

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
December 15, 2006

Subject: Litigation

December 2006

I. NEW CASES

1. Theresa Logan v Unibar Maintenance Services and University of Michigan. Wayne County Circuit Court. (Judge Warfield Moore) (Filed October 18, 2006).

Plaintiff claims that, in October 2005, she received a chemical burn after sitting on a recently cleaned toilet seat on the UM-Dearborn campus. The cleaning contractor is Unibar Maintenance Services. The plaintiff claims that allowing the chemicals to remain on the toilet seat created a hazardous and dangerous condition and that both Unibar and the University were negligent in failing to correct, inspect or warn others about it. Plaintiff alleges that she has suffered severe bodily injuries and seeks damages.

2. William Wilson v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed November 16, 2006).

Plaintiff, a resident of the state of Maine, filed this complaint alleging violations of the Administrative Procedures Act, the Open Meetings Act and the Freedom of Information Act in relation to the renovation of Michigan Stadium. Mr. Wilson claims that he has requested certain records under the Freedom of Information Act and that the University has delayed, requested an up-front deposit, refused to release some of the documents, and engaged in a pattern of intentional bad faith. He seeks an immediate electronic search of the records and release of the documents to him. He also claims that he has requested a continuing subscription request of the Public Comments documents for six months into the future and the University has denied his request. Plaintiff seeks creation of a "Reading Room" on campus that would house all documents relating to the Stadium renovation. He also seeks costs, damages and an expedited hearing of his complaints.

3. 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).

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, assert that ballot Proposal 2 was placed on the Michigan ballot by racially-targeted voter fraud and violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. They claim that state actors will be prohibited from utilizing policies to desegregate universities, employment and public contracting, thereby prohibiting state bodies from fulfilling federal mandates to desegregate. Plaintiffs also claim that public universities have a First Amendment right to determine their academic standards and to determine the criteria for admission to the university. Plaintiffs seek declaratory relief that Proposal 2 is preempted by the

federal civil rights acts, violates the First Amendment of the U.S. Constitution and violates the Equal Protection Clause of the Fourteenth Amendment.

II. RESOLUTIONS

4. 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. Trial on the defamation and interference claims against Drs. Koelling and Eagle began on November 6, 2006; on November 15, the jury found in favor of the defendants on all claims.

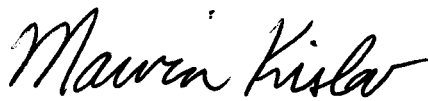
5. Pinaki Mazumder v University of Michigan, College of Engineering, Stephen Director, Richard Brown and Promod Khargonekar. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed April 8, 2003). Removed to U.S. District Court, Eastern District of Michigan. (Judge Paul D. Borman).

Plaintiff is a tenured professor in the College of Engineering. In his 414-paragraph complaint, Professor Mazumder alleges that he has been mistreated and discriminated against by the University and members of the University academic community based on his country of origin (Indian), religion, ethnicity, ancestry and caste (Kayastha). He seeks monetary damages, interest and attorneys' fees. The University removed the case to the United States District Court; it was assigned to Judge Borman. The University filed a motion for partial summary disposition, seeking dismissal of the claims filed against defendant Khargonekar; the motion was granted. The University filed a motion for summary disposition of the case in its entirety, which is scheduled to be heard on February 28, 2005. Plaintiff stipulated to a dismissal of his claims for damages pursuant to FOIA. On March 28, 2005, Judge Borman issued his opinion, dismissing all of Plaintiff's claims in their entirety. Plaintiff filed a claim of appeal *pro se* to the Michigan Court of Appeals, which was denied by the court. Mazumder has filed a request with the Court of Appeals for rehearing *en banc*, which was denied.

III. CASE UPDATES

There are no case updates this month.

Respectfully submitted,



Marvin Krislov
Vice President and General Counsel

December 2006