

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 11:15 a.m., Tuesday, September 20, 2011
Glenn S. Dumke Auditorium

Herbert L. Carter, Chair
Bob Linscheid, Vice Chair
Roberta Achtenberg
Carol R. Chandler
Bernadette M. Cheyne
Debra S. Farar
Kenneth Fong
Margaret Fortune
Steven M. Glazer
Melinda Guzman
William Hauck
Raymond W. Holdsworth
Hsing Kung
Linda A. Lang
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Jillian L. Ruddell
Glen O. Toney

Consent Items

Approval of Minutes of Meeting of March 22, 2011

Discussion Items

1. General Counsel's Report, *Information*

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

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

Tuesday, March 22, 2011

Members Present

Herbert L. Carter, Chair
Bob 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
Hsing Kung
Linda A. Lang
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Glen O. Toney

Approval of Minutes

The minutes of the meeting of September 22, 2010, were approved as submitted.

General Counsel's Report

General Counsel Helwick presented her semi-annual update on legal issues facing the CSU, including a PowerPoint presentation of litigation and claim statistics.

Chair Carter thanked Ms. Helwick and the legal staff for their fine work as reflected in her report.

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 57 currently active litigation files.

New Cases

Baird-Olson v. Fernandez, et al.

Los Angeles County Superior Court

Karren Baird-Olson, a 74 year old Associate Professor of Sociology, alleges that while she was participating in a March 4, 2010 demonstration at CSUN protesting student fee increases, certain CSUN and LAPD officers knocked her to the ground, broke her arm and stomped on her chest in the course of moving in to arrest a fellow protestor. She asserts causes of action for excessive force, and assault and battery. The case is in the discovery phase.

Davis, et al. v. NCAA, et al.

U.S. District Court, San Francisco

A group of six student athletes from California community colleges filed this suit against the NCAA, the University of California, and the California State University to challenge the August 2009 implementation of NCAA Division I Bylaw 14.5.4.2, asserting that the bylaw imposes more stringent transfer requirements upon transfers from community colleges in comparison to those coming from other four-year institutions. Plaintiffs claimed the bylaw violates the US and California constitutions' principles of equal protection. All defendants filed motions to dismiss, asserting that the bylaw was rationally related to the legitimate educational purpose of

preparing transfer students to meet the academic rigors of a more challenging four-year program. The court agreed and granted the motion to dismiss in June 2011. The case is now closed.

Lane, et al. v. CSU, et al.

Los Angeles County Superior Court

Brian Lane and Michael Pounds are tenured faculty in the Long Beach Film and Electronics Arts Department. Both Lane and Pounds allege they were defamed and retaliated against for their involvement in various department issues, including making complaints about other colleagues' alleged fraudulent credentials and both also claim to have been improperly accused of financial fraud. Lane alleges the Master of Dramatic Writing program he founded has been improperly singled out for possible elimination on budgetary grounds. Pounds, a 61 year-old African-American with a partial permanent disability resulting from falling out of a window on campus in 2006, alleges he has been subjected to numerous acts of discrimination based on his age, race and disability, including being appointed as department chair for only one year rather than a three-year term. The case is in the pleading stage.

Mattiuzzi v. CSUS, et al.

U.S. District Court, San Diego

Cici Mattiuzzi is the Director of Career Services in the College of Engineering and Computer Science at CSU Sacramento. In 2009 she filed another lawsuit against the University under various theories, including gender discrimination. The previous case was settled. Mattiuzzi now alleges that she was retaliated against for filing her first lawsuit, in that she was excluded from meetings, denied office space, and the career services account she oversees has been raided. The case is in the discovery phase.

Nelsen v. Cal Poly Foundation, et al.

San Luis Obispo County Superior Court

Plaintiff Nicole Nelsen, a Cal Poly student, suffered serious knee and leg injuries when a cow pinned her against a metal rod inside of an artificial insemination unit. The insemination was part of an instructional activity. Nelsen was allowed to participate even though she was not enrolled in the course. In this lawsuit, she alleges negligence and premises liability against both the CSU and the Cal Poly Corporation that owned the cow. The case is in the discovery phase.

Schulter v. CSU, et al.

