

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
May 17, 2007

Subject: Litigation

May 2007

I. NEW CASES

1. Michigan Paralyzed Veterans of America v University of Michigan. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed April 17, 2007).

Plaintiff ("MPVA") claims that the University is discriminating against MPVA, its members and others similarly situated by denying them equal access to seating at the Michigan Stadium, in violation of the Americans with Disabilities Act. Plaintiff seeks an injunction (1) restraining the University from receiving federal funding, (2) restraining the University from proceeding with any further construction at the Stadium and (3) requiring the University to provide individuals with disabilities full and equal access to the Stadium.

II. RESOLUTIONS

2. 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. That motion was denied; plaintiff did not file an appeal to the Michigan Court of Appeals so the case is concluded.

3. 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. Settlement was reached between the parties and the case is concluded.

4. 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. Plaintiff stipulated to dismiss the University from this case.

III. CASE UPDATES

5. 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. The University filed a motion for summary disposition.

Respectfully submitted,



Marvin Krislov
Vice President and General Counsel

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