

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

November 2012

**NEW CASES**

Barbara Beeson and Nicholas W. Beeson, individually and as Trustees of the Nicholas Welborn Beeson Trust; Nicholas F. Delbanco and Elena Delbanco; Jane A. Hassinger and Marvin G. Parnes; E. Stuart Hilbert and Barbara Ann Hilbert; and George H. Kuper and Danielle E. Kuper v Mark A. Moyad and Mia M. Moyad; James Sweetnam and Elizabeth Sweetnam; the Dwaine V. Lighthammer Qualified Personal Residence Trust and the Mary J. Lighthammer Qualified Personal Residence Trust; and the University of Michigan. Washtenaw County Circuit Court. (Judge David S. Swartz) (Served October 15, 2012).

The University has been added as a part to a lawsuit between some neighbors of the Arboretum regarding use of a path on the defendants' properties that various homeowners used to access the Arboretum across a third homeowner's property. The plaintiffs' counsel did not name the University or the third homeowner (Lighthammer) in the original lawsuit and has not requested any relief from the University or the third homeowner. However, the defendants requested that the University and the third homeowner be added to the lawsuit and the judge required that the University and the third homeowner be named.

Yusong Gong v Board of Regents of the University of Michigan, and Martin G. Myers, Jr. Washtenaw County Circuit Court. Judge Timothy Connors) (Served October 9, 2012).

Ms. Gong previously worked in the Department of Internal Medicine in a research laboratory under the direction of Dr. Myers. She claims that she was laid off in Dr. Myers' group in August 2007 and went to work in other departments at the University. Plaintiff alleges that, after she left Dr. Myers' laboratory, Dr. Myers instituted a campaign of harassment, intimidation and bullying against Plaintiff, which lead to Plaintiff's termination on April 18, 2012. Plaintiff's counts include national origin (China) discrimination, retaliation and violations of the Whistleblower's Protection Act. She seeks damages, costs and attorneys' fees.

Debra Shields v University of Michigan. United States District Court; Eastern District of Michigan. (Judge Lawrence P. Zatkoff) (Filed October 28, 2012).

Plaintiff is a registered nurse working at the East Ann Arbor Medical Procedures Center. Her complaint alleges that, since she testified in an arbitration hearing about a "race-based discharge," she has been harassed, discriminated against and retaliated against. She alleges she complained to Human Resources and continues to face harassment. She seeks damages, costs and attorney fees.

Lucrezia Sarcinelli v University of Michigan-Wisconsin Florence Program. Court of Florence (Italy) – Labor Section.

The University of Michigan administered a study abroad program in Florence, Italy (the "Florence Program") on behalf of the University of Michigan, the University of Wisconsin and Duke University. The Florence Program existed from the late 1980s until 2011, when UM, Wisconsin and Duke decided to discontinue the program and cease operations in Florence. Ms. Sarcinelli was an Italian language instructor for the Florence Program from 1989 until the termination of the program in 2011. Ms. Sarcinelli filed a petition in the Italian labor court claiming that, notwithstanding the fact that she signed employment agreements with the University (as administrator of the Florence Program) that identified her as an independent contractor, the substance of the employment relationship was such that she should have been deemed a dependent/subordinate employee (*contrattor di lavoro subordinato*) under Italian law. Being deemed a dependent employee under Italian law would have entitled Ms. Sarcinelli to additional pay and benefits, which she claims total approximately 400,000 euros over the entire course of her employment with the Florence Program. An initial hearing on this matter is scheduled for November 30, 2012.

## RESOLUTIONS

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; on October 29, 2012 Judge Friedman entered an Order to dismiss the federal ADA claim. Plaintiff has agreed to dismiss his state law claim so that he can re-file it in state court.

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. Plaintiff voluntarily dismissed the remainder of his lawsuit; this case is concluded.

The Authors Guild, Inc., et. al. v HathiTrust, Regents of The University of Michigan, et al.. United States District Court, Southern District of New York. (Judge Harold Baer) (Served October 14, 2011)

Plaintiffs claim Defendants are violating, or will violate, Plaintiffs' alleged copyrights through Defendants' efforts to: digitize the works in their libraries, create a shared repository through the HathiTrust, and participate in the HathiTrust's Orphan Works Project. Plaintiffs seek injunctive and declaratory relief as well as attorneys' fees and costs. The University, along with its co-defendants, filed a motion for judgment on the pleadings. The motion addresses some, but not all, of the allegations against the University in the case. On August 6, 2012, oral argument was heard by the court on the motions for summary judgment that were filed by all three parties (plaintiffs, the Library Defendants, and the intervening National Federation for the Blind). On October 10, 2012, Judge Baer ruled in favor of the Library Defendants, stating in a written opinion that the HathiTrust was an example of fair use and did not infringe upon copyright laws. Judge Baer also declared that the University of Michigan is an "authorized entity" under the Chaffee Amendment, which gives the University the ability to provide unprecedented access to library patrons who have disabilities. As of this writing, Authors Guild has not announced whether it will pursue an appeal to the 2<sup>nd</sup> Circuit Court of Appeals.