U.S. District Court, San Jose

Martin Schulter, the former SJSU Director of Disability Services, filed this lawsuit for damages against SJSU and the administrator who made the decision to non-renew his employment, alleging that this decision was based on his disability and was in retaliation for his work on behalf of disabled students and employees. This case is in the discovery stage.

Taiz v. CSU, et al.

Los Angeles County Superior Court

Lillian Taiz, President of the California Faculty Association, filed a writ petition challenging the salary approved for Cal Poly San Luis Obispo's new President, Jeffrey Armstrong, as a violation of the Open Meeting Act. Although she does not contest that the Board approved President Armstrong's salary in a public session, she alleges that an administrative document later processed by Human Resources to adjust the presidential salary range constitutes the violation of the Act. The petition will be heard on October 21, 2011.

University Marelich Mechanical, Inc. v. PCL Constructions Services,

Ventura County Superior Court

CSUCI has a technology infrastructure improvement contract with PCL. The mechanical subcontractor— UMM—has filed action against PCL for \$1.7M in cost overruns. PCL cross-complained against the CSU claiming it is the responsible party, despite PCL's contractual responsibility if the project cost exceeds the bid amount. CSUCI did not authorize the challenged additional costs. This matter is in the early pleading phase.

Washington v. CSU, et al.

Ventura County Superior Court

Eddie Washington, the former AVP of Human Resources at CSUCI, filed suit against the the CSU and its former Vice President for Business and Administration, for whistleblower retaliation, after being reassigned to be the campus EEO officer. The campus claims this reassignment was the result of long-standing performance issues. Washington claims to have blown the whistle on an alleged violation of travel reimbursement policy. This matter is in the early pleading phase.

Employment Cases

Baxter-White v. CSU, et al.

San Diego County Superior Court

Kathryn Baxter-White, a former temporary SDSU student health center accounting technician, sued the CSU and three individuals under the state whistleblower statute, alleging she was retaliated against for complaining that SDSU incorrectly billed a Medi-Cal program. In 2010, the state court upheld the SDSU determination that there was no retaliation. However, in Runyon, another the CSU whistleblower retaliation case, the California Supreme Court held that whistleblower retaliation plaintiffs may proceed with a civil trial for damages without having overturned the CSU administrative determination, which reinstated this case. After a May 2011 trial of the state court action, the jury found in favor of the CSU and the individual defendants. Plaintiff has agreed not to appeal in exchange for the CSU's waiver of its right to seek its costs.

In September 2010, Baxter-White filed a federal lawsuit against the CSU seeking reinstatement and a declaration that the California Whistleblower Protection Act and the CSU's procedure for investigating such complaints violate the U.S. Constitution, and against 10 individuals alleging they deprived her of property rights in her job without a due process hearing. *In June 2011, the federal court dismissed plaintiff's federal lawsuit and plaintiff did not amend her complaint, thus ending the federal claim.*

Brown v. CSU, et al.

Fresno County Superior Court

Auwana Brown, a former CSU Fresno 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 CSU Fresno 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.

The 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 the 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. *The appeal has been fully briefed, and oral argument is expected to be set sometime in 2012.*

Corral v. CSU, et al.

Sacramento County Superior Court

Wilfrido Corral, a faculty member of Hispanic and "Amerindian" descent at the CSU Sacramento and former chair of the Foreign Languages department, 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 claimed in this lawsuit that the investigation was discriminatory on the basis of his race, national origin and gender. He also claimed that the University did not give him proper notice of the underlying allegations during the investigation.

While his lawsuit was pending, three female faculty members, Buffard, Gelus and Moore, filed a separate lawsuit against Corral and the University, claiming that he had subjected them to sexual harassment. The University settled the claims against it for \$900,000 and terminated Corral. He filed an appeal under the union contract, which allows for him to remain employed until the matter is finally determined. The four female professors' individual claims against Corral were then consolidated into this lawsuit. As very damaging evidence about his behavior came in to the termination hearing, Corral agreed to dismiss his lawsuit and abandon his termination appeal in exchange for the University's agreement not to pursue cost reimbursement against him. All matters have now been dismissed without any further payment, and Corral's employment is finally terminated.

Noori v. CSU, et al.

