

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 11:00 a.m., Tuesday, March 20, 2012
Glenn S. Dumke Auditorium

Bob Linscheid, Chair
Roberta Achtenberg
Carol R. Chandler
Bernadette M. Cheyne
Debra S. Farar
Kenneth Fong
Margaret Fortune
Steven M. Glazer
Melinda Guzman
William Hauck
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 September 20, 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, September 20 2011

Members Present

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

Approval of Minutes

Chair Carter, hearing no objections, approved the minutes of March 22, 2011.

General Counsel's Report

General Counsel Helwick presented her semi-annual update on legal issues facing the CSU, summarizing the litigation and claim statistic trends of the last six-month period.

There were no questions or further comments. Chair Carter thanked General Counsel Helwick for her report.

The meeting adjourned.

COMMITTEE OF THE WHOLE

General Counsel's Report

Presentation By

Christine Helwick
General Counsel

This is the semi-annual report on the status of significant litigation confronting the CSU, and administrative hearing results that impact the CSU system. It is presented for information.

Litigation

“Significant litigation” for purposes of this report is defined as: (1) having the potential for a systemwide impact on the CSU; (2) raising significant public policy issues; (3) brought by or against another public agency; or (4) litigation 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 59 currently active litigation files. CSU is the plaintiff and seeking relief in *one* of those cases.

New Cases

Bates v. CSU

Los Angeles County Superior Court

Robert Bates, a CSULA student, claims that the adjournment of the Board of Trustees to an alternative meeting room after disruption at the November 16, 2011 meeting was in violation of the Bagley-Keene Open Meeting Act. In December 2011, the court denied plaintiff's request for a preliminary injunction to reverse the actions taken by the Board in that session. The case is in the discovery phase.

CSU v. Clark, et al.

Santa Clara County Superior Court

CSU filed this complaint for breach of contract and negligence against the architect and general contractor for plumbing repair and replacement costs as a result of leaks that have occurred at SJSU's Campus Village dormitory complex. Construction was completed in 2005. CSU has repaired or replaced major portions of the plumbing system with final repair work scheduled for summer 2012. The case is in the pleading stage.

Keep Fort Ord Wild v. County of Monterey, et al.

Monterey County Superior Court

Keep Fort Ord Wild filed a petition against the Fort Ord Reuse Authority and the County of Monterey alleging that they failed to comply with the California Environmental Quality Act in connection with a proposed roadway project. Keep Fort Ord Wild also named CSUMB as a party in the lawsuit because a portion of the roadway is on property that will be deeded to the campus sometime in the future. The case is in the pleading phase.

Lane v. CSU, et al.

San Luis Obispo County Superior Court

Donna Lane is a member of the Cal Poly Presidential Advisory Board, and was injured on May 2, 2010, when she fell off the Cal Poly Performing Arts Center stage while attending an advisory board function. The insurance carrier for the Performing Arts Center has accepted CSU's tender of defense for this lawsuit.

Naghash v. CSU, et al.

Sacramento County Superior Court

Ashley Naghash, a freshman at CSU Sacramento, alleges that she was sexually assaulted in a campus dormitory by a fellow student after she had consumed numerous alcoholic beverages. She claims that CSU failed to prevent the incident from occurring and failed to provide adequate protection in the dorm. The CSU filed a motion to dismiss the complaint. A hearing has been scheduled for May 25, 2012.

Ramey v. CSU Los Angeles, et al.

Los Angeles County Superior Court

Lauri Ramey, a white female, alleges that she was discriminated against when she was hired as a tenured associate professor at CSULA, because she was paid less than an African American male professor hired at the same time. The African American male had more teaching experience. While Ramey was later promoted to full professor, and the African American male professor remained an associate professor, he was still paid more than her. She complained about this perceived wage discrepancy, and now claims that she is the victim of both discrimination and retaliation. The EEOC found in her favor, but did not pursue the case. The case is in the discovery phase.

Sanchez-Graves v. CSU, et al.

San Bernardino Superior Court

Yvonne Sanchez-Graves was a student in an Outdoor Education class at CSU Northridge that participated in a field trip to Joshua Tree National Park. As the group was preparing dinner, one of the gas camping stoves lit by a faculty member flamed up and plaintiff was significantly burned. The faculty member, Alan Wright, is also a named defendant. The case is in the initial pleading stage.

