

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 3:15 p.m. Tuesday, March 16, 2010
Glenn S. Dumke Auditorium

Herbert L. Carter, Chair
A. Robert Linscheid, Vice Chair
Roberta Achtenberg
Nicole M. Anderson
Carol R. Chandler
Debra S. Farar
Kenneth Fong
Margaret Fortune
George G. Gowgani
Melinda Guzman
William Hauck
Raymond W. Holdsworth
Linda A. Lang
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Russel Statham
Glen O. Toney

Consent Items

Approval of Minutes of Meeting of January 27, 2010

Discussion Items

1. General Counsel's Report, *Information*

**MINUTES OF MEETING OF
COMMITTEE ON THE WHOLE**

**Trustees of The California State University
Office of the Chancellor
Glenn S. Dumke Conference Center
401 Golden Shore
Long Beach, California**

January 27, 2010

Members Present

Herbert L. Carter, Chair
Roberta Achtenberg
Carol R. Chandler
Debra S. Farar
Kenneth Fong
Margaret Fortune
George G. Gowgani
Melinda Guzman
William Hauck
Raymond W. Holdsworth
Linda A. Lang
Robert Linscheid
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Russel Statham
Glen O. Toney

Chair Carter called the meeting to order.

The minutes of September 22, 2009, were approved as submitted.

Appointment of Member of the California State University Headquarters Building Authority

Executive Vice Chancellor and Chief Financial Officer Benjamin F. Quillian presented this action item to the Committee. He explained that the California State University Office of the Chancellor facility has been financed and operated through a joint powers agreement with the city of Long Beach in place since 1976. The arrangement established the California State University Headquarters Building Authority to ensure provisions of the agreement are carried forward. The Trustees appoint two members to the Authority, the city appoints two members, and those four members jointly appoint a fifth member. Members are appointed for a term of four years and may be reappointed for successive terms. The position is uncompensated.

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Whole

Dr. Quillian noted the purpose of the agenda item is to recommend a four year extension of one of the representatives for the CSU. George Pardon, recently retired Vice President of Administration and CFO at California State University, Los Angeles, has served as a Trustee representative to the Authority since 1999, and has functioned as a valuable member of the Authority. It is resolved by the Board of Trustees of the California State University, that George Pardon be reappointed as a commissioner of the CSU Headquarters Building Authority for a four year term (RCOW 01-10-01).

The meeting adjourned.

COMMITTEE OF THE WHOLE

General Counsel's Report

Presentation By

Christine Helwick
General Counsel

Litigation Report

This is the semi-annual report on the status of significant litigation confronting the CSU, and is presented for information. "Significant" for purposes of this report is defined as litigation: (1) with the potential for a systemwide impact on the CSU; (2) that raises significant public policy issues; (3) brought by or against another public agency; or (4) which, for other reasons, has a high profile or is likely to generate widespread publicity. *New information since the date of the last report is printed in italics.*

The cases contained in this report have been selected from 66 currently active litigation files, in all of which CSU is named as the defendant.

New Cases

Buffard, et al. v. CSU, et al.

Sacramento County Superior Court

Nicole Buffard, Marjorie Gelus and Kathleen Moore, female faculty members in the Foreign Languages department at CSU Sacramento, claim that their colleague, Wilfrido Corral, who had served as department chair, discriminated, harassed and retaliated against them based on their gender and sexual orientation. They also claim that the University was on notice of Corral's behavior and failed to adequately investigate or correct it. The case is in the discovery phase.

City of Hayward v. CSU

Hayward Area Planning Association; Old Highlands Homeowners

Alameda County Superior Court

The City of Hayward filed a CEQA challenge to the 2009 CSUEB Master Plan Environmental Impact Report. The lawsuit alleges, among other things, that the University failed to adequately analyze impacts on public services, including police, fire, and emergency services. The City has specifically demanded that the University provide funding for additional fire facilities. The matter is in the pleading phase.

The Hayward Area Planning Association and Old Highlands Homeowners Association, two local residential homeowners' associations, also filed a CEQA challenge to the 2009 CSUEB Master Plan EIR. The lawsuit alleges shortcomings in nearly every aspect of the environmental findings, with a particular emphasis on the University's alleged failure to consider bus and other improvements to public transit access to the campus. The matter is in the pleading phase.

Fassberg Construction Co. v. CSU, et al.

