

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Received by the Regents  
December 17, 2009

Subject: Litigation

December 2009

## NEW CASES

There are no new cases this month.

## RESOLUTIONS

Keith Yohn v Coleman, Sullivan, Polverini, Krebsbach, Bernitsas and Snyder. United States District Court, Eastern District of Michigan. (Judge Gerald E. Rosen) (Filed January 2, 2008).

Plaintiff claims that University administrators, including President Coleman, Provost Sullivan, Dean Polverini, and Professors Krebsbach, Bernitsas and Snyder, have infringed on his free speech rights to mass mail email messages to the faculty to speak out. He claims he has also been deprived of his due process rights by refusing to grant him the right to a fair and impartial grievance review board (which was chaired by Professor Bernitsas) to address his grievance. Also, he claims that Dean Polverini filed a false report to the Department of Public Safety in order to embarrass, retaliate and intimidate him. He claims that Department Chair Krebsbach has made false accusations against him. His claims against Clinical Assistant Professor Snyder allege gross negligence to perform teaching duties for personal gain. Dr. Yohn seeks over \$1 million in damages. The University filed a motion for summary judgment on behalf of all defendants; that motion was granted by the court and the case was dismissed in its entirety. Plaintiff filed an appeal to the U.S. Court of Appeals on May 26, 2008 and briefs were filed. On November 25, 2009, the Court of Appeals affirmed the decision of the district court and denied Professor Yohn's appeal.

Rose Hall v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge James Giddings) (Served December 17, 2008).

Plaintiff, a former employee on the Flint Campus, claims that she was denied long term disability benefits to which she was entitled. She seeks the monthly benefits payments as well as attorneys' fees, costs and interest. Settlement was reached between the parties and the case was dismissed.

**Robert McGee v Regents of the University of Michigan.** Washtenaw County Circuit Court. (Judge Archie C. Brown) (Filed May 16, 2008).

Plaintiff was a graduate student in Nuclear Engineering and Radiological Sciences, with a 25% appointment as a Graduate Student Research Assistant to work in a laboratory in the area of neutron radiography. Plaintiff claims that he observed a number of practices in the lab that did not meet OSEH standards and reported them to the University's Radiation Safety Services office, to OSEH and to the Michigan Department of Environmental Quality. Plaintiff claims that his subsequent termination was retaliation against him for reporting suspected violations of laws. He seeks compensation for his losses, interest, costs and attorneys fees. The University filed a motion for summary disposition, which was denied. Trial began on November 9, 2009. The jury found in favor of the University.

**Rauhorn Electric, Inc. v DeAngelis Landscape, Inc. and The Regents of the University of Michigan, et al.** Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed February 18, 2009).

Plaintiff ("REI") served as the general contractor on a University of Michigan project known as Land Improvements, Construct Utility Duct Bank from Ingalls Switching Station to Wall Street and subcontracted a portion of the work to DeAngelis Landscape. Plaintiff claims that DeAngelis' performance was defective and deficient and that DeAngelis asserted claims for extra compensation not included in the contract. REI is passing those claims on to the University because, according to REI, the University partially approved the DeAngelis change order and claims for more money. Plaintiff alleges that the University breached its contract and seeks judgment against the University, including costs and attorney fees. Settlement was reached between the parties and the case is concluded.

**David Shand v William C. Martin.** United States District Court, Eastern District of Michigan. (Judge Julian Abele Cook, Jr.) (Served July 25, 2007).

Plaintiff was a radio host on local station WTKA until he was fired in April 2007. Plaintiff claims that his job was to host and produce a radio show which featured sports talk and that he was encouraged by his management to be humorous, opinionated, provocative and controversial. He alleges that Athletics Director Martin refused to allow the radio station to participate in a golfing event or to carry UM football games unless Plaintiff was fired from the station. Plaintiff's allegations include intentional interference with a business relationship and violations of Plaintiff's First Amendment rights. He seeks damages in excess of \$75,000, costs and attorney's fees. The University filed a motion for summary judgment which was denied by the judge. The University filed a renewed motion for summary judgment, which was granted by the judge. This case is concluded.

