon Jackson was a passenger in a vehicle that was allegedly struck by a University van driven by employee Schaeffgen. Jackson claims that the vehicle in which he was riding was uninsured and that his claim for payment of no-fault personal protection insurance benefits was denied by Defendant Farm Bureau Insurance Company. Plaintiff alleges that he was injured as a result of Defendant Schaeffgen's negligent operation of the University vehicle; he claims that the University is liable for its employee's negligence. He seeks damages in excess of \$25,000. The court dismissed all claims against the University of Michigan with prejudice. The claims against Schaeffgen remain pending.

Matthew McDonald v Brazen and Greer Masonry, Inc., O'Neal Construction Inc., Mastclimbers LLC and the University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) AND Matthew McDonald v University of Michigan. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Filed January 9, 2012).

Plaintiff claims that he was working for Koch Masonry Inc. and Mastclimbers LLC, subcontractor on the football indoor practice facility in 2008. O'Neal Construction was the general contractor. Mr.

McDonald alleges that, while performing masonry work from an elevated work station on the construction site, he stepped on an unsecured and loosely fitted wooden plank on that scaffold, causing him to fall to the ground. He alleges that guard rails and personal fall protection equipment was unavailable and that, as the owner of the premises, the University is liable for compliance with applicable safety standards. Plaintiff claims that he suffered painful and disabling injuries, which have subjected him to pain and suffering, mental anguish, mental depression and humiliation. As a consequence, he claims that he has suffered loss of wages, permanent impairment of wage-earning capacity, and medical expenses. He seeks damages, interest, costs and attorney's fees. The University was dismissed from the Washtenaw County Circuit Court matter and plaintiff re-filed his case against the University in the Michigan Court of Claims. The claims against the University of Michigan have been dismissed with prejudice.

Habitat for Humanity of Huron Valley v Angela Rowlands, The Regents of the University of Michigan and its Housing Bureau for Seniors, and the City of Ann Arbor. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Served April 18, 2011).

Plaintiff alleges that Defendant Rowlands defaulted on a mortgage which was payable to Habitat for Humanity. The Housing Bureau for Seniors holds a second mortgage on the property. Habitat claims that defendants Regents and the City claim an interest in the property but that such interests are subordinate to the mortgage interest of Habitat. Plaintiff Habitat seeks payment of the note and mortgage, plus costs and attorney fees, from defendant Rowlands or, in the alternative, asks the court to allow the mortgage to be foreclosed and the premises sold at public sale with the proceeds paid to Habitat. Habitat also asks the court to determine that the interests held by the Regents and the City are subordinate to Habitat's interests. Settlement was reached between the parties and the case is concluded.

In the Matter of the Estate of Ruth Youngblood. San Mateo County (California) Superior Court. (Filed November 14, 2011).

Ruth Youngblood died in July 2011, and a Purported Will of April 13, 2011 has been offered for probate. Ms. Youngblood's niece, Amanda Holmen, has contested the Purported Will on grounds that include undue influence, fraud, mistake and revocation. The University of Michigan and Rutgers University have joined Ms. Holmen in her amended will contest and grounds for objections to the Purported Will. If the Purported Will is not admitted to probate, both universities will receive substantially larger shares of Ms. Youngblood's estate, having a total value of approximately \$1.6 million, under her Last Will and Testament of June 28, 2010. This matter was resolved at mediation and the case is concluded.

## CASE UPDATES

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 has been paying royalties to the University for a number of years, but last year stopped paying, claiming that the University patents and technology do not cover all of the St. Jude products and that therefore the company was entitled to a credit on amounts previously paid. The University filed this lawsuit in order to recover the \$5-7 million that is currently owed, and to protect the University's ability to receive the 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 it has paid to us since 1998.

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; oral argument is scheduled to be heard on October 3, 2012.

Aiman Farhoud and Souhar Farhoud v Darice Rosario. Washtenaw County Circuit Court. (Judge Timothy P. Connors) (Filed August 1, 2011).

Plaintiff Aiman Farhoud is a patient care technician at the University of Michigan Hospital. Defendant Darice Rosario is a nurse co-worker. Plaintiff Farhoud alleges that Defendant made false accusations against him when she told her supervisors that Farhoud advised a co-worker "go do this procedure before I kill somebody." Plaintiff alleges that Rosario's accusations resulted in his being subjected to investigation by UMH security personnel (after which he was cleared of any wrongdoing) as well as suffering embarrassment, humiliation, mortification, depression, sleeplessness, anxiety, missed time from work, damage to his reputation in the workplace and his community, and lost wages and benefits. Plaintiff Souhar Farhoud (Aiman's wife) claims damage to her reputation in the community, emotional distress, humiliation, mortification, embarrassment, sleeplessness, and anxiety. Plaintiffs seek judgment in excess of \$25,000 plus costs, interest, and reasonable attorney fees. The University filed a motion to dismiss the defamation and emotional

distress claims. On October 27, 2011 Judge Connors dismissed the defamation claim but adjourned a ruling on the emotional distress claim. Judge Connors also granted Plaintiff's motion to amend the complaint to add the intentional interference of an advantageous relationship claim. At a December 15, 2011 hearing, Judge Connors granted the Defendant's motion to dismiss the case in its entirety with prejudice. Plaintiff filed a claim of appeal to the Michigan Court of Appeals on February 10, 2012. The University filed its brief in the Court of Appeals on September 26, 2012.