Los Angeles County Superior Court

Fassberg Construction Co., the general contractor retained by the CSUCI Site Authority for the residential and commercial construction of the East Campus Town Center project, has sued the Site Authority and the CSU for breach of contract and the value of services provided. Fassberg asserts that the Site Authority improperly terminated Fassberg's contract and that it owes approximately \$5.8 million for work Fassberg performed. Fassberg has already unsuccessfully pursued this claim before the CSU Contractors Review Board. The CSU has tendered its defense to the Site Authority, which has been accepted. This matter is in the pleading stage.

Kemper v. CSU, et al.

Sacramento County Superior Court

Edward Kemper, a campus visitor, alleges that he encountered architectural barriers on the CSU Sacramento campus, such as an impeded path of travel, lack of access to a performance stage, insufficient handrails, and lack of appropriate ramps, all of which impeded his ability to attend an event and constitute disability discrimination. The case is in the pleading stage. Kemper has sued several other public agencies on similar theories.

Sandford v. Louis, et al.

San Diego County Superior Court

Nicholas Sandford, a member of the 2008 SDSU football team, filed this action against former teammate Lance Louis, SDSU, and former head football coach Chuck Long for battery, negligent supervision and intentional infliction of emotional distress. The action arises out of an altercation between Sandford and Louis, which culminated in Louis attacking Sandford in a meeting room at the SDSU athletic center. Sandford suffered a concussion, ruptured eardrum and facial injuries. A separate criminal misdemeanor action is pending against Louis. This case is in the pleading stage.

Vega v. State of California, et al.

Santa Clara County Superior Court

Melissa Vega, a freshman student at San José State University, fell out of a second floor dormitory window and is now a paraplegic. She had a blood alcohol of .19 at the time of the accident. She has filed this lawsuit alleging that the university's premises were unsafe; she alleges that there should have been safety locks on the windows, bunk beds should not have been

placed adjacent to a large window, and three students should not have been in a room designed for two. This case is in the discovery stage.

Construction Cases

NetVersant v. Helix Electric, et al.

San Diego County Superior Court

In 2007, Netversant Solutions, a subcontractor, brought an action against Helix Electric, the general contractor on SDSU's telecommunications infrastructure project. The lawsuit includes claims for the reasonable value of work performed, breach of the subcontract, breach of the implied warranty of the fitness of plans, recovery on the bonds, and declaratory relief. In August 2009 Helix cross-complained against SDSU for breach of the prime contract and for implied contractual indemnity for any damages arising out of Netversant's claims against Helix. Helix also cross-claimed against Netversant's surety, which provided the performance bond on the subcontract. *CSU filed a cross-complaint against Helix and its surety and Netversant. The case is in the discovery stage. Trial has been set for October 29, 2010.*

Employment Cases

Bale v. CSU

San Diego County Superior Court

Courtney Bale, a strength and conditioning coach at SDSU, complains that an unfavorable performance evaluation, being denied the opportunity to work with the football and basketball teams, and being given a computer with pornography are sex discrimination and retaliation for reporting that she was treated differently from a male strength and conditioning coach. *On August 24, 2009, CSU filed a motion for summary judgment. In September, the parties agreed to settle for a payment by CSU to Bale of \$150,000.*

Baxter-White v. CSU, et al.

San Diego County Superior Court

Kathryn Baxter-White, a former temporary SDSU student health center accounting technician, sued CSU and three individuals for alleged retaliation under the state whistleblower statutes, alleging she was retaliated against for complaining that SDSU incorrectly billed a Medi-Cal program. The lawsuit requests that the court reverse the University's determination that there was no whistleblower retaliation, and allow her to pursue her claim for money damages for breach of contract and violation of the whistleblower statutes. *The parties have agreed to stay her claims for damages and allow her writ petition for reversal of the university's administrative determination to proceed. The writ is set for hearing on April 30, 2010.*

Block v. CSU, et al.

Los Angeles County Superior Court

Joel Block, a systemwide HR manager in the Chancellor's Office, was non-retained in January 2008 for performance reasons. He alleges that a pattern of adverse treatment, including a demotion, salary freeze and suspension, culminating in his non-retention, constituted discrimination and retaliation based upon his age, disability, efforts to redress grievances, and protests over the award of a no-bid contract to consultants. *The case settled in October 2009 for \$135,000.*

Brown v. CSU, et al.