Michelle Delynn Popovich and Erika D. Popovich v Joseph Merignac, Stacey Merignac, Village of Bellevue, Michigan, and the Board of Regents of the University of Michigan. Eaton County Circuit Court. (Judge Thoms S. Eveland) (Filed November 12, 2008). Erika D. Popovich v Board of Regents of the University of Michigan. Michigan Court of Claims. (Served March 30, 2009).

Plaintiff Michelle Popovich claimed that Bellevue Police Officer Joseph Merignac conducted a traffic stop on a vehicle driven by her without probable cause, detained her, and subsequently arrested her for operating while intoxicated. Plaintiff claims that Joseph Merignac called Stacey Merignac, a University employee, while he had Michelle Popovich in custody, and that Stacey Merignac accessed Plaintiff Erika Popovich's medical records improperly and disclosed Plaintiff Erika Popovich's medical information to Officer Merignac. Plaintiff Michelle Popovich was subsequently convicted of operating under the influence. That conviction was later set aside and the charge against her dismissed upon motion of the Eaton County Prosecutor. Plaintiff Erika Popovich's claim against the University includes unauthorized disclosure of her personal information by University employee Stacey Merignac in violation of statutory and common-law rights. The University was dismissed from the Eaton County Circuit Court action and Plaintiff Erika Popovich re-filed her complaint against the University in the Michigan Court of Claims. Settlement was reached between Plaintiff and the University.

## CASE UPDATES

Stanley Williams v University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed April 24, 2008).

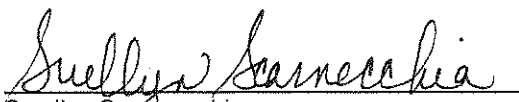
Plaintiff worked as an Anesthesia Technician at Mott Hospital. In July 2006, Mr. Williams was placed on a medical leave of absence; he was released by his physician to return to work in February 2007, with restrictions. Plaintiff claims that the University failed to reinstate him to a position that was compatible with his restrictions until August 2007. His allegations include disability discrimination, retaliation and retaliatory harassment by his supervisor. He seeks damages, interest, costs and attorney's fees. The University's motion for summary disposition was granted by Judge Morris and the case is dismissed. Plaintiff filed a claim of appeal to the Michigan Court of Appeals. Both parties have filed appellate briefs and we are waiting for a date for oral argument.

Peter J. Hammer v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge James R. Giddings) (Served January 6, 2005).

Plaintiff is a former Assistant Professor at the Law School who was denied tenure in 2002. He alleges that he did not receive tenure because of his sexual orientation, claiming that he relied on the University's promises that he would not be discriminated against based upon his sexual orientation. Mr. Hammer also alleges that he was not given notice of non-reappointment consistent with the Standard Practice Guide and that because he had an academic appointment for a full eight years, he is entitled to *de facto* tenure pursuant to Regents Bylaw 5.09. Mr. Hammer seeks judgment in excess of \$25,000. The University filed a motion for summary disposition and a motion

to dismiss, both of which were denied by Judge Giddings. The University filed an interlocutory appeal to the Michigan Court of Appeals. On January 25, 2007, the Court of Appeals vacated the orders of the Court of Claims and ordered Judge Giddings to reconsider the plaintiff's affidavits consistent with the court rules. The University and plaintiff filed motions and cross-motions for summary disposition; at oral argument in March 2008, the Court stated that it was denying the motions filed by both sides as to the claim of *de facto* tenure and took under advisement the University's motion to dismiss the discrimination claim. In December 2008, and again in November 2009, the Court of Claims granted plaintiff's request to reopen discovery for the purpose of taking additional deposition testimony. The Court of Claims has scheduled additional oral argument on December 11, 2009, on the University's request for the dismissal of Hammer's claim of sexual orientation discrimination.

Respectfully submitted,

  
Suellyn Scarhecchia  
Vice President and General Counsel

December 2009