

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the
Regents
June 18, 2015

Subject: Litigation

June 2015

NEW CASES

Megan Bayagich v Board of Regents of the University of Michigan. Court of Claims (Judge Mark Boonstra) (Filed May 4, 2015) AND Megan Bayagich v. Alyssa McCullough. Washtenaw County Circuit Court (Judge Timothy Connors) (Filed May 1, 2015)

Plaintiff, a University of Michigan student, alleges she sustained serious injuries when she fell from a University of Michigan bus. Plaintiff alleges she was ejected through a rear door when it opened without notice while the vehicle was in motion. Plaintiff claims Defendants failed to engage safety devices, and that the bus was overcrowded. The driver of the bus has also been sued, alleging gross negligence.

Mark Grebner v University of Michigan. Ingham County Circuit Court (Judge Rosemarie E. Aquilina) (Served May 18, 2015)

Plaintiff claims that Defendant has violated the Freedom of Information Act (FOIA) by denying him access to public records after his FOIA request was denied. Plaintiff asks the court to issue an Order compelling Defendant to cease and desist from violating FOIA, to disclose the public records requested at no cost to Plaintiff, and award Plaintiff damages, punitive damages, costs, and attorney's fees.

April Lakey v University of Michigan Hospital. United States District Court, Eastern District of Michigan (Judge Marianne O. Battani) (Served May 29, 2015)

Plaintiff, a Call Center Representative in the Otolaryngology Department, alleges she has been paid less than her Caucasian coworkers, and denied a promotion due to her race. Plaintiff claims she has suffered lost wages, lost benefits, and emotional damages, and seeks damages, with interest, costs and attorney's fees.

CASE UPDATES

Detroit Free Press, Inc., a Michigan corporation, and Federated Publications, Inc., a Delaware corporation v The Regents of the University of Michigan, a Michigan corporation. Court of Claims (Judge Talbot) (Filed July 8, 2014)

Plaintiffs allege that the University of Michigan violates the Open Meetings Act and the Michigan Constitution. Plaintiffs seek a temporary and permanent injunction. Plaintiffs also seek costs and attorney's fees. Both parties have filed motions for summary disposition, and oppositions thereto, that are pending before the court.

CASE RESOLUTIONS

Sheri Barron v University of Michigan and University of Michigan Health System. U.S. District Court, Eastern District of Michigan, Southern Division (Judge Mark A. Goldsmith) (Served August 10, 2011).

Plaintiff was a registered nurse at UMHS. She alleged she was harassed and discriminated against based on her age and disability or perceived disability when, after returning from a disability leave of absence of more than seven years, she was told that she should take a refresher course before she could be returned to work as a registered nurse. Plaintiff claimed that she applied for approximately 70 registered nurse positions within the University following her leave, and that, after taking the training, she was not promoted from the nurse's-aid position. Plaintiff also alleged that she was told she would not be

considered for promotion because of her age. Plaintiff claimed she suffered economic and emotional damages. She sought judgment against the University, damages, costs, and attorney's fees. On March 12, 2013, Defendants filed a motion to dismiss that was denied on May 30, 2013. On June 19, 2013, the Court awarded Defendants costs and attorney's fees as a result of a court filing seeking overdue discovery from Plaintiff. On August 28, 2013, Plaintiff's attorney's motion to withdraw as counsel was granted. Defendant's second motion to dismiss, filed on June 26, 2013, was denied. The Court also imposed additional sanctions upon Plaintiff for her failure to produce overdue discovery. On November 25, 2013, Defendants filed their third motion to dismiss for failure to comply with Court orders; that motion was granted on June 30, 2014, with prejudice. On July 21, 2014, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals. On May 29, 2015, the Court of Appeals affirmed the District Court's decision to dismiss after Plaintiff failed to comply with discovery-related Court orders and pay the monetary sanction assessed against her.