Fresno County Superior Court

Auwana Brown, a former Fresno State police officer, settled a sexual harassment lawsuit against the University in 1998. As a part of the settlement, Brown agreed to a future resignation after she vested in the state retirement plan (i.e., by August 31, 2000). After a large verdict in another Fresno State police department case was entered on August 11, 2000, Brown asked to unilaterally rescind her resignation less than two weeks before it was to become effective. The campus denied her request. Brown petitioned the State Personnel Board to reinstate her. The SPB refused, and Brown then petitioned the court to order the SPB to set aside her resignation. The court instead sent the case back to the SPB for further findings. After three years of inactivity, the SPB issued a second decision denying Brown reinstatement. Brown also filed a civil suit for damages. Both cases were consolidated, but her civil suit was stayed while Brown further challenged the SPB's decision.

In November 2008, the court denied Brown's (second) petition to set aside her resignation. Brown claimed in her lawsuit for damages that the term in her settlement agreement that bars her reemployment is in violation of public policy.

CSU filed a challenge to the legal sufficiency of her civil claim. The court imposed a further stay of the proceedings, and ordered Brown to appeal the November 2008 writ decision before any ruling would be made on her claim for damages. The court of appeal denied Brown's request. *The trial court then granted CSU's legal challenge to the sufficiency of Brown's remaining claims, dismissing the case. Brown has filed an appeal of the trial court judgment.*

Corral v. CSU, et al.

Sacramento County Superior Court

Wilfrido Corral is a faculty member of Hispanic and "Amerindian" descent at CSU Sacramento and former chair of the Foreign Languages department. He was investigated in 2006 for sexually harassing four students and ultimately reprimanded. The university paid \$15,000 in settlement on the claim of one of the students. Corral now claims that he was subjected to discrimination on the basis of his race, national origin and gender. He also claims that the University did not

give him proper notice of the underlying allegations during the investigation. The case is in the discovery phase.

Ohton v. SDSU, et al.

San Diego County Superior Court

David Ohton, a SDSU strength and fitness coach, sued CSU and various individuals for alleged retaliation under the state whistleblower statute, claiming he was retaliated against for statements he made in CSU's investigative audit of alleged improprieties in the SDSU Athletics Department and equipment room. The trial court granted CSU's motion for summary judgment on the ground that Ohton had not sought to reverse the University's administrative determination that

there was no retaliation, before filing suit. Ohton appealed. The Court of Appeal reversed and instructed the trial court to give Ohton an opportunity to amend his complaint. Ohton then amended his complaint and added a new petition for writ of mandate to reverse the University's administrative determination. The trial court again ruled in CSU's favor, finding that CSU's process met the requirements of the California Whistleblower Protection Act.

Ohton filed a second lawsuit and writ petition seeking to set aside a later administrative finding that subsequent actions were also not retaliatory for his participation in the 2002-03 audit. The cases were consolidated. The court stayed the second Ohton lawsuit as Ohton appealed the decision in the first.

In January 2010, the Court of Appeals reversed and ordered the trial court to grant's Ohton's petition to overturn CSU's administrative determination. The Court found that CSU did not satisfactorily address Ohton's complaint because it incorrectly found that Ohton's allegation about a coach being drunk was not made in good faith, and because CSU's final determination failed to address whether employees were disciplined or referred for criminal prosecution. CSU has requested review by the California Supreme Court.

Pagel v. CSU, et al.

Fresno County Superior Court

Ramona Pagel, formerly an assistant track coach at California State University, Fresno, applied for the head coach position and was not selected. Thereafter, she applied for an assistant coach position under the new head coach and also was not selected. Pagel claims that she was discriminated against because of her gender, was retaliated against for complaining of Title IX and gender discrimination, and that the university failed to provide her with an environment free from harassment. *The case settled at mediation in September 2009 for \$300,000.*

Runyon v. CSULB, et al.

Los Angeles County Superior Court

L.R. Runyon, a professor in the Finance Department of the College of Business at CSU Long Beach, alleges he was removed from his position as department chair in retaliation for reporting alleged improper activities by the Dean of the College of Business, Luis Calingo. Runyon made various complaints to his supervisors and others that the Dean made inappropriate and wasteful business trips and spent too much time away from campus. The Dean subsequently removed Runyon as chair of the department citing Runyon's failure to meet certain performance objectives. An extensive investigation into Runyon's claims of retaliation concluded that he was removed as department chair for performance reasons and not in retaliation for his complaints about the Dean. In 2006, the court granted CSU's motion for summary judgment and dismissed Runyon's case. Runyon appealed. In 2008 the Court of Appeal upheld the judgment in CSU's favor. Runyon's petition for hearing before the California Supreme Court was granted. *Oral argument is set to take place on March 3, 2010. The Court's attention will be drawn to another SDSU whistleblower retaliation claim (Ohton) also before the Supreme Court that raises similar issues.*

Shubin v. Jenkins, et al.

