

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
April 19, 2007

Subject: Litigation

April 2007

I. NEW CASES

1. JoAnn Hetherington v University of Michigan-Flint. Genesee County Circuit Court. (Judge Joseph J. Farah) (Filed February 9, 2007).

Ms. Hetherington claims that, while attending a performance in the Kiva Building auditorium on the Flint campus, she fell and injured herself severely. She alleges that the University has a duty to keep its buildings free from defect and that she was injured because of our failure to do so. She seeks damages, costs, interest and attorney's fees.

2. Edward H. Richter v A.J. Baxter Company, et al. Wayne County Circuit Court. (Judge Robert J. Colombo, Jr.) (Filed February 14, 2007).

Plaintiff claims that he was exposed to toxic levels of environmental pollutants, including asbestos fibers, while in the course of his employment with various contractors and that those contractors were working on projects over which the University of Michigan (and others) had supervision and control. The complaint states that the University was negligent and that, as a result of that negligence, the Plaintiff suffered harmful exposure to asbestos fibers, causing and/or contributing to a respiratory disease (asbestosis). Plaintiff seeks damages in excess of \$25,000, costs, interest and attorney's fees.

3. Anita Stubbs v University of Michigan. Oakland County Circuit Court. (Judge John J. McDonald) (Filed March 29, 2007).

Plaintiff is a former employee of the University. She claims that she is not receiving benefits that are due her, including long-term disability and retirement benefits. Plaintiff seeks damages in excess of \$25,000, implementation of benefit plans, costs, interest and attorney's fees.

II. RESOLUTIONS

4. Janice M. Gerard v Regents of the University of Michigan. Michigan Court of Claims. (Judge Paula J. Manderfield) (Filed November 3, 2006).

Plaintiff is a former employee of the University's Dental School. She claims that, while at work in the Dental Clinic, she was exposed to black mold in the air handlers, causing her to develop serious health conditions. She alleges that the University forced her to return to work before it was medically advisable and that she was forced to resign. Ms. Gerard claims that this constituted a constructive discharge. She seeks judgment in excess of \$25,000, plus costs, interest and attorney's fees. The

University filed a motion for summary disposition, which was granted by Judge Manderfield on March 14, 2007.

5. Heidi Philipson v Board of Regents of the University of Michigan. United States District Court, Eastern District of Michigan. (Judge Anna Diggs Taylor) (Served May 15, 2006).

Ms. Philipson claims that she applied for and was offered a position in the School of Business. She claims that the offer was rescinded when the hiring department learned that she has small children and inquired about working a flexible schedule. Plaintiff alleges gender discrimination under Title VII of the Civil Rights Act of 1964 and the Elliott Larsen Civil Rights Act. She seeks damages, lost wages, costs and attorney's fees. The University filed a motion for summary judgment, which was granted by the court on March 23, 2007.

6. 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. The University filed a motion for summary disposition, which was granted by the court on April 4, 2007. The case has been dismissed in its entirety.

III. CASE UPDATES

7. 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. Plaintiff filed a Motion for New Trial on December 18, arguing judicial error; the motion was denied by Judge Swartz.

Respectfully submitted,



Marvin Krislov
Vice President and General Counsel

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