Jesse R. Enjaian v University of Michigan President Mark S. Schlissel, Bernard C. Mundt II, Jose A. Dorta, and Renee J.S. Schomp. United States District Court, Eastern District of Michigan (Judge Linda V. Parker) (Filed August 25, 2014); AND **Jesse R. Enjaian v. University of Michigan Law School, and University of Michigan, and Regents of the University of Michigan.** United States District Court, Eastern District of Michigan (Judge Marianne O. Battani) (Served May 8, 2015)

Plaintiff alleged that, pursuant to an unlawful search warrant, the University of Michigan Police Department Officers seized his electronic equipment from his residence in connection with an alleged charge of criminal stalking, and did not return the property for 446 days. Plaintiff further claimed that Defendant Schomp made false allegations about him to University officials. Plaintiff's Complaint included claims of violations of the U.S. Constitution, Michigan Constitution, and defamation. Plaintiff asked the Court to order Defendants Schlissel, Mundt, and Dorta to destroy all copies of evidence seized from their search and seizure of his property. Plaintiff further sought actual, nominal, and punitive damages, costs, and attorney's fees. On December 16, 2014, the parties stipulated to dismissal of Counts V through VII (computer fraud, intentional infliction of emotional distress, and defamation); all claims for relief against President Schlissel; all claims alleging a violation of the Michigan Constitution; and all constitutional claims arising from Defendant Dorta's search and seizure of non-cryptographic data. On February 6, 2015, Defendants filed a motion for judgment on the pleadings and summary judgment that was granted on May 27, 2015. Plaintiff filed a similar complaint against the University of Michigan Law School, the University of Michigan, and the Regents of the University of Michigan that he voluntarily dismissed.

Polytorx, LLC, a Michigan Limited Liability Company, v. Regents of the University of Michigan. Court of Claims (Judge James S. Jamo) (Served May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff alleged that faculty in the Civil Engineering Department used the licensed patent rights to perform research and activities outside the scope of the rights retained by the University in the license, and that the faculty and a former graduate student also collaborated in the misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction (a Korean Company). Plaintiff sought damages, interest, costs, and attorney's fees. On July 3, 2013, Defendants filed a motion for summary disposition that was granted on September 10, 2013. Plaintiffs filed an appeal of the decision by the Court of Claims on November 8, 2013. On May 7, 2015, the Court of Appeals affirmed the Court of Claims Order that the case against the University be dismissed.

Polytorx, LLC a Michigan Limited Liability Company v Antoine Naaman, Sherif El-Tawil, Dong Joo Kim, Ju Young Kim, Ji Yong Kim, and Sambo Construction Machine Co., LTD. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff claims the defendants, a current and former faculty member, have tortiously interfered with plaintiff's business relationships. Plaintiff alleged that defendants engaged in research and activities using the licensed patent rights that were in conflict with the license and collaborating in misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction. On July 25, 2013,

Defendants filed a motion for summary disposition that was denied on March 3, 2014. On March 24, 2014, Defendants filed an application for interlocutory appeal. On April 21, 2014, Plaintiff filed a motion in opposition to Defendants' application for interlocutory appeal. Defendants filed a motion to stay proceedings on April 22, 2014. On May 19, 2014, the Court of Appeals granted Defendants' application for leave to appeal and motion to stay pending the appeal. At the same time, the Court ordered that the appeal to the Court of Claims and this appeal be consolidated. On May 7, 2015, the Court of Appeals reversed the Circuit Court order that had denied Defendants' motion for summary disposition and granting summary disposition to Polytorex, remanding to the Circuit Court to enter an order granting Defendants' motion for summary disposition in full, and dismissing the case.

Ivan Morgan v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed August 8, 2012).

Plaintiff is a steamfitter in the Plant Department. He claimed that he was discharged in 2008, grieved the termination through his Union, and was reinstated by an arbitrator, with back pay. The complaint alleged that Plaintiff's back pay was deficient and that he, an African American, has been treated disparately from white co-workers. Plaintiff claimed race discrimination and sought damages in excess of \$25,000 as well as costs, interest, and attorney's fees. Settlement has been reached between the parties. This case is concluded.