Sacramento County Superior Court

Rebecca Shubin was a tutor for the men's basketball team at CSU Sacramento who claims to have been subjected to inappropriate sexual comments and touching by the coaching staff. *Plaintiff has accepted \$75,128 in settlement for her claims.*

Verellen v. CSU, et al.

Los Angeles County Superior Court

Paul Verellen, a systemwide HR manager in the Chancellor's Office, was non-retained in March 2008 for performance reasons. In September 2007, immediately after learning informally of his supervisor's dissatisfaction with his performance, Verellen filed a whistleblower complaint that a labor relations consultant was improperly retained by the CSU. After he was formally advised a few days later that he would not receive a merit salary increase because of his performance, he filed a whistleblower retaliation complaint and a complaint of age discrimination. He filed a second retaliation complaint after he was non-retained. His retaliation and age discrimination complaints were investigated and rejected. Verellen then filed a petition for writ of mandate claiming the retaliation investigative outcomes are wrong and requesting reinstatement. He also filed a separate complaint for damages for whistleblower retaliation (under other statutes) and age discrimination. The damages action was stayed pending resolution of the writ petition. The trial court denied the writ petition. *Verellen has appealed this ruling, and his claim for damages under other legal theories remains stayed.*

Environmental Cases

City of San Diego v. Trustees, et al.

Del Cerro Action Council v. Trustees, et al

City of San Diego, et al. v. CSU

SDMTS v. CSU, et al.

SANDAG v. CSU, et al.

San Diego County Superior Court

The Environmental Impact Report for the 2005 SDSU Master Plan was challenged in three lawsuits filed by the City of San Diego, Alvarado Hospital and Del Cerro Neighborhood Association, each alleging the EIR did not adequately address necessary mitigation measures. The Alvarado lawsuit has been dismissed.

After the Supreme Court's City of Marina decision, SDSU prepared a revised 2007 Master Plan EIR that was challenged again by the City of San Diego, the San Diego Metropolitan Transit System and the San Diego Association of Governments. Each alleged that the EIR did not adequately address necessary mitigation measures and that the CSU must fund all mitigation cost, irrespective of Legislative funding. The Del Cerro lawsuit and these three new lawsuits have been consolidated.

On February 11, 2010, the court denied the challenges to SDSU's 2007 Master Plan EIR, finding that CSU met all of the requirements of the City of Marina decision and CEQA by requesting Legislative funding to cover the cost of local infrastructure improvements. CSU is not required to fund those projects on its own, or to consider other sources of funding for them. The decision also held that the EIR properly considered potential impacts, was supported by substantial evidence, that CSU properly consulted with SANDAG, and that petitioners were barred from proceeding on the issue of other sources of funding because it was not raised by them in the underlying administrative proceedings.

LandValue 77, et al. v. CSU, et al. (Lead case)

Fresno County Superior Court

LandValue 77, a private business entity in Fresno, filed a CEQA challenge to the Campus Pointe project, together with a claim of conflict of interest involving former Trustee Moctezuma Esparza, whose company will operate a movie theater in the project. In July 2009, the court determined that the environmental impact analysis for Campus Pointe is in full compliance with CEQA, except for additional analysis required on overflow parking and traffic, and certain water and air quality issues. The court also determined that because former Trustee Esparza had a financial interest in a sublease between Maya Cinemas and Kashian Enterprises, the developer on the project, an irresolvable conflict of interest existed when the Board took the vote on the Campus Pointe EIR, and the theater sublease must be voided as a result. *LandValue has appealed the trial court's ruling. The appeal has not yet been set for argument.*

Personal Injury Cases

Daves v. City of San Bernardino, et al.