San Luis Obispo County Superior Court

Mohammad Noori was Cal Poly's Dean of the College of Engineering until June 2010, when he was non-retained and exercised his retreat rights to a faculty position. Noori claims he was removed as dean because of his race/national origin and religion, and was retaliated against because he complained about discrimination. He further alleges he was defamed by Cal Poly employees because of his involvement in a partnership between Cal Poly and a Saudi Arabian University, and that Cal Poly did nothing to stop this defamation. Noori states claims against the CSU, Provost Koob and a Cal Poly faculty member (Menon).

The case was transferred to San Luis Obispo County Superior Court, and the court has directed Noori to eliminate several causes of action.

Riulli v. CSU, et al.

Sacramento County Superior Court

Laura Riulli is a faculty member at the CSU Sacramento. Following a similar and successful claim brought by one of her Business School colleagues, Riulli alleges violation of the California Equal Pay Act because she makes less money than the males in her department, which she claims has been a discriminatory practice since 2002. *The case is in the discovery phase.*

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. Following the California Supreme Court's decision in Runyon, Verellen withdrew his writ proceeding and filed an amended damages complaint. *The case settled in July 2011 for \$175,000.*

Environmental Cases

City of Hayward v. CSU

Court of Appeal

The City of Hayward filed a CEQA challenge to the 2009 CSUEB Master Plan Environmental Impact Report, claiming, among other things, that the University failed to adequately analyze impacts on public services, including police, fire, and emergency services. The City specifically demands that the University provide funding for additional fire facilities.

The Hayward Area Planning Association and Old Highlands Homeowners Association, two local residential homeowners' associations, filed a second CEQA challenge to the 2009 CSUEB Master Plan EIR, alleging 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.

On September 9, 2010, the trial court ruled in favor of the petitioners on nearly every issue and enjoined the University from proceeding with construction. The University appealed. *The CSU's opening brief was filed August 17, 2011.*

City of San Diego v. Trustees, et al.

SDMTS v. CSU, et al.

SANDAG v. CSU, et al.

San Diego County Superior Court

The EIR 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 was 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 lawsuits have been consolidated.

In February 2010, the court denied the challenges to SDSU's 2007 Master Plan EIR, finding that the 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. The 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 the 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. The City of San Diego, SANDAG and MTS have appealed. Del Cerro agreed to dismiss its lawsuit in exchange for the CSU's waiver of its costs.

The court of appeal will hear oral arguments on the appeal in October 2011.

LandValue 77, et al. v. CSU, et al.

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 appealed the trial court's ruling.

In February 2011, the appellate court ruled that voiding the Esparza theater sublease was a sufficient remedy to address the conflict of interest issue. The court formally set aside the EIR, and did not expand the scope of the required environmental review. The University was given an opportunity to fix the original three deficiencies identified by the trial court and reissue the EIR. The request for an injunction against construction while those corrections were made was denied.

A revised EIR addressing the court's concerns is being circulated for public review before return to the Board for approval. LandValue had requested attorneys' fees and costs as the prevailing party in this matter. Finding that LandValue had pursued this action for primarily its own financial interests, and not for the benefit of the public, the court denied LandValue's request.

Personal Injury Cases

Ridgeway v. Board of Trustees of the CSU, et al.

Los Angeles County Superior Court

On January 17, 2010, 10 year-old Joshua Ridgeway attended a performance by a third-party vendor, Clown Action Productions, at the Carpenter Performing Arts Center on the CSU Long Beach campus. As the performance was coming to a conclusion, the performers invited the children in the audience to approach the stage to catch streamers that were being thrown by the clowns. When Joshua did so, a wooden barricade that surrounded the stage gave way, and he fell approximately 10 feet to the concrete floor of the orchestra pit. Joshua was admitted to the pediatric intensive care unit with significant head and face injuries. He is being treated by various specialists. Joshua appears to be making good progress and was able to return to school within a few weeks of the accident. The contract with Clown Action Productions does not require indemnification for personal injuries during their event and states instead that the Carpenter Center is responsible for providing liability insurance through the CSU risk pool. Even though the Carpenter Center, which is operated by the campus Foundation, had that coverage in place, this action will be defended by the CSU because the Long Beach campus constructed the allegedly defective wooden barricade long before the Foundation took over the operation of the Carpenter Center. *This case is in the discovery phase, and the parties are planning to participate in an early mediation in the next few months.*

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 Louis, the CSU, and former head football coach 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. In March 2010, Louis pled guilty to misdemeanor battery in a separate criminal action.