Carmel Coward v. The Board of Regents of the University of Michigan. Court of Claims (Judge Michael J. Talbot) (Filed February 12, 2015)

Plaintiff, a former Patient Services Assistant for the Emergency Department at the University of Michigan Hospital, alleged that, while she was receiving treatment at a medical facility, her department's Interim Manager terminated her employment because she abandoned her position. Plaintiff's two-count complaint raised FMLA and wrongful termination claims. Plaintiff sought compensatory damages, liquidated damages, reinstatement, and an injunction prohibiting Defendant from engaging in any further acts of wrongdoing, discrimination, or retaliation with regard to Plaintiff. Plaintiff also sought interest, costs and attorney's fees. Settlement has been reached between the parties. This case is concluded.

Verna DeMartin v Regents of the University of Michigan d/b/a University of Michigan Dental School. Michigan Court of Claims (Judge William Collette) (Served November 5, 2012)

Plaintiff claimed she was injured on April 20, 2012, when she was struck by an automatic door while leaving the University of Michigan Dental School. Plaintiff alleged that the University was negligent and grossly negligent for having a defective and improperly maintained door. Plaintiff sought damages in excess of \$25,000, with interest, costs, and attorney's fees. Defendant filed a motion for summary disposition that was denied on October 30, 2013. On May 19, 2015, the Court of Appeals reversed the trial court's denial of the University's motion to dismiss, and remanded for entry of judgment in favor of Defendant.

Wei Cao and Li-Hsuan Yang v Board of Regents of the University of Michigan. Genesee County Circuit Court (Judge Joseph J. Farah) (Served April 2, 2013)

Plaintiff was an Assistant Professor of Education for the University of Michigan-Flint. She claimed she applied for and was denied tenure and promotion because of her national origin. She further alleged the denial of her tenure was in retaliation for her having opposed, through a published article, what she described as "the discriminatory environment" on the Flint campus. Plaintiff claimed she suffered economic loss, and sought reinstatement, money damages in excess of \$25,000, plus interest, consequential damages, costs, and attorney's fees. On February 3, 2014, Plaintiff filed an amended complaint and an Order was entered allowing the joinder of Li-Hsuan Yang as Co-Plaintiff, without prejudice to Defendant's right to seek severance of the two Plaintiffs for purposes of trial. Settlement was reached between the University and Plaintiff Cao. Defendants filed a partial motion for summary disposition in the Yang case that was denied. Defendant/Appellant, the Board of Regents of the University of Michigan, sought leave to appeal from the Genesee County Circuit Court's December 22, 2014 order denying Defendant's motion

for partial summary disposition as to Plaintiff Li-Hsuan Yang. Settlement has been reached between the University and Plaintiff Li-Hsuan Yang. This case is concluded.

Hussein Berry v Board of Regents of the University of Michigan. Court of Claims (Judge Deborah Servitto)
(Served November 12, 2014)

Plaintiff claimed he was unlawfully denied in-state tuition at the University of Michigan-Dearborn. Plaintiff alleged that he brought this action on behalf of himself and all those similarly situated, and alleged violations of equal protection, due process, and the Elliott Larsen Civil Rights Act (race and national origin discrimination). Plaintiff sought a refund of tuition, statutory damages, actual damages resulting from defendant's alleged unjust enrichment, future in-state tuition pricing, costs, expenses, and attorney's fees. Plaintiff's previous Complaint, filed in the Eastern District of Michigan, was dismissed. Plaintiff sought class certification, which was denied on March 26, 2015. On March 30, 2015, Defendant filed a motion for summary disposition, which was granted on June 2, 2015.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "T. Lynch", with a long horizontal flourish extending to the right.

Timothy G. Lynch
Vice President & General Counsel

June 2015