Pamela Myers v University of Michigan. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Served May 25, 2011).

Plaintiff is a former employee of the University. She alleges that long-term disability benefits have been wrongfully denied to her. As a result of this denial, Plaintiff claims that she has sustained loss of past, present and future income. She seeks judgment against the University, plus costs, interest and attorney fees. Plaintiff voluntarily dismissed her complaint and the case is concluded.

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; Judge Morris granted the motion on October 31, 2012 and the case is dismissed.

**CASE UPDATES**

**Douglas M. Smith v Regents of the University of Michigan.** Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed June 13, 2012).

Plaintiff claims that the University Board of Regents violated the Michigan Open Meetings Act when it announced its choice of a law firm to conduct an external evaluation of the handling of a report of a resident physician suspected of possessing child pornography, allegedly without having announced or held a special public meeting to choose that law firm. Plaintiff also alleges that he filed a Freedom of Information Act request for documents to show how the regents chose the consultants; and claims that the response received from the University was not timely, informed him that much of the responsive material would be exempt from disclosure, and informed him that a fee deposit would be required. Plaintiff asks the court to compel the University to disclose the public records that he requested, and seeks damages, attorney fees, and costs. The University filed a motion for summary disposition, which was argued before Judge Swartz on October 31, 2012. At that hearing, the court concluded that it was unable to decide the motion without the benefit of an evidentiary hearing. The court set a hearing date of January 18, 2013.

**Linda Martinson v Lee K. Roosevelt, Joanne Motino Bailey, Kathy Dunnuck.** Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed October 31, 2008). AND **Linda Martinson v Jodi Danhof, Sarah Choinard, Erin Flatley and Catherine Scott.** Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed November 7, 2008). AND **Linda Martinson v Sarah Soroosh Vandergoot.** Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed November 9, 2008). AND **Linda Martinson v Regents of the University of Michigan, Carol Loveland-Cherry, Judith Lynch-Sauer and Bonnie Hagerty.** United States District Court, Eastern District of Michigan. (Judge Paul D. Borman) (Served October 5, 2009).

Plaintiff was enrolled in the School of Nursing second career nursing program. She was dismissed from the program. Afterwards, she claimed that her classmates and a faculty member (the named defendants in the State court actions) made defamatory statements to third parties regarding Plaintiff, and that School of Nursing administrators relied upon those false statements to support her expulsion from the program. Ms. Martinson's state court action included defamation and intentional infliction of emotional distress against each of the defendants. She sought damages in excess of \$25,000 plus costs and interest. By stipulation of the parties, the three state court cases were dismissed without prejudice when Plaintiff filed a fourth lawsuit in the U.S. District Court for the Eastern District of Michigan, naming the Regents as well as administrators at the School of Nursing.

In her federal lawsuit, Plaintiff's allegations include various theories alleging violations of federal and state due process rights. Plaintiff seeks declaratory judgment stating that her expulsion from the School of Nursing is null and void, damages, interest, costs and attorney fees. Defendants filed a motion to dismiss and a motion for summary judgment. The motion to dismiss was argued before Judge Borman on August 31, 2011. Judge Borman issued a written opinion dated September 28, 2011 in which he granted the motion in part and denied the motion in part. Judge Borman dismissed all the claims against the University of Michigan and all claims against the individual defendants

except for the federal procedural due process claim against the individual defendants. Defendants' motion for summary judgment is still pending before the court. Plaintiff prematurely filed a notice of appeal to the Sixth Circuit Court of Appeals regarding the partial dismissal of her complaint. On August 16, 2012, Judge Borman granted the University's motion for summary judgment and dismissed plaintiff's complaint with prejudice. Plaintiff filed an appeal to the Sixth Circuit Court of Appeals.

Respectfully submitted,



Debra A. Kowich  
Interim Vice President & General Counsel

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