Construction Cases

University Marelich Mechanical, Inc. v. PCL Constructions Services,
Ventura County Superior Court

CSUCI has a technology infrastructure improvement contract with PCL Construction Services. The mechanical subcontractor - UMM - has filed action against PCL for \$1.7M in cost overruns. PCL cross-complained against 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. *The cost overrun claim has been settled by CSU paying PCL \$600,000; the only remaining issue is PCL's claim against CSU for allegedly improperly withholding contractual payment to cover flood damage that CSU alleges UMM caused. The case is set for trial on August 6, 2012*

Employment Cases

Brown v. CSU, et al.
Court of Appeal

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 filed an appeal of the trial court judgment. *On January 27, 2012, the Court of Appeal affirmed the judgment in CSU's favor. This concludes the matter.*

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 Art 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 Masters 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. *Lane has been served with a notice of dismissal from employment based on his financial misdeeds, including imposing extra fees on students in his classes. He has appealed to arbitration under the faculty contract. Both plaintiffs have now agreed to dismiss their lawsuit voluntarily.*

Mattiuzzi v. CSUS, et al.

U.S. District Court, Sacramento

Cici Mattiuzzi is the Director of Career Services in the College of Engineering and Computer Science at CSU, Sacramento. In 2009 she filed a previous lawsuit against the University under various theories, including gender discrimination. That case was settled. Mattiuzzi now alleges she was retaliated against for filing her first lawsuit, in that she was excluded from meetings, denied office space, and subjected to other unfair actions. The case is in the discovery phase.

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 CSU, Provost Koob and a Cal Poly faculty member (Menon). The case was transferred to San Luis Obispo County Superior Court. *It is in the discovery stage.*

Rioli v. CSU, et al.

Sacramento County Superior Court

Laura Rioli is a faculty member at CSU Sacramento. Following a similar and successful claim brought by one of her Business School colleagues, Rioli 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.

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. The case is in the discovery stage, *and has been ordered to mediation in June 2012.*

Washington v. CSU, et al.

Ventura County Superior Court

Eddie Washington, the former AVP of Human Resources at CSUCI, filed suit against the CSU and its former Vice President for Business and Administration, for whistleblower retaliation, after being reassigned to be the campus EEO officer. The reassignment was the result of long standing performance issues. Washington claims to have blown the whistle on an alleged violation of travel reimbursement policy. *The case has settled for \$250,000, and Washington's resignation.*

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 matter has been briefed.*

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City of San Diego, et al. v. CSU
SDMTS v. CSU, et al.
SANDAG v. CSU, et al.

Court of Appeal

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 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. The City of San Diego, SANDAG and MTS appealed; Del Cerro agreed to dismiss its lawsuit in exchange for CSU's waiver of costs.

On December 13, 2011, the Court of Appeal reversed the trial court's decision and ordered the Master Plan be vacated. CSU has petitioned the Supreme Court to review the case.

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 was slated to 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 was circulated for public review and approved by the Board in November 2011. 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.

In February 2012, the trial court found CSU had addressed all CEQA issues. LandValue has appealed the attorney fees decision.

Personal Injury 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 CSU Northridge 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. *Trial has been set for September 17, 2012.*

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 CSU, and the Cal Poly Corporation which owned the cow. The case is in the discovery phase.

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

Los Angeles County Superior Court

On January 17, 2010, ten year old Joshua Ridgeway attended a performance by a third party vendor, Clown Action Productions, at the Carpenter Performing Arts Center on the Long Beach State 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.

At a February 21, 2012 mediation, plaintiff produced an expert report alleging significant ongoing expenses for vocational and rehabilitation services. The parties have agreed to reconvene the mediation in sixty days.

Sandford v. Louis, et al.

Court of Appeal

Nicholas Sandford, a member of the 2008 SDSU football team, filed this action against former teammate Louis, 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 CSU from the lawsuit. In January 2011, the court dismissed former Coach Long from the lawsuit. The court entered judgment in favor of 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 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. *On December 5, 2011, the court granted summary judgment in favor of CSU. Steward has indicated that she plans to appeal.*

Student Cases

Alpha Delta-Chi-Delta Chapter, et al. v. Reed, et al.

9th Circuit Court of Appeal

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 2009, the court found CSU's non-discrimination policy constitutional, and granted 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 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. *Plaintiffs filed a petition for review with the United States Supreme Court. The Court is not expected to address the petition in the current term.*

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 175,000 students (down from over 400,000). CSU filed writs in the court of appeal and the California Supreme Court to challenge the class certification decision. Both were denied.

Notice of the litigation has been provided to the class members. Plaintiffs recently changed their legal theories to add alternative contract formation arguments. In light of the changes, CSU filed a motion to decertify the class, which will be heard on March 23, 2012. The case remains in the discovery phase.

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. *CSU has settled this matter for \$50,000. Plaintiff negotiated a separate settlement with the national sorority for \$50,000.*

Other Cases

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. Kemper has sued several other public agencies on similar theories. *The case settled on October 14, 2011 for \$25,000.*

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

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