**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. The University filed a motion to dismiss.

**Carter Simmons** v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Denise Page Hood) (Served January 3, 2012).

Plaintiff was employed as a custodian at the University. Mr. Simmons alleges that, after suffering an injury, he returned to work with medical restrictions and the University failed to accommodate him. His allegations include race and disability discrimination, as well as retaliation for having complained about discrimination and a violation of the Family and Medical Leave Act. He seeks damages in excess of \$75,000 as well as costs, interest, and attorney fees. The University filed a motion for summary judgment, which is currently pending before the court.

**Shalanda M. Golden** v Regents of the University of Michigan. Michigan Court of Claims. (Judge Rosemarie E. Aquilina) (Filed December 8, 2011).

Plaintiff alleges that she slipped on ice located in a University of Michigan-Flint parking structure. Plaintiff claims she sustained multiple injuries and alleges the University was in violation of statutory obligations and maintenance. Plaintiff claims that, as a result of the injuries, she has sustained loss of earnings and earning capacity, has become obligated for past and future medical expenses, and will experience future pain and suffering. Plaintiff seeks unspecified damages, plus costs, interest, and attorney fees. The University filed a motion for summary disposition.

**Catherine Wilkerson** v Kevin Warner, Janet Connors, Michael Matthews, Mark West, Dean Lloyd, Dr. Robert Domeier and Huron Valley Ambulance, Inc. U.S. District Court, Eastern District of Michigan. (Judge Lawrence P. Zatkoff) (Filed November 20, 2009).

On November 30, 2006, Plaintiff, along with others, protested an invited speaker at the Michigan League. Dr. Wilkerson claims that, during the protest, she was assaulted, falsely arrested and detained by University of Michigan police officers, and that she was subsequently charged with attempted resisting and obstructing. A jury trial was held and Plaintiff was found not guilty of those charges in December 2007. Plaintiff claims that she suffered damages including loss of earnings, medical expenses, pain and suffering, and attorney's fees. Her counts include violations of First and Fourth Amendment rights, conspiracy, assault and battery, false imprisonment, and malicious



prosecution. She seeks damages, attorney's fees, interest and costs. Plaintiff filed a motion to amend complaint to add a claim for conspiracy against Defendant Mathews on June 3, 2011. A Motion for Summary Judgment was filed on behalf of Defendants Mathews, West and Conners on June 17, 2011. All motions were briefed and oral argument was requested by the parties. Oral argument was denied and Judge Zatkoff ruled on the motions as briefed on March 29, 2012. Judge Zatkoff granted the defendants' motions for summary judgment and the case was dismissed, with prejudice, in its entirety. Plaintiff filed an appeal to the Sixth Circuit Court of Appeals. Briefs have been filed with the Court of Appeals.

Jesse R. Enjaian v Officer Bernard Mundt II, Officer Jose Dorta and the University of Michigan Department of Public Safety. United States District Court, Northern District of California. (Served August 3, 2012).

Mr. Enjaian alleges that DPS Officer Mundt, pursuant to a search warrant, seized electronic equipment from Plaintiff's residence in connection with an alleged charge of stalking. Plaintiff claims that the equipment has not been returned to him. He seeks the return of his property, compensatory and punitive damages, and attorney fees. The University filed a motion to dismiss or, in the alternative, to transfer venue. On October 2, 2012, the court granted the motion in part, dismissing plaintiff's claims for damages against the University and transferring the remainder of the case to the Eastern District of Michigan.

Sheri L. Barron v University of Michigan, University of Michigan Health System, Suellyn Scarnecchia and Angela Nortley. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed August 28, 2012).

Plaintiff filed a lawsuit against the University in August 2011 (*Sheri Barron v University of Michigan and University of Michigan Health System*, U.S. District Court, Eastern District of Michigan), claiming age and disability discrimination. A report of that lawsuit was included in the Regents Communication dated September 2011. Plaintiff alleges that the remarks in that September 2011 report were false. Plaintiff also alleges that deposition testimony in a separate case also included false information. Her claims include defamation and intentional infliction of emotional distress. She seeks a judgment in an unnamed amount, costs and interest. Defendants filed a motion for summary disposition.

Respectfully submitted,



Debra A. Kowich  
Interim Vice President & General Counsel