In October 2010, the court dismissed the CSU from the lawsuit. In January 2011, the court dismissed former Coach Long from the lawsuit. The court entered judgment in favor of the CSU and Long. Sandford and Louis settled the remaining litigation for undisclosed terms. *In March 2011, Sanford appealed the judgment in favor of Long. Appellate briefing is complete.*

Steward v. Guseman

San Diego County Superior Court

Norma Steward alleges that Dennis Guseman, an employee of the CSU San Marcos, struck her and her husband with his car while they were walking in an intersection. Steward suffered

severe injuries, and her husband died. Guseman was driving to meet friends for breakfast. Steward contends that he was acting in the course and scope of his employment. The case is in the discovery stage. *The CSU's Motion for Summary Judgment will be heard on November 18, 2011. Trial is set for January 6, 2012.*

Student Cases

Alpha Delta-Chi-Delta Chapter, et al. 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 the 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 the CSU's non-discrimination policy constitutional, and granted the CSU's summary judgment motion. Plaintiffs appealed. In 2010, the United States Supreme Court affirmed a judgment upholding a similar University of California policy. *On August 2, 2011, the Ninth Circuit Court of Appeals issued a ruling affirming that the CSU's non-discrimination policy is constitutional. The court also remanded the matter back to the trial court to examine whether the campus evenhandedly applied the policy to other student groups.*

Donselman, et al. v. CSU

San Francisco County Superior Court

Five students brought this class action to challenge the state university fee and non-resident tuition increases, and the Graduate Business Professional fee, from fall 2009. The court granted plaintiffs' motion to certify two subclasses that exclude four campuses where fees were posted late and students who received financial aid to cover their increased fees. The two subclasses consist of approximately 180,000 students (down from over 400,000). *The CSU filed writs in the court of appeal and the California Supreme Court to challenge the class certification decision, but both were denied. The class notice has not yet gone out, and the case remains in the discovery stage.*

Howard v. CSU, et al.

Santa Clara County Superior Court

Courtney Howard, a former San Jose State University student, filed this lawsuit for damages against SJSU and several SJSU employees, alleging that they failed to protect her and take adequate remedial measures following a hazing incident at her sorority. Howard transferred to

another school shortly after the incident. This case is in the discovery stage. *The case has been ordered to mediation which will take place in November 2011.*

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 the UC, the 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 alleged AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs sought 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. Defendants petitioned the California Supreme Court, which found that AB540's high school attendance requirement was not a residency requirement and therefore, that no federal immigration laws were violated. Plaintiffs petitioned the United States Supreme Court for review, *but the Court declined to hear the case.*

Other Cases

Kemper v. CSU, et al.

Sacramento County Superior Court

Edward Kemper, a campus visitor, alleges that he encountered architectural barriers on the 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. Kemper has sued several other public agencies on similar theories. *The case is in the discovery stage.*

SETC-United v. CSU, et al.

San Francisco County Superior Court

The State Employees Trades Council's collective bargaining agreement with the 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 the 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

The outcomes in the following administrative hearings during this reporting period raise significant public policy issues and/or have broad impact on the CSU system.

CSUEU v. CSU

CSUEU filed an unfair labor practice when a Chancellor's Office employee and the union were notified of the CSU's intent to layoff the employee after the 90 days notice required under the contract. CSUEU argued that it was not afforded the opportunity to bargain over the effects of the layoff before the notice was given and the layoff was implemented. The Public Employee Relations Board found that the CSU's notice was sufficient and in compliance with HEERA and the collective bargaining agreement. It also found that the CSU had bargained the effects in good faith.

Hendee v. CSU

A San Bernardino police officer appealed his rejection during probation on the grounds that he had gained permanent status at the Fullerton campus before resigning his position there and accepting a new position at San Bernardino. He argued that his permanent status was systemwide and the San Bernardino campus therefore lacked authority to place him in a probationary status. The CSU responded that each campus is a separate hiring authority, and his permanent status at Fullerton did not apply at San Bernardino. The State Personnel Board granted the CSU's motion to dismiss.