

THE UNIVERSITY OF MICHIGAN  
REGENTS COMMUNICATION  
ITEM FOR INFORMATION

Subject: Litigation

November 2006

I. NEW CASES

There are no new cases this month.

II. RESOLUTIONS

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 re-filed his state claims in state court. The University filed a motion for summary disposition, which was denied by Judge Morris. The University filed an interlocutory appeal to the Michigan Court of Appeals. This case is set to go to trial beginning on October 23, 2006. Settlement was reached between the parties and the case is concluded.

2. C. William Kauffman v Regents of the University of Michigan and David Hyland. Washtenaw County Circuit Court. (Judge David Swartz) (Filed October 26, 2000); Michigan Court of Claims (Judge William E. Collette) (Filed November 30, 2000).

Plaintiff is a tenured professor in the Department of Aerospace Engineering at the University. He claims that the chair of the department, David Hyland, appropriated Plaintiff's work on a proposal to create an international aircraft design center without plaintiff's knowledge and without allowing plaintiff to have any involvement in the project. Plaintiff alleges that, because he complained of Hyland's actions to the UM chapter of the American Association of University Professors (AAUP), he has been retaliated against as a whistleblower. He seeks damages, costs, and attorney's fees. The two cases have been consolidated and will be heard before Judge Swartz. The judge granted defendant David Hyland's motion for leave to file a counterclaim against plaintiff. The University filed a motion for partial summary disposition, which was heard on May 14, 2003. The court dismissed Hyland as an individual defendant. Judge Swartz also dismissed the entire Court of Claims complaint and dismissed everything except the Whistleblower claim in the Circuit Court complaint. On October 21, Plaintiff's attorney withdrew and plaintiff had 45 days to retain another attorney. Judge Swartz ruled that, although it appears as though the plaintiff has not retained counsel, the trial will go forward. Plaintiff appealed to the Michigan Court of Appeals, which vacated Judge Swartz' order denying Kauffman's motion for a trial adjournment. Trial was then scheduled for August 23,

2004. Plaintiff voluntarily dismissed his sole remaining claim in the circuit court and appealed Judge Swartz' earlier dismissal of Plaintiff's other claims. On April 26, 2006, the Michigan Court of Appeals upheld the trial court's dismissal. Plaintiff filed a claim of appeal to the Michigan Supreme Court which denied his application for leave to appeal. This case is concluded.

3. Ann LaCivita v Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed October 6, 2005).

Ms. LaCivita was the Director of Alumni Relations at the School of Business Administration until her termination in February 2005. She claims that Dean Dolan and Assistant Dean Andreasen targeted her because of her age and gender and ultimately wrongfully discharged her. She claims violations of the Elliott-Larsen Civil Rights Act and seeks lost compensation, costs, attorney's fees and interest. Settlement was reached between the parties and the case is dismissed.

### III. CASE UPDATES

4. 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. The case will go to trial on the defamation and interference claims against Drs. Koelling and Eagle beginning on November 6, 2006.

5. Catherine Wilkerson v University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed December 19, 2003).

Plaintiff was employed as a physician at the University and worked as an emergency room physician in the emergency care unit at Hurley Hospital. She claims that, after she had raised concerns about women's health issues at the hospital and assisted another female staff member with her claim of sexual harassment, she was retaliated against by her supervisor. Plaintiff alleges that her job was ultimately eliminated in retaliation for complaining about gender discrimination and that alleged promises of another job were not forthcoming. She seeks damages, attorney fees, costs and interest. The University filed a motion for summary disposition, which was denied by the court. The University filed an application for leave to appeal that decision to the Michigan Court of Appeals; on February 3, 2006, the Court of Appeals granted our motion. Oral argument was held on July 11, 2006. On July 25, 2006, the Court of Appeals issued its opinion, reversing the trial court's opinion in part, affirming in part, and remanding for further proceedings. Essentially, the court ruled that plaintiff's claims of discriminatory/retaliatory termination based on the elimination of her position are time-barred. In addition, plaintiff failed to establish a question of fact that she was denied other employment opportunities at the University in retaliation of her complaints of discrimination, with the exception of an opportunity to work certain shifts in the MWorks area. Therefore, according to the court's ruling, the only claim remaining in this case is that allegation relating to the MWorks shifts and that has been remanded for further proceedings. Plaintiff filed a motion for reconsideration by the Court of Appeals, which was denied by the court on September 8, 2006. On October 19, 2006, Plaintiff filed an application for leave to file an appeal with the Michigan Supreme Court.

Respectfully submitted,



Marvin Krislov  
Vice President and General Counsel