

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

EXH	MOTION
	SECOND
	ACTION APPROVED BY THE REGENTS
NOTE:	MAY 19 2005

Subject: Litigation

May 2005

I. NEW CASES

1. Owen Kevin McNulty v University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed April 11, 2005).

Plaintiff is employed by UM's Department of Public Safety. He claims that he has been treated unfairly and bypassed for promotion because of his disability. Plaintiff also alleges that his supervisors failed to accommodate his disability and then demoted him in retaliation for questioning the way in which he was being treated. He seeks lost wages, damages, costs, interest and attorney's fees. Plaintiff had previously filed his claims in federal court (*Owen K. McNulty v University of Michigan and William Bess*. United States District Court, Eastern District of Michigan; filed February 24, 2004). He stipulated to a dismissal of his federal claims and is now filing his state claims in state court.

2. Margaret Welch v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge Joyce Draganchuk) (Filed April 19, 2005).

Plaintiff was employed as a nurse in the University's Saline Health Center clinic. She claims that she had reported a number of safety concerns at the facility and had been admonished by her supervisor for doing so. In October 2004, plaintiff was placed on medical leave of absence by her physician. She claims that, when she returned to work in January 2005, she was interrogated at length by her supervisors and that, fearing she was going to lose her job, she resigned. Plaintiff alleges that she was retaliated against in violation of her First Amendment rights to free speech and in violation of the Whistleblower's Protection Act. She also alleges that she was harassed by her supervisors and constructively discharged in retaliation for taking medical leave protected by the Family and Medical Leave Act. She seeks damages, lost wages, front pay, and reinstatement.

II. RESOLUTIONS

3. Keith Yohn v Board of Regents of the University of Michigan, William Kotowicz, Robert Feigal, Marilyn Woolfolk, Merle Jaarda and Kenneth Stoffers. Michigan Court of Claims. (Judge Beverley Nettles-Nickerson) (Filed April 1, 2003).

Dr. Yohn, a professor in the Dental School, claims that he was deprived of an employment contractual right to assign a grade of "F" to two Dental School students. He alleges that Dean Kotowicz and members of the executive committee of the Dental School gave special treatment to the students, that ultimately a "W" grade was given to the students rather than the "F" assigned by Dr. Yohn and three other colleagues and that the students were given the opportunity to repeat the project. Dr. Yohn claims that the actions taken by the Dean and executive committee were done with malice toward him, with deliberate disregard for his contractual rights. He asks the court to order the University to post the "F" grades for the students, enjoin the defendants from interfering in his employment contractual rights, and damages. Plaintiff had previously filed a

lawsuit on this issue in the federal court system; his complaint (and subsequent appeals) were dismissed. The University filed a motion for summary disposition which was granted by the court and the case was dismissed. Plaintiff filed a motion for reconsideration, which was denied by the court. Plaintiff filed a claim of appeal to the Michigan Court of Appeals. On April 20, 2005, the Court of Appeals affirmed the Court of Claims decision in favor of the University and all named defendants, agreeing with our argument that Plaintiff's claims in the state court are barred by *res judicata* because he should have raised those claims in his earlier federal action. This case is concluded.

4. Robert Pavlic v University of Michigan and Mariana Kaplan, MD. United States District Court, Eastern District of Michigan. (Judge Victoria A. Roberts) (Filed April 15, 2004).

Plaintiff was a research assistant in the Department of Internal Medicine until his discharge in October 2003. He claims that he reported misappropriation of grand funds and other irregularities by the laboratory director, Dr. Kaplan, and that he was suspended and ultimately discharged by Dr. Kaplan as a result. His allegations include violations of his freedom of speech and of the Whistleblower's Protection Act. He seeks reinstatement, back pay, damages, costs and legal fees. The University filed a motion for summary judgment, which was granted on May 2, 2005.

III. CASE UPDATES

5. Sarah Knowlton v Board of Regents of the University of Michigan. Michigan Court of Claims. (Judge Paula J.M. Manderfield) (Served April 5, 2004).

Plaintiff claims that she was in a bathroom in the UM Medical Center Radiology Department when a toilet paper dispenser cover fell open, striking her on the nose and breaking it. The University paid for minor surgery and all hospital bills involved; plaintiff seeks additional compensation in excess of \$25,000. Both sides accepted the case evaluation award and the case is dismissed.

6. 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 to the Michigan Court of Appeals.

Respectfully submitted,



Marvin Krislov
Vice President and General Counsel

May 2005