San Bernardino County Superior Court

The father and son of decedent, Russell Daves, filed this wrongful death action against CSU, the City and County of San Bernardino and the State. Daves presented as a suspicious person in the hillside of the CSUSB campus at the time of the severe wild land fires of 2007. University police attempted to approach him and Daves fled. The police pursued him and were joined by the San Bernardino Police Department. The decedent was shot and killed after he backed his vehicle in the direction of the officers threatening their lives. *CSU has agreed to settle the action for \$5,000 in exchange for a full release. Plaintiffs have settled their claim with the City of San Bernardino for \$10,000.*

Student Cases

Balderramos v. SJSU

Santa Clara County Superior Court

Alfredo Balderramos, a student at SJSU, filed this writ action to overturn a disciplinary sanction imposed during his freshman year after he was found to have made a threat of physical harm towards other students. His writ challenges procedural aspects of the disciplinary process, including whether hearsay testimony can support the imposition of discipline. Balderramos has taken no steps to complete preparation of the administrative record, a prerequisite to having the court hear the case. *Settlement negotiations are underway.*

Donselman v. CSU

San Francisco County Superior Court

This is a purported class action filed by two students from San Francisco State University and CSU San Bernardino, challenging the July 2009 student university fee increase and the May 2009 Graduate Business Professional fee, both of which were imposed in the Fall 2009 term. Plaintiffs' application for a temporary restraining order and a preliminary injunction were denied. *The case is in the discovery stage.*

Every Nation Campus Ministries, etc. v. Reed, et al.

U.S. District Court, San Diego

A group of Christian student organizations and students at the San Diego and Long Beach campuses sued under various legal theories to challenge the constitutionality of the CSU anti-discrimination policy, which refuses recognition of student organizations that discriminate on the basis of religion, sexual orientation or marital status. The plaintiff groups exclude non-Christians, homosexuals and others from joining or becoming officers. They allege that their First Amendment rights of freedom of religion and association trump CSU's anti-discrimination prohibition, and that they must be recognized and provided full access to University facilities.

The court denied plaintiffs' motion for a preliminary injunction, and both sides filed summary judgment motions. In February 2009, the court found CSU's non-discrimination policy constitutional, and granted CSU's summary judgment motion. Plaintiffs filed an appeal. Oral argument has not been set yet. This issue is raised in several similar suits throughout the nation that have produced mixed results. The Ninth Circuit Court of Appeals recently ruled the University of California's non-discrimination policy was constitutional. *That case has been accepted for review by the United States Supreme Court.*

Martinez, et al. v. Regents of the UC, et al.

Yolo County Superior Court

This is a class action filed by non-resident citizen students against UC, CSU, and the California Community Colleges, challenging the exemption from out-of-state tuition for those, including undocumented immigrants, who meet the three year California high school attendance requirement of AB540. Plaintiffs allege AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs seek an injunction enjoining enforcement of AB540, a declaration that the statute is unlawful, class-wide tuition restitution, damages, and attorney fees. Defendants collectively filed motions to dismiss, which were granted. Plaintiffs appealed. The appellate court ruled in favor of the plaintiffs, remanding the matter back to the trial court. Defendants petitioned the California Supreme Court and review was granted. *Oral argument has not yet been set.*

Torres v. CSU, et al.

Alameda County Superior Court

Jerri Ann Torres, a CSU East Bay student, alleges she was sexually harassed by a faculty member. The harassment consisted of unwelcomed kissing, touching, and holding, as well as other verbal harassment. The faculty member is being separately represented at his own expense in this action. *The matter is in the discovery phase.*

Other Cases

Barour (dba Dolcini Caffè Espresso) v. CSULA Auxiliary Services, et

Los Angeles County Superior Court

A campus coffee shop owner sued the CSULA auxiliary and the university, seeking a declaration from the court that he has the right to operate on campus through 2023 pursuant to his license agreements with the auxiliary. He also claimed that the auxiliary breached those license agreements by converting its coffee shop into a Starbucks-branded franchise named "Café L.A." CSULA brought a separate unlawful detainer action to evict the coffee shop owner under a license agreement with its auxiliary. *In November 2009, the parties settled, entering a new sublease that permits the coffee shop to continue to operate at its old location and in one new location through 2014. The auxiliary will also be permitted to continue operating its competing Starbucks-branded franchise.*

Whole
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SETC-United v. CSU, et al.

San Francisco County Superior Court

The State Employees Trades Council's collective bargaining agreement with CSU expired on June 30, 2008. The Education Code requires that prevailing wages be paid to certain hourly laborers unless a collective bargaining agreement states otherwise. SETC claims that when its collective bargaining agreement expired, its employees should have been paid prevailing wages. Because CSU pays SETC employees on a monthly, not an hourly basis, the Education Code requirement should not apply. The case is in the discovery phase.

Administrative Hearings Report

There were no administrative hearing outcomes during this reporting period that raise significant public policy issues and/or have broad impact on the CSU system.